AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

8-5-93
Vol. 58 No. 149

federal register

Thursday
August 5, 1993

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

OFFICIAL BUSINESS
Penalty for private use, $300

SECOND CLASS NEWSPAPER

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

8–5–93
Vol. 58 No. 149
Pages 41621–41980

federal register

Thursday
August 5, 1993

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The seal of the National Archives and Records Administration authenticates this issue of the **Federal Register** as the official serial publication established under the Federal Register Act. 44 U.S.C. 1507 provides that the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper, 24x microfiche format and magnetic tape. The annual subscription price for the **Federal Register** paper edition is $375, or $415 for a combined **Federal Register**, Federal Register Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the Federal Register Index and LSA is $353; and magnetic tape is $37,500. Six month subscriptions are available for one-half the annual rate. The charge for individual copies in paper form is $4.50 for each issue, or $4.50 for each group of pages as actually bound; or $1.50 for each issue in microfiche form; or $175.00 per magnetic tape. All prices include regular domestic postage and handling. International customers please add 25% for foreign handling. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA or MasterCard. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954.

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 58 FR 12345.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	202–783–3238
Magnetic tapes	512–1530
Problems with public subscriptions	512–2303

Single copies/back copies:

Paper or fiche	783–3238
Magnetic tapes	512–1530
Problems with public single copies	512–2457

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	523–5243
Magnetic tapes	512–1530
Problems with Federal agency subscriptions	523–5243

For other telephone numbers, see the Reader Aids section at the end of this issue.

Printed on recycled paper containing 100% post consumer waste

Contents

Federal Register

Vol. 58, No. 149

Thursday, August 5, 1993

Agriculture Department
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Rinderpest and foot-in-mouth disease; disease status change:
Chile, et al., 41643

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
State level fatality surveillance and field investigations; NIOSH; fatality assessment and control evaluation model, 41791

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Delaware, 41709
Louisiana, 41709
Oklahoma, 41709

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Myanmar, 41737, 41738

Commodity Credit Corporation
RULES
Loan and purchase programs:
Price support levels—
Peanuts, 41625
PROPOSED RULES
Loan and purchase programs:
Price support levels—
Feed grain acreage reduction; 1994 program, 41641

Customs Service
RULES
Organization and functions; field organization, ports of entry, etc.:
Norfolk and Newport News, and Richmond-Petersburg, VA, 41633

Defense Department
See Uniformed Services University of the Health Sciences
PROPOSED RULES
Freedom of Information Act; implementation:
National Reconnaissance Office, 41679
Stars and Stripes newspaper and business operations, 41671

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Bilingual education and minority languages affairs—
Bilingual vocational instructor training program, 41918
National Institute on Disability and Rehabilitation Research—
Rehabilitation research and training centers, 41910
Special education and rehabilitative services:
Blind vending facilities; arbitration panel decisions under Randolph-Sheppard Act, 41738, 41739, 41740, 41741, 41742, 41743

Energy Department
See Federal Energy Regulatory Commission
See Southeastern Power Administration
NOTICES
Natural gas exportation and importation:
Bay State Gas Co., 41761
Jonan Gas Marketing Inc., 41761
Northern Utilities, Inc., 41761
Tennessee Gas Pipeline Co., 41761
Texas International Gas & Oil Co., 41762

Environmental Protection Agency
NOTICES
Hazardous waste:
Municipal solid waste—
North Carolina, 41765
State program adequacy determinations—
Georgia, 41767
Tennessee, 41768
Meetings:
Phosphoric Acid Production Waste Dialogue Committee, 41770
Pesticide registration, cancellation, etc.:
Bonide Products Inc. et al., 41770
Union Carbide Chemicals & Plastics Co., Inc., 41776
WipeOut Cold Sterilizing Disinfecting Solution, 41779

Executive Office of the President
See Presidential Documents

Farmers Home Administration
RULES
Program regulations:
Business and industrial loan program [Editor's Note: This document, appearing at page 41171 in the Federal Register of August 3, 1993, was listed under the wrong agency in that issue's table of contents.]

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
Teledyne Continental Motors, 41645

Federal Communications Commission
RULES
Radio stations; table of assignments:
California, 41638
Tennessee, 41638

PROPOSED RULES
Radio stations; table of assignments:
Louisiana, 41681
New York, 41680
NOTICES
Agency information collection activities under OMB review, 41787, 41788

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 41848

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 41848

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Kansas, 41788

Federal Energy Regulatory Commission
RULES
Regional transmission groups; policy statement, 41626
PROPOSED RULES
Natural Gas Policy Act:
Electronic Bulletin Boards Standards; informal conferences, 41647
NOTICES
Natural Gas Policy Act:
State jurisdictional agencies tight formation recommendations; preliminary findings—
Land Management Bureau, 41744, 41745
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 41745
Blue Diamond Power Partners L.P., 41745
Central Maine Power Co., 41745
Dominion Management Argentina S.A., 41760
National Fuel Gas Supply Corp., 41760

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Asotin County, WA, 41832

Federal Maritime Commission
NOTICES
Complaints filed:
Deppe Linie GmbH & Co., 41789

Federal Railroad Administration
NOTICES
Railroad user fees, 41832

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 41849

Federal Trade Commission
NOTICES
Prohibited trade practices:
Griffin Bacal, Inc., 41789
Hasbro, Inc., 41789
Right Start, Inc., et al., 41789
United Weight Control Corp., 41790
YKK (U.S.A.) Inc., 41790

Financial Management Service
See Fiscal Service

Fiscal Service
PROPOSED RULES
Federal agency receipts management, disbursements, and cash management improvements fund operation, 41902
NOTICES
Surety companies acceptable on Federal bonds:
Evanston Insurance Co., 41841
Ranger Insurance Co., 41841

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Dugong, 41688
Hawaiian hawk, 41684
Royal snail, etc., 41690
San Joaquin Valley Orcutt grass, etc. (eight plants from California), 41700
Texas ayenia, etc., 41696
NOTICES
Endangered and threatened species:
Recovery plans—
Caesalpinia kavaiensis, etc. (Kona Dryland forest plants), 41802
Roan Mountain bluet, 41801
Meetings:
Crystal River National Wildlife Refuge, FL; management, 41802
Privacy Act:
Systems of records, 41803

Food and Drug Administration
RULES
Administrative practice and procedure:
Advisory committees—
List update, 41635
Organization, functions, and authority delegations:
Center for Drug Evaluation and Research, 41634
NOTICES
Committees; establishment, renewal, termination, etc.:
National Mammography Quality Assurance Advisory Committee, 41793

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Florida—
Group Technologies Corp.; electronic/computer/communication equipment plant, 41709
Mississippi—
Chevron U.S.A. Products Co.; oil refinery, 41709

General Services Administration
RULES
Federal property management:
Supply and procurement—
Supply sources use priorities, 41637
NOTICES
Environmental statements; availability, etc.:
Imperial County, CA; border station, 41791

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Inspector General Office, Health and Human Services Department

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 41794

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Acrylic sheet from Japan, 41710
Aluminum rod from Venezuela, 41711
Anhydrous sodium metasilicate from France, 41711
Brass sheet and strip from—
Japan, 41712
Cadmium from Japan, 41713
Candles from China, 41713
Forged stainless steel flanges from—
India, 41713
Taiwan, 41716
Forged steel crankshafts from—
United Kingdom, 41719
Industrial phosphoric acid from—
Belgium, 41721
Pagers from Japan, 41720
Pipe fittings from—
Thailand, 41721
Silicon metal from Brazil, 41721
Stainless steel wire rods from—
Brazil, 41723
France, 41726
India, 41729
Tapered roller bearings from Yugoslavia, 41732
United States-Canada free-trade agreement; binational panel reviews:
Cold-rolled carbon steel flat products from Canada, 41733
Corrosion-resistant carbon steel flat products from Canada, 41733
Cut-to-length carbon steel products from Canada, 41734
Hot-rolled carbon steel flat products from Canada, 41734

International Trade Commission
NOTICES
Import investigations:
Cordage products from Costa Rica et al., 41804
Magnetic switches for coaxial transmission lines and products containing same, 41805

Interstate Commerce Commission
PROPOSED RULES
Tariffs and schedules:
Payment of discounts by motor carriers of property to nonpayer of freight charges, 41684
NOTICES
Environmental statements; availability, etc.:
Duluth, Missabe & Iron Range Railway Co. et al., 41805
Motor carriers:
Declaration order petitions-
Yellow Freight System, Inc. of Indiana, 41806
Railroad services abandonment:
Dakota, Minnesota & Eastern Railroad Corp., 41806

Justice Department
See National Institute of Corrections
NOTICES
Pollution control; consent judgments:
Bond Corp. North America et al., 41807
Charles George Trucking Co., Inc., 41807
Gershon, Jerald, et al., 41807

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Closure of public lands:
California, 41799
Oregon, 41800
Motor vehicle use restrictions:
Oregon, 41800
Oil and gas leases:
California, 41800
Survey plat filings:
Wyoming, 41800
Withdrawal and reservation of lands:
Oregon, 41801

Maritime Administration
NOTICES
Applications, hearings, determinations, etc.:
First American Bulk Carrier Corp., 41833

Minerals Management Service
NOTICES
Agency information collection activities under OMB review, 41804

National Highway Traffic Safety Administration
RULES
Motor vehicle safety standards:
Tires, new pneumatic—
18- and 19-inch tires testing, 41638
PROPOSED RULES
National Traffic and Motor Vehicle Safety Act; fee schedule, 41681
NOTICES
Meetings:
Motor Vehicle Safety Research Advisory Committee, 41833
Motor vehicle theft prevention standard:
Passenger motor vehicle theft data (1990–1991 CYs), 41834

National Institute for Literacy
NOTICES
Grants and cooperative agreements; availability, etc.:
State literacy resource centers—
Adult literacy staff development, 41962
Interagency performance measurement and reporting systems, 41940

National Institute of Corrections
NOTICES
Grants and cooperative agreements; availability, etc.:
Program plan (1994 FY), 41808

National Institute of Standards and Technology
NOTICES
Grants and cooperative agreements; availability, etc.:
Interoperability testing on BACnet communication protocol implementations; cooperative research and development consortium, 41735

Inventions, Government-owned; availability for licensing, 41736

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 41640
NOTICES
Permits:
Endangered and threatened species, 41736, 41737

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Nuclear Fuel Services, Inc., 41809, 41810
Omaha Public Power District, 41811
Power Authority of State of New York, 41812
Regulatory guides; issuance, availability, and withdrawal, 41813
Applications, hearings, determinations, etc.:
Connecticut Yankee Atomic Co., 41814

Occupational Safety and Health Administration
NOTICES
Meetings:
Construction Safety and Health Advisory Committee, 41808

Personnel Management Office
RULES
Pay administration:
Pay advances to newly appointed employees, 41623

Presidential Documents
PROCLAMATIONS
Special observances:
Helsinki Human Rights Day (Proc. 6584), 41621

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Railroad Retirement Board
NOTICES
Railroad Unemployment Insurance Act:
Loan repayment from railroad unemployment insurance account to railroad retirement account, 41814

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 41814, 41817
New York Stock Exchange, Inc., 41819
Philadelphia Stock Exchange, Inc., 41821
Applications, hearings, determinations, etc.:
Public utility holding company filings, 41822
Quest for Value Fund, Inc., et al., 41826
Texas Employees Tax Exempt Money Market Mutual Fund, 41830
WNC Housing Tax Credit Fund IV, L.P., et al., 41830

Small Business Administration
PROPOSED RULES
Small business investment companies:
Definitions, limited partnerships, fees and interest charges, etc., 41882
Leverage, participating securities, and conditions affecting good standing of licensees, 41852

Southeastern Power Administration
NOTICES
Cumberland System of Projects; power marketing policy, 41762

Surface Mining Reclamation and Enforcement Office
RULES
Initial and permanent regulatory programs:
State standards adoption and State enforcement activities; CFR Parts removed, 41936
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Indiana, 41669

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
NOTICES
Capital and accounting standards; report availability, 41841

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration

Treasury Department
See Customs Service
See Fiscal Service
See Thrift Supervision Office
NOTICES
Agency information collection activities under OMB review, 41840, 41841

Uniformed Services University of the Health Sciences
NOTICES
Meetings; Sunshine Act, 41849

Veterans Affairs Department
RULES
Medical benefits:
Presumptive service connection for diseases resulting from exposure to ionizing radiation, 41635
Vocational rehabilitation and education:
Training and rehabilitation programs; extension, 41636

Separate Parts In This Issue

Part II
Small Business Administration, 41852

Part III
Department of the Treasury, Fiscal Service, 41902

Part IV
Department of Education, 41910

Part V
Department of Education, 41918

Part VI
Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 41936

Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

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.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
6584.....41621

5 CFR
550.....41623

7 CFR
1446.....41625
Proposed Rules:
1413.....41641

9 CFR
Proposed Rules:
92.....41643
94.....41643

13 CFR
Proposed Rules:
107 (2 documents).....41852, 41882

14 CFR
Proposed Rules:
39.....41645

18 CFR
2.....41626
Proposed Rules:
284.....41647

19 CFR
101.....41633

21 CFR
5.....41634
14.....41635

30 CFR
718.....41936
720.....41936
735.....41936
Proposed Rules:
914.....41669

31 CFR
Proposed Rules:
206.....41902

32 CFR
Proposed Rules:
246.....41671
296.....41679

38 CFR
3.....41635
21.....41636

41 CFR
101–26.....41637

47 CFR
73 (2 documents).....41638
Proposed Rules:
73 (2 documents).....41680, 41681

49 CFR
571.....41638
Proposed Rules:
594.....41681
1312.....41684

50 CFR
672.....41640
Proposed Rules:
17 (5 documents).....41684, 41688, 41690, 41696, 41700

Federal Register
Vol. 58, No. 149
Thursday, August 5, 1993

Presidential Documents

Title 3—

The President

Proclamation 6584 of August 1, 1993

Helsinki Human Rights Day, 1993

By the President of the United States of America

A Proclamation

Since its inception in the 1970's, the Conference on Security and Cooperation in Europe (CSCE) has been the premier forum in which the ongoing struggle for human rights and the dignity and worth of individuals in European nations has been waged. In the wake of the instability created by the outbreak of war in the former Yugoslavia, the CSCE states have embraced a strategy of preventive diplomacy as a way of resolving differences before they lead to conflict. The CSCE's approach of combining a strong emphasis on human rights, preventive diplomacy, and multilateral action is an example of the kind of foreign policy I seek to pursue.

Yet, the dire situation in the former Yugoslavia gives pause to those who want to believe that the CSCE's principles will be respected in nations emerging from totalitarian rule. We must work with these nations in order to guide them toward the principles we hold dear.

The CSCE has made a major contribution even in areas of instability and conflict. Through conflict-prevention missions, monitoring of sanctions, sponsorship of the Nagorno-Karabakh negotiations, activities of the High Commissioner on National Minorities, and the energetic program of the Office for Democratic Institutions and Human Rights, participating states have demonstrated their collective political commitment to transform CSCE principles into reality.

As we grapple with the great challenges the CSCE faces, we reaffirm our belief that security cannot be divorced from respect for human rights and the democratic process. We also reaffirm our commitment to the advancement of the rights of individuals, for it was individuals who stood in front of tanks and tore down the walls that split East from West. Individuals braved the wrath of repressive regimes in order to call on them to live up to their CSCE commitments. And individuals today continue to struggle to build democratic societies at peace with their neighbors. The groundbreaking work of the CSCE in establishing human rights and other standards to which all CSCE states have committed themselves has permanently strengthened European security.

In recognition of the contributions of the CSCE toward the expansion of human rights, the Congress, by Senate Joint Resolution 111, has designated August 1, 1993, as "Helsinki Human Rights Day" and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim August 1, 1993, as Helsinki Human Rights Day and reaffirm the American commitment to upholding human dignity and freedom—principles that are enshrined in the Helsinki Final Act. As we Americans observe this day with appropriate programs and activities, let us remember our courageous citizens who have made sacrifices to secure the freedoms that we enjoy. Let us work together to encourage respect for human rights and democratic values in all CSCE states.

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

William J. Clinton

[FR Doc. 93–18895
Filed 8–3–93; 3:39 pm]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 58, No. 149
Thursday, August 5, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AE30

Pay Administration (General); Advances in Pay

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on advances in pay for newly hired employees, as authorized by section 107 of the Federal Employees Pay Comparability Act of 1990 and E.O. 12748 of February 1, 1991. The head of an agency may provide an advance in pay, covering not more than 2 pay periods, to a newly appointed employee.

EFFECTIVE DATE: The final rule is effective on September 7, 1993.

FOR FURTHER INFORMATION CONTACT: JoAnn Perrini, (202) 606–1413.

SUPPLEMENTARY INFORMATION: On March 28, 1991, OPM published interim regulations to implement section 107 of the Federal Employees Pay Comparability Act of 1990 (FEPCA) (Pub. L. 101–509, November 5, 1990), codified at 5 U.S.C. 5524a, which provides that the head of an agency may make advance payments of basic pay, covering not more than 2 pay periods, to any individual who is newly appointed to a position in the agency. (See 56 FR 12833.)

The 60-day public comment period ended on May 28, 1991. Comments were received from six Federal agencies and one labor organization. Comments, as well as certain modifications and clarifications of the interim regulations, are summarized below.

General Comments

One agency commented that the time period during which an advance payment may be made should be extended to the first 60 days following appointment. The agency believes the additional time would allow an employee more time to assess his or her financial needs and would be more consistent with the military personnel system, which generally permits 1 month's advance pay to members in receipt of orders to a permanent change of station (including reserve forces members ordered to active duty) within the first 60 days of arrival at the new/first duty station. Another agency recommended that the time period for authorizing an advance payment be extended to at least 30 days following appointment and that the time limit for issuing payment be tied to the date the authorization for payment is granted, rather than the date the employee receives the first regular paycheck. The agency believes new employees may not realize they need the advance payment until a week or more after entering on duty and that many agencies cannot process payments before the date of the first regular paycheck.

The law does not provide a maximum time limit for authorizing an advance payment. The purpose of an advance payment under 5 U.S.C. 5524a is to provide a newly appointed employee payment prior to, or in addition to, his or her first regular paycheck to assist in paying immediate expenses that are normally incurred as a result of starting a new job and/or relocating to a new geographic area. After an employee receives his or her first regular paycheck, the need for an advance payment is less critical. However, OPM realizes that in some cases, agencies may need additional time to process advance payments and newly appointed employees may need additional time to evaluate their financial needs. As a result of the agencies' concerns, OPM has amended the regulations to extend the maximum time limit for making an advance payment. An advance payment may be made to a newly appointed employee no earlier than the date of appointment with the agency and no later than 60 days after appointment. To ensure that employees receive an advance payment when it is most needed, OPM encourages agencies to make an advance payment as soon as practicable after the employee is appointed to the agency.

Estimated Deductions

The interim regulations state that the maximum amount that may be advanced is the amount of basic pay to which the employee is entitled on the date of appointment, reduced by the amount of any applicable allotments or deductions from pay. An agency recommended that the regulations be revised to clarify that the maximum amount that may be advanced should not exceed the amount estimated to be available after normal deductions. The agency noted that the actual amount of allotments or deductions may not be known until normal payroll processing for the first 2 pay periods. Allowing the use of estimates would greatly expedite payment of the advance to the employee and reduce processing costs.

The regulations have been amended so that an advance payment will more closely reflect the net amount of pay the employee will receive in his or her first regular paycheck. Agencies are instructed to reduce the gross amount of an advance payment by the exact amount of each applicable deduction wherever practicable. In some cases, actual deductions are required. The Internal Revenue Service (IRS) has determined that an advance payment is considered to be income at the time of payment and is subject to deductions for Federal Insurance Contributions Act (FICA) tax and Federal income tax withholdings. Agencies must determine the exact amounts of FICA tax and Federal income tax withholdings to be subtracted from the advance payment. In a memorandum to Federal Personnel Directors dated August 3, 1992, OPM provided agencies with additional information on the tax consequences of receiving an advance payment.

In most cases, actual deductions will not be made. Estimates may be used for deductions or allotments for which the agency does not yet know the employee's preferences—e.g., life and health insurance premiums and Thrift Savings Plan contributions. In addition, since OPM accepts deductions for retirement contributions, health benefits, and life insurance premiums only as of the date of each regular paycheck, these deductions will not actually be paid to OPM. Rather, the gross advance payment will be reduced

as though such deductions were actually made so that the computation of the advance payment approximates the computation of the employee's first regular paycheck to the maximum extent practicable.

Use of Imprest Funds

An agency asked OPM to consult with the Department of the Treasury to obtain authorization for use of imprest funds by Federal agencies to make advance payments. We contacted the Department of the Treasury's Financial Management Service in Kansas City, Kansas, and learned that a revision of the Treasury Financial Manual has been drafted to allow agencies to use imprest funds for advance payments, as long as the advance payment is consistent with 5 U.S.C. 5524a. The revised Treasury Financial Manual is expected to be published at the end of June 1993. Agencies should contact the Kansas City Financial Management Service for additional guidance on this matter.

Definition of "Newly Appointed" Employee

An agency requested that excepted service positions be included under this provision. Section 5524a of title 5, United States Code, provides authority to the head of each agency to make an advance payment of basic pay to any "individual who is newly appointed to a position in the agency." This broad authority includes employees appointed to the excepted service.

Waiver of Repayment

An agency asked whether an agency head may waive any dollar amount of repayment of an advance payment if the agency head determines that recovery would be against equity and good conscience or against the public interest criteria established by the agency. Neither the statute nor the final regulations place any limit on the dollar amount an agency head may waive under 5 U.S.C. 5524a.

Definition of "Rate of Basic Pay"

In the interim regulations, the definition of "rate of basic pay" included annual premium pay for standby duty under 5 U.S.C. 5545(c)(1). The labor organization commented that the rate of basic pay should also include annual premium pay for administratively uncontrollable overtime (AUO) work, as authorized by 5 U.S.C. 5545(c)(2). The intent of an advance payment is to provide an amount that reflects the pay the employee will receive in his or her first regular paycheck. If annual premium pay has been authorized for a specific position, the employee will receive the appropriate amount in his or her first regular paycheck. OPM has modified the definition of "rate of basic pay" to include annual premium pay for AUO work.

Prepayment of Balance Due

Section 550.204(c)(3) of the interim regulations requires agencies to notify an employee that he or she may prepay all or part of the balance of an advance in pay at any time before the money is due. The labor organization recommended that this section be supplemented to require agencies to instruct employees on where and how such prepayments can be made. OPM agrees and has amended the regulations to include this requirement.

Payroll Allotments

The labor organization commented that § 550.204(d) of the regulations should eliminate agency discretion in establishing procedures for payroll allotments from an advance payment. The labor organization believes that agencies should be required to establish procedures that allow allotments from an advance payment on the same basis as regular pay. Section 550.204(d) is consistent with 5 U.S.C. 5525, which authorizes the head of an agency to establish procedures under which an employee is permitted to make allotments and assignments of amounts out of his or her pay for such purpose as the head of the agency considers appropriate. OPM believes modification of § 550.204(d) is unwarranted.

Recovery Period

The interim regulations authorize an agency to establish a recovery period of no longer than 13 pay periods for each employee to repay an advance payment. The labor organization commented that a maximum term of 13 pay periods for repaying an advance payment is far too short, since it may result in deductions of more than 15 percent of an employee's disposable pay. The labor organization commented that under these circumstances, employees would be well advised to invoke the salary offset provisions in 5 CFR part 500, subpart K, which limits deductions to no more than 15 percent of disposable pay per pay period, unless a larger deduction is requested by the employee. The labor organization recommended that the regulations be amended to include a requirement that agencies notify an employee in writing of his or her right to: (1) Cap a payroll deduction installment at 15 percent of disposable pay, and (2) voluntarily request any payroll deductions in excess of this amount. The labor organization commented that the length of recovery periods could be left to agency discretion and be a subject of bargaining between agencies and their exclusive representatives.

OPM calculated that, in most cases, it would take slightly more than 13 pay periods to repay the maximum payable net advance payment if no more than 15 percent of disposable pay is deducted. Limiting the deduction to a maximum of 15 percent of disposable pay is consistent with the salary offset provisions in 5 CFR part 550, subpart K. Therefore, OPM has amended the interim regulations to allow an agency to establish a recovery period of no more than 14 pay periods to repay an advance payment. In addition, the recovery period has been amended to begin on the date the advance payment is made to the employee, rather than on the date of appointment. Shorter recovery periods may be established upon written request by an employee. OPM does not believe a longer recovery period is warranted, since the intent of an advance payment is to provide a "loan" to an employee to assist in meeting immediate financial obligations. Under § 550.204(c)(1), employees will be notified of their rights under the salary offset provisions, since before making an advance payment, the agency must provide each employee a statement indicating how the advance payment will be recovered, either in installments under agency procedures for payroll deductions or by salary offset procedures under 5 CFR part 550, subpart K.

Miscellaneous

A new paragraph has been added to § 550.203 to clarify that the head of an agency, or an employee appointed to a position in the expectation of receiving an appointment as the head of an agency, may not receive an advance payment under 5 U.S.C. 5524a.

The definition of "newly appointed" in § 550.202 was expanded to allow cooperative education (co-op) students who are on leave without pay for at least 90 days pending conversion to the competitive service to receive an advance payment when they receive their first permanent appointment in the competitive service. A co-op student may receive the advance payment only if he or she has repaid any former advance in pay that may have been received upon his or her first appointment in the Federal service—i.e., an appointment to his or her first work session.

Finally, it should be noted that OPM is amending § 550.202, which was

adopted as final with changes on January 22, 1992 (57 FR 2431).

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities, since it applies only to Federal employees and agencies.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, the interim regulations in 5 CFR part 550, subpart B, published on March 28, 1991, at 56 FR 12833, as amended by final rules published on January 22, 1992, at 57 FR 2431, are adopted as final with the following changes:

PART 550—PAY ADMINISTRATION (GENERAL)

1. The authority citation for part 550, subpart B continues to read as follows:

Subpart B—Advances in Pay

Authority: 5 U.S.C. 5524a; secs. 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (Pub. L. 101–509), 104 Stat. 1462 and 1466, respectively; E.O. 12748.

2. In § 550.202, the definitions of *newly appointed* and *rate of basic pay* are revised to read as follows:

§ 550.202 Definitions.

* * * * *

Newly appointed means—

(a) The first appointment, regardless of tenure, as an employee of the Federal Government;

(b) A new appointment following a break in service of at least 90 days; or

(c) A permanent appointment in the competitive service following a period of leave without pay for at least 90 days received after termination of employment in a cooperative work-study program under a Schedule B appointment made in accordance with § 213.3202 of this chapter, provided such employee has fully repaid any former advance in pay under § 550.205 of this part.

* * * * *

Rate of basic pay means the rate of pay fixed by law or administrative action for the position held by an employee, including annual premium pay under 5 U.S.C. 5545(c); night differential for prevailing rate employees under 5 U.S.C. 5343(f); a special rate established under 5 U.S.C. 5305, § 532.231 of this chapter, or other legal authority; and locality-based comparability payments under 5 U.S.C. 5304, any applicable interim geographic adjustment, special rate of pay for law enforcement officers, or special pay adjustment for law enforcement officers under section 302, 403, or 404 of the Federal Employees pay Comparability Act of 1990 (Pub. L. 101–509), respectively; but not including additional pay of any other kind.

3. In § 550.203, paragraphs (a), (b), and (c) are revised and paragraph (e) is added to read as follows:

§ 550.203 Advances in pay.

(a) The head of an agency may provide for the advance payment of basic pay, in one or more installments covering not more than 2 pay periods, to an employee who is newly appointed to a position in the agency.

(b) The maximum amount of pay that may be advanced to an employee shall be based on the rate of basic pay to which the employee is entitled on the date of his or her new appointment with the agency, reduced by the amount of any allotments or deductions that would normally be deducted from the employee's first regular paycheck.

(c) An advance in pay may be made to an employee no earlier than the date of appointment with the agency and no later than 60 days after the date of appointment.

* * * * *

(e) An advance in pay may not be made to the head of an agency or to an employee appointed to a position in the expectation of receiving an appointment as the head of an agency.

4. In § 550.204, paragraph (c)(3) is revised to read as follows:

§ 550.204 Agency procedures.

* * * * *

(c) * * *

(3) A statement indicating that the employee may prepay all or part of the balance of the advance payment at any time before the money is due, including instructions as to where and how such prepayments may be made.

* * * * *

5. In section 550.205, paragraph (b) is revised to read as follows:

§ 550.205 Recovery of advances in pay.

* * * * *

(b) An agency shall establish a recovery period for each employee to repay an advance in pay, but no agency may establish a recovery period of longer than 14 pay periods beginning on the date the advance in pay is made to the employee under § 550.203 of this part. If a longer period for recovery is necessary to avoid exceeding the limitation on deductions described in § 550.1104(i) of this part, recovery may be accomplished under salary offset procedures established under subpart K of this part. Upon written request, an employee may elect a recover period of less than 14 pay periods.

* * * * *

[FR Doc. 93–18567 Filed 8–4–93; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560–A033

Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule amends the peanut program regulations to raise to $2.00 per net ton of peanuts the maximum deduction from producer price support advances that may be made by the area marketing association for the Southwest marketing area, as defined in the regulations, for related activities of the association outside the price support program. Such deductions are made only upon prior agreement of the producer and have no effect on the amount of public outlay for the peanut program. This action is necessary to provide applicable rules for 1993 through 1995 crops of peanuts with respect to the request by the area marketing association for the Southwest area, the Southwestern Peanut Growers' Association (SWPGA), that the Commodity Credit Corporation (CCC) amend the regulations to increase the deduction.

DATES: This interim rule is effective August 5, 1993. Comments must be received on or before September 7, 1993 in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415, or deliver to room 5750, South Building, 14th Street and Independence Avenue, SW., Washington, DC. All written

comments received in response to this request will be made available for public inspection in room 5750, South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., on regular workdays.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Tobacco and Peanuts Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–0152.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and has been classified not major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Federal Assistance Program

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this interim rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The information collection requirements contained in the regulations at 7 CFR part 1446 for the peanut price support program were approved by the Office of Management and Budget (OMB), as required by 44 U.S.C. chapter 35, and assigned OMB control numbers 0560–0006, 0560–0014, and 0560–0033. This interim rule does not change the information collection as approved by OMB. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to USDA, Clearance Officer, OIRM, room 404W, Washington, DC 20250; and to the OMB Paperwork Reduction Project (OMB 0560–0006, 0560–0014, or 0560–0033), Washington, DC 20503.

Background

Regulations at 7 CFR 1446.303(g)(5) permit the SWPGA, for peanuts produced in the Southwest area, to take a deduction from producer price support proceeds to fund SWPGA's activities not related to price support. Such deductions, which have previously been permitted up to a maximum of $1.00 per net ton, are allowed only upon prior agreement of the producers. Due to increased operating costs and increased activities, the SWPGA Board of Directors directed the association management to petition CCC to allow the deduction to be increased to not more than $2.00 per net ton. As granting the request will not affect public outlays for the program and there does not appear to be any reason to deny the request, it has been determined, pending public comment, to amend the regulations accordingly.

Some producers in the Southwest area traditionally have peanuts ready to deliver for price support on August 1, the first day of the marketing year and the first day price support is available. Delaying the amendment for prior public comment would likely result in the final rule being issued after the beginning of the crop year and possibly after some producers delivered peanuts for price support. For that reason and since the deduction is made only with prior producer approval, it has been determined that such delay is contrary to the public interest and that this interim rule should be issued in order to permit the higher deduction for all 1993-crop price support advances.

Accordingly, this amendment to the peanut regulations is issued as an interim rule with a 30-day comment period.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, 7 CFR part 1446 is amended as follows:

PART 1446—PEANUTS

1. The authority citation for 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 1359a, 1375, 1421 *et seq.*; 15 U.S.C. 714b and 714c.

2. In 7 CFR 1446.303(g)(5), remove the term "$1.00" and add in its place, the term "$2.00".

Signed at Washington, DC, on August 2, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–18782 Filed 8–2–93; 4:29 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM93–3–000]

Policy Statement Regarding Regional Transmission Groups; Policy Statement

Issued July 30, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Rule; policy statement.

SUMMARY: The Federal Energy Regulatory Commission is announcing a general policy of encouraging the development of Regional Transmission Groups (RTGs), and providing guidance regarding the basic components that should be included in RTG agreements filed with the Commission.

DATES: This Policy Statement is effective on July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Janice G. Macpherson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Telephone: (202) 208–0921.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the tests of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a

modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, LaDorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Policy Statement Regarding Regional Transmission Groups

I. Background

When Congress enacted the Federal Power Act (FPA) in 1935, it declared in FPA section 201(a) that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest and that Federal regulation of matters relating, inter alia, to the transmission of electric energy in interstate commerce is necessary in the public interest. 16 U.S.C. 824(a). Congress in FPA sections 205 and 206 gave the Federal Power Commission, and later the Federal Energy Regulatory Commission (Commission),[1] the responsibility for regulating the rates, terms and conditions of transmission of electric energy in interstate commerce by public utilities. 16 U.S.C. 824d and e. However, with the exception of certain authority to address war and emergency conditions (now the responsibility of the Department of Energy), 16 U.S.C. 824a (c) and (d), Congress did not give the Commission the explicit authority to order transmission.

This changed in 1978 when Congress, as part of the Public Utility Regulatory Policies Act (PURPA), added section 211 to the FPA, which gave the Commission general authority to order electric utilities to provide transmission to, inter alia, other electric utilities.[2] However, section 211 of the FPA, as enacted in PURPA, was largely unused because the Commission could only order transmission if the Commission determined that the order "would reasonably preserve existing competitive relationships."

The Energy Policy Act of 1992 (Energy Policy Act) has significantly expanded the Commission's authority to order transmission services under section 211.[3] As amended by the Energy Policy Act, section 211 now gives the Commission authority, upon application, to order transmitting utilities, as defined in section 3(23) of the FPA, to provide transmission to electric utilities, Federal power marketing agencies, or any other person generating electric energy for sale for resale, if such action will not unreasonably impair reliability and will be in the public interest. Section 211 allows the Commission to order entities that are not subject to section 205 jurisdiction to provide transmission, and the Commission has authority to review the rate charged by such an entity pursuant to a section 211 order under the standards of section 212.

During the final stages of Congress' consideration of the Energy Policy Act, which, as noted above, significantly expanded the Commission's authority to order transmission upon application, representatives of the electric utility industry and other interest groups presented "consensus" Regional Transmission Group (RTG)[4] legislation for consideration. The consensus proposal would have explicitly required the Commission to "certify" RTGs meeting certain statutory criteria. Included among the criteria were requirements for: Broad membership; an obligation for a member transmission-owning utility to wheel power for others, including an obligation to upgrade its system or build new facilities; coordinated regional transmission planning and information sharing; and fair procedures for decision-making and for dispute resolution. Under the proposal, an RTG that met these (and other) standards for Commission certification would have been entitled to have its decisions receive some degree of deference from the Commission (consistent with the FPA). Moreover, the Commission would have been required to afford some degree of deference to the decisions reached through dispute resolution procedures contained in an RTG agreement. The rates charged for transmission by non-public utilities (i.e., entities not otherwise subject to Commission rate jurisdiction) would have had to meet the substantive FPA rate-making standards and would have been subject to suspension and refund as if they were subject to sections 205 and 206 of the FPA. The consensus proposal set forth procedures for the Commission to impose conditions on certification of RTGs, if necessary, and to exercise continuing oversight. Certification was to be denied if all the affected state commissions unanimously objected to certification. The consensus proposal was presented after the conferees had voted on the provisions of the H.R. 776 Conference Report affecting electric power regulation and was not included in the bill.[5]

On November 10, 1992, the Commission issued a Request for Public Comments on the consensus proposal and solicited comments on how the consensus proposal could be adapted into a proposed rulemaking that would address Commission consideration of RTG agreements affecting matters subject to Commission jurisdiction.[6] We received 100 comments from a wide variety of commenters. Most of the commenters supported the concept of RTGs. However, the comments presented differing views of exactly what an RTG should be and do.[7]

The Commission believes that RTGs can be alternative vehicles for attaining the same goals inherent in the new section 211: Promoting competition in generation, improving efficiency in both short-term and long-term trading in bulk power markets, and reducing the cost of electricity to consumers. RTGs can provide mechanisms for encouraging negotiated agreements and resolving transmission issues without resorting to the procedures under sections 211 and 213 of the FPA.[8] As such, RTGs should reduce the need for potentially time-consuming and expensive litigation before the Commission. To that end, the Commission is announcing a general policy of encouraging the development of RTGs, and providing guidance regarding the basic components that should be included in RTG agreements filed with the Commission.

[1] See Department of Energy Organization Act, 42 U.S.C. 7171.

[2] All public utilities, as defined in the FPA, are electric utilities as defined in the FPA. However, electric utilities include entities that are not public utilities, such as cooperative and municipal utilities.

[3] Pub. L. 102–486, 106 Stat. 2776 (1992).

[4] The Commission defines an RTG as a voluntary organization of transmission owners, transmission users, and other entities interested in coordinating transmission planning (and expansion), operation and use on a regional (and interregional) basis.

[5] See 138 Cong. Rec. S.17,616 and S.17,620–22 (daily ed. Oct. 8, 1992).

[6] 61 FERC ¶ 61,232 (1992).

[7] As discussed infra, the Commission is adopting a general statement of policy rather than a detailed rule. The comments submitted in this docket have provided a very thorough discussion of the issues. However, we discuss below only those comments that are relevant to this Policy Statement.

[8] As the Commission stated in its recent Policy Statement regarding good faith requests for transmission services and responses by transmitting utilities under sections 211 and 213: "we believe that as a policy matter sections 211(a) and 213(a) should be implemented in a manner which encourages negotiation." The Commission also stated that its "guidelines are broad enough to encourage individual initiative and negotiation within a flexible framework, leading to accommodations that will encourage optimum access to this country's transmission system." 58 FR 38964, 38965–66 (July 21, 1993).

II. Discussion

A. The Expected Benefits of RTGs

A primary purpose of RTGs is to facilitate the provision of transmission services to potential users and voluntarily to resolve disputes over the provision of such services. We believe that RTGs can address disputes over transmission issues in a manner that satisfies the statutory standards of the FPA, and can minimize applications seeking Commission orders for mandatory transmission services under section 211.

Properly functioning RTGs will serve the public interest by enabling the market for electric power to operate in a more competitive, and thus more efficient manner, and by providing coordinated regional planning of the transmission system to assure that system capabilities are adequate to meet system demands. They will decrease the delays that are inherent in the regulatory process, resulting in a more market-responsive industry. RTGs may also significantly enhance regional transmission planning by providing a mechanism for cooperation among state commissions and the utilities they regulate.

Regional transmission needs will change as the generation sector becomes more competitive, thereby affecting many more companies than in the past. Since RTGs bring together both transmitting utilities and their customers (and potential customers) in a region, they can provide a means for companies to coordinate their transmission planning more effectively, avoid costly duplication of facilities, and, in conjunction with their respective state commissions, find more efficient solutions to region-wide problems. This is critical because the transmission network is highly interconnected; thus, the actions of one party often affect many others.

Many transmission issues (e.g., loop flow) are highly technical. As far as possible, those with technical expertise should resolve such issues directly. RTGs can bring together the technical experts from all interested parties to address technical issues directly. This promises to be more productive than using traditional regulatory approaches, which tend to force parties to polarize their positions, as the primary mechanisms for resolving disputes.

As the generation sector continues to become more competitive, the industry will have many new opportunities to trade power. RTGs can provide a forum in which planning data and other useful information can be compiled and exchanged.[9] They can also provide a forum for parties to find workable ways to conduct business with each other. RTGs can develop procedures that make transactions efficient for all—for example, through region-wide trading systems based on electronic bulletin boards. In short, RTGs promise efficient and expeditious solutions to problems that may stem from expanded transmission access.

B. Recent Developments—Why the Time Is Ripe for Commission Action

During the time since the Commission issued the request for public comment on the consensus RTG proposal, there has been considerable activity in various regions of the country concerning the development of RTGs. For example, utilities in New England, California, the upper Midwest, and the Southwest and Northwest regions of the United States have been actively negotiating RTG agreements.[10] Utilities in other regions also may be considering such agreements. All of these regions differ with regard to generating resource mix, transmission system integration, and existing institutional frameworks.[11] These factors, among others, can affect the resolution of planning, access, and operational issues important to RTG agreements. Differences in important regional characteristics support the view, expressed by many in written comments on the consensus proposal, that considerable flexibility is needed in forming RTGs.

Although considerable activity is already underway in various parts of the country toward creating regional transmission organizations, recent events in some of the more advanced negotiations indicate difficulties in reaching final agreements. Recent public reports from both California and New England indicate that negotiations in both of these regions have failed to come to closure. The impasse may be due, in part, to parties' decisions to delay commitment to the RTG process pending action by the Commission. The issuance of this Policy Statement is intended to provide assurance that the Commission encourages these collaborative efforts and to provide guidance as to the basic components that should be included in jurisdictional RTG agreements.

In issuing this Policy Statement, the Commission emphasizes that it intends to use its new transmission authority to ensure that electric generation markets can become fully competitive. However, there are several reasons why we believe that RTGs, as opposed to case-by-case determinations by this Commission, offer the potential to be more effective and efficient in dealing with the complex issues that arise as result of expanded transmission access. First, by including and addressing the needs of all transmission users in a region, RTGs can use the technical expertise of the industry to the benefit of all parties. RTGs can provide a forum for resolving difficult technical issues relating to transmission system operation and planning in a fair and non-discriminatory manner that will benefit all participants. Second, RTGs can provide a practical means for collaboration between the industry and its regulators at both the state and Federal levels. As discussed below, consultation and cooperation with state regulatory authorities are critical to the timely and efficient provision of transmission services. Third, consensual resolution of issues involving transmission in interstate commerce, consistent with the FPA, can lead to enhanced efficiency in both transmission and generation and can reduce expensive and time-consuming litigation before the Commission and possibly state regulatory authorities.

It is important to recognize the Commission's limited authority in the development and success of RTGs. RTGs are purely voluntary associations of transmission owners, users, and others with differing interests. Therefore, the formation of an RTG, by itself, does not insulate its transmitting utility members from proceedings under FPA section 211. However, RTGs that succeed in accommodating all parties' interests, so that members do not feel the need to resort to section 211, will meet the goals intended by the Commission in issuing this Policy Statement. In addition, the Commission will afford an appropriate degree of deference to decisions under an RTG, depending on the degree to which an

---

[9] As the Commission noted in its Notice of Proposed Rulemaking proposing to implement the information-collection requirement in section 213, making more information available will improve efficiency, expedite negotiations, and reduce the number of section 211 applications. New Reporting Requirements Under the Federal Power Act and Changes to Form No. FERC–714, Proposed Rulemaking, IV FERC Stats. & Regs. ¶32,493 (1993), 58 FR 17,544 (April 5, 1993).

[10] For example, the Southwest Power Pool is considering RTG-like reforms in its Vision Statement of November 1992. The Western Association for Transmission Systems Coordination and the New England Power Pool are also attempting to form RTGs.

[11] For example, in New England, NEPOOL, a centrally dispatched pool, and in the upper Midwest, MAPP, a non-centrally dispatched but highly coordinated pool, both already provide for significant sharing of installed and operating reserves of generation resources. Any RTG in these regions may develop as a complement to these power pools.

RTG agreement mitigates the market power of transmission owners and provides for fair decision-making. The success of RTGs will be determined less by the Commission's approval of RTG agreements than by the consensual resolutions negotiated by the members.

C. Minimum Components for RTG Agreements

The Commission does not have authority to "certify" RTGs. However, under section 205(c) of the FPA, public utilities must file with the Commission the classifications, practices, and regulations affecting rates and charges for any transmission or sale subject to the Commission's jurisdiction, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services. Thus, a governing agreement or other RTG-related agreement that in any manner affects or relates to jurisdictional transmission rates or services must be approved or accepted by this Commission as just, reasonable, and not unduly discriminatory or preferential under the FPA.[12] Accordingly, in addition to adopting a general policy of encouraging the development of RTGs, we believe it is also important to provide guidance regarding the basic components that should be included in RTG agreements in order to satisfy FPA requirements.

The experience drawn from the RTGs developing in various areas of the country indicates that there is a need for flexibility in forming these voluntary associations and the agreements that govern them, in order to reflect specific geographic, operational, historical, or other circumstances of the parties. RTG governing agreements may differ substantially both substantively and in terms of the level of detail. For example, an RTG governing agreement may contain only general criteria for determining the rates that will be charged for transmission services, detailed rate formulations, or no price provisions at all.[13] Likewise, a governing agreement may contain only general criteria regarding terms and conditions of service, or it may specify detailed terms and conditions. We believe it is crucial to RTG development to permit considerable flexibility regarding the formation of RTGs and RTG agreements, particularly at this early stage and in light of the desire to encourage voluntary participation in RTGs. Therefore, parties may file any RTG agreement that they believe satisfies their contractual needs and complies with the substantive standards of the FPA. Still, the Commission believes that RTG agreements should, at a minimum, contain the following basic components:

1. (§ 2.21(b)(1)) An RTG agreement should provide for broad membership and, at a minimum, allow any entity that is subject to, or eligible to apply for, an order under section 211 of the FPA to be a member. An RTG agreement should encompass an area of sufficient size and contiguity to enable members to provide transmission services in a reliable, efficient, and competitive manner.

Component No. 1 allows for the broadest possible membership for RTGs, including foreign utilities that are interconnected with the national grid.[14] Numerous commenters emphasized the importance of the broadest possible membership.[15] Broad membership will extend the benefits of RTGs to the greatest number of market participants, thereby leading to greater efficiency.

In regard to participation by foreign utilities, such entities currently participate in existing reliability councils and power pools. Domestic and foreign utilities' current participation in reliability councils, power pools and commercial transactions over the existing international boundary facilities should be taken as models to draw from in order to structure continuing, viable working relationships in newly forming RTGs. Furthermore, the history of international cooperation on transmission issues (such as resolution of the Lake Erie loop flow problem)[16] provides evidence that inclusion of foreign utilities in RTG associations will be beneficial.

Component No. 1 also provides that the geographic area covered by an RTG agreement should be sufficiently large and contiguous. It is implicit in section 202(a) (which concerns "regional districts" for voluntary coordination and interconnection) that there should be coordinated operation in areas large enough and contiguous enough for economic efficiency.[17] Many commenters also made this point.[18]

2. (§ 2.21(b)(2)) An RTG agreement should provide a means of adequate consultation and coordination with relevant state regulatory, siting, and other authorities.

Component No. 2 provides for adequate consultation and coordination with states. Many commenters,[19] representing transmission-owning utilities and transmission-dependent entities as well as the states themselves, pointed out the need for involvement of the states in RTGs. We agree that consultation and coordination with the states are critical to the successful implementation of RTGs, especially in view of the fact that states have authority over retail rates which recover transmission costs, integrated resource planning, and siting of transmission facilities. In addition, state involvement in RTGs can allow state agencies to improve communications with utilities and with each other in dealing with transmission concerns, and can facilitate coordinated treatment of siting issues among the states.

It will be our policy to encourage RTGs to involve the states in whatever way is most effective. State participation is important particularly in the formative stages of RTGs. RTGs are encouraged to seek state participation during formation to ensure that the RTG's governing agreement recognizes that actions taken by RTG members under an RTG agreement must be consistent with state and local law.

3. (§ 2.21(c)(1)) An RTG agreement should impose on member transmitting utilities an obligation to provide transmission services

[12] Any jurisdictional entity seeking to invoke any other basis for jurisdiction over an RTG should set forth its arguments that such other basis exists.

[13] The Commission recently issued an inquiry on transmission pricing. Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, Notice of Technical Conference and Request for Comments, 64 FERC ¶ 61,109 (1993), 58 FR 36400 (July 7, 1993). Since the FPA does not mandate the use of a particular method in setting rates, the Commission may decide, for example, that in certain circumstances either "postage stamp" rates or distance-sensitive rates would be just and reasonable. The Commission envisions that an RTG may propose a particular pricing method for its region, which the Commission will accept if it finds the method is just, reasonable, and not unduly discriminatory or preferential. Ultimately, however, the Commission must ensure that any rate developed using the method is just, reasonable, and not unduly discriminatory or preferential. If RTG participants are able to reach agreement with regard to specific rates, the RTG agreement should specify the type of rate (e.g., tariff, individual rate schedules, formula), the underlying pricing method, and any necessary cost support.

[14] The term "foreign utilities," as used in this document, means electric utilities that are not located in the United States but are interconnected with the United States transmission grid.

[15] See, e.g., Comments of Ohio Edison Company at 3, Edison Electric Institute at 3, the National Independent Energy Producers at 4, Electric Consumers at 15–16, the Electric Generation Association at 5.

[16] See The Transmission Task Force's Report to the Commission, October, 1989 at 62–66.

[17] FPA section 202(a) was transferred to the Department of Energy in the DOE Organization Act. See 42 U.S.C. 7151, 7172.

[18] See, e.g., Comments of Utilicorp United, Inc. at 4–5, American Public Power Association at 13, Cajun Electric Power Cooperative, Inc. at 11, and Department of Energy at 8–9.

[19] See e.g., Comments of National Association of Regulatory Utility Commissioners (joint comments with, among others, Electricity Consumers) at 6–7, the National Regulatory Research Institute at 1, Municipal Electric Utilities of Wisconsin at 2–6, Missouri Public Service Commission at 1–3, and the Large Public Power Council at 18–19.

for other members, including the obligation to enlarge facilities, on a basis that is consistent with sections 205, 206, 211, 212 and 213 of the FPA. To the extent practicable and known, the RTG agreement should specify the terms and conditions under which transmission services will be offered.

Component No. 3 provides for an affirmative obligation to provide transmission services. Many commenters [20] argued that this is essential to an RTG. An inability to obtain service on reasonable terms and conditions will likely result in filings with the Commission under sections 211 and 212 of the FPA. Section 211 does not place a limit on the meaning of the term "transmission services" and provides that the Commission can order facilities to be enlarged, if needed, to provide requested service. Accordingly, the service obligation of RTG members should extend to all types of transmission services and should include a commitment to expand or upgrade facilities when needed to meet service requirements. Such a commitment by RTG transmitting utilities will assure members that they can obtain transmission services similar to those that the Commission could order upon application under sections 211 and 212. RTGs thus may help to secure the benefits of expanded transmission access, such as facilitating competitive generation markets, without the additional costs of lengthy regulatory proceedings.

4. (§ 2.21(c)(2)) An RTG agreement should require, at a minimum, the development of a coordinated transmission plan on a regional basis and the sharing of transmission planning information, with the goal of efficient use, expansion, and coordination of the interconnected electric system on a grid-wide basis. An RTG agreement should provide mechanisms to incorporate the transmission needs of non-members into regional plans. AN RTG agreement should include as much detail as possible with regard to operational and planning procedures.

Component No. 4 provides for coordinated transmission planning and sharing of transmission planning information.[21] The coordinated planning process should be open to participation by all members and should address the transmission needs of members as well as non-members. The term "coordinated planning" is a broad term that should encompass the goal of efficient use and expansion of the nation's transmission system. The term "efficient expansion" goes beyond planning needed for reliability purposes. It also includes planning to make expansions that are economically justified from a regional perspective. This component assures that the economic trade-offs between generation and transmission expansion will be weighed appropriately.

Another key aspect of coordinated planning, in our view, is that it addresses the needs not only of the region encompassed by the RTG, but also of the surrounding areas that have transmission assets that interact with those of the RTG. Transmission upgrades in one part of a regional network can affect the operations in another part because power flows freely within the larger grid. RTGs should not only plan for efficient expansion within their own boundaries, but also should coordinate with one another to assure that bottlenecks do not develop on the boundaries between RTGs and that existing bottlenecks are appropriately eliminated. We believe that the development of coordinated plans can assist in removing impediments to power transfers within and among the RTGs that share a larger grid.

5. (§ 2.21(b)(3)) An RTG agreement should include fair and non-discriminatory governance and decisionmaking procedures, including voting procedures.

Component No. 5 provides for fair and non-discriminatory governance and decisionmaking procedures. No commenter opposed such a standard, and transmission-dependent entities expressed particular concern that they not be powerless within an RTG. The Commission will not specify in this Policy Statement what specific governance rules or features would be acceptable. In general, we think an RTG should have rules or procedures to protect the rights of entities that are more susceptible to the exercise of market power, such as transmission dependent utilities (TDUs). If the voting rules permit transmission owners to dominate the RTG, for example, this would disadvantage weaker users and would be unfair.[22] An RTG may wish to strive for consensus when dealing with regional grid issues that affect most members. Accordingly, super-majority voting rules may be appropriate in some circumstances. Different regions and organizations may wish to address these issues in their own manner. The Commission believes that RTGs must have substantial flexibility in designing governance procedures to deal with the difficulties that will be encountered. The procedures must be fair and non-discriminatory if an RTG is to meet the objectives discussed above.

6. (§ 2.12(c)(3)) An RTG agreement should include voluntary dispute resolution procedures that provide a fair alternative to resorting in the first instance to section 206 complaints or section 211 proceedings.

Component No. 6 provides for voluntary dispute resolution procedures. The Commission particularly encourages RTGs to develop high quality alternative dispute resolution procedures [23] for resolving technical and reliability issues. As discussed in detail infra, we encourage proposals under which we would afford substantial deference to outcomes resulting from appropriate alternative dispute resolution (ADR) procedures that are specified in the RTG agreement.

7. (§ 2.21(c)(4)) An RTG agreement should include an exit provision for RTG members that leave the RTG, specifying the obligations of a departing member.

Component No. 7 provides for an exit provision for RTG members who wish to leave the RTG. If a party has accepted a responsibility under an RTG agreement and then decides to leave the RTG, the obligation of such departing party to comply with its prior commitments should be set forth in the RTG agreement.[24]

D. Other Issues

(1) Adoption of Policy Statement Rather Than Rule

In the comments on the consensus legislative proposal, EEI and many others, including several TDUs, argued that the Commission should issue a general statement of policy rather than a rule with specific requirements. These commenters argued that the Commission should review RTG agreements on a case-by-case basis as they are filed. Several reliability councils and power pools, as well as others, are concerned that a rule would stifle the developing RTGs by imposing uniform, detailed requirements. A policy statement would allow flexibility for individual RTGs to form in ways that are suited to accommodate unique

[20] See e.g., Comments of Edison Electric Institute at 3, 16–17, National Independent Energy Producers at 3, Electricity Consumers at 17–19, and Cajun Electric Power Cooperative at 11–12.

[21] Several commenters supported a coordination role for RTGs. See e.g., comments of American Public Power Association at 11–13, Electrical Generation Associated at 4–5, Iowa Association of Municipal Utilities at 5–6.

[22] See, e.g., Comments of the Electricity Consumers Resource Council at 21–22, American Public Power Association at 14, Missouri Basin Municipal Power Agency at 26–27, and Northeast Texas Electric Cooperative at 3.

[23] See Comments of the Electric Generation Association at 6, Southern Maryland Electric Cooperative at 11–12.

[24] For example, under Article II of the Mid-Continent Area Power Pool Agreement, any participant may withdraw by giving four years' written notice.

circumstances in different regions of the country.

Many other commenters, particularly certain TDUs, supported issuance of a rule that would adopt the "consensus proposal;" some suggested various changes, and others argued that it should be adopted unchanged to preserve the consensus of support.

We have decided to adopt a policy statement rather than a rule because, as discussed above, the ongoing development of RTGs clearly indicates a need for flexibility to adapt to specific geographic, operational, historical or other circumstances. A rule with specific, detailed requirements might stifle the development that is already taking place and discourage the evolution of different types of RTGs that respond to the needs of particular regions of the country. This Policy Statement is designed to allow sufficient flexibility for various creative solutions, while at the same time ensuring that RTG agreements are just, reasonable, and not unduly discriminatory or preferential.

(2) State Issues

A general concern was raised in the comments on the consensus proposal concerning Federal preemption of state rights and authorities as a result of the Energy Policy Act. These concerns stem in large part from the provisions in the Energy Policy Act which expand the Commission's authority to order transmission services upon application, including any enlargement of transmission capacity necessary to provide such services, and the possible adverse impacts on retail customers that may result from such orders.

In reference to concerns regarding enlargement of facilities, Congress was clear in its intention to preserve state authorities.[25] RTGs that deal with enlargement of capacity must obtain necessary state approvals for the construction of transmission facilities.

The ultimate resolution of concerns regarding the impact of RTGs on retail customers will be largely driven by any changes in transmission pricing that result from the implementation of the Energy Policy Act. However, the creation of RTGs may also substantially influence these concerns.

Some see a need to improve collaboration between state and Federal authorities as a result of the Energy Policy Act provisions. The creation of RTGs pursuant to this Policy Statement could help to meet this perceived need. RTGs by their very nature are collaborative mechanisms. In order for an RTG to reach successful outcomes, it must simultaneously satisfy not only the needs of the transacting parties but the requirements of state and Federal regulatory authorities as well. This collaborative effect would also reach to possible conflicts between the various state interests involved. In sum, properly designed and functioning RTGs will inherently provide effective, close collaboration among all parties necessary to assure an efficient transmission system. The extent of collaboration and coordination with states would be one factor influencing the degree of deference the Commission would give to consensual resolutions reached under an RTG.

3. Deference to RTG Alternative Dispute Resolutions

Some commenters argued that the Commission cannot afford any deference to an alternative dispute resolution technique such as arbitration. Several referred to the Commission's lack of authority to "delegate" its authority to private organizations. Others argued that while parties to contracts may agree to arbitration, states must be able to challenge these contracts before the Commission without being hampered by a deference standard.

On the other hand, many commenters argued that alternative dispute resolution proceedings, with some degree of Commission deference, are critical to RTGs. These commenters argued that the Commission has authority to allow parties to a contract to bind themselves to reasonable arbitration procedures with limited Commission review; in other words, a party may contract away its statutory right to Commission review under the normal "just and reasonable" standard.

Another argument raised is that the RTGs' alternative dispute resolution procedures should be used only for technical issues, such as reliability and the adequacy of existing transmission; RTG members could go directly to the Commission with disputes over policy matters (such as cost allocation or the terms and conditions of access).

Whether consensual resolutions are reached by direct negotiation among the parties or by various methods of ADR,[26] the Commission has the authority and is willing to give appropriate deference to outcomes produced by agreement of the parties. In either case, the Commission must ensure that the resolution is not unjust, unreasonable, or unduly discriminatory or preferential, as required by the FPA, which we are bound to enforce, and that it does not result from the exercise of market power by one party over another.

Voluntary resolution of disputes is consistent with the statutory scheme under the FPA that relies on contracts between the parties in the first instance.[27] It is also consistent with the Alternative Dispute Resolution Act.[28] We believe that an RTG agreement that assures that transmission owners cannot exert significant market power or control over non-owners can provide the Commission the assurance it needs to give appropriate deference to voluntary resolutions or resolutions reached as a result of ADR. While the Commission cannot "delegate" its authority, it can give deference to resolutions which meet the standards of the FPA.

One type of ADR is arbitration. We note that arbitration of certain FPA-related matters is not a new concept at the Commission.[29] We have long recognized the value of parties agreeing to attempt to resolve matters through other means before coming to the Commission. We have pointed out that it is "desirable and appropriate, if otherwise consistent with the public interest, to attempt to adhere to the results of a binding arbitration award" because arbitration is a valuable way to avoid time-consuming and expensive administrative proceedings.[30] Moreover, where parties have agreed to submit disputes to fair arbitration procedures before resorting to the Commission, the Commission will insist that they do

[25] Under section 211(d)(1)(C) of the FPA, added by the Energy Policy Act, the Commission must modify or terminate an order requiring enlargement of transmission facilities if it finds, upon application and after notice and opportunity for hearing, that the transmitting utility after making a good faith effort, failed to obtain necessary approvals or property rights under applicable Federal, State, and local laws.

[26] ADR can include, but is not limited to, conciliation, facilitation, mediation, early neutral evaluation, fact-finding, mini-trials, and non-binding or binding arbitration. See Administrative Dispute Resolution, Notice of Inquiry, IV FERC Stats. & Regs. ¶ 35,823.

[27] *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, 337–9 (1956); FPC v. Sierra Pacific Power Co., 350 U.S. 348 (1956).

[28] 5 U.S.C. 581–593.

[29] The Commission has accepted arbitration provisions for non-rate matters such as determining what is a reasonable amount of time for new transmission facilities to be built. Public Service Co. of Indiana, Opinion No. 349, 51 FERC ¶ 61,387, dismissed No. 90–1528 (D.C. Cir. January 21, 1992). The Commission has also allowed arbitration of rate disputes. Kansas Gas and Electric Co., 28 FERC ¶ 61,112 (1984).

[30] Kansas Gas and Electric Co., 28 FERC ¶ 61,112 at 61,195 (1984); accord, Madison Gas and Electric Co., 56 FERC ¶ 61,447 at 62,579 (1991); North Carolina Eastern Municipal Power Agency v. Carolina Power and Light Co., 45 FERC ¶ 61,487 at 62,518 (1988), rehearing denied, 46 FERC ¶ 61,181 (1989); Pacific Gas and Electric Co., 43 FERC ¶ 61,403 at 62,035–6 (1988).

so.[31] There are a variety of other ADR procedures, in addition to arbitration, that RTGs could use.

The Commission encourages RTGs to develop alternative dispute resolution procedures for resolving transmission issues, particularly those involving technical and reliability issues. We are also willing to entertain proposals for the Commission to give some degree of deference to decisions rendered pursuant to an ADR process, pursuant to procedures that are specified in the RTG agreement and that assure due process for all participants.

We will not attempt to decide in this Policy Statement exactly what degree of deference we will be willing to afford. This may depend on a number of factors including, but not limited to, the type of issue to be resolved, the degree of specificity in the RTG agreement, the ability of any party to exercise market power, and type of ADR being used. We will make that decision based on the particular facts of the proposals presented to us.

For example, it may be appropriate to give considerable deference to an arbitrator's finding on a purely factual issue, such as how much an improvement to the system will cost. This is somewhat analogous to factual decisions of administrative law judges, to which we afford considerable deference. However, just as we would not defer to an administrative law judge's decision that is directly contrary to Commission policy, we would not defer to an arbitrator's decision that is directly contrary to Commission policy. Other factors that might influence the degree of deference we would afford to the outcome of a dispute resolution process include, for example, whether a party can or does object to the decision, the degree to which the decision was reached under procedures that maximize fairness, and the degree to which the decision is based on a well-developed record.

4. Antitrust Concerns

Several commenters expressed concern that RTGs may raise antitrust concerns. Some argued that the Commission cannot guarantee immunity from antitrust proceedings.[32] While the Commission can provide no guarantees, we agree with other commenters[33] that RTGs need not violate the antitrust laws. As the Department of Justice pointed out in its comments,[34] the purpose of RTGs is to encourage competition in generation, not to discourage it, by making transmission more easily available to a wider spectrum of generating entities and by increasing the efficiency of the transmission system. More easily available wheeling should make the market work better and should lead to greater economic efficiency.

In this regard, we note that RTGs are in many ways analogous to power pools, which have been found not to violate the antitrust laws. In *Central Iowa Power Cooperative* v. *FERC*,[35] the court rejected arguments that the Mid-Continent Area Power Pool (MAPP) violated the antitrust laws or policies. The court pointed out that FPA section 202 expresses Congress' view that coordination is in the public interest. It specifically rejected arguments that MAPP constituted price fixing under the Sherman Act because of the pool's service schedules, which set forth rates.

5. Filing Procedures

The Commission expects that most RTGs will contain public utilities. As such, RTG agreements must, at a minimum, be filed under section 205(c) as contracts affecting or relating to transmission services provided by public utilities. We anticipate that most such filings will be made by one or more public utility members, on behalf of all public utilities in the RTG.[36] If the filing entity believes that the filing will become effective automatically if the Commission does not act on the filing within 60 days,[37] it should so state in the first paragraph of the cover letter in bold-faced type and should explain the arguments on which that view is based.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 2, chapter I, title 18 of the Code of Federal Regulations as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

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

Authority: 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7353.

2. Part 2 is amended by adding § 2.21 to read as follows:

§ 2.21 Regional Transmission Groups.

(a) *General policy.* The Commission encourages Regional Transmission Groups (RTGs) as a means of enabling the market for electric power to operate in a more competitive and efficient way. The Commission believes that RTGs can provide a means of coordinating regional planning of the transmission system and assuring that system capabilities are always adequate to meet system demands. RTG agreements that contain components that satisfy paragraphs (b) and (c) of this section generally will be considered to be just, reasonable, and not unduly discriminatory or preferential under the Federal Power Act (FPA). The Commission encourages RTG agreements that contain as much detail as possible in all of the components listed, particularly if the RTG participants will be seeking Commission deference to decisions reached under an RTG agreement.

(b) *Organizational components.* (1) An RTG agreement should provide for broad membership and, at a minimum, allow any entity that is subject to, or eligible to apply for, an order under section 211 of the FPA to be a member. An RTG agreement should encompass an area of sufficient size and contiguity to enable members to provide transmission services in a reliable, efficient, and competitive manner.

(2) An RTG agreement should provide a means of adequate consultation and coordination with relevant state regulatory, siting, and other authorities.

(3) An RTG agreement should include fair and nondiscriminatory governance and decisionmaking procedures, including voting procedures.

(c) *Other components.* (1) An RTG agreement should impose on member transmitting utilities an obligation to provide transmission services for other members, including the obligation to enlarge facilities, on a basis that is consistent with sections 205, 206, 211, 212 and 213 of the FPA. To the extent practicable and known, the RTG agreement should specify the terms and

[31] Pacific Gas and Electric Co., 44 FERC ¶ 61,010 at 61,053 (1988).

[32] See Comments of American Public Power Association at 9, Old Dominion Electric Cooperative at 1, Central Power and Light Company at 10.

[33] See, *e.g.*, Comments of Edison Electric Institute at 31–32, Public Generating Pool at 10, Southern California Edison Co. at 5.

[34] DOJ Comments at 1–7.

[35] 606 F.2d 1156 (D.C. Cir. 1979).

[36] See Western Systems Power Pool, 55 FERC ¶ 61,099, 61,301 (1991), reh'g den'd, 55 FERC ¶ 61,495 (1991), aff'd sub nom. *Environmental Action, et al.* v. *FERC*, No. 91–1404 (D.C. Cir. July 2, 1993).

[37] As with all section 205 filings, the Commission intends to notice RTG filings in the Federal Register and to provide and opportunity for comment prior to Commission action on the filing.

conditions under which transmission services will be offered.

(2) An RTG agreement should require, at a minimum, the development of a coordinated transmission plan on a regional basis and the sharing of transmission planning information, with the goal of efficient use, expansion, and coordination of the interconnected electric system on a grid-wide basis. An RTG agreement should provide mechanisms to incorporate the transmission needs of non-members into regional plans. An RTG agreement should include as much detail as possible with regard to operational and planning procedures.

(3) An RTG agreement should include voluntary dispute resolution procedures that provide a fair alternative to resorting in the first instance to section 206 complaints or section 211 proceedings.

(4) An RTG agreement should include an exit provision for RTG members that leave the RTG, specifying the obligations of a departing member.

(d) *Filing procedures.* Any proposed RTG agreement that in any manner affects or relates to the transmission of electric energy in interstate commerce by a public utility, or rates or charges for such transmission, must be filed with the Commission. Any public utility member of a proposed RTG may file the RTG agreement with the Commission on behalf of the other public utility members under section 205 of the FPA.

[FR Doc. 93–18681 Filed 8–4–93; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 93–60]

Consolidation of Norfolk and Newport News, and Richmond-Petersburg, VA, as Customs Ports for Marine Purposes

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

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by consolidating the ports of entry of Norfolk and Newport News, and Richmond-Petersburg, Virginia for marine purposes only. This change enables Customs to obtain more efficient use of its personnel, facilities and resources. It eliminates duplication of port functions and permits better control of staffing resources without impairing services to area businesses or the general public. This amendment does not change any individual port's status, and will not reduce staffing levels. It is designed to simplify vessel entry and clearance procedures and reduce expenses and paperwork for all parties involved thereby enabling Customs to provide better and more economical service to carriers, importers, and the public.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service, (202) 927–0456.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs is amending § 101.3, Customs regulations (19 CFR 101.3), by consolidating, for marine purposes only, the port of entry of Norfolk and Newport News, and the port of entry of Richmond-Petersburg, Virginia, located in the Norfolk District in the Southeast Region.

Inasmuch as these two ports are located within approximately 75 miles of one another on the James and Elizabeth Rivers and perform similar services, it is estimated that the consolidation will significantly reduce expenses without impairing Customs ability to provide services to area businesses or to the general public.

Under this amendment, the laws and regulations administered and enforced by Customs relating to the entry of merchandise would continue to apply at Norfolk and Newport News and at Richmond-Petersburg, with both of the ports retaining their port code as well as their current geographical limits. However, the two ports are now to be considered to be one port for the purposes of the navigation laws. Accordingly, all reports of arrival and entry and clearance requirements prescribed by the Customs and navigation laws administered and enforced by Customs, such as reporting arrival when entering a port and making formal entry when arriving at a Customs port from foreign or another U.S. port (if a foreign-registered vessel), will only have to be complied with once when a vessel is moving in the waters of Norfolk and Newport News and Richmond-Petersburg. Further, a vessel required to obtain a permit to proceed to move between one U.S. port and another will no longer have to receive such a permit to proceed between Norfolk and Newport News and Richmond-Petersburg.

It is anticipated that the consolidation also will result in reducing penalties incurred under the Customs and navigation laws. Penalties were assessed in the past when carriers failed to enter and properly clear merchandise being shipped in a residue cargo movement between the ports of Norfolk and Newport News, and Richmond-Petersburg. This will no longer be considered a violation of the laws as a carrier will no longer be required to enter and clear merchandise when moving from one of these ports to the other. The reduction of penalty cases will reduce paperwork for carriers, importers and Customs.

Analysis of Comments

Customs published a notice of proposed rulemaking in the **Federal Register** on August 10, 1992 (57 FR 35530), and invited public comment on the proposed amendment. In response to this invitation, Customs received approximately 10 comments.

All the comments which addressed the scope of the proposal—the consolidation of the ports for marine purposes—supported it.

Several comments were addressed to an issue which was outside the scope of the notice, but which is apparently one of concern to the Norfolk and Newport News areas. These comments believed the Notice announced Customs intention to either consolidate Norfolk and Newport News into one port of entry or to reduce the present level of Customs Service activity at either location.

Customs is planning neither of those actions. The Notice specifically stated that the adoption of the amendment would have no effect on the current geographical boundaries of the ports involved. The basis for the misunderstanding was that some people were unaware that, for Customs purposes, the ports of Norfolk and Newport News had already been consolidated. This consolidation had occurred when the Customs Service was reorganized by the President's message dated March 3, 1913, which was published as T.D. 33249. That message states, in pertinent part, that the Customs District of Virginia would include "* * * all of the State of Virginia, except the county of Alexandria, with district headquarters at Norfolk, in which Norfolk and Newport News, Richmond, Petersburg, Cape Charles City, Chincoteague, and Reedville shall be ports of entry. The port of Norfolk shall include both of said cities and the waters and shores of

Hampton Roads." Later in the message, the collectors of Customs (now known as District Directors) are instructed to maintain their offices at the headquarters of their districts "with the exception of the collectors for the districts of Virginia, * * * who shall maintain a principal office at both Newport News and Norfolk, * * *" The ports of Richmond and Petersburg were similarly consolidated for Customs purposes in T.D. 68–179.

As stated earlier, adoption of this amendment will result in no change in the current geographical limits of either port. However, it is necessary to amend the list of Customs regions, districts, and ports of entry set forth in § 101.3(b), Customs Regulations (19 CFR 1011.3(b)), to reflect the consolidation of these ports for the purposes of the navigation laws.

Regulatory Flexibility Act and Executive Order 12291

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued after notice and comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this document relates to agency organization and management, it is not subject to E.O. 12291.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Amendment to the Regulations

Part 101 Customs Regulations (19 CFR part 101) is amended as set forth below:

PART 101—GENERAL PROVISIONS

1. The authority citation for part 101 is revised to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 2, 58(c), 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624, unless otherwise noted.

§ 101.3 [Amended]

2. Section 101.3 (b) is amended by adding the following phrase in the listing of Customs regions, districts and ports of entry, in the Southeast Region, under the column headed "Name and headquarters", under the listing "Norfolk, Va.":

"(The ports of Norfolk and Newport News and Richmond-Petersburg, consolidated for purposes of the navigation laws. See T.D. 93–60.)"

George J. Weise,

Commissioner of Customs.

Approved: July 12, 1993.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93–18659 Filed 8–4–93; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Center for Drug Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority for the Center for Drug Evaluation and Research (CDER) to reflect the current structure of the Office of Over-the-Counter (OTC) Drug Evaluation after the recent CDER reorganization. In addition, with the objective of achieving a more expeditious process, FDA is also amending the regulations regarding the authority to grant or deny certain citizen petitions that request exemption from a general overdose warning and exemption from OTC drug administrative procedures.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Ellen Rawlings, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4976.

SUPPLEMENTARY INFORMATION: FDA is amending § 5.31 *Petitions under part 10* (21 CFR 5.31) by adding to § 5.31(d) the authority to grant or deny citizen petitions under § 10.30 (21 CFR 10.30) requesting exemption from a general overdose warning required under § 330.1(g) (21 CFR 330.1(g)) and petitions requesting exemption from OTC drug administrative procedures under § 330.10 (21 CFR 330.10). Section 5.31(d)(2) is further amended by removing the Director and Deputy Director, Office of Drug Standards, CDER, and by adding the Director and Deputy Director, Office of OTC Drug Evaluation, CDER, to reflect a change brought about by the recent CDER reorganization.

The additional delegations will allow the center to be more expeditious in processing such citizens' petitions.

Further redelegation of the authority delegated is not authorized. Authority delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 21 U.S.C. 41–50, 61–63, 141–149, 467f, 679(b), 801–886, 1031–1309; secs. 201–903 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321–394); 35 U.S.C. 156; secs. 301, 302, 303, 307, 310, 311, 351, 352, 361, 362, 1701–1706, 2101, 2125, 2127, 2128 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1, 300aa–25, 300aa–27, 300aa–28); 42 U.S.C. 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11490, 11921, and 12591; secs. 312, 313, 314 of the National Childhood Vaccine Injury Act of 1986, Pub. L. 99–660 (42 U.S.C. 300aa–1 note).

2. Section 5.31 is amended by revising the introductory text of paragraph (d) and paragraph (d)(2) to read as follows:

§ 5.31 Petitions under part 10.

* * * * *

(d) The following officials are authorized to grant or deny citizen petitions submitted under § 10.30 of this chapter requesting exemption from the general pregnancy-nursing warning for over-the-counter (OTC) drugs required under § 201.63 of this chapter, requesting exemption from a general overdose warning required under

§ 330.1(g) of this chapter, and requesting exemption from OTC drug administrative procedures under § 330.10 of this chapter:

(1) * * *

(2) The Director and Deputy Director, Office of OTC Drug Evaluation, CDER.

* * * * *

Dated: July 30, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–18686 Filed 8–4–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 14

Advisory Committees; National Mammography Quality Assurance Advisory Committee; Establishment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment by the Commissioner of Food and Drugs of the National Mammography Quality Assurance Advisory Committee in FDA's Center for Devices and Radiological Health. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice requesting nominations for membership on this committee. This document adds the National Mammography Quality Assurance Advisory Committee to the agency's list of standing advisory committees.

DATES: This rule becomes effective August 5, 1993. Authority for the committee being established will end on July 6, 1995, unless the Commissioner of Food and Drugs formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463), the Mammography Quality Standards Act of 1992 (section 354(n), part F, subpart 3 of Title III of the Public Health Service Act (Pub. L. 102–539)), section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 394) as amended by the Food and Drug Administration Revitalization Act (Pub. L. 101–635), and 21 CFR 14.40(b), FDA is announcing the establishment by the Commissioner of Food and Drugs of the National Mammography Quality Assurance Advisory Committee to the Food and Drug Administration.

The committee shall advise FDA on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; and (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities. The committee will also determine: (1) Whether there exists a shortage of mammography facilities in rural and health professional shortage areas and the effects of personnel or other requirements on access to the services of such facilities in such areas; (2) whether there will exist a sufficient number of medical physicists after October 1, 1999; and (3) the costs and benefits of compliance with these requirements.

Because this is a technical amendment to 21 CFR part 14, the Commissioner of Food and Drugs finds, under 21 CFR 10.40(c), (d), and (e), that notice and public procedure in § 10.40(b) are unnecessary and contrary to the public interest. Therefore, the agency is revising the authority citation for 21 CFR part 14 and adding new paragraph (d)(4) to 21 CFR 14.100 as set forth below.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR part 14 is revised to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394; 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b, 264); secs. 2–12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451–1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

2. Section 14.100 is amended by adding new paragraph (d)(4) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(d) * * *

(4) *National Mammography Quality Assurance Advisory Committee.*

(i) Date established: July 6, 1993.

(ii) Function: Advises on developing appropriate quality standards and regulations for the use of mammography facilities.

* * * * *

Dated: July 28, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–18630 Filed 8–4–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

Disease Subject to Presumptive Service Connection

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the regulations of the Department of Veterans Affairs (VA) that govern presumptive service connection for certain diseases resulting from exposure to ionizing radiation during military service. This correction is required in order to amend a cross-reference in the regulation. No substantive change to the content of the regulations is being made by this correcting amendment.

EFFECTIVE DATE: This correcting amendment is effective October 1, 1992, the date provided by Public Law 102–578.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a final rule in the **Federal Register** on April 27, 1993 (See 58 FR 25563–64), to implement section 2 of the Veterans' Radiation Exposure Amendments of 1992, Public Law 102–578, which amended 38 U.S.C. 1112(c) to repeal the requirement that, to be presumed service connected, specified diseases of veterans who participated in a radiation-risk activity become at least 10 percent disabling within 40 years after the veterans' last exposure to radiation. Accordingly, VA removed 38 CFR 3.309(d)(3) and redesignated § 3.309(d)(4) as the new § 3.309(d)(3). However, VA neglected to amend the reference to the redesignated

§ 3.309(d)(3) that appears at § 3.309(d)(1). This document corrects that omission.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.309 [Corrected]

2. In § 3.309(d)(1), remove the words "paragraph (d)(4)" and insert, in their place, the words "paragraph (d)(3)".

Approved July 27, 1993.

B. Michael Berger,

Director, Records Management Service.

[FR Doc. 93-18473 Filed 8-4-93; 8:45 am]

BILLING CODE 8320-01-U

---

38 CFR Part 21

RIN 2900-AG34

Extension of Training and Rehabilitation Programs

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs is amending current regulations in order to extend the termination date for the program of vocational training for certain pensioners and the special counseling and employment services program for veterans with total disability ratings because of individual unemployability. These programs are extended through December 31, 1992. In addition, the law ratifies actions which VA took to furnish certain services under these programs during the period beginning February 1, 1992, and ending May 20, 1992.

DATES: These amendments are effective retroactively to January 31, 1992, except for amendments to § 21.6042. The amendments to § 21.6042 are effective May 20, 1992, the date of enactment.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Policy and Program Development, Vocational Rehabilitation Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-6496.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs provides programs of training and rehabilitation services to eligible disabled veterans in receipt of VA pension benefits and service-disabled veterans in receipt of total disability benefits because of individual unemployability. The revisions contained in these regulatory changes implement certain provisions of Public Law 102-291, extending certain authorities relating to the administration of Veterans' laws. The provisions include:

1. Extension of the termination date of the program for trial work periods and employment services for veterans with total disability ratings because of individual unemployability from January 31, 1992, to December 31, 1992. Under the program's provisions, the veteran's total disability rating may not be reduced if the veteran obtains substantially gainful employment unless the veteran maintains such employment for 12 consecutive months. Public Law 102-291 ratifies VA action during the lapsed period not to reduce the disability rating of a veteran who obtained substantially gainful employment during the period beginning February 1, 1992 and ending May 20, 1992.

2. Extension of the termination date of the program of vocational training for certain veterans in receipt of VA pension from January 31, 1992, to December 31, 1992. Under the program of vocational training, VA provides programs of vocational training and employment to veterans awarded VA pension benefits if it is determined that employment is a reasonably feasible goal. Governing regulations authorized the continuation of vocational training programs for all veterans who were participating in such programs on January 31, 1992, and the entry into training of veterans awarded pension before that date under certain conditions. Public Law 102-291 ratifies these actions and other actions which VA took during the lapsed period beginning February 1, 1992 and ending May 20, 1992 to continue vocational services to provide a vocational training program (including related evaluations and other related services) under this program.

VA has determined that these final rules do not contain a major rule as that term is defined in Executive Order 12291, Federal Regulation. These rules will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

Publication of these changes for public notice and comment is unnecessary because these changes simply implement provisions of law. The regulatory amendment to §§ 21.6005, 21.6042(a), (b), (c) and (d), 21.6503 and 21.6523 are retroactively effective to January 31, 1992, and the amendments to § 21.6042(e) are effective May 20, 1992, the date of enactment. Moreover, VA finds that good cause exists for making these rules retroactively effective. A delayed effective date would be contrary to statutory design; would complicate implementation of these provisions of law; and might result in a denial of a benefit to a veteran who is entitled by law to that benefit.

Since a notice of proposed rulemaking is unnecessary and will not be published, these changes are not subject to the requirements of the Regulatory Flexibility Act, (RFA). In any case these rules will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the RFA. Pursuant to 5 U.S.C. 605(b), this rule is therefore exempt from the initial and final flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the rule only affects the rights of individual beneficiaries. No new regulatory burdens are imposed on small entities by these amendments.

The Catalog of Federal Domestic Assistance number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: June 24, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 21 is amended as set forth below:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart I—Temporary Program of Vocational Training for Certain New Pension Recipients

1. The authority citation for part 21, subpart I continues to read as follows:

Authority: Pub. L. 98-543, 38 U.S.C. 501 and chapter 15, sections specifically cited.

2. In § 21.6005, paragraph (b) is amended by removing the date "January 31, 1992", and in its place add the date "December 31, 1992; the authority citation in paragraph (b) is revised to read as follows:

§ 21.6005 Definitions.

* * * * *

(b) *Program period.* * * *

(Authority: 38 U.S.C. 1524(a)(4); Pub. L. 102–291)

* * * * *

3. In § 21.6042, at the end of the introductory text in paragraph (a), remove the words "which make timely entry impracticable"; in paragraphs (a) introductory text and (a)(1), remove the date "January 31, 1992", and in its place add the date "December 31, 1992"; the authority citation for paragraph (a) is revised; in paragraph (b) remove the date "August 1, 1992", and in its place add the date "August 1, 1993", and its authority citation is revised; the authority citation for (c) is revised; in paragraph (d) remove the date "January 31, 1997", and in its place add the date "January 31, 1998", and its authority citation is revised; paragraph (e) is added to read as follows:

§ 21.6042 Entry, reentry and completion.

(a) *Dates of entry.* * * *

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 102–291)

(b) *Entry precluded.* * * *

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 100–687; Pub. L. 102–291)

(c) *Reentry.* * * *

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 102–291)

(d) *Final termination of services.* * * *

(Authority: 38 U.S.C. 1524(b)(4); Pub. L. 100–687; Pub. L. 102–291)

(e) *Provision of vocational training and services during the period beginning February 1, 1992 and ending May 20, 1992.* The provision of a vocational training program (including related evaluations and other related services) to a veteran under the provisions of subpart I of this part, and related determinations during the period beginning February 1, 1992, and ending May 20, 1992, is ratified.

(Authority: Pub. L. 102–291)

Subpart J—Temporary Program of Vocational Training and Rehabilitation

4. The authority citation for part 21, subpart J continues to read as follows:

Authority: Pub. L. 98–543, section 111; 38 U.S.C. 1163; Pub. L 100–687, sec. 1301.

5. In § 21.6503, paragraph (a) remove the date "January 31, 1992", and add in its place the date "December 31, 1992"; the authority citation for paragraph (a) is revised to read as follows:

§ 21.6503 Definitions.

(a) *Program period.* * * *

(Authority: 38 U.S.C. 1163(a)(2)(B); Pub. L. 102–291)

* * * * *

6. In § 21.6523, paragraph (a), remove the date "January 31, 1992", and add in its place the date "December 31, 1992"; the authority citation is revised; the authority citation for paragraph (b) is revised to read as follows:

* * *

§ 21.6523 Entry and reentry into a program of counseling and employment services under 38 U.S.C. 3104(a)(2) and (5).

(a) *Dates of entry.* * * *

(Authority: 38 U.S.C. 1163; Pub. L. 100–687; Pub. L. 102–291)

(b) *Reentry.* * * *

(Authority: 38 U.S.C. 1163; Pub. L. 100–687; Pub. L. 102–291)

[FR Doc. 93–18483 Filed 8–4–93; 8:45 am]

BILLING CODE 8320–01–U

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–26

[FPMR Amendment E–274]

Priorities for Use of Supply Sources

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation revises the section on priorities for use of supply sources to add references to the regulatory authorities which relate to the priorities and to reflect a change in the name of a committee. The regulation is necessary to maintain the list of priorities on a current basis and to minimize uncertainties in determining the appropriate supply source to be used.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: John M. Boughton, Regulations Management Staff (703–305–7525).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 101–26

Government property management.

For the reasons set forth in the preamble, 41 CFR part 101–26 is amended as follows:

1. The authority citation for part 101–26 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

PART 101–26—PROCUREMENT SOURCES AND PROGRAM

Subpart 101–26.1—General

2. Section 101–26.107 is revised to read as follows:

§ 101–26.107 Priorities for use of supply sources.

(a) Executive agencies shall satisfy requirements for supplies and services from or through the sources and publications listed below in descending order of priority:

(1) *Supplies.* (i) Agency inventories;

(ii) Excess for other agencies (see part 101–43 and 48 CFR subpart 8.1);

(iii) Federal Prison Industries, Inc. (UNICOR) (see § 101–26.702 and 48 CFR subpart 8.6);

(iv) Procurement lists of products available from the Committee for Purchase From People Who Are Blind or Severely Disabled (see § 101.26.701 and 48 CFR subpart 8.7);

(v) Central supply sources, such as the stock, special order, or customer supply center programs of the General Services Administration (GSA) (see subpart 101–26.3, § 101–26.102, and subpart 101–28.3), the Defense Logistics Agency (see subpart 101–26.6), the Department of Veterans Affairs (see § 101–26.704), and military inventory control points (see § 101–26.606);

(vi) Mandatory Federal Supply Schedules (see subpart 101–26.4 and 48 CFR subpart 8.4);

(vii) Optional use Federal Supply Schedules (see subpart 101–26.4 and 48 CFR subpart 8.4); and

(viii) Commercial sources (including educational and nonprofit institutions).

(2) *Services.* (i) Procurement lists of services available from the Committee for Purchase From People Who Are Blind or Severely Disabled (see § 101–26.701 and 48 CFR subpart 8.7);

(ii) Mandatory Federal Supply Schedules (see subpart 101–26.4 and 48 CFR subpart 8.4);

(iii) Optional use Federal Supply Schedules (see subpart 101–26.4 and 48 CFR subpart 8.4); and

(iv) Federal Prison Industries, Inc. (UNICOR) (see § 101–26.702 and 48 CFR subpart 8.6) or other commercial sources (including educational and nonprofit institutions).

(b) Sources other than those listed in paragraph (a) of this section may be used as prescribed in § 101–26.301 and in an unusual and compelling urgency as prescribed in § 101–25.101–5 and 48 CFR 6.302–2.

Dated: June 11, 1993.

Dennis J. Fischer,

Acting Administrator of General Services.

[FR Doc. 93–18611 Filed 8–4–93; 8:45 am]

BILLING CODE 6820–24–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–10; RM–8150]

Radio Broadcasting Services; Paris, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Benton-Weatherford Broadcasting, Inc. of Tennessee, permittee of Station WMUF–FM, Channel 231A, Paris, Tennessee, substitutes Channel 231C3 for Channel 231A at Paris and modifies Station WMUF–FM's authorization to specify operation on the higher powered channel. See 58 FR 07874, February 10, 1993. Channel 231C3 can be allotted to Paris in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.2 kilometers (10.7 miles) northeast to accommodate Benton-Weatherford's desired site. The coordinates for Channel 231C3 are 36–22–40 and 88–09–20. With this action, this proceeding is terminated.

EFFECTIVE DATE: September 13, 1993.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–10, adopted July 13, 1993, and released July 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 231A and adding Channel 231C3 at Paris.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–18647 Filed 8–4–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–31; RM–8162]

Radio Broadcasting Services; Crescent North, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 250C2 for Channel 250C3 at Crescent North, California, and modifies the license for Station KPOD–FM to specify operation on the higher powered channel, as requested by William E. Stamps, Sr. and Patricia R. Stamps, d/b/a Let's Talk Radio. See 58 FR 13436, March 11, 1993. Coordinates for Channel 250C2 at Crescent North, are 41–48–25 and 124–10–16. With this action, the proceeding is terminated.

EFFECTIVE DATE: September 13, 1993.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–31, adopted July 9, 1993, and released July 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 250C3 and adding Channel 250C2 at Crescent North.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–18648 Filed 8–4–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 92–48; Notice 2]

RIN 2127–AE55

Federal Motor Vehicle Safety Standards; New Pneumatic Tires

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

ACTION: Final rule.

SUMMARY: This notice amends Standard No. 109, New Pneumatic Tires—Passenger Cars, to permit the testing of 18 inch and 19 inch tires. Currently, Standard No. 109 does not permit tires of these sizes since the standard requires each tire to meet all of its requirements but provides no way to conduct certification tests of these sized tires to the bead unseating requirements.

DATES: The amendments made in this rule are effective on September 7, 1993.

Any petitions for reconsideration must be received by NHTSA no later than September 7, 1993.

ADDRESSES: Any petitions for reconsideration should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.—4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, NRM–11, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–4803.

SUPPLEMENTARY INFORMATION: On September 14, 1992, NHTSA proposed to amend Federal Motor Vehicle Safety Standard No. 109, *New Pneumatic Tires*, (49 CFR 571.109) to allow the testing of 18 and 19 inch tires. The proposed amendment was in response to a petition submitted by the European Tire and Rim Technical Organization (ETRTO). The ETRTO petitioned the agency to amend the dimensions in the bead unseating fixture in Figure 1 of Standard No. 109. ETRTO requested that the figure include, for tires other than 60 lbs./in.², a 12.5 inch dimension A for 18 inch tires and a 13.0 inch dimension A for 19 inch tires. For 60 lbs./in.² tires, it requested a 12.0 inch dimension A for 19 inch tires. After reviewing the petition, the agency proposed the petitioned-for changes.

Two comments were received to the proposal. Both Chrysler Corporation and ETRTO concurred with the proposed changes. Since commenters did not object to the changes, they are promulgated as proposed.

Section 103(c) of the Vehicle Safety Act requires that each order shall take effect no sooner than 180 days from the date the order is issued unless "good cause" is shown that an earlier effective date is in the public interest. Since this amendment would facilitate the introduction of certain tires without imposing additional requirements on manufacturers and since the public interest would be served by not delaying the introduction of these alternative tire designs, the agency has determined that there is good cause to have an effective date 30 days after publication of the final rule.

This rule will not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Rulemaking Analyses and Notices

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

NHTSA has examined the impact of this rulemaking action and determined that it is neither major within the meaning of Executive Order 12291, nor significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has found that its effect will be so minimal as not to warrant preparation of a full regulatory evaluation. NHTSA has evaluated this rule and believes that it will impose no mandatory costs on manufacturers. This amendment will merely permit manufacturers to introduce tires of larger dimensions. For those manufacturers, the costs will be minimal. It will not have an impact on the economy in excess of $100 million. Similarly, it will not result in a major change in costs or prices for consumers, individuals, industries, government, or any geographic region. Nor will this action significantly affect competition.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a regulatory flexibility analysis.

The agency believes that few, if any, tire manufacturers qualify as small businesses. Small businesses, small organizations and small governmental units will be affected by the amendment only to the extent that they purchase vehicles for which the tires in question are specifically designed.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Executive Order 125612 (Federalism)

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, P.L. 96–511, the agency notes that there are no information collection requirements associated with this rulemaking.

List of Subjects in 49 CFR Part 571

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

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

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

2. Section 571.109 is amended by adding a heading preceding Figure 1 and revising the table in Figure 1, as follows:

§ 571.109 Standard 109, New pneumatic tires.

* * * * *

FIGURES TO STANDARD 109

* * * * *

Wheel sizes	Dimension "A" for tires with maximum inflation pressure	
	Other than 60 lbs/in²	60 lbs/in²
19	13.00	12.00
18	12.50	11.40
17	12.00	10.60
16	11.50	9.90
15	11.00	9.40
14	10.50	8.90
13	10.00	8.40
12	9.50	.....
11	9.00	.....
10	8.50	.....
320mm	8.50	.....
340mm	9.00	.....
345mm	9.25	.....
365mm	9.75	.....
370mm	10.00	.....
390mm	11.00	.....
415mm	11.50	.....
400mm(1)	10.25	.....
425mm(1)	10.75	.....
450mm(1)	11.25	.....
475mm(1)	11.75	.....

FIGURES TO STANDARD 109—Continued

. . . . .

Wheel sizes	Dimension "A" for tires with maximum inflation pressure	
	Other than 60 lbs/in²	60 lbs/in²
500mm(1)	12.25	.....

(1) for CT tires only.

Figure 1.—Bead Unseating Fixture—Dimensions in Inches

Issued: July 30, 1993.

Howard M. Smolkin,

Acting Administrator.

[FR Doc. 93–18634 Filed 8–4–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107–3068; I.D. 080293B]

Groundfish of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the Gulf of Alaska (GOA), except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This action is necessary because the third seasonal apportionment of prohibited species catch (PSC) of Pacific halibut to trawl gear in the GOA has been caught.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), August 3, 1993, through 12 noon, A.l.t., October 4, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Gorundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The final 1993 initial specifications for the GOA (58 FR 16787, March 31, 1993) established the 1993 Pacific halibut PSC limit for trawl gear at 2,000 metric tons (mt). In accordance with § 672.20(f)(2), 600 mt was apportioned to the third season, the period June 28, 1993, through October 3, 1993.

The Director of the Alaska Region, NMFS, has determined, in accordance with § 672.20(f)(1)(i), that vessels engaged in directed fishing for groundfish with trawl gear in the GOA have caught the third seasonal apportionment of Pacific halibut PSC. Therefore, NMFS is prohibiting directed fishing for groundfish by vessels using trawl gear in the GOA, except for directed fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA that remain open to directed fishing for pollock. This closure is effective from 12 noon, A.l.t., August 3, 1993, through 12 noon, A.l.t., October 4, 1993.

Classification

This action is taken under 50 CFR 672.20, and is in compliance with E.O. 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

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

Dated: August 2, 1993.

David S. Crestin,

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

[FR Doc. 93–18733 Filed 8–2–93; 2:32 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 149
Thursday, August 5, 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

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AD02

1994 Feed Grain Acreage Reduction Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to set forth the acreage reduction percentage for each of the 1994 feed grain crops and whether producers of malting barley should be exempt from complying with acreage reduction requirements to maintain eligibility for feed grain loans, purchases and payments. Producers who participate in the Feed Grain Acreage Reduction Program would be eligible for benefits such as price support loans and deficiency payments. This action is required by section 105B of the Agricultural Act of 1949, as amended (the 1949 Act).

DATES: Comments must be received on or before September 20, 1993 in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Director, Grains Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3742–S, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Philip W. Sronce, Director, Grains Analysis Division, ASCS, USDA, room 3742–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202–720–4418.

SUPPLEMENTARY INFORMATION:

Executive Order 12291 and Departmental Regulation 1512–1

This rule has been reviewed under USDA procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "major." It has been determined that an annual effect on the economy of $100 million or more may result from implementation of the provisions of this proposed rule.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule since the Commodity Credit Corporation (CCC) is required by section 105B(o) of the 1949 Act to request comments with respect to the subject matter of this rule. A Preliminary Regulatory Impact Analysis was prepared, which determined that this regulation will have no significant impact on a substantial number of small entities because the particular acreage reduction percentages considered will not affect the paperwork, reporting, or compliance burdens of the small entities in the program. CCC thus certifies that the rule will have no significant economic impact on a substantial number of small entities. The Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impact of the implementation of each option is available on request from the above-named individual.

Environmental Assessment or Impact Statement

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Feed Grain Production Stabilization—10.055.

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule do not preempt State laws; are not retroactive; and do not require the exhaustion of any administrative appeal remedies.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1413 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Public Comments

Comments are requested with respect to this proposed rule and such comments shall be considered in developing the final rule.

Statutory Background

In accordance with section 105B of the 1949 Act, an acreage reduction program (ARP) is required to be implemented for the 1994 crops of corn, grain sorghum, or barley if it is determined that the total supply of each respective feed grain would otherwise be excessive.

Land diversion payments also may be made to producers if needed to adjust the total national acreage of feed grains to desirable goals. A paid land diversion program is not being considered because, given the allowed ARP percentages, it is not needed.

If an ARP is announced, the reduction shall be achieved by applying a uniform percentage reduction to the respective feed grain acreage base for the farm. In making such a determination, the number of acres placed into the agricultural resources conservation program established under subtitle D of title XII of the Food Security Act of 1985, as amended, must be taken into consideration.

Producers who knowingly produce feed grains in excess of the respective permitted acreage for the farm plus any respective feed grain acreage planted in accordance with the flexibility provisions are ineligible for loans and purchases and all payments with respect to that crop on the farm. If an ARP program for the 1994 crop is in effect, the program must be announced no later than September 30, 1993. Adjustments in the announced program may be made if it is determined that there has been a significant change in the total supply of feed grains since the program was first announced. These

adjustments must be made no later than November 15, 1993.

In accordance with section 105B of the 1949 Act, not less than 60 days before the program is announced for a crop of feed grains, proposals for public comment on various program options for the crop of feed grains are required to be set forth. Each option must be accompanied by an analysis that includes the estimated planted acreage, production, domestic and export use, ending stocks, season average producer price, program participation rate, and cost to the Federal Government that would likely result from each option.

In determining the 1994 corn ARP, the Secretary will choose a specific ARP reduction percentage from within a range established by the estimated ending stocks-to-use (S/U) ratio for the 1993 corn marketing year. If it is estimated that the 1993 ending S/U ratio in percentage terms will be:

(1) More than 25 percent, the ARP shall not be less than 10 percent nor more than 20 percent; or

(2) Equal to or less than 25 percent, the ARP may not be more than 12.5 percent.

The S/U for the 1993 marketing year is estimated to be 24.9 percent. Based on this estimate, the 1994 ARP may be not more than 12.5 percent. In the case of grain sorghum and barley, the Secretary may choose a 1994 ARP percentage in the range from 0 to 20 percent. For oats, the 1994 ARP is statutorily mandated not to exceed 0 percent.

Section 1104 of the Agricultural Reconciliation Act of 1990 provides that the acreage reduction factor for the 1994 crops of corn, grain sorghum, and barley may not be less than 7.5 percent. This provision does not apply if the estimated corn S/U for the 1993 crop is less than 20 percent. Section 1302 of the Agricultural Reconciliation Act of 1990 also provides that minimum ARP requirements may be waived if an agreement resulting from the General Agreement on Tariffs and Trade (GATT) negotiations is not entered into by June 30, 1992.

Currently the S/U for the 1993 corn crop is greater than 20 percent. Thus, the minimum 7.5-percent-ARP provision is not currently applicable and an ARP less than 7.5 percentage for corn, grain sorghum, or barley cannot be announced unless minimum ARP levels are waived. ARP's lower than 7.5 percent for corn, grain sorghum, and barley will be included as options because (1) small changes in supply and demand estimates could result in a revised corn S/U estimate that is less than 20 percent, which would allow for consideration of an ARP below 7.5 percent, and (2) a GATT agreement was not entered into by June 30, 1992.

Conversely, the final ARP decision process could consider higher ARP's between 10 and 20 percent if the S/U ratio exceeds 25 percent, and such an outcome is possible. The ARP options included in this analysis are the most likely possibilities, based on June 1993 data. If ending stocks increase, due to weaker demand or higher than expected yields, and raise the S/U ratio to 25 percent or higher, ARP levels between 12.5 and 20 percent may be considered before a final decision is made. The 1994 ARP options considered are shown in table 1.

TABLE 1.—PROPOSED 1994 FEED GRAIN ARP OPTIONS

Item	Option		
	1	2	3
Percent			
Corn	5	10	15
Grain Sorghum	0	5	10
Barley	0	0	5
Oats	0	0	0

For grain sorghum and barley, ARP percentages higher than 7.5 percent are not considered because expected sorghum and barley S/U's are low compared with historical levels. The 1993 grain sorghum S/U is forecast at 18.6, which with the exception of 1991, the lowest level since 1976 (17.3 percent). The 1993 barley S/U is forecast at 33.8, a level reached only two other times since 1982. ARP levels above 5 percent would limit supplies of barley and grain sorghum to the point of not allowing export and domestic needs to be met. However, ARP levels above 5 percent will be considered when making the final ARP decision if feed grain supply and demand changes are large enough to warrant their consideration.

The estimated impacts of the ARP options are shown in tables 2 through 4.

TABLE 2.—CORN SUPPLY AND DEMAND ESTIMATES

Item	1994 Program options		
	1	2	3
Percent			
ARP	5	10	15
Participation	80	77	72
Million acres			
Planted acreage	76.8	75.0	73.5

TABLE 2.—CORN SUPPLY AND DEMAND ESTIMATES—Continued

Item	1994 Program options		
	1	2	3
Million bushels			
Production	8,615	8,405	8,235
Domestic use	7,195	7,155	7,125
Exports	1,590	1,575	1,560
Ending stocks, 8/31	1,953	1,798	1,673
Dollars per bushel			
Season average producer price	2.14	2.20	2.26
Million dollars			
Deficiency payments	3,195	2,600	2,022

TABLE 3.—GRAIN SORGHUM SUPPLY AND DEMAND ESTIMATES

Item	1994 Program options		
	1	2	3
Percent			
ARP	0	5	10
Participation	82	79	76
Million acres			
Planted acreage	11.5	11.3	11.1
Million bushels			
Production	685	670	660
Domestic use	413	408	403
Exports	292	290	288
Ending stocks, 8/31	112	104	101
Dollars per bushel			
Season average producer price	2.00	2.05	2.10
Million dollars			
Deficiency payments	304	252	209

TABLE 4.—BARLEY SUPPLY AND DEMAND ESTIMATES

Item	1994 Program options		
	1	2	3
Percent			
ARP	0	0	5
Participation	79	78	76
Million acres			
Planted acreage	7.8	7.8	7.8

TABLE 4.—BARLEY SUPPLY AND DEMAND ESTIMATES—Continued

Item	1994 Program options		
	1	2	3
Million bushels			
Production ..	415	415	405
Domestic use	353	355	350
Exports	80	80	79
Ending stocks, 5/ 31	154	152	148
Dollars per bushel			
Season average producer price	2.11	2.15	2.20
Million dollars			
Deficiency payments	143	132	110

Accordingly, comments are requested as to whether the 1994 acreage reduction percentage for: (1) Corn should be 5, 10, or 15 percent or any percentage less than 12.5 percent; (2) Grain sorghum should be 0, 5, or 10 percent or any percentage in the range of 0 to 20 percent; and (3) Barley should be 0 or 5 percent or any percentage in the range of 0 to 20 percent. The final determination of these percentages will be set forth at 7 CFR part 1413.

In accordance with section 105B(e)(2)(G) of the 1949 Act, with respect to feed grains, the Secretary may exempt producers of malting barley, as a condition of eligibility for feed grain loans, purchases, and payments, from complying with the acreage reduction requirements. It is proposed that malting barley not be exempted from the feed grain acreage reduction requirements for the 1994 crop.

List of Subjects in 7 CFR Part 1413

Cotton, Feed grains, Price support programs, Rice, Wheat.

Accordingly, it is proposed that 7 CFR part 1413 be amended as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b-3a, 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54 is amended by:

A. Removing the word "and" at the end of paragraph (a)(2)(ii)(B),

B. Removing the period at the end of paragraph (a) (2)(iii)(C) and adding a semicolon and the word "and",

C. Adding a new paragraph (a)(2)(iv),

D. Removing the word "and" at the end of paragraph (d)(3)(iii),

E. Removing the period at the end of paragraph (d)(3)(v) and adding a semicolon and the word "and";

F. Adding a new paragraph (d)(4); and

G. Revising paragraph (e) to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(2) * * *

(iv) For the 1994 crop:

(A) Corn, grain sorghum, and barley shall be no more than 12.5 percent, as determined and announced by CCC; and

(B) Oats shall be 0 percent.

* * * * *

(d) * * *

(4) For the 1994 crop, shall not be made available to producers of feed grains, as determined and announced by CCC.

(e) With respect to the 1991, 1992, 1993, and 1994 crop years, in order to receive feed grain loans, purchases and payments in accordance with this part and part 1421 of this title, producers of malting barley must comply with the acreage reduction requirements of this part.

Signed this August 2 day of 1993 at Washington, DC.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–18774 Filed 8–2–93; 4:35 pm]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Parts 92 and 94

[Docket No. 92–107–1]

Llamas and Alpacas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to remove certain health certification requirements and requirements concerning quarantine upon arrival in the United States for llamas and alpacas from Chile, Poland, and The Netherlands. This action appears warranted to relieve excessively burdensome restrictions.

DATES: Consideration will be given only to comments received on or before October 4, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–107–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Import-Export Animals Staff, VS, APHIS, USDA, room 761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–7511.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 92 and 94 (referred to below as the regulations) regulate, among other things, the importation into the United States of specified animals and animal products to prevent the introduction of various livestock diseases.

The regulations in § 92.435 were published in the **Federal Register** (55 FR 39601–39608, Docket Number 89–216) as a final rule on September 28, 1990, the date Chile was declared free of foot-and-mouth disease (FMD). This section (referred to below as the "Llamas and alpacas regulations") sets forth health-certification and quarantine requirements for llamas and alpacas imported into the United States from any country where FMD or rinderpest has been known to exist and that was declared free of those diseases on or after September 28, 1990. Section 94.1(d) lists such countries: Chile, Poland, and The Netherlands. Poland and The Netherlands were added to the list on June 14, 1993. Therefore, from 1990 until June 14, 1993, the llamas and alpacas regulations (§ 92.435) applied only to importations of llamas and alpacas from Chile. Section 92.435 includes the requirement that llamas and alpacas from countries listed in § 94.1(d)(1) undergo quarantine-upon-arrival for at least 40 days at the high-security Harry S Truman Animal Import Center (HSTAIC).

The "Llamas and alpacas regulations" were considered a necessary precaution when Chile was declared free of FMD in September 1990. While it was true that few cases of FMD in llamas or alpacas had ever been documented, it was also

true that FMD in llamas and alpacas had not been the object of focused scientific study. We were concerned about the possible existence of a "silent carrier" state, in which apparently healthy llamas or alpacas could harbor FMD and spread that disease to other animals. We were also concerned about a lack of data about the behavior of the FMD virus in llamas and alpacas.

In the final rule published on September 28, 1990, we stated our plans to conduct research on FMD in llamas and alpacas. We further stated that we would revisit the need for § 92.435 when research results were available, so that we could scientifically evaluate the possible "silent carrier" status of llamas and alpacas. The research project mentioned in the final rule published September 28, 1990, was completed earlier this year. The results are consistent with previously available empirical data and confirm that, when considered as potential FMD hosts, llamas and alpacas need not be treated differently from other ruminants. The results obtained from both the clinical trial and the serological survey demonstrate that llamas are very resistant to FMD infection, even when exposed to domestic livestock actively shedding the virus. Furthermore, such exposed llamas failed to transmit the virus to other llamas and to susceptible domestic livestock. These results are dispositive of all camelids, including alpacas.

No llamas or alpacas from an FMD-free country listed in § 94.1(d) have been imported into the United States since 1988, in part because of the logistical difficulty of arranging for them to be quarantined at HSTAIC, as § 92.435(b)(1) requires. Even so, four importations of llamas and alpacas from countries in which FMD exists have taken place through HSTAIC during the past decade; most recently, in October 1991. FMD virus was never isolated from any of the imported llamas and alpacas.

Additional evidence discounting the "silent carrier" theory has come from New Zealand, a country where FMD does not exist, which has imported more than 2,000 llamas and alpacas from Chile since it was recognized as FMD-free by the Office of International Epizootics in 1988. The FMD virus has never been isolated from tissue samples obtained from these llamas and alpacas, all of which have been tested. Further, the Pan American Foot-and-Mouth Disease Center in Rio de Janeiro, Brazil, which routinely receives samples from laboratories throughout South America for diagnostic testing, has never detected serological or virological evidence of FMD in serum or tissue samples examined from llamas and alpacas.

Given that the results from the research show that llamas and alpacas are not silent carriers of FMD, confirming the empirical data previously available, we no longer believe § 92.435 is necessary to prevent the introduction of FMD into the United States.

We are therefore proposing to remove § 92.435, "Llamas and alpacas," and to delete the related cross-references in § 92.405(a), § 92.411(b)(1) and (2), § 92.430(b)(3)(i)(B)(*2*), § 92.522(b)(3)(i)(B)(*2*), and § 94.1(d). Any llamas and alpacas imported into the United States from Chile or any other country listed in § 94.1(a)(2) would be governed by the regulations in part 92, subpart D.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Current regulations require llamas and alpacas from Chile, Poland, and The Netherlands to enter the United States through HSTAIC, where they must remain quarantined for at least 40 days. Costs depend on the size of the shipment, but are generally $1092 per head. Competition for the quarantine space in HSTAIC is intense. Import requests are awarded on a lottery basis, with cattle, sheep, goats, and swine required to be imported through HSTAIC and swine from countries in which African swine fever, hog cholera, or swine vesicular disease exists receiving higher priority than llamas and alpacas. Since 1990, when this lottery system became effective, only one importation of llamas and alpacas has occurred.

The greater ease of importing could attract persons into the business of importing llamas and alpacas from Chile into the United States. (We are not aware of any llamas and alpacas in Poland or The Netherlands that are available for export.) Based on past requests for the use of HSTAIC, imports could reach 900 llamas and alpacas per year, although we would consider half that number more realistic. The proposed rule would save importers of Chilean llamas and alpacas at least $592,488 for a shipment of 900 animals and $296,244 for a shipment of 450. For purposes of this analysis, savings are calculated using shipments of 450 animals because HSTAIC can accommodate no more than 450 llamas and alpacas per shipment. The proposed rule would be beneficial to importers of Chilean llamas and alpacas, who would save approximately $700 per llama or alpaca imported through an animal import center other than HSTAIC. The decreases in price and quarantine time, along with greater access to quarantine facilities, would remove some barriers to entry into the import market. We estimate between 15 and 20 importers, all small entities, could be affected by this proposed rule.

The potential effect on breeders of llamas and alpacas in the United States depends on the demand elasticity of the market. Independent of this rulemaking, the domestic price for llamas and alpacas has been decreasing during the past few years; we would expect prices to continue to fall if this proposed rule is adopted. Current market values for females range from $5000 to $8000, but have gone as low as $2000. These prices are down from the 1989 values of $7500 to $10,000. Prices for males used as pets or pack animals have remained relatively steady at $500 to $1500. Prices for stud-quality males were not available. Current figures are not available, but in 1989 approximately 99 percent of the llama and alpaca breeders in the United States were believed to be small entities. With prices decreasing and llama and alpaca births rising annually in the United States as a result of forces unrelated to the regulatory changes we propose, we would not expect our proposed rule to significantly affect a substantial number of breeders.

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

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no

retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging its provisions.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects

9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR parts 92 and 94 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would be revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.405 [Amended]

2. In § 92.405, paragraph (a), the term ", and 92.435" would be removed.

§ 92.411 [Amended]

3. In § 92.411, paragraph (b)(1), the first sentence, the phrase "other than llamas and alpacas from countries listed in § 94.1(d) of this chapter, and" would be removed.

4. In paragraph (b)(2) of § 92.411, the last sentence would be removed.

§ 92.430 [Amended]

5. In § 92.430, paragraph (b)(3)(i)(B)(*2*), the words "Llamas, alpacas, water" would be removed and "Water" added in their place.

§ 92.435 [Removed]

6. Section 92.435 would be removed.

§ 92.522 [Amended]

7. In § 92.522, paragraph (b)(3)(i)(B)(*2*), the words "Llamas, alpacas, water" would be removed and "Water" added in their place.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

8. The authority citation for part 94 would be revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

9. In § 94.1, paragraph (d) would be removed.

Done in Washington, DC, this 2nd day of August 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–18731 Filed 8–4–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–23]

Airworthiness Directives; Teledyne Continental Motors IO–520, TSIO–520, IO–550, TSIO–550, and TSIOL–550 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Teledyne Continental Motors (TCM) IO–520, TSIO–520, IO–550, TSIO–550, and TSIOL–550 series reciprocating engines. This proposal would require inspection of certain fuel pumps to determine which combination of fuel pump drive shaft and fuel pump drive coupling is installed, and replacement, if necessary, of fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings. This proposal is prompted by reports of seven incidents where the fuel pump drive shaft disengaged from the fuel pump drive coupling. The actions specified by the proposed AD are intended to prevent possible fuel pump drive shaft disengagement, which could result in a loss of engine power.

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

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–23, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, suite 210C, Atlanta, GA 30349; telephone (404) 991–3810; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the rules docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice

must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–23." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules docket No. 93–ANE–23, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion:

The Federal Aviation Administration (FAA) has received reports of seven incidents where the fuel pump drive shaft disengaged from the fuel pump drive coupling on Teledyne Continental Motors (TCM) IO–520, TSIO–520, IO–550, TSIO–550, and TSIOL–550 series reciprocating engines. This condition was caused by a fuel pump drive coupling, Part Number (P/N) 631263, that had less than the required minimum engagement with drive shaft, P/N 646176, due to the tolerance range in the fuel pump drive train. If the fuel pump drive shaft disengages in flight, engine power will be lost, and this loss of power could be critical depending on the phase of flight. This condition, if not corrected, could result in possible fuel pump drive shaft disengagement, which could result in a loss of engine power.

The FAA has reviewed and approved the technical contents of TCM Mandatory Service Bulletin (MSB) No. M93–9, Revision 1, dated March 10, 1993, that describes procedures for inspecting fuel pumps to determine which combination of fuel pump drive shafts and fuel pump drive couplings is installed, and replacement, if necessary, of fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspection of certain fuel pumps to determine which combination of fuel pump drive shaft and fuel pump drive coupling is installed, and replacement, if necessary, of fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings. TCM has replaced fuel pump drive coupling, P/N 631263, with a longer fuel pump drive coupling, P/N 653359. This new fuel pump drive coupling is compatible with both of the fuel pump drive shafts, P/N 643689 and 646176, used in early and current fuel pump assemblies. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 15,000 engines with the affected design fuel pumps installed in the worldwide fleet. The FAA estimates that 10,500 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $30 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,625,000.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Teledyne Continental Motors: Docket No. 93–ANE–23.

Applicability: Teledyne Continental Motors (TCM) Model IO–520B, IO–520BA, IO–520BB, IO–520C, IO–520CB, IO–520M, IO–520MB; IO–550A, IO–550B, IO–550C, IO–550G; TSIO–520B, TSIO–520BB, TSIO–520D, TSIO–520DB, TSIO–520E, TSIO–520EB, TSIO–520J, TSIO–520JB, TSIO–520K, TSIO–520KB, TSIO–520L, TSIO–520LB, TSIO–520N, TSIO–520NB, TSIO–520UB, TSIO–520VB, TSIO–520WB; TSIO–550B; and TSIOL–550A and TSIOL–550B reciprocating engines, with serial numbers lower than those listed in TCM Mandatory Service Bulletin (MSB) No. M93–9, Revision 1, dated March 10, 1993; which are equipped with the following fuel pumps: Part Numbers (P/N) 646210–1, –2, –8, –10, –11; P/N 646212–2, –5, –16, –17; P/N 646758–5, –7, –8, –9; P/N 646765–6 and –7; P/N 646766–1 and –2; 646767–1; 649368–19; or engines equipped with any fuel pump, regardless of part number that have had the fuel pump replaced in the field prior to the effective date of this AD with fuel pump drive shaft, P/N 646176, installed. These engines are installed on but not limited to the following aircraft: Beech Bonanza 35–C33A, E33A/C, F33A/C, S35, V35/A/B, A36/TC, B36TC; Beech Baron 95–C55/A, D55/A, E55/A, 58/A/P/PA/TC/TCA; Cessna 310R, T310P/Q/R, 320 D/E/F, 335 series, 340 series, 401 series, 402 series, 414 series; Cirrus VK–30; Lancaire IV; Navion Model H; and Questair.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible fuel pump drive shaft disengagement, which could result in a loss of engine power, accomplish the following:

(a) At the next 100 hour, annual, or progressive maintenance inspection after the effective date of this AD, whichever occurs first, visually inspect the fuel pump to determine which combination of fuel pump drive shaft and fuel pump drive coupling is installed, and replace, if necessary, fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings, in accordance with Figure 1 of TCM MSB No. M93–9, Revision 1, dated March 10, 1993, as follows:

(1) If fuel pump drive shaft, P/N 646176, is installed with fuel pump drive coupling, P/N 631263, replace the fuel pump drive coupling with a serviceable fuel pump drive coupling, P/N 653359.

(2) If fuel pump drive shaft, P/N 643689, is installed with either fuel pump drive coupling, P/N 631263 or 653359, no further action is required.

(3) If fuel pump drive shaft, P/N 646176, is installed with fuel pump drive coupling, P/N 653359, no further action is required.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate

FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

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

Issued in Burlington, Massachusetts, on July 26, 1993.

Jack A. Sain,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–18665 Filed 8–4–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations; Proposed Rulemaking

July 29, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing changes in its regulations to standardize the content of, and procedures for accessing, information relevant to the availability of service on interstate pipelines. The Commission's proposed standards will require pipelines to make this information available on Electronic Bulletin Boards and through downloadable files and will detail procedures and protocols for EBB operation and file transfers.

DATES: Comments are due on or before August 30, 1993.

ADDRESSES: An original and 14 copies of the written comments on this proposed rule must be filed in Docket No. RM93–4–000. All filings should refer to Docket No. RM93–4–000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend its open access regulations to standardize the content of, and procedures for accessing, information provided through Electronic Bulletin Boards (EBBs) maintained by interstate pipelines. The Commission proposes to adopt the consensus agreements reached by the major segments of the gas industry through informal conferences on standardization initiated by the Commission and some additional elements on which consensus was not reached.

II. Reporting Requirements

The Commission estimates the public burden for this information requirement under the proposed rule—including the one-time start-up burden related to pipeline EBBs—will average 6,250 hours per company. The burden estimate includes the time required to implement the standards proposed in this rule, review the standards, develop the necessary software, search existing data sources, gather and maintain the data needed, and complete and review the information. The information/data elements required to be maintained on pipeline EBBs will be under a new information requirement, FERC–549(B), Gas Pipeline Rates: Capacity Release Information. The annual burden associated with the new FERC–549(B) information requirement will be 487,500 hours based on the estimated initial EBB development burden and daily EBB informational updates by an anticipated 78 pipeline respondents.

Send comments regarding these burden estimates or any other aspect of this information requirement, including suggestions for reductions of the burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415, FAX (202) 208–2425]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission].

III. Background

In Order No. 636,[1] the Commission established a capacity releasing mechanism under which shippers can release firm transportation and storage capacity on either a short or long term basis to other shippers wanting to obtain capacity. The Commission further required pipelines to establish EBBs to provide shippers with equal and timely access to relevant information about the availability of service on their systems, including capacity available through release transactions and firm and interruptible capacity available directly from the pipeline.[2]

In Order No. 636–A, the Commission concluded the efficiency of the capacity release mechanism would be enhanced by standardizing both the content of capacity release information and the methods by which shippers could access that information.[3] The Commission found it did not have sufficient information to prescribe such standards and strongly encouraged the gas industry to develop its own uniform standards and conventions. The Commission committed to hold a technical conference to assess the progress in developing such standards.

On February 26, 1993, the Commission held the technical

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992); *order on reh'g*, Order No. 636–A, 57 FR 36128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992); *order on reh'g*, Order No. 636–B, 57 FR 57911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), *appeal pending sub nom., Atlanta Gas Light Co. and Chattanooga Gas Co. v. FERC*, No. 92–8782 (11th Cir. Aug. 13, 1992).

[2] 18 CFR 284.8(b)(3)(4), 284.9(3)(4).

[3] Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,549.

conference at which it received presentations by a number of industry groups. The participants at the conference expressed a willingness to establish a broad industry-wide working group to reach consensus on standards governing capacity release transactions.

Based on that commitment, the Commission, on March 10, 1993, issued a Notice (March 10 Notice) beginning the process of standardizing EBBS by setting up procedures to develop standards for capacity release transactions.[4] The Commission preferred the industry to reach consensus on the proposed standards and established informal conferences with Commission staff and all interested members of the gas industry to facilitate the development of consensus standards. The Commission directed the participants in the conferences to develop:

(1) Standards for the information and common terminology needed to ensure a viable capacity release market;

(2) Standards for files with common data formats, which could be "downloaded" by customers;[5] and

(3) Communication protocols that would enable users to transfer information using readily available, off-the-shelf communication programs.

The Commission requested a report on the outcome of the conferences by July 1, 1993. On July 1 and July 6, 1993, the Commission received reports from five Working Groups (identified by numbers) that had been established by the participants at the conferences. A broad spectrum of firms and organizations participated in these Working Groups, including representatives from the major segments of the gas industry and other interested parties, such as computer and software firms.

Working Groups 1 and 2[6] proposed the standardized information (data sets) for capacity release transactions and for firm and interruptible capacity available from pipelines. The data sets include fields for offers to sell firm capacity (either by the pipeline or releasing shippers), bids for capacity, awards of capacity, withdrawals of capacity offers and bids, and operationally available (i.e., interruptible) capacity. The Working Groups also proposed standards governing posting of system-wide notices. Working Groups 1 and 2 reached consensus on 158 data elements, with 21 left for future resolution. The Working Group report also included minority reports on several issues on which agreement could not be reached.

Working Group 3 was established to consider the development of standards applying to business practices, other than capacity release, in the business environment created by the restructuring of pipeline operations under Order No. 636. Its main goals were to establish a dialogue between the pipelines and their customers and to establish a process for developing appropriate standards which would extend beyond July 1, 1993. It, therefore, has submitted no proposed standards at this time.

Working Group 4 reached consensus on proposed standards and principles relating to the procedures and protocols needed for the efficient transfer of the data sets specified by Working Groups 1 and 2. The key agreement reached by Working Group 4 was to provide for the downloading of files through Electronic Data Interchange (EDI) as an alternative to using on-line EBBs to obtain access to the standardized data sets.[7] The EDI transactions would comply with standards developed by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12. Working Group 4 failed to reach agreement on two issues: Uploading files (the transfer of files from customers to the pipelines) and downloading subsets of files; for example, a user wishing to download only recent capacity release information would not need to download an entire data file.

Working Group 5 was responsible for developing common codes. Although it identified proposed methods for determining common company codes and common codes for gas transaction points, it did not finalize these proposals.

All the Working Groups recognized that the standards and principles they have adopted may need to be modified once the industry has more experience with the operation of capacity release. They all recommended that the process of developing these standards through industry-wide efforts should be continued.

Public notice of the filing of the Working Group reports was issued on July 7, 1993, requesting any comments to be filed by July 14, 1993.[8] Twenty-one comments were received. In addition, a number of letters on issues in this proceeding have been received and added to the record.

IV. Discussion

A. General Description of Commission Proposal

The Commission is very pleased by the results of the conferences. The significant consensus among all industry segments on such a significant range of issues is testament to the industry's commitment to this project and should result in a more efficient capacity release market redounding to the benefit of all. In the nationwide market for gas and pipeline capacity fostered by Order No. 636, efficient capacity allocation can take place only when all pipelines adhere to a common set of standards so shippers can obtain and process information from multiple pipelines.

Because the benefits of standardization can be realized only through implementation of the standards by all pipelines, the Commission is proposing to require interstate pipelines to follow the consensus agreements reached by the Working Groups, with a few additions. The Commission is proposing a general regulation that would require pipelines to provide standardized information relevant to the availability of service on their systems and the ability to download the standardized information in compliance with standardized procedures and protocols. The required information, procedures, and protocols would be made available in a document which could be obtained from the Commission.[9] In summary, the standards and protocols the Commission is proposing to adopt would require pipelines to: provide the information contained in the capacity data sets developed by Working Groups 1 and 2 (with certain modifications); make this information available on their on-line EBBs and through downloadable files using EDI, in accordance with the ASC X12 standards, and using ASCII

[4] 58 FR 14530 (March 18, 1993).

[5] In developing standards for file downloads, the Notice identified several issues for the participants to address: standardized identifiers to facilitate the comparison of capacity releases among pipelines, such as standard codes to identify pipeline receipt and delivery points; standard methods to access these files independent of the display format of the EBB; and standard procedures for notifying EBB users of files and bulletins added to the EBB since the user was last "logged" onto the EBB.

[6] These two Working Groups eventually were consolidated due to their overlapping membership.

[7] On-line EBB refers to a continuous computer connection between a pipeline EBB and a user's computer in which the information from the pipeline's computer is displayed visually on the user's computer and the user can enter data directly to the pipeline's computer. File downloading refers to the transfer in computerized format of an entire file from the pipeline's computer to the user's computer. The user would then be able to use its own internal computer programs to manipulate the data. EDI is a standardized method used to transfer computerized information between parties and is described in more detail later.

[8] 58 FR 37447 (July 12, 1993).

[9] The proposed document is attached as Appendix A.

format [10]; and adhere to the protocols developed by Working Group 4 for EBB operation and file transfers.

The Commission recognizes the Working Groups were unable to reach agreement on certain issues and, due to time limitations, were unable to finalize agreements in certain areas, which they agreed to explore later. The Commission also realizes experience with capacity release may dictate changes or modifications to these standards. Nonetheless, the Commission concludes promulgation of this rule should not wait for final resolution of these matters, but should proceed based on the agreements already reached. These agreements cover a significant proportion of the most significant issues and their early implementation will significantly improve capacity releasing.

Some commenters support the commission's issuance of a rule to ensure compliance with the requirements. Others suggest a policy statement would be preferable because it would permit modifications to the standards to be made more easily. The Commission has determined to proceed through rulemaking because, to achieve the benefits of standardization, the minimal informational content and downloading procedures need to be mandatory for all pipeline EBBs.

Some commenters contend the proposed standards need to be implemented by November 1, 1993. Pipelines and others contend such an implementation schedule is far too ambitious and fails to provide sufficient time for some pipelines to test and implement their proposed EBBs, much less complete the programming and testing required to implement the proposed standards and EDI.[11]

The Commission agrees that setting a November 1, 1993 implementation date may be impractical on many systems. The Commission expects pipelines to implement these standards as soon as is practical and proposes to establish April 1, 1994 as the date for compliance with these requirements. Pipelines should have sufficient time to program their computers by April 1 and implementation by that date will enable them to conduct final testing of their systems in operation during the off-peak summer season, so the systems will be fully operational by the 1994 winter heating season.

All the Working Groups found the informal conferences were exceedingly beneficial in developing these standards and support a continuation of this process. Working Group 3 proposed to continue its efforts to develop standards required by the post-restructuring business environment and most commenters support the continuation of these efforts.[12] Many comments also endorse the development of a Gas Industry Standards Board (GISB) to replace the Working Groups and continue the development and maintenance of standards.

To facilitate resolution of the unresolved issues and other issues discussed in this Notice of Proposed Rulemaking (NOPR), the Commission is proposing to direct staff to continue the informal conferences established by the March 10 Notice. Given the level of support for developing standards governing post-restructuring business transactions other than capacity release, the Commission concludes the participants in the conferences should continue their efforts to develop such standards. The Commission expects reports on the outcome of these conferences by February 1, 1994. Amendments and modifications to reflect these further deliberations can then be made prior to the 1994 winter heating season. The Commission is interested in the GISB concept and invites the submission of detailed proposals as to how it would operate.

B. Capacity Release and Available Capacity Data Sets (Working Groups 1 and 2)

The Commission proposes to require all pipelines to adopt the data elements on which Working Groups 1 and 2 reached consensus with two additional elements, relating to contingent bidding and date and time stamps as discussed below. His information would be made available through the pipelines' on-line EBBs as well as through standardized downloadable files. The standardization of the downloadable file formats is necessary to permit shippers to download the same information from all pipelines.[13]

The non-consensus issues in Working Groups 1 and 2 report are discussed below.

1. Contingency Bidding Fields

The contingency bidding fields apply when releasing shippers provide in their terms and conditions that they will accept bids contingent on events taking place after the close of the pipeline bidding period. For instance, a releasing shipper may wish to permit bidders to make bids contingent on their ability to obtain downstream or upstream capacity on other pipelines. Some members of the Working Groups wanted the Commission to reconsider allowing releasing shippers this flexibility, because they contend contingent bidding introduces too much confusion in the offer/bid process.

The Commission's general policy has been to provide releasing shippers with the flexibility to structure their capacity release offers in ways that will enhance the value of their offers and, consistent with this philosophy, the Commission permitted shippers the flexibility to accept contingent bids.[14] Consideration of contingent bidding is not appropriate in this proceeding since such substantive policy issues are beyond the scope of the proceeding, which is limited to developing standardization policies for EBBs. Moreover, the industry has not had experience with capacity release and any decision to eliminate contingent bidding would be premature.

2. Date and Time Fields

Working Groups 1 and 2 agreed on identifying the date and time when release offers, bids, withdrawals of bids or offers, and capacity awards are placed on the EBBs. They disagreed over whether date and time fields also are needed to identify when pipelines actually received the offers, bids, and withdrawals or made the determination to award capacity. On some pipelines, for example, offers to release capacity and bids may not be posted on EBBs immediately upon receipt because the pipeline needs to verify and check the information.

Those supporting inclusion of the additional date and time fields argue they will permit monitoring of the pipeline's handling of capacity release transactions and prevent discrimination.[15] Those opposing inclusion contend this information is not needed in the ordinary course of business and would be available from the pipelines when needed.[16]

The Commission concludes the standardized data sets should include only the date and time fields identifying when a pipeline has received a bid.

[10] ASCII refers to the American Standard Code for Information Interchange, a code for character representation.

[11] Comments by Interstate Natural Gas Association (INGAA); Texas Eastern Transmission Corporation, *et al.*

[12] Southern California Gas Company, however, asserts Working Group 3 should be disbanded because pipelines and their customers are working out these arrangements and federal standards are unnecessary.

[13] While the on-line EBB and the downloadable files must include the same information, the Commission is not addressing the form in which the information is displayed on on-line EBBs.

[14] See El Paso Natural Gas Company, 61 FERC ¶ 61,333 at 62,298 (1992); Transwestern Pipeline Company, 61 FERC ¶ 61,332 at 62,243–44 (1992).

[15] Working Groups 1 & 2 Report at 87.

[16] See Comments by INGAA.

Since pipelines and releasing shippers can specify first-come, first-served as the method for breaking ties, information on the time bids are received will enable shippers to verify the determination of the winning bid without having to contact the pipeline. The date and time information about offers, withdrawals, and capacity awards does not appear as important to capacity release transactions as the bid information, so questions about these items should be less frequent. For example, the time at which one offer is posted relative to another ordinarily should have little effect on the bidding process. Pipelines must maintain records of the date and time they receive offers and withdrawals and make their capacity awards, and the Commission considers a shipper's ability to obtain such information upon request to be sufficient.

3. Operationally Available Capacity

The Commission is accepting the recommendation by Working Groups 1 and 2 to include a field for operationally available capacity, which is defined as the amount of unscheduled capacity available at a location. This information would identify capacity which is available on an interruptible basis from the pipeline. Working Groups 1 and 2 have identified a variety of possible locations at which such information can be provided, such as receipt or delivery points, mainline, or segments, and the Commission expects a pipeline to provide this information for as many of these locations as is feasible for its system.

The major issue of disagreement is over the inclusion of fields for aggregate confirmed firm and interruptible nominations and the use of a no-notice indicator (which shows whether no-notice service is available at a location).[17] Those supporting this information contend it is needed so releasing shippers can evaluate the value of available capacity, particularly when the confirmed nominations on a day are close to the full capacity of the pipeline at that location. For example, if almost all scheduled capacity is interruptible, they assert the value of released firm capacity would be similar to the value of interruptible capacity. But if almost all scheduled capacity is firm, they maintain the value of released firm will be greater than interruptible since firm service can displace interruptible service.[18]

Those opposing inclusion of this information maintain the information is not needed to buy capacity, but only will be used to lower bids for capacity. They assert inclusion of the information will unfairly tilt the capacity release market in favor of bidders and against firm capacity holders. They argue this type of information is not normally provided by the free market because sellers do not inform buyers of their inventories.

The two sides also disagree on the ability and expense of providing the information. Those opposing provision of the information assert the quantity of data being requested is enormous and would be burdensome to provide because it would have to be verified, tabulated, and posted within a few hours every day.[19] They also contend many pipelines cannot always distinguish between the amount of firm and interruptible gas flowing on mainlines or segments due to the configuration and operational characteristics of the pipelines. Those supporting disclosure respond that pipelines, regardless of configuration, have to distinguish between interruptible and firm nominations to determine if additional interruptible capacity can be sold and to implement curtailment plans or maximize gas flows in situations when the pipelines are unable to serve all the demands for service.[20]

The National Registry of Capacity Rights (National Registry) suggested an alternative definition of operationally available capacity as being the capacity a firm shipper can nominate at a point. This definition would include capacity that is nominated as interruptible, but could be displaced by a firm shipper.[21]

Although the Commission, as a general matter, finds relevant information improves the functioning of markets, the Commission cannot resolve this issue at this time. The information available in this proceeding does not permit a full evaluation of the operational issues, and the Commission also is not sure exactly how the information will affect the markets for released firm and interruptible capacity. Actual experience with capacity release transactions may provide further insight into the need for the information.

Moreover, the industry only had a short time frame in which to consider this issue. The Commission, therefore, strongly encourages the parties to continue their discussions of this issue at the conferences and to explore alternatives for providing information relevant to the purchasing of capacity that is operationally feasible to provide at reasonable cost.

4. Index of Purchasers

The National Registry has requested the inclusion of an Index of Purchasers (Index), which is a series of data elements establishing baseline contractual capacity rights held by current holders of capacity on pipelines, including, for example, characterization of releasable rights as to whether partial path or segment releases are permitted.[22] It asserts such information is needed so potential purchasers of capacity can determine the releasable rights of a firm capacity holder. It contends no distinction should be made between customers purchasing released capacity, whose contractual rights will be posted on EBBs, and customers holding existing capacity.

Comments on the Index are mixed. Those supporting the Index assert it is needed so small customers can determine what releasable contract rights are available, information which large marketers, pipelines, and LDCs already know.[23] Those opposing it contend such an index is not needed for capacity release to function efficiently and the cost of supplying the information outweighs the benefit.[24] Some also point out information regarding shipper name, transmission capacity, receipt and delivery points, and storage already is in the public domain.[25]

The Commission is not proposing to require the inclusion of the Index at this time.[26] Providing the quantity of information requested by the National Registry appears too burdensome and costly. However, the Commission considers a more limited electronic index of current capacity holders to have value in identifying shippers with releasable capacity. The continuing

[17] Working Groups 1 and 2 Report at 12–42.

[18] The no-notice flag would reveal whether interruptible service might be interrupted if the pipeline is required to provide no-notice service.

[19] Working Groups 1 and 2 Report at 37–42; comments by INGAA.

[20] Working Groups 1 and 2 Report at 28; comments by Natural Gas Supply Association (NGSA). The supporters of disclosure further assert pipelines can develop computer algorithms to deal with complex flow situations, such as backhauls.

[21] Working Groups 1 and 2 Report at 53.

[22] Working Groups 1 & 2 Report at 49. The posting of contract number and replacement contract number (two other disputed items) are tied to the Index.

[23] See, e.g., Letters by Interstate Marketing Inc., GasLantic Corporation, Advantage Energy Marketing, Inc; comments by Peoples Gas System, Inc.

[24] Comments by Columbia Distribution Companies; INGAA; Texas Eastern Transmission Corporation, et al.

[25] Working Groups 1 and 2 Report at 75; comments by INGAA.

[26] Since the provision of contract number and replacement contract number are tied to the Index, the Commission also is not proposing to include these items at this time.

conferences should focus on developing a consensus on a cost-effective method of presentation.

C. Communications Protocols and Logistics (Working Group 4)

The Commission is proposing to adopt the substance of the consensus standards developed by Working Group 4. These standards would apply to the use of EDI to download files and would establish protocols relating to EBB operations, including standards governing the software used to access EBBs, the modem speeds EBBs must support, and the procedures for logging-on to EBBs.[27] The pivotal standards are those requiring EBB operators to provide for downloading of files through EDI transactions complying with the ASC X12 standards. By establishing a standardized method for downloading information, shippers will not have to view information visually on EBBs, but will be able to obtain capacity information electronically from multiple pipelines. They can then manipulate those data using their own computers to determine the packages of capacity and capacity paths best fitting their needs.

EDI essentially is an electronic data submission capability that allows computers to exchange information using standardized formats over telephone lines. To facilitate these transfers, the ASC X12 standards provide standardized transaction sets for different types of transactions, such as requests for quotations and responses to such requests. Because the ASC X12 transaction sets have been standardized, commercial software and consulting services are available to assist users in translating data from standard program files to the standardized ASC X12 formats and *vice versa.*

Working Group 4 states the adoption of ASC X12 standards for EDI would provide a number of benefits when compared with downloading files in other forms, such as ASCII flat files. Among these benefits are cross-industry compatibility with other EDI business documents, receipt acknowledgements, audit trails, and date and time stamping of files. Adoption of the already-standardized ASC X12 standards would avoid the need to rebuild these capabilities and would conform the gas industry to other industries relying upon ASC X12 standards for electronic business transactions.

[27] The Commission is adopting the phrase "EBB operator" to apply to pipelines or third-party vendors providing EBB services to pipelines. Pipelines relying on third-party vendors must ensure they comply with these requirements.

The ASC X12 transaction sets provide generic data groups applicable to a range of potential applications. These transaction sets must be customized to individual applications by correlating or "mapping" the specific information to an ASC X12 transaction set through an implementation guide. Working Group 4 states the Gas*Flow Group[28] will provide the required "map" correlating the standardized information fields developed by Working Groups 1 and 2 to the relevant ASC X12 transaction sets. Gas*Flow has agreed to provide the implementation guide and make the guide available to the industry. The Commission proposes that, after issuance of the final standards setting forth the information pipelines will be required to provide, Gas*Flow would develop a draft implementation guide, circulate it for comments under its normal procedures, and prepare a final document. The Commission expects this process to take no more than a month. The Commission would then review the final implementation guide and, if acceptable, would incorporate it into its proposed standards by reference, with an appropriate version number or other means of identifying the implementation guide being adopted.

The Commission also is adopting the Working Group's proposal that data in ASC X12 format should be made available to any person, including a Value Added Network (VAN). A VAN is a communications or information system operated by an independent firm, which provides an aggregation, routing, and delivery service. In effect, a subscriber to a VAN is provided with an electronic mailbox for receipt of information.

Working Group 4 stated it assumed an EBB operator will make the capacity data sets available in standardized downloadable ASCII files in addition to EDI, but it considered the provision of ASCII downloads to be an option.[29] Order No. 636 required pipelines to provide for downloading of files. To permit users without ASC X12 capability to download files, the Commission is proposing to require pipelines to provide for downloading in an ASCII format with a standardized file structure. Gas*Flow has agreed to provide the documentation for the ASCII file structures, and the Commission is proposing to incorporate this documentation in the same manner as the ASC X12 implementation guide. Comments should focus on the benefits and detriments of requiring downloading of files in ASCII format in addition to the ASC X12 files.

[28] Gas*Flow was organized to promote the acceptance of ASC X12 EDI in the gas industry. It is composed of representatives from the gas industry, including local distribution companies, marketers, producers, shippers, and pipelines, and operates under guidance from the Natural Gas Review Committee.

[29] Working Group 4 Report at 10.

D. Downloading Subsets of Files

Working Group 4 reached a general agreement that all industry participants would benefit from the ability to reduce the size of the data sets transmitted by permitting users to eliminate unneeded information; for example, a user looking only to supplement its data with recent capacity information would not need to download capacity information it previously obtained. But the Working Group was unable to work out technical details for permitting this capability. The development of standardized procedures in this area was one of the issues addressed in the March 10 Notice and should be considered a priority in the continuing conferences.

E. Uploading Files

Given the time available, Working Groups 1 and 2 and Working Group 4 were not able to resolve issues relating to the ability of customers, releasers or bidders, to upload files directly to the pipeline's computer and have scheduled meetings in September to consider this issue. Without a file upload capability bidders, for example, cannot submit bids electronically, but would have to use EBBs in an on-line mode. The Commission considers file uploading capability to be important to producing a maximally efficient computerized capacity release mechanism. Indeed, one of the benefits of adopting EDI and ASC X12 standards is that these standards provide for two way communications which should ease the difficulty of providing for upload capability. This topic also should be a high priority for the conference participants to consider.

F. Common Codes (Working Group 5)

The March 10 Notice set the development of necessary common codes as a task for the conferences. Working Group 5 recommends the development of common codes only for company identification and transaction points (such as receipt and delivery points). It has identified a process for developing common codes in these areas, but has not finalized the details for developing these codes.

1. Company Codes

Common company codes refer to specific codes to identify business entities, which may include separate numbers for each location at which a

corporation does business. Working Group 5 recommended the adoption of DUNS numbers[30] to identify companies. The Working Group, however, has not finalized its choice of DUNS numbers because it was concerned about problems created by a single company having multiple DUNS numbers. The Working Group is still exploring whether Dun and Bradstreet (D&B) will permit an industry representative to share or license D&B's "Family Tree" service which relates DUNS members within a corporate family so a legal entity at a location will be associated with one number.

The adoption of common company codes will enhance the efficiency of electronic data transfer and the Commission expects the participants at the conferences to finalize the details of its proposal by the February 1, 1994 date for submission of final reports.

2. Common Transaction Point Codes

At present, pipelines use different codes to identify transaction points, such as receipt and delivery points, on their systems. In the restructured environment created by Order No. 636, shippers need to move gas efficiently across multiple pipelines. To effectively use computer technology to track gas movement across pipelines, shippers need a common nomenclature for identifying pipeline points, such as interconnect points between pipelines.

Working Group 5 considered a number of potential common code systems, including PI–GRID developed by the Petroleum Information Corporation and Gas*Code developed by INGAA. Instead of adopting one of these approaches, Working Group 5 proposed to have a third-party or industry group assign and maintain a computerized cross-reference table to relate the pipelines' proprietary location codes to common codes.[31] The pipelines would provide sufficient information to the third-party to enable it to establish the cross-reference between the common codes and the proprietary codes used by pipelines. The pipelines would ensure that this information is kept current and that new points are added quickly. Working Group 5, however, has not finalized the implementation details, such as, how to select the Code Assignor, pay the costs for assignment and maintenance, and distribute the code.

A number of commenters express concerns about the concept of using a third-party to provide the cross-reference, contending it would be too cumbersome and might be too expensive.[32] They maintain the entire industry would be better served over the long term if pipelines are required to agree now on a common transaction point code. Others contend Working Group 5 simply did not have enough time to finish the process. They maintain no immediate action is needed because common codes are not required for implementation of the capacity data sets.[33] Other commenters preferred the adoption of a single common code, but, recognizing the strong opposition by some industry participants, endorsed the Working Group 5 approach as a reasonable compromise in the interests of obtaining industry consensus.[34]

The National Registry contends Working Group 5 failed to provide data fields that would permit shippers electronically to locate a transaction point in relation to other transaction points. Knowing how points relate to each other (through the use of line numbers and mile markers), it contends is necessary for shippers to determine whether they could use alternate points within the path of a capacity release offer to satisfy their capacity requirements.

The Commission considers the establishment of common transaction point codes to be extremely important to the development of more efficient gas and capacity markets. Like many of the commenters, the Commission has serious misgivings about whether the code assignor procedure ultimately will be workable or whether a preferable approach for the long-run would be to have the pipelines provide the translation to an existing common code, rather than each customer having to do the translation itselves. For example, the PI–GRID code is already in use and selection of this code should not entail significant additional investment.

Nevertheless, given the short time frame in which the industry was operating and the level of support for the code assignor procedure as a compromise, the Commission is willing to give Working Group 5 and the conference participants until October 1, 1993, to reach a consensus approach. A final proposal should be submitted to the Commission by that date. If no consensus is reached, the Commission will select a common code. In case the participants do not reach consensus, the Commission requests comments on whether to adopt PI–GRID or another common transaction point code.

G. Policy Considerations

Several minority reports raise policy issues relating to EBBs, including pipeline disclaimers of liability of EBB operation, the method of recovering the costs of standardization, and the disclosure of non-price considerations underlying capacity release transactions. As a general matter, these are substantive policy issues that are largely beyond the scope of this proceeding. They are more appropriately considered in individual pipeline-specific cases.

1. Liability

Several minority reports request the Commission to clarify the extent of pipeline liability for incorrect information posted on EBBs.[35] Some support the Commission's policy that pipeline EBB liability should be the same as for other pipeline operations, but claim pipeline contracts do not comply with the pipeline's tariff. New York State Electric & Gas, et al., contend the Commission's standard is not sufficient and submitted a more detailed proposal.[36] In their proposal, they suggest pipelines should be required to include in their EBB standard agreement a provision requiring subscribers (i.e., releasing shippers or bidders) to warrant the accuracy of the information they provide.

The comments on this issue are split. Some, for example, oppose the requirement that users warrant the accuracy of their data.[37] Pipelines oppose any suggestion that they should be responsible for the accuracy of information provided by others.[38] NGSA opposes severe liability provisions, arguing most if not all data errors are inadvertent and pipelines have demonstrated "good faith" in the past to correct such errors.

In restructuring orders, the Commission has required pipelines' liability for EBB operations to be the same as for their other operations and continues to find this standard sufficient.[39] Specific issues regarding liability standards or changes in such standards should be addressed in individual rate cases in which pipelines

[30] Data Universal Numbering System, maintained by Dun and Bradstreet.

[31] Working Group 5 did not provide data sets containing the information to be provided about each location, but did provide an example of data element definitions. Working Group 5 Report at 19.

[32] See Comments by Vesta Energy Company; Columbia Gas Distribution Companies; Process Gas Consumers Group, *et al.*

[33] See Comments by INGAA.

[34] Comments by NGSA.

[35] Working Groups 1 & 2 Report at 45, 77–86.

[36] Working Groups 1 & 2 Report at 79–81.

[37] Comment by Process Gas Consumers Group.

[38] Comments by INGAA; Texas Eastern Transmission Corporation, et al.

[39] See Texas Eastern Transmission Corporation, 62 FERC ¶ 61,015 at 61,107 (1993).

or others may propose changes to a pipeline's tariff standard. The Commission emphasizes that pipeline contracts must reflect the liability provisions in their tariffs.

2. Costs of Standardization

In proposing the use of EDI, Working Group 4 adopted the principle that the implementation and costs of obtaining data through EDI should be treated in accordance with agreements reached by the parties. The Working Group explained that this principle referred to special costs resulting from an agreement to facilitate a particular EDI transaction, such as a special leased phone line. Working Group 4 envisioned that generic costs related to implementation of EDI would be handled in individual pipeline rate proceedings.

Holders of pipeline firm capacity are concerned about their responsibility for paying the cost of providing information which they believe is of value only to certain groups. For this reason, Northern Illinois Gas Company *et al.*, suggest that no information should be required beyond what is needed for scheduling, nomination, and capacity release. Others suggest this issue be set as a priority for the task force.

The Commission is sympathetic to firm shippers' concerns that they not be solely responsible for paying the costs for providing information benefitting others. Although proposals to recover the costs of implementing these standards and EDI will be addressed in individual rate cases, the Commission encourages the industry to consider a policy for a fair sharing of such costs through methods such as user or access fees.

3. Non-Price Considerations

American Natural Gas Corporation, et al., suggest standards are needed to guard against capacity releases involving deals for indirect consideration, such as deals tieing capacity releases to gas supply arrangements.[40] They maintain all consideration underlying a capacity release transaction should be posted on the EBB. This issue is better addressed in individual restructuring proceedings in which specific circumstances can be evaluated rather than in a generic proceeding.[41]

[40] Working Groups 1 & 2 Report at 89.

[41] Compare Northwest Pipeline Corporation, 63 FERC ¶ 61,124 at 61,803 (1993) (posting of competitively significant gas supply relationships not required) with Pacific Gas Transmission Company, 64 FERC ¶ 052, slip op. at 33–37 (1993) (requirement for non-discriminatory terms and conditions precludes tieing released capacity to side deals for unrelated consideration).

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[42] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[43] The action taken here falls within categorical exclusions provided in the Commission's regulations.[44] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[45] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant impact on a substantial number of small entities.

VII. Information Collection Requirement

Office of Management and Budget (OMB) regulations require OMB approval of certain information collection requirements imposed by agency rules. Because the proposed rule contains new information and EBB requirements, many of which are one-time start-up costs, the FERC–549(B) burden will be reduced by 2,250 hours per respondent the year following initial implementation of the respondent's EBB.

The data and communication standards on EBBs required under new FERC–549(B), Gas Pipeline Rates: Capacity Release Information, (OMB Control No. to be assigned by OMB) is necessary to ensure a viable capacity release market under Commission Order No. 636.

Because of the proposed EBB standards/development and new data requirements under FERC–549(B), the Commission is submitting a copy of the proposed rule to OMB for its review and approval. Interested persons may obtain information on these EBB standards/information requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Policy and Standards Branch, (202) 208–1415, FAX (202) 208–2425]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission].

[42] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[43] 18 CFR 380.4.

[44] See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5).

[45] 5 U.S.C. 601–612.

VIII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14 copies of comments to this notice must be filed with the Commission no later than August 30, 1993. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, and should refer to Docket No. RM93–4–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street, NE, Washington, DC 20426, during regular business hours.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend part 284, chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In § 284.8, paragraph (b)(5) is redesignated (b)(6) and new paragraph (b)(5) is added to read as follows:

§ 284.8 Firm transportation service.

* * * * *

(b) * * *

(5) *Standardization of information provided on Electronic Bulletin Boards.* (i) An interstate pipeline must provide access on its electric Bulletin Board to

standardize information relevant to the availability of service on its system and the ability to download the standardized information in compliance with standardized procedures and protocols. The standardized information and the procedures and protocols are found in "Standardized Data Sets And Communication Protocols," which can be obtained from the Office of Public Information, Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426.

(ii) An interstate pipeline must implement these standards, procedures, and protocols by April 1, 1994.

* * * * *

The following Appendix will not appear in the Code of Federal Regulations.

Appendix A

Docket No. RM93–4–000

Standardized Data Sets and Communication Protocols

Standardized Data Sets.....34
Communication Protocols.....85

STANDARDIZED DATA SETS

Line No.	Field name	Description of field	Status[1]	Data type and explanation
I.1. Firm Transportation Capacity Offer				
I.1.1. Header Record: Firm Transportation Capacity Offer Data Sets				
1	Pipeline Code	The code for the pipeline to which nominations for use of the released capacity would be made.	M	A number field which is an industry standard. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts standardized coding system.
2	Pipeline Name	The name that the pipeline wants to be known by.	O	A text field of a standard mnemonic specified by the pipeline.
3	Offer No.	A unique identifier within each pipeline identifying the capacity being offered. It can also be described as package, parcel, or release of capacity.	M	A number field containing a unique number assigned by pipeline. Pipelines may use numbers which are: alpha-numeric with monthly identifiers, sequentially numbered with annual identifiers, or otherwise numbered to distinguish among offers.
4	Releaser Name	The legal name of the offeror of the firm capacity.	O	A text field containing the name of the shipper as listed in the recitals and/or the signature line (as appropriate) of the contract with the pipeline. Note: Where the offeror is the pipeline offering unsubscribed capacity or "new" capacity this field would have the pipeline's name in it the same as that contained above.
5	Releaser's Company Code No..	The unique company code number for the legal entity which signed the contract with the pipeline.	M	A number field containing the unique company code of the legal entity which signed the contract with the pipeline.
6	Time Zone	The Time Zone in which all time on this pipeline is denominated.	M	An alpha-numeric field of no more than 3 characters containing one of the following time zone abbreviations: EST, DT, ET, CST, CDT, CT, MST, MDT, MT, PST, PDT, or PT.
7.	Term begin date	The year/month/day which marks the beginning date of the offer's term.	M	A date field in a format that is machine-processable. Releases are presumed to be effective at the start of the gas day corresponding to the start date. Note: A "gas day" is a 24 hour period (*e.g.*, 8:00 am to 8 a.m. beginning and ending at the same time on two consecutive days and may not be the same as a calendar day.
8	Term end date	The year/month/day which marks the end date of the offer's term.	M	A date field in a format that is machine-processable.
9	Shorter term indicator	An indicator which tells bidders whether the offeror will accept bids for less than the full term. (Y or N).	M	A (yes/no) indicator field.
10	Term minimum	The minimum acceptable term in a contiguous time period.	C	A number field which will be filled on the condition that the shorter term indicator is "Y" (yes).
11	Offer Quantity	The amount of capacity in whole MMBtu or Mcf per day which is the total quantity of capacity of the type indicated below (in the Quantity indicator field).	M	A number field in whole numbers containing the quantity of capacity in MMBtu or Mcf per day in this offer. Note: Those wishing to seasonally or otherwise "shape" their releases can list the "base or minimum" quantity as one offer, list the differing monthly or weekly quantities as other offers, and place a reference in the bid evaluation method that only bids on all offers will be considered by the offeror.

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
12	Offer type indicator	A number field indicating the type of capacity being referred to in the Offer Quantity field. 1=Primary Receipt Pt(s) Quantity ..... 2=Primary Delivery Pt(s) Quantity ..... 3=Segment(s) Quantity ..... 4=Storage Quantity ..... 5=Mainline Quantity ..... 6=Storage Injection Quantity ..... 7=Storage Withdrawal Quantity	M	This is a number field which is designed to alert the bidder as to the type of capacity referred to in the Quantity field. The purpose of this indicator is to make it possible to identify which rights are being referred to. Depending on the pipeline, the offeror may list receipt point rights in total which exceed the mainline rights and seek to accentuate this fact by listing these rights in this space. Likewise a shipper may seek to accentuate their mainline, segment, storage, injection or withdrawal rights that are being released.
13	Measurement basis	Measurement basis (by tariff) of the contract rights being released, *i.e.*, whether capacity is being released on a thermal (MMBtu/d) of volumetric (Mcf/d) base.	M	A number field which is a default field on a by-pipeline basis. The shipper may not select a measurement basis other than that in the tariff. This field simply identifies to the bidder the units of measurement in use on this pipeline; it does not create a choice where none exists. 1=MMBtu or Dth 2=Mcf
14	Pressure base indicator.	To be filled in if measurement basis is volumetric (*i.e.*, Mcf).	C	A number field to be populated if Measurement Basis is 2 (Mcf) and is a default field on a by-pipeline basis. It indicates whether measurement is in pounds per square inch: gauge (PSIG) or pounds per square inch: absolute (PSIA). In other words, the shipper may not select a measurement basis other than in the tariff. This field simply identifies the basis; it does not create a choice where none exists. 1=PSIA 2=PSIG
15	Pressure base	To be filled in if measurement basis is volumetric (*i.e.*, Mcf).	C	A number field to be completed if Measurement Basis is 2 (Mcf) and is up to three (3) decimal places listing the pressure basis in pounds per square inch (gauge or absolute).
16	Lesser quantity indicator.	An indicator which tells bidders whether the offeror will accept bids for less than the full daily quantity listed in the Offer quantity field above. (Y or N).	M	A (yes/no) indicator field.
17	Quantity minimum	The minimum daily quantity (of the Offer type listed above) acceptable to the offeror from a bidder.	C	A number field which will be filled in only if lesser quantity indicator is "Y" (yes).
18	Rate schedule	The pipeline's rate schedule applicable to this offer, (*e.g.*, GS, FT1, etc).	M	An alpha-numeric field of at least 12 characters in length which contains a representation of the rate schedule which is the same as the pipeline's tariff abbreviation (if any) for the rate schedule under which service for the offer is being provided. This is where offers for different types of services can be made, *e.g.*, no-notice.
19	Maximum Reservation Rate.	The pipeline's maximum tariff rate for service provided by the pipeline to the holder of the rights contained in the offer.	M	A number field, 12 characters in length, with five decimal places The rate is in the units of measurement stated in the tariff (*e.g.*, $/MMBtu/Month). Note: This maximum rate includes all applicable surcharges, GRI, Transition costs, etc.
20	Rate Form/Type Code	A code indicating the form or type of rate which the offeror will accept bids. 1=Reservation Charge only ..... 2=Volumetric Charge only ..... 3=Blended Rate	M	A number field. The purpose of this field is to indicate to bidders whether the offeror will entertain bids which are a) only in reservation charge form; b) only in volumetric form; or c) in a form which is a blend of reservation and volumetric rates.
21	Lesser rate indicator ..	An indicator telling bidders whether offeror will accept any bids at less than the maximum tariff rate. (Y or N)	M	A (yes/no) indicator field. For use by offerors as a way to inform bidders that bids below the maximum rate will be evaluated.

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
22	Minimum acceptable rate.	The minimum rate per unit of the rate form specified above which the offeror will entertain.	C	A number field, 12 characters in length, with five decimal places. The rate is intended to apply to the units stated above in the "Rate Form/Type Code" field which is acceptable to the offeror (*i.e.*, reservation, volumetric, or blended). To be filled in if a "Lesser rate" indicator is "Y."
23	Percentage or dollar denominated bids indicator.	An indicator which tells bidders the basis upon which the offeror is accepting bids. (*i.e.*, on a percentage of maximum rate (P), absolute dollars and cents per unit basis (A) or either (E)).	M	A (percentage/absolute/either) "P," "A" or "E" indicator field. For use by offerors as a way to inform bidders of the type of bid they must make.
24	Contingency indicator	An indicator which tells bidders whether the offeror will accept bids which are contingent from the bidder's point of view (*i.e.*, bid not binding at the time of the bid closing time). (Y or N).	M	A (yes/no) indicator field.
25	Contingency end date	The year/month/day which marks the end date of the period by which the bidder must revise its bid to remove the contingency.	C	A date field in a format that is machine-processable. Would be filled in if contingency indicator is "Y."
26	Contingency end date—hour.	The hour of the end date which marks the end of the period by which the bidder must revise its bid to remove the contingency.	C	A time field in a machine-processable format. Where necessary, this is a defaulted field on a by-pipeline basis. In other words, the offeror may not select a Contingency end date which conflicts with that allowed in the tariff. However, if allowed, and if the offeror wishes to have contingent bids be counted as though non-contingent, then the end date and time would be after the close of bids. Likewise if there are restrictions as to how far in advance of a bid close time a contingency must be removed or the bid will be deemed invalid, then the tariff will determine. This field is intended to identify the time by which contingencies would be removed, not to create a choice where none exists.
27	Posting date	The year/month/day in which the pipeline posted this offer.	M	A date field in a format that is machine-processable. Postings will be date and time stamped by the pipeline when they are posted to both the bulletin board and the downloadable files. This is that date and time.
28	Posting date—hour	The hour/min/sec during which the pipeline posted this offer.	M	A time field in a machine-processable format.
29	Bid start date	The year/month/day in which the bidding on this offer may commence.	M	A date field in a format that may be downloaded and ranked in a machine-processable manner for the purposes of time sensitive review. The start date may or may not be pre-determined by tariff. This entry, as well as the one below, is intended to inform bidders of the bid start day and time. These fields will not create a choice where the tariff prescribes a start time and date. Where the tariff is specific, this field is a default field.
30	Bid start date—hour ...	The hour/min/sec during which the bidding on this offer may commence.	M	A time field in a machine-processable format. (See also explanatory note above.)
31	Bid end date	The year/month/day in which the end date for bidding on this offer is found.	M	A date field in a format that may be downloaded and ranked in a machine-processable manner for the purposes of time sensitive bidding. The end date may or may not be pre-determined by tariff. This entry, as well as the one below, are intended to inform bidders of the bid end day and time. These fields will not create a choice for the offerors where the tariff prescribes a end time and date. Where the tariff is specific, this field is a default field.

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
32	Bid end date—hour	The hour/min/sec after which no bids will be accepted/acceptable on this offer.	M	A time field in a machine-processable format. (See also explanatory note above.)
33	Pipeline or Releaser bid evaluation method indicator.	An indicator which tells bidders whether the bids will be evaluated according to one of the pipeline's methods ("P") or according to the releaser's method ("R").	M	An indicator field which is used by the offeror where it has the option of choosing to use a pipeline method or a method of its own description. Where the option to choose is not open to the offeror, this field is defaulted to the "P" or pipeline method.
34	Bid evaluation method description.	A description or reference to tariff section specifying the choice of the offeror as to ranking bids in order to award capacity to bidders.	M	A text field which describes either (a) the section(s) of the pipeline's tariff where the bid evaluation method to be employed for this offer is located, or (b) the releaser's bid evaluation method to be employed by the pipeline for this offer.
35	Bid tie-breaking method description.	A description or reference to tariff section describing method for awarding capacity in case of tied bids.	M	A text field which describes either (a) the section(s) of the pipeline's tariff where the tie-breaking method to be employed for this offer is located, or (b) the releaser's tie-breaking method to be employed by the pipeline for this offer.
36	Prearranged deal indicator.	An indicator which tells bidders whether there is a bidder which has the right to match the winning bid(s) of others owing to their having made a pre-arranged deal with the releaser/offeror. (Y or N).	M	A (yes/no) indicator field which is used by the releaser (offeror) to signify that this offer is subject to another bidder's right to match the highest bid.
37	Prearranged deal at maximum rate indicator.	An indicator which tells bidders whether there is a prearranged bidder which has bid the maximum rate for this offer of capacity. (Y or N).	C	A (yes/no) indicator field which is used by the offeror to signify that this offer is being posted for information purposes only. Conditioned on "Y" for "Prearranged deal indicator."
38	Prearranged deal match date.	The end date for matching prearranged deals by a higher bid on this offer.	C	A date field in a format (*e.g.*, year/month/day) that allows ranking in a machine-processable manner for the purposes of time sensitive bidding, or to aid bidders on multiple pipelines with varying end date/times. This match date/time may or may not be predetermined by tariff. This entry, as well as the one below, are intended to inform bidders of the bid match day and time. These fields will not create a choice for the offerors where the tariff prescribes a match time and date. Where the tariff is specific, this field is a default field to the tariff specified value. Conditioned on "Y" for "Prearranged deal indicator."
39	Prearranged deal match hour.	The hour/min/sec prior to which the prearranged bidder must match the otherwise highest bid(s) on this offer.	C	A time field in machine-processable format. (See also explanatory note above.) Conditioned on "Y" for "Prearranged deal indicator."
40	Prearranged deal bidder name.	The legal name of the shipper acquiring the offer of capacity.	O	A text field containing the name of the shipper as listed in the recitals and/or the signature line (as appropriate) of the contract with the pipeline. This field is optional because some pipelines are not required to provide the name.
41	Prearranged deal bidder's Company Code No.	The common code for the legal entity which signed the contract with the pipeline.	O	A number field containing the common code of the legal entity which will sign the contract for the offered capacity. This field is optional because some pipelines are not required to provide the name. Filled in only if bidder name is provided.
42	Re-release indicator ...	An indicator which tells bidders whether this offer contains capacity that was previously released. (Y or N).	M	A (yes/no) indicator field which is used by the offeror. "Yes" signifies this offer contains in total or in part capacity which was previously released.
43	Permanent release indicator.	An indicator for bidders as to whether this offer is being permanently released. (Y or N).	M	A (yes/no) indicator field which is used by the offeror to signify this offer is being made available for permanent release.
44	Recall indicator	An indicator which tells bidders whether this offer can be recalled subsequent to award of capacity to the winning bidder. (Y or N).	M	A (yes/no) indicator field which is used by the offeror to signify this offer is subject to being recalled.

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
45	Recall terms	A description of the terms and conditions under which the offer can be recalled by the offeror subsequent to the acquisition by the winning bidder.	C	A very long text field which is used by the releasing shipper to set or reflect the terms and conditions under which they may (or a previous offeror may) recall the capacity so released. This field must contain the terms in sufficient detail to enable the pipeline to enforce the recall and is conditional on the recall indicator being Y.
46	Award date	The year/month/day of posting of the award of this offer.	M	A date field in a machine-processable format for the purposes of time sensitive confirmation of whether one has won a bid. Especially needed by those bidding on multiple offers or multiple pipelines with varying end date/times. This award date/time may or may not be pre-determined by tariff. This entry, as well as the one below, is intended to inform bidders of the bid award day and time. These fields will not create a choice for the offerors where the tariff prescribes an award data and time. Where the tariff is specific, this field is a default to the tariff specified value.
47	Award date—hour	The hour/min/sec of the posting of the award of this offer.	M	A time field in machine-processable format (*i.e.*, not in text format). (See also explanatory note above.)
48	Special terms and miscellaneous notes.	Other required or desired and applicable terms which are either offered or required pursuant to the pipeline's tariff.	O	A very long text field containing any pertinent or relevant material, terms, conditions or provisions relating to the offer, its enforceability, or use.
I.1.2. Receipt Point or Storage Injection Information				
1	Pipeline code	The code for the pipeline to which nominations for use of this receipt point contained in this offer would be made.	M	A number field in an industry standard format. (See header definition for this field.)
2	Offer No	The same unique identifier as contained in the header.	M	A number field. The purpose of repeating this header field is to associate this and other receipt or storage injection points to this offer. An offer must have at least one of either a receipt point, injection point, delivery point, withdrawal point, mainline or segment right, but may be comprised of more than one such point. The "Offer No." provides the link between these points.
3	Receipt/injection point code.	The code which uniquely identifies this point	M	An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure.
4	Receipt/injection point description.	The name/description/or other identifier generally in use on the pipeline to describe this point.	O	A text field. This is to aid in recognition of the point. Note: only primary points are listed in this data set because only primary point capacity rights can be released. This record is used when releasers are offering capacity at a particular point, or are required to release point capacity as part of a release.
5	Receipt/injection point quantity.	The uniform daily quantity of capacity being made available by the offeror at this point. The units of capacity (*i.e.*, MMBtu or Mcf) are determined in the header and apply to all capacity in the offer.	M	A number field, in whole numbers, stating the quantity of contractual capacity offered at this point. Note: in cases where pipelines make all their receipt or injection points available in an offer, there would not be specific quantities associated with each point.
6	OBA indicator	An indicator which tells bidders whether there is an Operational Balancing Agreement ("OBA") which is in effect and which will govern allocation of actual quantities of gas flowing at the point. (Y, N or U).	M	A (yes/no/unknown) indicator field. For use by offerors as a way to inform bidders that an OBA governing allocations of actual gas flows is in effect at the point.
I.1.3. Delivery Point or Storage Withdrawal Information				

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
1	Pipeline code	The code for the pipeline to which nominations for use of this delivery point contained in this offer would be made.	M	A number field in an industry standard format. (See header definition for this field.)
2	Offer No	The same unique identifier as contained in the header..	M	A number field. The purpose of repeating this header field is to associate this and other delivery points or storage withdrawal to this offer. An offer must have at least one of either a receipt point, injection point, delivery point, withdrawal point, mainline or segment right, but may be comprised of more than one such point. This "Offer No." provides a link between these points.
3	Delivery/withdrawal point code.	The code which uniquely identifies this point	M	An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure.
4	Delivery/withdrawal point description.	The name/description/or other identifier generally in use on the pipeline to describe this point.	O	A text field. This is to aid in recognition of the point. Note: only primary points are listed because only primary point capacity rights can be released.
5	Delivery/withdrawal point quantity.	The uniform daily quantity of capacity being made available by the offeror at this point.	M	A number field, in whole numbers, stating the quantity of contractual capacity offered at this point. Note: some pipelines might make all delivery or storage withdrawal points available in an offer, in which case there may not be specific quantities associated with each point.
6	OBA Indicator	An indicator which tells bidders whether there is an Operational Balancing Agreement ("OBA") which is in effect and which will govern allocation of actual quantities of gas flowing at the point. (Y, N or U).	M	A (yes/no/unknown) indicator field. For use by offerors as a way to inform bidders that an OBA governing allocations of actual gas flows is in effect at the point.
I.1.4. Segment Capacity, Mainline Capacity or Storage Quantity Information				
1	Pipeline Code	The code for the pipeline to which nominations for use of this Capacity Segment contained in this offer would be made.	M	A number field in an industry standard format. (See header definition for this field)
2	Offer No	The same unique identifier as contained in the header.	M	A number field. See description in receipt point information section above for explanation of the purpose behind repeating this field.
3	Location Code 1	The code uniquely identifying one of the two points defining segment capacity, storage or mainline capacity being offered.	M	An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. This location code is intended to identify one of the two "points" defining the end-points of the segment capacity, mainline capacity or storage quantity being offered. In the case of storage quantity, only one location code is needed.
4	Location Code 2	The code uniquely identifying the other of the two points defining the boundaries of the segment capacity mainline capacity being offered.	M	An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. This location code is intended to identify the other of the two "points" defining the end-points of the segment capacity or mainline capacity being offered by the offeror.
5	Segment, mainline or storage identifier.	The unique code of the pipeline (if any) which uniquely identifies this capacity.	O	An alpha-numeric field containing the unique code specified by the pipeline as corresponding to this capacity.
6	Segment, mainline or storage description.	The name/ description/ or other identifier either generally in use on the pipeline or as specified by the offeror to describe this capacity.	O	A text field. This is to aid in recognition of the capacity segment. Note: Depending on the pipeline, this description may be predefined or it may be dynamic (*i.e.*, defined by the offeror).

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
7	Segment, mainline or storage quantity.	The uniform daily quantity of capacity being made available by the offeror for movement between location codes 1 and 2 (or vice versa) or for keeping in storage.	M	A number field, in whole numbers, stating the quantity of contractual capacity offered (segment or mainline capacity is defined by the two location code points listed above).
8	Location Code 1 OBA Indicator.	1 An indicator which tells bidders whether there is an Operational Balancing Agreement ("OBA") which is in effect and which will govern allocation of actual quantities of gas flowing at the point identified as location code 1. (Y, N or U).	M	A (yes/no/unknown) indicator field. For use by offerors as a way to inform bidders that an OBA governing allocations of actual gas flows is in effect at the point. Where this point is a pooling point or other in-line transfer point, the existence of an OBA may not be applicable.
9	Location Code 2 OBA Indicator.	An indicator which tells bidders whether there is an OBA in effect and governing allocations of actual quantities of gas flowing at location code 2. (Y, N or U).	M	A (yes/no/unknown) indicator field. (See explanation above as to applicability and purpose of this field)
I.2. Downloadable Firm Transportation Capacity Bid Review Information				
I.2.1 Header Record: Firm Transportation Capacity Bid Review Information Data Sets				
1	Pipeline Code	The code for the pipeline to which nominations would be made by the winning bidder.	M	A number field. (See Capacity Release Header I.1.1 above.)
2	Pipeline Name	The name that the pipeline wants to be known by.	0	A text of a standard mnemonic specified by the pipeline.
3	Offer No	The offer to which this bid applies	M	A number field. The unique number on a by-pipeline basis. (see Officer description in Section I.1.1.)
4	Bid No	A unique identifier within each pipeline identifying the bid being made.	M	A number field. The unique number on a by-pipeline basis. (See Offer description in Section I.1.1.)
5	Bid term begin date ...	The year/month/day which marks the first gas day ("beginning date") for which the bidder is willing to assume payment responsibility for the Bid quantity.	M	A date field in a format that is machine-processable. Availability of Acquired Capacity is presumed to be effective at the start of the gas day corresponding to the start date.
6	Bid term end date	The year/month/day which marks the last day ("end date") for which the bidder is willing to assume payment responsibility for the Bid quantity.	M	A date field in a format that is machine-processable.
7	Bid quantity	The amount of capacity in a whole number of MMBtu or Mcf per day which is the total quantity of capacity sought by the bidder pursuant to this Bid. The "Measurement Basis" item in the Header record defines the units for this entry.	M	A number field in whole numbers containing the quantity of capacity in MMBtu or Mcf per day which is bid for by the bidder during each day of the term of this bid. Note: Those wishing to seasonally or otherwise "shape" their Bids for capacity can do the following: list the "base or minimum" quantity as one bid, list the differing monthly or weekly quantities as other bids, and place a reference in the contingent bid field that the bid is contingent unless all bids are awarded capacity by the pipeline. Also of note: a bidder bidding a pure volumetric rate would place a zero "0" in this field and might place a quantity in the "Minimum Total Period Volumetric Bid Quantity" field below.
8	Bid type indicator	A number field indicating the type of capacity being referred to above in the Bid Quantity field.. 1=Primary Receipt Pt(s) Quantity ..... 2=Primary delivery Pt(s) Quantity ..... 3=Segment (s) Quantity ..... 4=Storage Quantity ..... 5=Mainline Quantity ..... 6=Storage Injection Quantity ..... 7=Storage Withdrawal Quantity	M	This is a number field which is designed to identify the quantity that the bidder is bidding on and the Bid Quantity refers to. The purpose of this field is to identify just which rights are being referred to in this "header" section.

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
9	Lesser quantity indicator.	An indicator which tells the pipeline whether the bidder will accept award of capacity for less than the full daily quantity listed in the Bid quantity field above. (Y or N).	M	A (yes/no) indicator field. This field is used to identify whether, in the case of ties, the bidder will accept a proration of the capacity sought. Some bidders can not use less than the total quantity that they desire. This field enables them to communicate that they will not accept less than the full Bid Quantity.
10	Quantity minimum	The minimum daily quantity (of the Bid type listed above) which would be acceptable to the bidder if less than the total bid quantity were awarded by the pipeline.	C	A number field which would be blank if the Lesser quantity indicator field above is "N" (no); and would be filled-in if lesser quantity indicator is "Y" (yes).
11	Contingency indicator	An indicator which tells offerors that the bid is not a firm bid from the bidder's point of view (*i.e.*, not binding at the time of the bid). (Y or N).	M	A (yes/no) indicator field. Where "Y" or yes signifies that the bid is contingent (*i.e.*, not firm). An "N" or no signifies that the bid is firm as made.
12	Bid Receipt date	The year/month/day which marks the date on which this Bid was received for posting by the pipeline.	M	A date field in a machine-processable format. Bids will be date and time stamped by the pipeline when they are received from the releasing shipper.
13	Bid Receipt date–hour	The hour/min/sec during which the pipeline received this Bid.	M	A time field in (hh/mm/ss) format.
14	Posting date	The year/month/day in which the pipeline posted this Bid.	M	A date field in machine-processable format. Postings will be date and time stamped by the pipeline when they are posted to both the bulletin board and the downloadable files. This is that date and time.
15	Posting date–hour	The hour/min/sec during which the pipeline posted this Bid.	M	A time field in a machine-processable (hh/mm/ss) format.
16	Prearranged deal indicator.	An indicator which tells bidders that this bidder has the right to match the winning bid(s) of others owing to this bidder having made a pre-arranged deal with the offeror for the Offer referred to above. (Y or N).	M	A (yes/no) indicator field which is used by the bidder to signify this bidder has a right of first refusal/right to match the highest bid(s) of other bidder(s) bidding for this Offer.
17	Prearranged deal at maximum rate indicator.	An indicator which tells bidders whether this is a prearranged bid which has bid the maximum rate for this Offer. (Y or N).	M	A (yes/no) indicator field which is used by the bidder to signify that this parcel is being posted for information purposes only.
18	Rate Form/Type Code	A code indicating the form or type of rate which the bidder is bidding. 1=Reservation Charge only ..... 2=Volumetric Charge only ..... 3=Blended Rate	M	A number field. The purpose of this field is to indicate to bidders, the pipeline, and the offeror of the offer whether the bidder is bidding the bid quantity a) only in reservation charge form; b) only in volumetric form; or c) in a form which is a blend of reservation and volumetric rates.
19	Reservation Rate Bid .	The amount of the bid for the Bid Quantity ...	M	A number field, 12 characters in length, with five decimal places. The field is mandatory but the value could be zero dollars and cents ("0.00000") where the bidder is not bidding a reservation charge rate.
20	Volumetric Rate Bid ...	The rate per unit bid by the Bidder for the Total Period Bid Quantity listed below.	C	A number field, 12 characters in length, with five decimal places. The value could be zero dollars and cents ("0.00000") where the bidder is not bidding a volumetric or blended rate. This field is conditional on "Rate Form/Type Code" being either "2" or "3."
21	Minimum Total Volumetric Bid Quantity.	The minimum quantity the bidder agrees to pay for on a volumetric basis in order that the pipeline and the Offeror may evaluate the bidder's volumetric bid, or the volumetric component of the blended rate bid.	C	A number field, 12 characters in length, in whole numbers. The amount could be zero ("0") where the bidder is not bidding a volumetric or blended rate. This field is conditional on "Rate Form/Type Code" being either "2" or "3."

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
22	Percentage or dollar denominated bid indicator.	An indicator which tells the pipeline and the offeror the basis upon which the bid is made (*i.e.*, on a percentage of maximum tariff or absolute dollars and cents per unit basis) (P or A).	M	A (percentage/absolute) "P" or "A" indicator field. For use by bidders as a confirming check as to the denomination of their bid. Note: This field is not intended to provide a choice where none exists. If bidders are allowed to bid in denominations other than what the offeror has specified then this field will provide a choice, otherwise, it is intended solely to confirm the denomination of the rate(s) contained in the fields listed above.
23	Bid for full quantity of offer.	An indicator for whether this bid quantity is for the full Offer quantity of the offer (Y or N).	M	An indicator (yes/no) to inform potential participants whether this bid encompassed the full quantity of capacity in the offer.
24	Notes	Any notes or special conditions pertaining to this bid.	O	A text field.
I.2. Downloadable Firm Transportation Capacity Bid Review Information				
I.2.2. Receipt Point or Storage Injection Information				
1	Pipeline Code	The code for the pipeline to which nominations for use of this receipt point contained in this bid would be made.	M	A number field in an industry standard format. (See header definition for this field.)
2	Offer No	The same unique identifier as contained in the header of the offer to which this bid applies.	M	A number field. The purpose of repeating this field is to associate this and other receipt point or storage injection bids to this offer.
3	Bid No	A unique identifier within each pipeline identifying the bid being made.	M	A number field. The purpose of repeating this field is to associate all listed receipt points or storage injection points in this Bid to the appropriate offeror. A Bid must have at least one primary point but could be comprised of several.
4	Receipt point description.	The name/description/or other identifier generally in use on the pipeline to describe this point.	O	A text field. This is to aid in recognition of the point. Note: only primary points are listed in this data set known as Receipt point information.
5	Receipt point code	The code which uniquely identifies this point	M	An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure.
6	Receipt point quantity	The uniform daily quantity of capacity being bid for by the bidder at this point.	M	A number field, in whole numbers, stating the quantity of capacity bid for at this point.
I.2.3. Delivery Point or Storage Withdrawal Information				
1	Pipeline Code	The code for the pipeline to which nominations for use of this delivery point contained in this bid would be made.	M	A number field in an industry standard format. (See header definition for this field.)
2	Offer No	The same unique identifier as contained in the header of the offer to which this bid applies.	M	A number field. The purpose of repeating this field is to associate bids containing this and other delivery or storage withdrawal points to the appropriate offer.
3	Bid No	A unique identifier within each pipeline identifying the bid being made.	M	A number field. The purpose of repeating this field is to associate this and other points to this Bid.
4	Delivery/storage withdrawal point description.	The name/description/or other identifier generally in use on the pipeline to describe this point.	O	A text field. This is to aid in recognition of the point. Note: only primary points are listed in this data set.
5	Delivery/storage withdrawal point code.	The code which uniquely identifies this point	M	An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure.
6	Delivery/storage withdrawal point quantity.	The uniform daily quantity of capacity being bid for at this point.	M	A number field, in whole numbers, stating the quantity of capacity bid for at this point.
I.2.4 Segment Capacity Mainline Capacity or Storage Quantity Information				

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
1	Pipeline Code	The code for the pipeline to which nominations for use of this Capacity Segment contained in this bid would be made.	M	A number field in an industry standard format. (See header definition for this field.)
2	Offer No.	The same unique identifier as contained in the header of the offer to which this bid applies.	M	A number field. See description in receipt point information section above for explanation of the purpose behind repeating this field.
3	Bid No.	A unique identifier within each pipeline identifying the bid being made.	M	A number field. The purpose of repeating this field is to associate this and other Segment bids to this Bid.
4	Location Code 1	The code uniquely identifying one of the two points defining segment capacity, mainline capacity or storage quantity bid.	M	An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. This location code is intended to identify one of the two "points" defining the end-points of the segment capacity or mainline capacity being bid. In the case of storage quantity, only one location code is needed.
5	Location Code 2	The code uniquely identifying the other of the two points defining the boundaries of the segment capacity or mainline capacity bid for by the bidder.	M	An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. This location code is intended to identify the other of the two "points" defining the end-points of the capacity segment being bid.
6	Segment, mainline or storage identifier.	The unique code (if any) assigned by the pipeline which uniquely identifies this capacity.	O	An alpha-numeric field containing the unique code specified by the pipeline as corresponding to this capacity.
7	Segment, mainline or storage description.	The name/description or other identifier either generally in use on the pipeline or as specified by the offeror to describe this capacity.	O	A text field. This is to aid in recognition of the capacity. Note: Depending on the pipeline, this description may be predefined or it may be dynamically defined by the offeror.
8	Segment, mainline or storage quantity.	The uniform daily quantity of capacity being bid between location codes 1 and 2 (or vice versa).	M	A number field, in whole numbers, stating the quantity of contractual capacity (segment or mainline capacity is defined by the two location code points listed above) which is being bid for by the bidder.

I.3. Award Parcel Posting

I.3.1. Header: Bid Award Posting Data Sets

1	Pipeline Code	The code for the pipeline to which nominations for use of the awarded capacity would be made.	M	A number field. (See Section I.1.1: Header for Capacity Release Data Set, for discussion of Code.)
2	Pipeline Name	The name that the pipeline wants to be known by.	O	A text field of a standard mnemonic specified by the pipeline.
3	Offer No.	The unique identifier within each pipeline identifying the parcel from which this bid was awarded.	M	A number field. Corresponds to the Offer from which the capacity comprising this award is removed.
4	Bid No.	The unique identifier within each pipeline identifying the bid that is being awarded/identified with this posting.	M	A number field. The unique number on a by-pipeline basis. (See Offer Description in Section I.1.1 or Bid description in Section I.2.1.)
5	Bidder Name	The legal name of the Bidder awarded the firm capacity.	M	A text field containing the name of the shipper as listed in the recitals and/or the signature line (as appropriate) of the new contract with the pipeline.
6	Bidder's Company Code No..	The unique company code number for the legal entity which signed the contract with the pipeline.	M	A number field containing the unique company code number of the legal entity which signed the new contract with the pipeline.
7	Releaser's Company Code No..	The unique company code number for the legal entity which signed the contract with the pipeline.	M	A number field containing the unique company code number of the legal entity which signed the contract with the pipeline.
8	Term begin date	The year/month/day which marks the beginning day of the Award term.	M	A date field in a format that is machine-processable. Awards are presumed to the effective at the start of the gas day corresponding to the start date.

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
9	Term begin date-hour	The hour of the term begin day which marks the beginning of the of the offer's term.	M	A time field in a machine processable format (see above). This field is intended to simply identify the start of the appropriate gas day not create a choice where none exists.
10	Term end date	The year/month/day which marks the end date of the Award term.	M	A date field in a machine-processable format.
11	Term end date-hour	The hour of the term end day which marks the end of the Award term.	M	A time field in a machine-processable format. (See gas day and time discussion above.)
12	Award quantity	The amount of capacity in a whole number of MMBtu or Mcf per day which is the total quantity of capacity of the capacity type indicated below (in the Quantity Indicator field) award to the Bidder pursuant to this Award parcel.	M	A number field in whole numbers containing the quantity of capacity in MMBtu or MCf per day each day of the term of this offer.
13	Award type indicator	A number field indicating the type capacity being referred to above in the Offer Quantity field. 1=Primary Receipt Pt(s) Quantity 2=Primary Delivery Pt(s) Quantity 3=Segment(s) Quantity 4=Storage Quantity 5=Mainline Quantity 6=Storage Injection Quantity 7=Storage Withdrawal Quantity	M	This is a number field which is designed to alert reviewers as to the type of capacity referred to in the Award Quantity field.
14	Rate schedule	The pipeline's rate schedule under which service pursuant to this award* is performed, (*e.g.*, GS, FT1, etc).	M	An alpha-numeric field of at least 12 characters in length which contains a representation of the pipeline's rate schedule.
15	Tariff Maximum Reservation Rate.	The pipeline's maximum tariff rate for service provided by the pipeline to the holder of the rights contained in this award parcel.	M	A number field, 12 characters in length, with five decimal places. The rate is in the units of measurement stated in the tariff (*i.e.*, $/MMBtu/Month). Note: This maximum rate includes all applicable surcharges, GRI,Transition costs, etc.
16	Award rate form/type indicator.	A code indicating the form or type of rate which the bidder was awarded. 1=Reservation Charge only 2=Volumetric Charge only 3=Blended Rate	M	A number field. The purpose of this field is to indicate whether the rate form awarded the bidder is a) only in reservation charge form; b) only in volumetric form; or c) in a form which is a blend of reservation and volumetric rates.
17	Award reservation charge.	The rate ($) applicable to the Award Parcel Quantity.	C	A number field, 12 characters in length, with five decimal places. The value could be zero dollars and cents ("0.00000") where the Award has no reservation charge component. This field is conditional on the "Award Rate Form/Type Indicator" above being "1".
18	Award volumetric charge.	The rate per unit awarded by the pipeline to the Bidder for all quantities shipped by the bidder during the Award period.	C	A number field, 12 characters in length, with five decimal places. The value could be zero dollars and cents ("0.00000") where the bidder is not bidding a volumetric or blended rate. This field is conditional on item #16 "Award Rate Form/Type Indicator" being either "2" or "3."
19	Award minimum total period quantity.	The minimum quantity the bidder is obligated to pay for on a volumetric basis pursuant to the bid and award.	M	A number field, 12 characters in length, in whole numbers. The field is mandatory but the amount could be zero ("0") where the bidder is not bidding a volumetric or blended rate.
20	Capacity award date	The year/month/day which marks the date on which this award was received/acknowledged by the pipeline.	M	A date field in a machine-processable format. Awards are date/time stamped by the pipeline when they are granted. This is that date and time. The purpose of this field is to prevent discriminatory award and or posting practices by the pipeline.
21	Capacity award hour.	The hour/min/sec during which the pipeline awarded this award.	M	A time field in the (hh/mm/ss) format.
22	Award posting date	The year/month/day in which the pipeline posted this award.	M	A date field for postings which are date/time stamped by the pipeline when they are posted to both the bulletin board and the downloadable files. This is that date and time.

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
23	Award posting hour	The hour/min/sec during which the pipeline posted this award.	M	A time field in machine-processable format (hh/mm/ss).
24	Prearranged deal indicator.	An indicator for whether this is a pre-arranged deal between the offeror and the bidder. (Y or N).	M	A (yes/no) indicator field which is used to signify this award was a pre-arranged deal.
25	Prearranged deal at maximum rate indicator.	An indicator for whether this prearranged deal was at maximum rate for this offer of capacity. (Y or N).	M	A (yes/no) indicator field which is used to signify that this award is being posted for information purposes only.
26	Re-release indicator	An indicator for whether this award contains capacity that was previously released. (Y or N).	M	A (yes/no) indicator field which is used to signify that this award contains capacity which was previously released.
27	Permanent release indicator.	An indicator for whether this award is made up of capacity which is being contracted to the bidder for the remainder of the primary term. (Y or N).	M	A (yes/no) indicator field which is used to signify that this award is being made available to the bidder for the balance of the primary term of the contract.
28	Special terms and Miscellaneous notes.	Other required or desired and applicable terms which are part of the offer/bid or award as appropriate or required pursuant to the pipeline's tariff.	O	A very long text field containing any pertinent or relevant material, terms, conditions or provisions relating to the release, the bid, the award and the respective enforceability, or use.
I.3.2. Receipt Point or Storage Injection Information				
1	Pipeline Code	The code for the pipeline to which nominations for use of this receipt point contained in this award would be made.	M	A number field in an industry standard format. (See header definition for this field.)
2	Offer No.	The unique identifier within each pipeline identifying the parcel from which this bid was awarded.	M	A number field. Corresponds to the Offer from which the capacity comprising this award is removed.
3	Bid No.	The unique identifier within each pipeline identifying the bid that is being awarded/ identified with this posting.	M	A number field. The unique number on a by-pipeline basis. (See offer description in Section I.1.1 or Bid description in Section I.2.1.)
4	Receipt/injection point description.	The name/description/or other identifier generally in use on the pipeline to describe this point.	O	A text Field. This is to aid in recognition of the point. Note: Only primary point capacity rights are listed as only primary rights can be awarded.
5	Receipt/injection point quantity.	The uniform daily quantity of capacity being made available to the bidder at this point.	M	A number field, in whole numbers, stating the quantity of contractual capacity awarded to the bidder at this point.
6	Receipt/injection point code.	The common code which uniquely identifies this point.	M	An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure.
I.3.3. Delivery Point or Storage Withdrawal Information				
1	Pipeline Code	The code for the pipeline to which nominations to use this delivery point contained in this award parcel would be made.	M	A number field in an industry standard format. (See header definition for this field.)
2	Offer No.	The unique identifier within each pipeline identifying the parcel from which this bid was awarded.	M	A number field. Corresponds to the Offer from which the capacity comprising this award is removed.
3	Bid No.	The unique identifier within each pipeline identifying the bid that is being awarded/ identified with this posting.	M	A number field. The unique number on a by-pipeline basis. (See Offer description in Section I.1.1 or Bid description in Section I.2.1.)
4	Delivery/withdrawal point description.	The name/ description/ or other identifier generally in use on the pipeline to describe this point.	O	A text field. This is to aid in recognition of the point. Note: Only primary points are listed as only primary point capacity rights can be awarded.
5	Delivery/withdrawal point code.	The common code which uniquely identifies this point.	M	An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure.
6	Delivery/withdrawal point quantity.	The uniform daily quantity of capacity being made available to the bidder at this point.	M	A number field, in whole numbers, stating the quantity of contractual capacity awarded to the bidder at this point.
I.3.4. Segment, Mainline or Storage Capacity Information				

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
1	Pipeline Code	The code for the pipeline to which nominations for use of this Capacity Segment contained in this award parcel would be made.	M	A number field in an industry standard format. (See header definition for this field.)
2	Offer No.	The unique identifier within each pipeline identifying the parcel from which this bid was awarded.	M	A number field. Corresponds to the Offer from which the capacity comprising this award is removed.
3	Award No.	The same unique identifier as contained in the header.	M	A number field. (See description in receipt point information section above for explanation of the purpose behind repeating this field.)
4	Location Code	The code uniquely identifying one of the two points defining the boundaries of the capacity offered. In the case of storage quantity, only one code is needed.	M	An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. This location code is intended to identify end-points of segment or mainline capacity being offered.
5	Location Code 2	The code uniquely identifying the other of the two points defining the boundaries of the capacity segment offered.	M	An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure. This location code is intended to identify end-points of segment or mainline capacity being offered.
6	Segment, mainline or storage identifier.	The unique code of the pipeline (if any) which uniquely identifies this segment.	O	An alpha-numeric field containing the unique code specified by the pipeline as corresponding to this segment.
7	Segment, mainline or storage description.	The name/description/or other identifier either generally in use on the pipeline or as specified by the offeror to describe this capacity.	O	A text field. This is to aid in recognition of the capacity. Note: Depending on the pipeline, this description may be predefined and it may be dynamically defined by the offeror.
8	Segement, mainline or storage quantity.	The uniform daily quantity of capacity awarded to the bidder.	M	A number field, in whole numbers, stating the quantity of capacity awarded to the bidder.

I.4. Withdrawal Notice

I.4.1. Header: Withdrawal Posting Data Sets

1	Pipeline Code	The code for the pipeline which received notice to withdraw this package from its bulletin board.	M	A number field in an industry standard format. (See header definition for this field.)
2	Pipeline Name	The name that the pipeline wants to be known by.	O	A text field of a standard mnemonic specified by the pipeline.
3	Withdrawal Type Indicator.	An indicator for whether this is a posting of a shipper's notice of withdrawal of an Offer ("O"), or, a Bid ("B"), or a pipeline's notice of withdrawal of an Award ("A"). Note: Not to be confused with an Operational Balancing Agreement or "OBA").	M	An indicator field (indicator O/B/A) of one character in size which is used to signify that this Withdrawal Posting is the posting of a notice of withdrawal of either a bid, an offer or an award. Note: An indicator to signify that a pipeline withdrew an award is needed in order to allow shippers and others to clean up their records in the event a pipeline posts a mistaken award.
4	Offer No	The unique identifier within each pipeline identifying the Offer No. to which this Withdrawal Posting pertains.	M	A number field. Where the notice of withdrawal to which this posting pertains is a withdrawal of an offer of release (*i.e.*, the indicator is "O") this field contains the same number as the Offer No. which is being withdrawn by the offeror. (See "Offer No" in capacity release dataset, Line 3.) Note: All notices of withdrawal will have this field populated with an Offer No. This is due to the fact that all bids are only uniquely identifiable when they are coupled with the Offer No. to which the bid applies, and, that all Awards are also only identifiable from the unique combination of Offer No. and Bid No. This field will always be populated even where an Offer may still be in effect and only a bid is withdrawn.

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
5	Bid No.	The unique identifier within each pipeline identifying either the bid that is being withdrawn or the winning bid award which is withdrawn with this posting.	C	A number field. The unique number on a by-pipeline basis. (See Bid No. description in Section I.2.1 or Award No. description in Section I.3.1) This field is a conditional field and is only populated when the notice of withdrawal which is being posted is a notice of withdrawal of Bid or Award. (See discussion above.)
6	Posting date	The year/month/day in which the pipeline posted this Withdrawal Notice.	M	A date field in a machine-processable format. Postings are date/time stamped by the pipeline when they are posted to both the bulletin board and the down-loadable files. This is that date and time.
7	Posting date hour	The hour/min/sec during which the pipeline posted this Withdrawal Notice.	M	A time field in a machine-processable format.
8	Explanatory and Miscellaneous notes.	Where withdrawing party is required to provide a reason or explanation for the withdrawal, this is the place where that is done.	C	A very long text field containing any pertinent or relevant material relating to the Withdrawal Notice of the withdrawing party. Note: Most Offerors will be required to explain the circumstances of their withdrawal of offers to release.

Operationally Available Capacity and Notices

Record 1: Operationally Available Capacity Data Sets

1	Pipeline Code	Pipeline (name and number), on which capacity can be nominated and booked.	M	A number field which is an industry standard. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding system.
2	Location Type	Type of location for which capacity information is provided (*e.g.*, receipt point, delivery point, bi-directional, mainline, pooling point, segment, injection, withdrawal).	M	Should be a recognized code: we suggest (R) receipt, (D) delivery, (B) bi-directional, (M) mainline, (P) pooling, (S) segment, (I) storage injection, (W) storage withdrawal.
3	Location Code 1	A code for the location for which capacity information is being provided. Could be a location or a segment.	M	An alpha-numeric field. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding procedure.
4	Location Code 2	A code for a location to define a segment or mainline. Conditional on location type being S or M.	C	An alpha-numeric field. Pipelines may use the system of codes the currently use in common business practice until the Commission adopts a standardized coding procedure. This element applies only if Location Type is S or M and capacity is defined by two points.
5	Location Description	The description for the location for which capacity is being provided.	O	Text field. Will use the pipeline name for this location (pipeline designated name—not a standard).
6	Effective Date	The beginning date for which the capacity is available.	M	A date field in a format that is machine-processable.
7	End date	The ending date for which the capacity is available.	O	A date field in a format that is machine-processable; optional, and only to be used if capacity is available for more than one day.
8	Quantity available	The amount of capacity available at the location in whole MMBtu or Mcf/d.	M	A number field indicating the amount of unscheduled capacity available at this location.
9	Measurement basis	The unit of measure for the capacity	M	A number field indicating the units of measure on the pipeline: 1=MMBtu or Dth; 2=Mcf/d.
10	Pressure base indicator.	To be filled in if the measurement basis is Mcf/d.	C	A number field indicating the pressure basis for the pipeline: 1=PSIA; 2=PSIG. Conditional on "Measurement Basis" being "2."
11	Pressure base	To be filled in if the measurement basis is volumetric—either PSIA or PSIG.	C	A number field up to three decimal places listing the pressure basis. Conditional on "Measurement Basis" being "2."
12	Posted date	The date the information was posted	M	A date field in a format that is machine-processable.
13	Posted time	The time the information was posted	M	A time stamp that is machine-processable.

STANDARDIZED DATA SETS—Continued

Line No.	Field name	Description of field	Status [1]	Data type and explanation
14	Time Zone Indicator	The time zone in which the pipeline operates	M	Should be standard code: (E) Eastern, (C) Central, (M) Mountain, (P) Pacific
15	Comments & notes	A short text field for any special considerations.	O	Text field.
Record 2: System-wide Notices				
1	Pipeline Code	Pipeline (name and number) on which capacity can be nominated and booked..	M	A number field which is an industry standard. Pipelines may use the system of codes they currently use in common business practice until the Commission adopts a standardized coding system.
2	System-wide critical notices.	General notices applicable to all shippers in a given area (may not be applicable 100% system-wide). Notices would include operational flow orders, force majeure notices, and notice of intent to impose curtailment, maintenance notices and other notices. These are not notices specific customers..	M	Large text field. These general, system-wide notices back up the current practice of informing customers by phone and/or fax.
3	Type of notice	Indicator to identify type and urgency of notice.	M	Select one of the following codes for use in record to identify the type of notice. *Description and Code* 1. Operational action (change in physical flow and/or scheduled flow) may be required by impacted customers. Code should be selected based on how much time the customer may have to respond. a. Immediate response required— b. Response required in twelve hours or less—OT c. Response required in twenty-four hours or less—OD 2. "Critical Period" is in, or will be placed into, effect—CP 3. Maintenance on system or system segment is planned or is in process—SM 4. "Curtailment" situation exists or will be placed into effect—CS 5. "System or segment-wide" operational flow order has been, or is expected to be issued—OF 6. "Force Majeure" situation exists or will be placed into effect—FM
4	Effective dates—maintenance notices.	Start date information regarding maintenance notices.	M	A date field in a format that is machine-processable.
5	End date—maintenance notices.	End date information regarding maintenance information.	M	A date field in a format that is machine-processable.
6	Effective time—maintenance notices.	Start time regarding maintenance information	O	Text field. Effective time for start of maintenance in machine-processable format.
7	End time—maintenance notices.	End time regarding maintenance information	O	Effective time for end of maintenance in machine-processable format
8	Posted date	The date the information was posted	M	A date field in a format that is machine-processable.
9	Posted time	The time the information was posted	M	A time stamp that is machine-processable.

[1] Status refers to the obligation to populate each data item and can be: M = mandatory field and should be populated by the reporting entity; O optional, filled at the discretion of the entity providing the data or if the data element is as applicable/available; C = conditional, to be filled pending on the condition in another data element in the data set, *e.g.*, if an indicator is (Y), then the field could be relevant and populated.

Communication Protocols

I. Electronic Data Interchange

A. Electronic Bulletin Board (EBB) operators must provide for file downloading of the standardized data sets using Electronic Data Interchange in accordance with American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12 standards and the implementation guide developed by Gas*Flow.

B. EBB operators must make the ASC X12 data sets available to any party, including a Value Added Network (VAN).

C. Access to the standardized data sets for EDI must be comparable to access provided for on-line EBB users.

D. EBB operators must provide EDI access to the standardized data sets at all hours, subject to reasonable downtime requirements for maintenance.

E. EBB operators must transmit data sets that are current as of the time of a customer's request for EDI download is processed.

F. EBB operators must provide for file downloading of the capacity data sets in the American Standard Code for Information Interchange (ASCII) in accordance with the documentation developed by Gas*Flow.

II. Communications Software and Hardware.

A. EBB operators must provide access to EBBs through a commercially available software package specified by the EBB operator or through a customized software package provided by the EBB operator at no cost.

B. EBB operators must support Consultative Committee for International Telephone and Telephony (CCITT) V.22 bis (Hayes 2400 baud modem speed), but may support others modem speeds. EBB operators supporting 9600 baud modem speeds must support CCITT V.32.

III. Access Requirements

A. EBB operators must permit access to commercially sensitive customer data by third parties when the EBB Operator has received advance authorization.

B. EBB operators must design their EBBs to handle their projected number of peak concurrent users.

C. EBB operators must provide easy and efficient access to the file transfer option(s) for the standardized data sets.

IV. Log-On Procedures

A. EBB operators must simplify or automate their procedures for logging-on to their computer to the maximum extent practicable, consistent with security requirements.

B. EBB operators must provide a log-on script that details its log-on procedures, which is compatible with the commercial software package specified by the EBB operator or the customized software package provided by the EBB operator.

C. EBB operators may place reasonable limits on EBB users' periods of inactivity during an EBB session, on individual session time, and on total daily connect time, but such limits will not apply when the user pays the costs for dedicated service.

[FR Doc. 93–18557 Filed 8–4–93; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed program amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter dated July 2, 1993 (Administrative Record No. IND–1272), Indiana submitted proposed Program Amendment Number 93–5 containing modifications to the Indiana Administrative Code (IAC) rules at 310 IAC 12. The proposed program amendment pertains to definitions of terms used in the Indiana program. The amendment is intended to revise the Indiana program to be consistent with the corresponding Federal regulations.

This document sets forth the times and locations that the Indiana program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on September 7, 1993. If requested, a public hearing on the proposed amendment will be held at 1 p.m. on August 30, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on August 20, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, at the address listed below. If a hearing is requested, it will be held at the same address.

Copies of the Indiana program, the proposed amendment, a listing of any scheduled public meetings, and all written comments received in response to this document will be available for public review at the following locations, during normal business hours, Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Indianapolis Field Office, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204. Telephone: (317) 226–6166.

Indiana Department of Natural Resources, 402 West Washington Street, room 295, Indianapolis, IN 46204. Telephone: (317) 232–1547.

Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Indianapolis Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, **Federal Register** (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.10, 914.15, and 914.16.

II. Discussion of Proposed Amendment

By letter dated July 2, 1993 (Administrative Record No. IND–1272), the Indiana Department of Natural Resources (IDNR) submitted proposed program amendment number 93–5. Program amendment 93–5 consists of proposed changes to the Indiana program definitions at 310 IAC 12.

The proposed amendments are summarized below

1. 310 IAC 12–0.5–6 Affected Area

The proposed language provides that the affected area includes any of seven specified examples of "affected area." Prior to this change, the rule language used the term "each" rather than "any." The proposed change is intended to clarify that any of the specified examples alone or together with one or more of the listed examples is sufficient to be an affected area.

2. 310 IAC 12–0.5–23 Coal Mine Waste

The term "coal mine waste" is defined to mean coal processing waste and underground development waste.

3. 310 IAC 12–0.5–53 Ground Cover

The term "ground cover" is defined to mean the area of ground which is covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement. At least ninety-five percent (95%) of the species present must be species listed in the revegetation plan.

4. 310 IAC 12–0.5–55 Half-shrub

The term "half-shrub" is defined to mean a perennial plant with a woody base whose annually produced stems die each year.

5. 310 IAC 12–0.5–64 Impounding Structure

The term "impounding structure" is defined to mean a dam, embankment, or other structure used to impound water, slurry, or another liquid or semi-liquid material.

6. 310 IAC 12–0.5–72 Litter

The term "litter" is defined to mean the detached recognizable portions of the plants under evaluation that cover the ground surface.

7. 310 IAC 12–0.5–104 Reference Area

The term "reference area" is defined to mean a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods. A reference area must be representative of geology, soil, slope, and vegetation in the permit area.

8. 310 IAC 12–0.5–111 Shelter Belt

Ther term "shelter belt" is defined to mean an area used for protection from wind or snow and which is subject to proof-of-productivity standards for fish and wildlife habitat.

9. 310 IAC 12–0.5–116 Soil Productivity

The term "soil productivity" means the capacity of a soil for producing a specified plant or sequence of plants under a physically defined set of management practices.

10. 310 IAC 12–0.5–139 Valid Existing Rights

(a) "Valid existing rights" means, for the purposes of 310 IAC 12–1–1, 310 IAC 12–2–1, and 310 IAC 12–2–5 the following:

(1) Except for haul roads: (A) Those property rights in existence on August 3, 1977, that were created by a legally binding conveyance, lease, deed, contract, or other document which authorized the applicant to conduct surface coal mining operations; and

(B) The person proposing to conduct surface coal mining operations on such lands:

(i) Had been validly issued or exercised good faith effort to obtain, on or before August 3, 1977, all state and federal permits necessary to conduct operations on those lands;

(ii) Can demonstrate to the director that the coal is both needed for and immediately adjacent to, an ongoing surface mining operation for which all permits were obtained prior to August 3, 1977; or

(iii) Can demonstrate that the operation was in existence or operation at the time an area became protected under IC 13–4.1–14–1 or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in IC 13–4.1–14–1.

(2) For haul roads: (A) A recorded right-of-way, recorded easement, or a permit for a coal haul road recorded as of August 3, 1977;

(B) Any other road in existence as of August 3, 1977; or

(C) Any haul road that was in existence or operating at the time an area became protected under IC 13–4.1–14–1, or at the time of the coming into existence, within the prohibited distance of a structure, road, cemetery, or other activity listed in IC 13–4.1–14–1.

(b) The interpretation of the terms of a document used to establish a valid existing right is based upon the common law concerning the interpretation of documents conveying mineral rights. If there is no applicable common law, the interpretation is based upon the following:

(1) The usage and custom at the time and place where a document came into existence.

(2) A showing by the applicant that the parties to the document contemplated the right to conduct the same underground or surface activities for which the applicant claims a valid existing right.

(c) "Valid existing rights" does not mean the mere expectation of a right to conduct surface coal mining operations or the right to conduct underground coal mining. Examples of rights which alone do not constitute valid existing rights include, but are not limited to, coal exploration permits or licenses, applications or bids for leases, or where a person has only applied for a federal or state permit.

(d) If an area comes under the protection of IC 13–4.1–14–1 after August 3, 1977, valid existing rights are present if a validly authorized surface coal mining operation exists on that area on the date the protection comes into existence.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Indiana satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Indiana program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Indianapolis Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4 p.m. on August 20, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM Indianapolis Field Office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted in

advance at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the review required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 28, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 93–18629 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 246

[DoD Directive 5120.aa]

Stars and Stripes (S&S) Newspaper and Business Operations

AGENCY: American Forces Information Service, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises and supersedes portions of DoD Instruction 5120.4 concerning the Stars and Stripes newspapers and business operations. The proposed revisions are intended to promote efficiency and economy by updating procedures to meet changed circumstances, and to accommodate recommendations made by the General Accounting Office in a Congressionally-mandated examination of Stars and Stripes operations. The proposed rule is not expected to have an impact upon the general public.

DATES: Written comments on this proposed rule must be received on or before September 7, 1993.

ADDRESSES: Forward comments to the American Forces Information Service, Plans & Policy Office, 601 North Fairfax Street (EFC Plaza), Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Richard Oleszewski, (703) 274–4868.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, "Federal Regulation"

The Special Assistant to the Secretary of Defense (Public Affairs), has determined that 32 CFR part 246 is not a major rule. The rule does not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, or innovation.

Public Law 96–354, "Regulatory Flexibility Act"

The Special Assistant to the Secretary of Defense (Public Affairs), has certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601). This rule is a revision of an existing instruction that establishes policy, assigns responsibilities and prescribes procedures within the Department of Defense with regard to the activities of the Stars and Stripes' newspapers and business operations. Its primary effect will be to promote efficiency and economy in the Stars and Stripes organizations. The rule will have minimal, if any, effect upon small businesses.

Public Law 96–511, "Paperwork Reduction Act"

The Special Assistant to the Secretary of Defense (Public Affairs), has certified that 32 CFR part 246 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 246

Government publications, Newspapers and magazines.

Accordingly, title 32, subchapter M, is proposed to be amended to add part 246 to read as follows:

PART 246—STARS AND STRIPES (S&S) NEWSPAPER AND BUSINESS OPERATIONS

Sec.

246.1 Purpose.
246.2 Applicability.
246.3 Definitions.
246.4 Policy.
246.5 Responsibilities.
246.6 Procedures.
246.7 Information requirements.
Appendix A to part 246—Mission.

Appendix B to part 246—Business and Financial Operations.
Appendix C to part 246—Personnel Policies, and Procedures.
Appendix D to part 246—Editorial Operations.
Appendix E to part 246—Stars and Stripes (S&S) Board of Directors.

Authority: 10 U.S.C. 136.

§ 246.1 Purpose.

This part:

(a) Establishes policy, assigns responsibilities, and prescribes procedures for the S&S organizations owned by designated Unified Commands consistent with 32 CFR part 372.

(b) Supersedes policies and procedures in 32 CFR part 247 about the S&S newspapers.

(c) Authorizes the establishment, management, operation, and oversight of the Stars and Stripes, including the resale of commercial publications necessary to support the overall S&S mission, production, distribution authority, and business operations as mission-essential activities of the Department of Defense and the designated Unified Commands.

(d) Designates the Secretary of the Army as the DoD Executive Agent for providing administrative and logistical support to the American Forces Information Service (AFIS), designated Unified Commands, and the S&S.

(e) Authorizes the Commander in Chief, U.S. European Command, and the Commander in Chief (CINC), U.S. Pacific Command, to establish and maintain a S&S board of directors to address S&S business operations in their Unified Commands.

§ 246.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including their National Guard and Reserve components), the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Unified and Specified Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components"). The term "the Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

§ 246.3 Definitions.

(a) *Adverse conditions.* Conditions that may adversely affect the survival of the newspapers such as troop drawdown, increase in troop population, currency fluctuations, inflation, armed conflict, national contingency deployment, and others.

(b) *S&S Commander/publisher.* The senior position in each S&S responsible for simultaneously performing dual functions. This military officer commands the S&S to which assigned, while also serving as the publisher of the Stars and Stripes produced by that organization.

(c) *S&S Management Action Group (MAG) and S&S Steering Committee.* These are ad hoc joint committees between the Office of the Assistant Secretary of Defense (Public Affairs) [OASD(PA)] and the Office of the Assistant Secretary of Defense (Force Management and Personnel) [OASD (FM&P)] that address S&S personnel and business policies. The S&S MAG is chaired by the senior OASD (PA) AFIS member and includes members from the OASD (FM&P) and other DoD offices with the authority and expertise to address various S&S problems. The Director of the AFIS, and the Deputy Assistant Secretary, OASD(FM&P), served as co-chairman of the S&S Steering Committee that addresses DoD-level S&S issues. Neither the DoD S&S Steering Committee, nor the S&S MAG, involve themselves in Stars and Stripes editorial policies.

(d) *S&S ombudsman.* A highly qualified journalist hired from outside the Department of Defense for a term of 3 years who independently advises the Unified Command CINCs, the S&S commander/publisher, the Stars and Stripes editor, the Director of the AFIS, and the Congress on matters of readership interest in the Stars and Stripes.

(e) *Stars and Stripes.* The title of one, or both, depending on the context of usage, of the newspapers produced by the S&S.

(f) *Stars and Stripes Editor.* The senior civilian position on the newspaper editorial staff of the S&S to which he or she is assigned. All mention of "the editor" in this part refers exclusively to this position, unless otherwise specified.

(g) *Stars and Stripes (S&S).* The organizations that perform the administrative, editorial, and business operations, which include newspapers, bookstores, job-printing plants, etc. necessary to do their mission.

§ 246.4 Policy.

It is DoD policy that:

(a) The U.S. European Command and the U.S. Pacific Command are authorized to publish the Stars and Stripes and provide support to the S&S. The Unified Command component commanders and their public affairs staffs shall provide the Stars and Stripes editorial staffs the same help provided to commercial newspapers, in compliance with the principles governing the release of information to media in 32 CFR part 375.

(b) Editorial policies and practices of the Stars and Stripes shall be in accordance with journalistic standards governing U.S. daily commercial newspapers of the highest quality, with emphasis on matters of interest to the Stars and Stripes readership. Except as provided in paragraph (e) of this section, the DoD policy for the Stars and Stripes is that there shall be a free flow of news and information to its readership without news management or censorship. The calculated withholding of unfavorable news is prohibited.

(c) The S&S are basically self-sustaining operations. Each S&S shall be administered in accordance with DoD Directive 1015.1[1] as a joint Service nonappropriated fund (NAF) instrumentality (NAFI) in its Unified Command, except where different procedures are specified in this part. Funding shall be provided through newspaper sales, resale of commercial publications, authorized advertising, job printing, and appropriated fund (APF) support as authorized by this part, DoD Directive 1015.6[2] and DoD Instruction 1330.18.[3] The S&S shall conduct bookstore operations similar to business operations of commercial bookstores in the United States. The Stars and Stripes and the S&S bookstores provide important news and information to U.S. personnel and their families stationed overseas while generating NAF revenues.

(d) The Stars and Stripes personnel procedures shall differ from commercial newspapers only because the S&S are U.S. Government organizations that are required to operate in accordance with the following:

(1) 32 CFR part 40, other Federal laws and DoD Directives that affect all DoD employees, and the Manual for Courts Martial (MCM), 1984,[4] for S&S military personnel on active duty.

(2) National security constraints prescribed by E.O. 12356 (47 FR 14874 and 15557, 3 CFR, 1982 Comp., p. 166).

(3) Overseas status of forces agreements (SOFAs), where applicable.

(e)(1) The only circumstances under which news or information that is not in the public domain may be directed to be withheld from publication in the

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to § 246.4(c).

[3] See footnote 1 to § 246.4(c).

[4] See footnote 1 to § 246.4(c).

Stars and Stripes by a Unified Command CINC are when such publication:

(i) Involves disclosure of classified national security information.

(ii) Would adversely affect national security.

(iii) Clearly endangers the lives of U.S. personnel.

(2) Those circumstances in paragraphs (e)(1) (i) through (iii) may not be construed to permit the calculated withholding of news unfavorable to the Department of Defense, the Military Services, or the U.S. Government. Only the Unified Command CINC may authorize withholding of news or information from the Stars and Stripes. When the CINC directs withholding of publication, the Unified Command shall immediately inform the ASD(PA) by telephone and then forward an immediate precedence, appropriately classified, message to the following: SECDEF Washington DC/OASD–PA, with information copies to the Director, AFIS, and the Special Assistant for Public Affairs to the Chairman of the Joint Chiefs of Staff. The CINC may include the appropriate "AMEMBASSY" as an information addressee.

(f) Sensitivities of host nations shall not be a reason to withhold any story from publication in the Stars and Stripes. The Unified Command theater host-nation sensitivity lists prepared for the armed forces Radio and Television Service (AFRTS) shall not be used to restrict the content of the Stars and Stripes. If representatives of other governments show an interest in, or concern about, the content of the Stars and Stripes, they shall be informed that:

(1) The Stars and Stripes does not represent the official position of the U.S. Government, including the Department of Defense or the Unified Command.

(2) The Stars and Stripes is an unofficial, abstracted collection of commercial news and opinion available to commercial newspapers in the United States, along with Stars and Stripes editorial staff-generated DoD, command, and local news and information. The Stars and Stripes provides this information to the members of the Department of Defense and their family members serving overseas, as do commercial daily newspapers that are published and sold throughout the United States in keeping with the principles of the First Amendment to the U.S. Constitution.

(g) The Department of the Army shall be the DoD Executive Agency to provide APF and NAF support to the S&S. APFs shall be provided, when required by adverse conditions or special circumstances as defined in § 246.3, by the Military Services, as agreed on through a memorandum of understanding (MOA) detailing the shared responsibilities, and approved by the OSD and the Unified Commands.

§ 246.5 Responsibilities.

(a) The *Assistant Secretary of Defense (Public Affairs)*, under 32 CFR part 375, as the principal staff assistant to the Secretary of Defense for internal information policy and programs, including S&S matters, shall:

(1) Provide policy and broad operational guidance to the Director of the AFIS.

(2) Monitor and evaluate the overall effectiveness of the policies in § 246.6, and procedures in § 246.6.

(b) The *Director, American Forces Information Service*, under 32 CFR part 372 shall:

(1) Develop, issue, and oversee the implementation of policies and procedures for the Unified Commands and the Military Departments for the operation of the S&S.

(2) Provide business and policy counsel on the mission performance and financial operations of the S&S.

(3) Serve as the DoD point of contact with the Congressional Joint Committee on Printing (JCP) for S&S matters.

(4) In coordination with the Chairman of the Joint Chiefs of Staff and the ASD(PA), provide broad and overall planning guidelines to the Unified Commands for S&S wartime operations that involve more than one area of responsibilities.

(5) Chair, as required, at the Deputy Assistant Secretary of Defense level, or above, the steering committee providing guidance to the S&S MAG.

(6) Select and employ the S&S Ombudsman.

(c) The *Secretaries of the Military Departments* shall:

(1) Nominate the most highly-qualified military personnel for positions in the S&S in accordance with appendix C to this part.

(2) Enter into appropriate MOAs, as approved by the Unified Commands and, as required by the Office of the Secretary of Defense (OSD), to provide APF and/or NAF support when required by adverse conditions as defined in § 246.3(a).

(d) The *Secretary of the Army* shall:

(1) Provide administrative and logistic support, as the DoD Executive agent, to the S&S organizations.

(2) Support NAF and APF accounting and reporting procedures required by DoD Instruction 7000.12,[5] in coordination with the Unified Commands and the Director of the AFIS

(3) Designate the successor-in-interest to the S&S, as agreed upon by the applicable Unified Command and the Director of the AFIS.

(e) The *Commander in Chief, U S. European Command*, and the *Commander in Chief, U.S Pacific Command*, shall:

(1) Authorize a Stars and Stripes newspaper, provide operational direction to the S&S commander/publisher, and support the S&S throughout the Unified Command area of responsibility, consistent with each organization's status as a category B NAFI.

(2) Provide Unified Command regulations and guidance, as needed, to carry out this part.

(3) Establish procedures to resolve situations wherein a U.S. Ambassador (or, if so designated, the chief of mission) believes a specific issue in his or her nation of responsibility, not already in the public domain through other news sources, would violate national security or endanger the safety of American citizens, or other persons under their jurisdiction, if it were to be published in the Stars and Stripes.

(4) Select the S&S commander/publisher and other military officers in S&S positions.

(5) Aid the S&S commander/publisher to educate the Stars and Stripes editorial staff about the missions of the Unified Command and Military Service component commands.

(6) Approve the selection of the Stars and Stripes editor.

(7) Establish and maintain a S&S board of directors to address S&S business operations. (See appendix E to this part)

(8) Establish and maintain Stars and Stripes readership forums, which may take many forms, to address Stars and Stripes matters of interest and S&S bookstore operations. Those forums are to provide community feedback to the S&S. This will enable the S&S commander/publisher and the Stars and Stripes editor to better understand and, thereby, better serve the interests and needs of the readers and bookstore customers.

(9) At the discretion of the Unified Command CINC, provide for meetings between the S&S commander/publisher and the Stars and Stripes editor, the Unified Command public affairs office, and the Unified Command component commands, represented by their directors of public affairs, to discuss the performance of the Stars and Stripes and the performance of related public affairs operations. The Unified

[5] See footnote 1 to § 246.4(c).

Commands, their component commands, and the S&S may invite any attendees they choose. Representatives from the AFIS may attend. Those meetings may not serve as editorial advisory boards. The Unified Command and component commands represent the principal source, and a prominent subject, of Stars and Stripes staff-generated news coverage. Consequently, any involvement or appearance of involvement by component command staff in the Stars and Stripes editorial policy creates an unacceptable conflict of interest damaging to the editorial integrity and credibility of the Stars and Stripes.

(10) Ensure that the S&S Commander/Publisher:

(i) Assumes the duties and responsibilities of command, leadership, management, and training for the S&S.

(ii) Executes DoD and Unified Command policy.

(iii) Is responsible to the Unified Command CINC for S&S operations to include the newspaper publication and timely circulation, the operation of the S&S resale and job printing activities, and associated distribution systems in the relevant Unified Command area of responsibility.

(iv) Provides planning and execution of initiatives to ensure support of U.S. Armed Forces during contingency operations and armed conflict. The S&S commander/publisher shall identify wartime and contingency S&S personnel asset requirements to the Unified Command CINC to fulfill the Unified Command force responsibilities during armed conflict.

(v) Selects the Stars and Stripes editor.

(vi) Approves, in coordination with the Stars and Stripes editor, military personnel selectees for the Stars and Stripes editorial staff. (See appendix C to this part)

(vii) Provides a current status briefing and 2-year financial forecast to the Director of the AFIS at the annual AFIS S&S meeting. Provides support to the S&S board of directors as required in appendix E to this part.

(viii) Conducts frequent independent readership surveys, in accordance with DoD Instruction 1100.13 [6], and readership focus groups to gather information.

(f) The *Other Unified Commanders in Chief* shall ensure that their deployment exercise, contingency, and war time planning documents reflect the S&S transportation, funding or reimbursement and in-theater distribution requirements, as applicable. Information copies of such planning documents or annexes shall be furnished to the following:

(1) U.S. European Command (ATTN: Director, Public Affairs).

(2) U.S. Pacific Command (ATTN: Director, Public Affairs).

(3) The AFIS (ATTN: Assistant Director for Plans and Policy).

§ 246.6 Procedures.

(a) *General.*

(1) Authority to establish or disestablish S&S operations is from the Secretary of Defense through the ASD(PA) and the Director of the AFIS. The Unified Commands shall forward such requests to the Director of the AFIS, as required.

(2) Classified information shall be protected in accordance with 32 CFR parts 159 and 159a.

(3) The Stars and Stripes and the S&S business operations shall conform to applicable regulations and laws involving libel, copyright, U.S. Government printing and postal regulations, and DoD personnel policies and procedures.

(4) With the concurrence of the Unified Command, the S&S is authorized direct communication with the Military Services on S&S personnel matters and with the Department of the Army on S&S financial matters. The S&S shall keep the Unified Command and the AFIS informed of all actions.

(b) *Management review and evaluation.*

(1) The Director of the AFIS provides business counsel, assistance, and policy oversight for the S&S. The Director of the AFIS shall meet annually with the Unified Command representatives, to include the S&S commander/publisher, and senior DoD officials who have S&S responsibilities, such as the S&S MAG.

(2) The Director of the AFIS shall be assisted by a S&S MAG composed of senior representatives from the AFIS, the OASD(FM&P), and the other DoD offices with the authority and expertise to aid in solving S&S problems. As needed, the Director of the AFIS may organize a DoD steering committee to oversee and aid the S&S MAG to address specific concerns identified by the Director of the AFIS and the Unified Command CINCs.

(3) In accordance with DoD Instruction 7600.6,[7] and Army implementation thereof, the S&S shall be audited on an annual basis, either by the Army Audit Agency (AAA) or by an AAA-approved audit contractor. NAF funds of the S&S shall be used for such contracts. The audits will be performance audits and may be financial in nature as prescribed by the Comptroller General of the United States Government Auditing Standards. Each annual audit will determine whether prior audit recommendations have been implemented and the reasons any have not been implemented. When the Inspector General, DoD, elects to perform an audit of the S&S organization, such audit may substitute for the required annual audit. The S&S organizations shall coordinate their audit requirements with each other and the Army Community and Family Support Center to the maximum extent practicable to avoid duplication of costs and to increase the efficiency and effectiveness of these audits. Information copies of the audit contractor reports shall be forwarded by the S&S to the Unified Commands, AFIS and the AAA. The S&S shall provide a response to the audit to the Unified Command CINC within 60 days of receiving the completed report. The S&S response to the audit must indicate a concurrence or nonconcurrence for each finding and recommendation. For each concurrence the corrective actions taken or planned should be described and completion dates for actions already taken, as well as the estimated dates for completion of planned actions, should be provided. For each nonconcurrence, specific reasons must be stated. If appropriate, alternative methods for accomplishing desired improvements may be proposed. If nonconcurrences in the findings and recommendations cannot be resolved between the S&S management and the auditors or AAA endorses the contractors' findings and recommendations, then the resolution procedures established by DoD Directive 7650.3,[8] and Army Regulations should be followed. The Unified Command shall forward the response to the Director of the AFIS and the AAA.

§ 246.7 Information requirements.

The reporting requirements in § 246.6, and appendix B to this part shall be submitted in accordance with DoD Instruction 7000.12, and 7600.6, unless specifically excepted by this part.

Appendix A to Part 246—Mission

A. General

The Stars and Stripes (S&S) organizations shall contribute to the overall U.S. joint-defense mission overseas by providing news and information for the Armed Forces internal audiences serving in a Unified Command area of responsibility, or deployed in support of designated joint-Service

[6] See footnote 1 to § 246.4(c).

[7] See footnote 1 to § 246.4(c).

[8] See footnote 1 to § 246.4(c).

exercises, contingency operations, or situations of armed conflict. That shall be done through the operation of a daily newspaper and resale activities of commercial publications (primarily through the S&S bookstores).

B. Newspapers

The Stars and Stripes coverage of news and information makes possible the continued exercise of the responsibilities of citizenship by DoD personnel and their families overseas. The Stars and Stripes are to be published overseas during peacetime, contingency operations, and armed conflicts. They shall provide the same range of international, national, and regional news and opinion from commercial sources, as is provided by newspapers in the United States. Additionally, to better serve their readers, the Stars and Stripes shall pay special attention to news of local, host-country conditions relevant to their audiences. They shall provide, through their reporters and bureaus, news of local military communities within the theater and news of the U.S. Government, the Department of Defense, the Military Services, and theater operations not usually available to readers from outside commercial sources. The Stars and Stripes are to serve the interests of their overseas DoD readership as do prominent commercial daily newspapers through the United States.

C. S&S Bookstores and Retail Operations

The S&S shall serve readers' needs for contemporary news and information by providing a broad selection of resale commercial publications of interest to their customers at the most reasonable prices, either directly in the S&S bookstores or through other authorized sales outlets at their discretion throughout the Unified Command designated geographic area. The S&S shall have the same authorities and rights for resale commercial publications that the military exchange services have for other nonsubsistence goods and services.

D. S&S Job Shop Printing

The S&S are authorized to operate job shop printing to include book publishing and/or printing, within the Unified Commands for U.S. military community newspapers, military organizations, nonappropriated fund (NAF) instrumentalities (NAFI), Morale, Welfare, and Recreation (MWR) activities, private organizations of interest and concern to the Department of Defense, as designated by 32 CFR part 212, DoD employees and their immediate families, and others designated by the Unified Command.

E. War-Time Mission and Contingency Operations

The S&S shall provide the Stars and Stripes on a daily basis for transportation to, and distribution in, the designated area of operations, as requested and funded by the responsible Unified Command Commander-in-Chief (CINC), and supported by the respective Unified Command owning the S&S organization. The Unified Command shall plan for required airlift on a timely basis and intratheater distribution of daily Stars and Stripes shall be the responsibility of the supported Unified Command CINC and respective component commands, who shall reimburse the S&S for nonresale issues on a per issue basis. When deployed to an area of operations, the Stars and Stripes reporters shall operate in the same manner as commercial media representatives. The deployed Stars and Stripes reporters shall be eligible for participation in DoD and command-sponsored regional and local media pools.

Appendix B to Part 246—Business and Financial Operations

A. General Financial Operations

1. For financial management purposes, the Unified Command shall administer the Stars and Stripes (S&S), with policy oversight exercised by the Director of the American Forces Information Service (AFIS), as nonappropriated fund instrumentalities (NAFIs) in accordance with § 246.4(c), except where procedures differ as defined in this part. The S&S shall report as prescribed in DoD Instruction 7000.12,[1] providing information copies to the Unified Commands and the Director of the AFIS.

a. The S&S shall be authorized nonappropriated fund (NAF) and appropriated fund (APF) support as category B NAFIs as provided under DoD Instruction 1015.6.[2]

b. The S&S shall be funded to the maximum extent possible through the sale and distribution of the newspaper, news magazines, books, periodicals, and similar products; job printing; authorized advertising revenues; and other authorized sources of revenues, as approved by the Department of Defense and the Congress.

c. APF support shall be kept to a minimum, consistent with the S&S mission.

2. The Secretary of the Army shall be the DoD Executive Agent for APF and NAF support to the S&S. If adverse conditions occur, the other Military Services shall provide proportionate funding support through a memorandum of agreement (MOA) containing funding procedures coordinated with the affected Unified Commands and the AFIS. Copies of the agreement shall be provided to all concerned parties.

3. The Stars and Stripes and other S&S commercial resale publications may be made available within the Unified Command to other U.S. Government Agency members, and U.S. Government contractors, as approved by the Unified Command.

4. The S&S system of accounting and internal control shall conform with the requirements of DoD Instruction 7000.12, Army regulations on Morale, Welfare and Recreation (MWR) activities and NAFIs, and NAF accounting policies and procedures, except as authorized by the S&S Comptroller's Manual to meet business and consolidation requirements. The S&S shall ensure that quarterly reports are furnished to the Unified Commands, the S&S Board of Directors, and the Director of the AFIS.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to A.1. of this Appendix.

B. Appropriated Funds

In addition to DoD Directive 1015.6, the S&S shall be authorized APF support:

1. As provided by the U.S. Army for direct funding support when adverse conditions make such funding necessary to ensure the survival of the newspaper without impairment of mission capability. The Secretary of the Army shall provide such funding when requested by the affected Unified Command Commander-in-Chief (CINC), through the Director of the AFIS.

2. For regional air transportation of the newspaper, overseas "transportation of things" as authorized to joint-Service NAFIs; and electronic, optical, or satellite transmission to the newspaper when long distances require these modes to ensure timely and economical delivery.

3. As required, to transport Stars and Stripes to officially designated "remote and isolated" locations. The Unified Command may authorize DoD official postage to remote and isolated locations, if that action is required to ensure timely delivery. Each S&S shall annually review its mailing support to minimize APF expenditures. The U.S. postal regulations apply to the S&S.

a. The S&S shall use in-house or other non-postal means of transportation to distribute the newspaper to areas that are not designated as remote and isolated.

b. The S&S are authorized to use official managerial and administrative mail related exclusively to the business of the U.S. Government in accordance with DoD 4525.8–M,[3] Chapter 3, Subsection O.8. Such official mail is also authorized to support archive responsibilities in the United States, as designated by the AFIS. Official mail may forward the Stars and Stripes through the Department of Defense to the Congress. Official mail is not authorized to provide the Stars and Stripes to general readership or to support in-theater distribution of S&S resale commercial publications.

4. For transportation of military personnel incident to mission-essential travel, required military training, participation in contingency operations, in military field exercises, such as "Reforger" or "Team Spirit," or to areas of armed conflict.

5. In times of armed conflict or national contingency deployment, as directed by the Chairman of the Joint Chiefs of Staff for production and free distribution of the Stars and Stripes to forces as designated. The other Military Services shall reimburse the Department of the Army for services as authorized in the MOA. The Unified Commands shall endeavor to provide the Stars and Stripes and other S&S services for DoD personnel engaged in military operations, contingency operations, and exercises in the most expeditious manner possible as requested by the participating commands. The requesting Unified Command shall be responsible for distribution of the Stars and Stripes within its theater of operations. These services shall be provided on a reimbursable basis to the S&S.

6. In other agreements as made with the Unified Commands, the Department of

[3] See footnote 1 to A.1. of this Appendix.

Defense, and the U.S. Army as the DoD Executive Agency.

C. Nonappropriated Funds

1. So that the Department of the Army may perform its duties as the DoD Executive Agency, the S&S NAFs shall be invested in the Army's Banking and Investment Program and insured with the Army's Risk Management Insurance Program in accordance with DoD Instruction 7000.12 and the implementing Army regulations.

2. Excess NAFs belonging to the S&S may be declared excess by the Unified Command CINC, upon the recommendation of the S&S board of directors, under the guidelines in section C.3. of this Appendix. Disposition of excess NAFs shall be as directed by the Unified Command CINC. The S&S NAFs declared in excess in one theater may be allocated or loaned to the other Unified Command for S&S-related activities.

3. The NAFs may be declared in excess only if the following conditions are met:

a. The S&S working capital is at a level to continue prudent operations.

b. The local national S&S employee retirement and severance accounts are fully funded. The other S&S employment agreements required by applicable NAF regulations must also be fully funded.

c. Sufficient capital is available from an investment and/or contingency fund to complete all planned and projected capital expenditure projects, and to fulfill the other legitimate S&S business obligations.

d. Additional sinking funds are available to sustain the S&S through foreseeable periods of financial crisis created by adverse conditions. The sinking fund level shall be determined by the S&S board of directors and recommended to the Unified Command CINC for approval.

e. The retail price of the Stars and Stripes is at, or below, the most prevalent charge for similar U.S. newspapers. That shall be determined by the S&S board of directors and recommended to the Unified Command CINC for approval. The Director of the AFIS will be informed of any decision to raise the retail sales price of Stars and Stripes and will provide the Unified Command CINC an assessment of average commercial newspaper sales prices throughout the United States. The availability of the Stars and Stripes at reasonable cost to overseas personnel, commensurate with the retail sales price of comparable commercial newspapers throughout the United States, is a major quality-of-life consideration. A reasonable retail sales price is critical to ensure the greatest access for all overseas personnel and their family members to current print news and information so that they may remain informed U.S. citizens.

f. The S&S books, periodicals, magazines, and similar products are to be sold at no more than cover price and should be discounted to an appropriate level that still sustains full S&S operations, as determined by the S&S board of directors and recommended to the Unified Command CINC for approval.

4. Under adverse conditions, the S&S commander/publisher may apply for NAF support through the Unified Commands to the Director of the AFIS. Following approval by the Unified Command, the Director of the AFIS shall forward the request to the Secretary of the Army for appropriate action. Such NAF requests must first be recommended by the S&S board of directors and approved by the Unified Command CINC. In these cases, the S&S NAFs in either Unified Command may be considered as the first source before forwarding a request to the Department of the Army. The Unified Commands may lend NAFs from one S&S to the other through an MOA.

D. Bookstores and Related Resale Activities

1. The S&S shall endeavor to provide the same selection of resale commercial publications that would be available in quality bookstores in the United States through its bookstores, or, at the discretion of the S&S management, other authorized sales outlets. The S&S has the same authorities and rights for resale and distribution of commercial publications that the military exchange services have on military installations for other nonsubsistence goods and services. The assortment of commercial books, periodicals, magazines, and similar products shall approximate publications commercially available in United States bookstore chains of similar size. Decisions on which publications to include shall be made by the S&S on the basis of marketability and service, not content. As an exception to the Army NAF procurement regulations, contracting authority limitations applicable to U.S. Army and joint-Service NAFIs do not apply to the S&S procurement of resale commercial publications. Limitations will be as recommended by the S&S board of directors and approved by the Unified Command.

2. The Unified Command CINC shall adjudicate publications resale issues within the theater that cannot be resolved by the S&S at the operating level.

3. Both S&S shall consolidate their wholesale purchases of commercial publications to the maximum extent, consistent with Unified Command distribution criteria, actual economies of scale, and cost-efficiencies. Consolidation initiatives shall be worked in concert with the Unified Commands, the AFIS, and the S&S board of directors. As recommended by the S&S board of directors and approved by the Unified Command CINC, the S&S bookstores shall offer discounts similar to commercial United States bookstore franchises. The offering of discounts should not endanger the financial viability of the S&S.

4. The S&S bookstores shall be audited by the S&S management at least annually. Where bookstores are operating at a consistent financial loss, the S&S may consider servicing readers through arrangements with exchanges, other military outlets, or consider consolidation at central points.

a. Bookstore inventory levels shall be verified internally on a semiannual basis. Inventory levels shall be held to cost-effective levels that still consider the servicing needs of overseas customers.

b. The S&S shall establish affidavit-return procedures to vendors and/or publishers, where possible, to return damaged merchandise, overstock or out-of-date publications to reduce APF expenditures necessary for "over-the-water" transportation.

5. The S&S shall conduct local "market-penetration" surveys. The S&S shall also operate a "customer-complaint" feedback system to monitor its service and provide the best possible service to its customers. The results of those surveys shall be provided to the Unified Command with recommendations to the S&S board of directors, as required.

E. Advertising

1. As U.S. Government publications, the Stars and Stripes operate under the authority of the "Government Printing & Binding Regulations"[4] issued by the Joint Committee on Printing (JCP) of the U.S. Congress. To serve the readership, the JCP has granted an exemption to Title III of the "Government Printing and Binding Regulations", authorizing the Stars and Stripes to carry limited advertising so that they may provide information to overseas DoD personnel and their families on commercial goods and services. The Stars and Stripes are authorized to solicit, sell, publish, and circulate display advertising, paid classified ads, and supplement section advertising, to include price and brand names of products or services and related coupons that are available through authorized Government outlets, their concessionaires, NAF activities, or private organizations operating on DoD installations under 32 CFR part 212. The Stars and Stripes may have run-of-the-paper display advertising not to exceed 25 percent of the newspaper over a period of 1 month. In addition, the Stars and Stripes are authorized to sell, publish, and circulate display advertising, and supplement section advertising for consumer goods and services not available through authorized Government outlets, their concessionaires, NAF activities or private organizations operating on DoD installations under 32 CFR part 212 when sponsored by MWR activities, NAFIs, or Type I (Federally Sanctioned) private organizations as defined by 32 CFR part 212. Implementation of the advertising authority shall be as specified by the Director of the AFIS, who shall coordinate with the JCP.

2. The Stars and Stripes may sell, through commercial advertising agencies, run-of-the-paper advertising of DoD recruiting and retention programs or activities.

3. The S&S has the right to refuse any advertising.

4. The Stars and Stripes may publish news stories on special DoD-affiliated tours or entertainment opportunities for DoD personnel and their dependents in accordance with DoD Instructions 1015.2[5] and 1330.13.[6]

5. The S&S may promote the Stars and Stripes, books, periodicals, magazines and similar products; authorized advertising; and

[4] Copies may be obtained from the Joint Committee on Printing of the U.S. Congress. [illegible] Hart Senate Office Building, Washington, DC 20510

[5] See footnote 1 to A.1. of this Appendix.

[6] See footnote 1 to A.1. of this Appendix.

job printing services (except APF) in the Stars and Stripes. Books, periodicals, magazines, and similar product promotions may include publications by name, title, author, and price. The Stars and Stripes also may promote literacy, health, safety, and other community service issues.

6. The S&S may promote AFRTS schedules, programs, and services in their newspapers and bookstores. The S&S shall cooperate with AFRTS outlets to promote each others' programs and services as authorized by DoD Directive 5120.20.[7]

7. As a newspaper operated by the Department of Defense, the Stars and Stripes may not:

a. Contain any material that implies that the DoD Components or their subordinate levels endorse or favor a specific commercial and/or individually-owned product, commodity, or service.

b. Subscribe, even at no cost, to a commercial, feature wire, or other service whose primary purpose is the advertisement or promotion of commercial products, commodities, or services.

c. Carry any advertisement that implies discrimination as to race, age, origin, gender, politics, religion, or physical characteristics that include health.

F. Trademark

The S&S shall trademark the Stars and Stripes in overseas areas where it is distributed.

Appendix C to Part 246—Personnel Policies and Procedures

A. General Nonappropriated Fund (NAF) Employment Policies

1. The Stars and Stripes (S&S) shall have a personnel system that is business oriented in terms of personnel management concepts. The system shall provide maximum authority and accountability to the S&S managers at all levels and shall endeavor to improve productivity through a system of awards and bonuses for high-performing employees. The S&S NAF employees shall be governed in accordance with the U.S. Army NAF regulations, except where exceptions to general policy have been granted by the Unified Commands, the American Forces Information Service (AFIS), and the U.S. Army to the S&S.

2. As DoD employees, the S&S civilian personnel shall abide by 32 CFR part 40, the Department of Defense, the Unified Command, and the U.S. Army regulations, U.S. laws governing Government employees, the applicable host-nation laws, and the applicable status of forces agreements (SOFA) requirements. The S&S commander/publisher shall ensure that the S&S employees are made aware of those provisions before being hired and that employees receive adequate personnel training.

3. The S&S shall endeavor to recruit civilian personnel with solid experience, education, and performance credentials in the required business, publishing, or editorial disciplines. The S&S, as part of its hiring practices, shall specify terms of Government employment and include responsibilities, such as those in 32 CFR part 40, so that the S&S civilian employees are fully aware of their obligations as DoD employees.

B. Appropriated Fund [APF] Personnel Assignment Authority

Appropriated-funded manpower staffing to operate, manage, or support the S&S is authorized under DoD Directive 1015.4[1]

C. Military Officer Personnel Procedures

1. Candidates for the S&S military officer positions shall be nominated by the Military Services, through the Director of the AFIS, to the Unified Command Commander-in-Chief (CINC), who shall make the final selection. The S&S military officer positions consider for nomination shall be the S&S commander/publisher and deputy commander(s).

a. The S&S commander/publisher should have military public affairs and joint-Service experience, and a journalism degree.

b. The S&S officers supervising business operations should have experience in DoD Comptroller functions and be familiar with laws and regulations applicable to DoD and NAFI business operations. A master's degree in business administration is desirable, but not mandatory.

c. Instead of an advanced degree or military public affairs experience, nominees may be authorized, by the Unified Command CINC and the AFIS, to substitute a DoD-funded "training-with-industry" program with comparable newspaper operations in the United States.

d. The Unified Commands shall forecast military vacancies in the S&S to allow time for the Military Services' nomination processes to be completed and provide for education before the S&S assignment.

e. The Military Services shall provide highly qualified officers for all S&S assignments at the required grade levels.

2. Military officers selected for duty as S&S commander/publisher shall undergo a "training-with-industry" program to provide real-world training with a commercial newspaper. That program shall be administered by the Director of the AFIS, in coordination with the Military Services and the Unified Commands.

D. Enlisted Members of the Stars and Stripes Editorial Staff

1. Enlisted military personnel shall be assigned to the Stars and Stripes editorial staff, as reflected in the designated Unified Command Joint Manpower Program (JMP) documents, on a nominative basis. The Military Services shall nominate the most mature and professional personnel for assignment to the Stars and Stripes editorial staff at the required JMP grade- and experience-level, coordinating with the Unified Commands and the Director of the AFIS. Nominations shall be considered on a competitive basis by the S&S commander/publisher and the Stars and Stripes editor. The S&S shall request nominations 18 months before projected billet vacancies. The Military Services shall forward nominations 6–10 months in advance to the S&S, (ATTN: S&S Commander/Publisher). The Military Services shall provide the S&S with reasonable overlap of military enlisted members serving on the Stars and Stripes editorial staff.

2. The S&S commander/publisher shall coordinate with the Unified Commands to ensure that there is an appropriate mixture of Military Service billets and/or assignments represented in the S&S to preserve the tradition of the Stars and Stripes as joint-Service newspapers.

Appendix D to Part 246—Editorial Operations

A. General

1. The Stars and Stripes shall serve the interests of their overseas DoD readership, as commercial daily newspapers serve their readers throughout the United States. However, as a Government organization, the Stars and Stripes news staff may not take an independent editorial position. The Stars and Stripes editorial practices and policies shall be in accordance with the highest standards of American journalism.

2. The Stars and Stripes editor, with the concurrence of the S&S commander/publisher, and the Unified Command Commander-in-Chief (CINC), as the owner of the newspaper, may establish a standard code of personal and professional ethics and general editorial principles similar to those developed at major metropolitan newspapers or by professional journalists in organizations such as the Society of Professional Journalists. Those codes usually stress the following:

a. Responsibility of the newspaper to fully inform its readership.

b. Freedom of the press.

c. Commitment to personal and professional ethics.

d. Emphasis on content accuracy, objectivity, and fair representation of all sides of an issue.

When developed, copies of the code and style guides shall be provided to the Unified Command CINC and the Director of the American Forces Information Service (AFIS).

3. The Stars and Stripes editor shall be responsible for developing editorial procedures and, if required, a style guide that mirrors daily U.S. commercial newspapers.

4. The editorial content of the Stars and Stripes shall be governed by the general principles applicable to quality commercial press as follows:

a. Presentation of News

A major purpose of the Stars and Stripes is to provide news and information from varied sources. This aids DoD members and their families stationed overseas to exercise their democratic citizenship responsibilities.

b. Commercially-Contracted News, Feature, and Opinion Columns

The Stars and Stripes purchase (or contract for) and carry news stories, features, syndicated columns, comic strips, and editorial cartoons from commercial services or sources. Wire-service news, information, and feature material may be edited in accordance with source contracts and for

[7] See footnote 1 to A.1. of this Appendix.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

space requirements. The Stars and Stripes reflect the news of the day being carried in comparable U.S. commercial daily newspapers. They should reflect different sides of issues over a reasonable amount of time.

c. Staff-Generated Copy

In keeping with the standards established for major daily commercial newspapers in the United States, staff-generated news and features in the Stars and Stripes shall be accurate, factual, impartial, and objective. News stories and feature material shall distinguish between fact and opinion. Every effort should be made to attribute quotations and facts to identified sources. In the case of controversial or sensitive stories, the Stars and Stripes editor, or his or her designee, shall ascertain the identity of confidential sources, as required by normal journalistic practices that ensure that sources are credible. The Stars and Stripes may use the normal range of journalistic techniques including "people-on-the-street" interviews if that technique does not constitute a political poll.

d. Political Campaign News

(1) The Stars and Stripes shall publish coverage of the U.S. political campaigns from commercial news sources. Presentation of such political campaign news shall be made on an impartial, unbiased, and nonpartisan basis reflecting DoD policies of non-endorsement of any specific candidates for an elected office. Every effort should be made to ensure that the Stars and Stripes reflect the full spectrum of campaign news being published in the United States on national candidates and issues.

(2) The Stars and Stripes shall support the Federal Voting Assistance Program by carrying factual information about registration and voting laws.

e. The Stars and Stripes shall provide balance in commercial syndicated columns. Since the Stars and Stripes may not take an independent editorial position, a balanced selection of syndicated opinion columns shall be published over a reasonable time period. The presentation of syndicated editorial cartoons should reflect the full spectrum of topical editorial cartoons being published throughout the United States. The S&S commander/publisher shall provide the Unified Commands annual assurance that the required balance for syndicated opinion columns has been met.

B. Administrative

1. The Stars and Stripes shall comply with DoD Instruction 1100.13 [1] on polls, surveys, and straw votes. The Stars and Stripes may not conduct a poll, a survey, exit polls, or a straw vote on any political campaign. The Stars and Stripes may publish polls, surveys, and/or straw votes furnished to the newspaper through its contracted wire-services. The Stars and Stripes may not conduct lottery games.

2. The Stars and Stripes shall have the following disclaimer placed in the masthead or at the extreme bottom of one of the prominent pages, segregated from copy in a box:

This newspaper is authorized for publication by the Department of Defense for members of the Military Services overseas. However, the contents of the Stars and Stripes are unofficial, and are not to be considered as the official views of, or endorsed by, the U.S. Government, including the Department of Defense or the (name of the appropriate Unified Command). As a DoD newspaper, the Stars and Stripes may be distributed through official channels and use appropriated funds for distribution to remote and isolated locations where overseas DoD personnel are located.

The appearance of advertising in this publication, including inserts or supplements, does not constitute endorsement by the Department of Defense or the Stars and Stripes of the products or services advertised.

Products or services advertised in this publication shall be made available for purchase, use, or patronage without regard to race, color, religion, sex, national origin, age, marital status, physical handicap, political affiliation or any other nonmerit factor of the purchaser, user, or patron.

C. Editorial

1. The Stars and Stripes news staffs are authorized to gather and report news, good and bad, on the Department of Defense and its subordinate commands. All reporting necessarily requires some investigation and, as with journalists on commercial newspapers, the Stars and Stripes news staff members have the right and need to ask questions and expect responses to fulfill the S&S mission. However, the Stars and Stripes is not an authorized investigative agency, such as military law enforcement agencies, investigative bodies, or an Inspector General, and shall not function in that capacity. As DoD employees, the Stars and Stripes news staff members must adhere to the DoD personnel policies that may not usually apply to journalists employed by commercial newspapers and must comply with 32 CFR part 40 and, as applicable, the Manual for Courts Marshall, 1984.[2]

a. Since most journalistic reporting is investigative by nature, "investigative reporting," as such, is not banned. The Stars and Stripes reporters have the same need to ask questions of sources, and expect responses, as do commercial newspaper journalists. While the Stars and Stripes staff cannot conduct independent investigations that fall under the jurisdiction of various military law enforcement of designated investigative agencies, the Stars and Stripes may report on open or completed investigations by agencies authorized to perform investigative functions. If the Stars and Stripes employees note unlawful or criminal actions in their performance of duty, they must report such incidents immediately to the S&S commander/publisher or to their immediate supervisor, in accordance with 32 CFR part 40, who shall also comply with 32 CFR part 40 and, as applicable, DoD Directive 7050.1 [3] and DoD Instruction 5240.4.[4] If there is an authorized investigation, a Stars and Stripes reporter or editor cannot protect a source as confidential when the information may be required to complete the investigation. Coverage of an investigation, from a news perspective, should be based on case progress or the resolution provided by the investigative agency if considered newsworthy by the Stars and Stripes. The Stars and Stripes editorial procedures shall not prohibit publishing news of independent investigations furnished by commercial media and, therefore, in the public domain.

b. The Stars and Stripes staff may not knowingly place classified information in Stars and Stripes staff-generated material. That does not apply to public domain information attributed to commercially contracted news, features, or opinion columns.

2. The Stars and Strips editorial staffs shall receive the same treatment as commercial media.

a. The Stars and Stripes reporters shall have the same right to ask questions, to gain help, to have access, and to attend gatherings available to reporters from the commercial media. Commanders or public affairs staffs may not use the U.S. Government status of Stars and Stripes reporters to block the release of, or access to, otherwise releasable news, information, or events. Under the same circumstances, the Stars and Stripes reporters may not use their U.S. Government status or credentials to gain special treatment, access to restricted areas or gatherings, or other advantages that are not given equally to civilian media.

b. In keeping with the "Principles of Information" in 32 CFR part 375 governing release of information to commercial media, the DoD Components are expected to make available timely and accurate information so that the Stars and Stripes news staffs and readers may assess and understand the facts about their military organizations, the national defense, and defense strategy. Consistent with statutory requirements, information shall be made fully and readily available under the principles for the release of information to the media issued by the Secretary of Defense. A Government organization may not file a request for information against another Government organization under 32 CFR part 285, which implements the Freedom of Information Act (FOIA) in the Department of Defense, but it is the responsibility of all commands to honor the DoD Principles of Information, particularly regarding the intent of open access as described in 32 CFR part 285 when responding to queries from Stars and Stripes reporters.

3. To meet organizational responsibilities, the Stars and Stripes editor, the S&S commander/publisher, and the Stars and Stripes staff members they select, should meet frequently with area commanders and public affairs officers and staffs to confer, as their counterparts in U.S. commercial daily newspapers do with local government and community interest representatives.

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1 to B.1 of this Appendix.

[3] See footnote 1 to B.1 of this Appendix.

[4] See footnote 1 to B.1 of this Appendix.

4. When matters of interest to the Stars and Stripes readership cut across the Unified Command component command responsibilities, the Stars and Stripes editor may use "special project reporting teams" to examine such concerns. Whether the areas of Stars and Stripes interest are military exercises, fast-breaking news affecting the entire Unified command community, or policies that require a greater-than-individual-reporter effort, the Stars and Stripes editor, through the S&S commander/publisher, can gain help by keeping the Unified Command and its component command public affairs offices informed of the need for theater-wide assistance. Such aid could help dispel morale-damaging rumors.

5. The Stars and Stripes shall conduct readership surveys at least once every 3 years in the Unified Commands where the Stars and Stripes are distributed. Such formal surveys shall be conducted in accordance with DoD Instruction 1100.13. The S&S may make shorter market surveys through its bookstore operations to determine changing readership interests. The Stars and Stripes is also encouraged to make frequent use of readership focus groups throughout the Unified Command.

6. The Stars and Stripes may review commercial entertainment where relevant and where it supports readership interest.

7. All bureau personnel and field reporters shall have Stars and Stripes newsroom experience before being given independent assignments. The Stars and Stripes military reporters may wear military or civilian clothes at the discretion of the S&S commander/publisher. If authorized by the S&S commander/publisher, Stars and Stripes military members may be authorized a clothing allowance in accordance with individual Service directives.

8. The Stars and Stripes are both authorized to maintain a Washington, DC, bureau located with other correspondent bureaus in the OASD(PA) Correspondents' Corridor. A desk will be provided for each Stars and Stripes. The S&S shall select the most qualified reporters possible for assignment to the bureau. A joint memorandum of understanding on personnel support shall be established between the two newspapers and approved by the Unified Commands, with a copy provided to the Director of the AFIS.

Appendix E to Part 246—Stars and Stripes (S&S) Board of Directors

A. Organization and Management

1. The S&S board of directors of each Unified Command shall provide advice to the S&S management, and recommend guidance to its Commander-in-Chief (CINC) on all business operations. Attendance is at the direction of the Unified Command CINC.

2. Each Unified Command CINC shall designate the chairman of its S&S board of directors.

3. Each S&S board of directors shall include a member from the Unified Command Offices of Public Affairs and the Comptroller, and at least one member from each of the Unified Command Service components. Members shall be appointed by the Unified Command CINC for 2 years to ensure continuity. They shall be the best qualified personnel available in business-related disciplines. Members should be at the grade of O–5, GS–12, or higher. Other than the Unified Command and the S&S senior representatives, the S&S board members should not be members of any other S&S forums or councils. Representatives from the American Forces Information Service (AFIS) and one S&S may attend the meetings of the other S&S board of directors and have their observations included in the minutes, but they are not voting members. Recommendations approved by the S&S board of directors may be incorporated by the Unified Command CINC into the Unified Command S&S instruction or directive, as applicable.

4. The S&S board of directors should meet at least three times each year. The minutes of each meeting shall be approved by the Unified Command CINC. The approved S&S board recommendations shall be incorporated, as permanent policy, into the Unified Command S&S implementing instructions or directives. Where such recommendations affect DoD policy, the Unified Commands shall ask the Director of the AFIS for resolution. The S&S commander/publisher shall provide sufficient documentation to the S&S board members between meetings to inform them of on-going business operations and the execution of financial actions.

B. Functions

1. The S&S board of directors shall monitor planning and execution of the S&S business activities.

2. The S&S board of directors shall aid the S&S commander/publisher with evaluation of external factors that impact the S&S, such as adverse conditions, as recommended by the S&S commander/publisher, the S&S board of directors, or the Unified Command CINC.

3. Annually, the S&S commander/publisher shall provide a financial plan that shall include a capital expenditure budget and a 2-year forecast for the S&S board of directors' evaluation and recommendation to the Unified Command CINC. The S&S shall also forecast and get approval for building and/or construction projects through the S&S board of directors.

4. The S&S shall maintain a 5-year business strategic and corporate plan that shall be forwarded to the S&S board of directors. The Unified Commands shall forward the on-going strategic and corporate plan to the Director of the AFIS for overall DoD strategic goals.

Dated: August 2, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–18683 Filed 8–4–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

32 CFR Part 296

National Reconnaissance Office Freedom of Information Act Program Regulation

AGENCY: National Reconnaissance Office, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed rule establishes the National Reconnaissance Office (NRO) regulation governing the disclosure of information under the Freedom of Information Act. This regulation is published pursuant to the Department of Defense rule which implements the Freedom of Information Act and it conforms to the Department's rule and schedule. As a component of the Department of Defense, the Department rules and schedules with respect to the Freedom of Information Act, as amended, will also be the policy of the NRO.

DATES: Comments must be received on or before September 7, 1993.

ADDRESSES: Comments may be mailed to: Michael P. Healy, Director, External Relations, National Reconnaissance Office, 1040 Defense Pentagon, Washington, DC 20301–1040.

FOR FURTHER INFORMATION CONTACT: Michael Healy, (703) 892–0147.

SUPPLEMENTARY INFORMATION: This regulation is issued pursuant to the Department of Defense rule, 32 CFR part 285, which implements the Freedom of Information Act and it conforms to the Department's rule and schedule contained in 32 CFR part 286. This rule does not constitute a major rule within the meaning of Executive Order 12291. Neither the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), nor the reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (Pub. L. 96–511, as amended) apply. It is hereby certified that this proposed rule does not exert a significant economic impact on a significant number of small entities. This determination is made based upon the fact that the rule merely codifies the procedural aspects of the NRO Freedom of Information Act Program, which includes guidance on how and from whom to request information pertaining to the NRO; imposes no new requirements, rights, or benefits on small entities; will have neither a beneficial nor an adverse effect on small entities, and is not a major rule under the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 296

Freedom of information.

Accordingly, title 32, chapter 1, subchapter N is proposed to be amended to add part 296 to read as follows:

PART 296—NATIONAL RECONNAISSANCE OFFICE FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Sec.
296.1 Purpose.
296.2 Definitions.
296.3 Indexes.
296.4 Procedures for request of records.
296.5 Appeals.

Authority: 5 U.S.C. 552.

§ 296.1 Purpose.

The purpose of this part is to provide policies and procedures for the National Reconnaissance Office (NRO) implementation of the Freedom of Information Act (FOIA), and to promote uniformity in the NRO FOIA program.

§ 296.2 Definitions.

The terms used in this part, with the exception of the following, are defined in 32 CFR part 286.

(a) *Freedom Of Information Act Appellate Authority.* The Deputy Director, NRO.

(b) *Initial Denial Authority.* The Director, External Relations, NRO, or the Acting Director.

§ 296.3 Indexes.

The NRO does not originate final orders, opinions, statements of policy, interpretations, staff manuals or instructions that affect a member of the public of the type covered by the indexing requirement of 5 U.S.C. 552(a)(2). The Director, NRO, has therefore determined, pursuant to pertinent statutory and executive order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552.

§ 296.4 Procedures for request of records.

(a) *Requests.* Requests for access to records of the National Reconnaissance Office may be filed by mail addressed to the Director, External Relations, National Reconnaissance Office, 1040 Defense Pentagon, Washington, D.C. 20301–1040. Requests need not be made on any special form but must be by letter or other written statement identifying the request as a Freedom of Information Act request and setting forth sufficient information reasonably describing the requested record. All requests should contain a willingness to pay assessable FOIA fees.

(b) *Determination and notification.* When the requested record has been located and identified, the Initial Denial Authority shall determine whether the record is one which, consistent with statutory requirements, executive orders and appropriate directives, may be released or should be exempted under the provisions of 5 U.S.C. 552. Normally, the Initial Denial Authority, shall notify the requester of the determination within 10 working days of the receipt of the request.

(c) *Extension of response time.* In unusual circumstances, when additional time is needed to respond, normally the Initial Denial Authority shall notify the requester in writing within the initial response period of the delay, the reasons therefore, and if specified, a date, not to exceed 10 working days, on which a determination is expected to be dispatched. When a significant number of requests have been received, e.g., 10 or more, the requests shall be initially processed in order of receipt. However, this does not preclude the Initial Denial Authority from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt.

(d) *Fees*—(1) *General.* As a component of the Department of Defense, the applicable published Department rules and schedules with respect to the schedule of fees chargeable and waiver of fees will also be the policy of NRO. See 32 CFR 286.33.

(2) *Advance payments.* (i) Where a total fee to be assessed is estimated to exceed $250, advance payment of the estimated fee will be required before processing of the request, except where assurances of full payment are received from a requester with a history of prompt payment. Where a requester has previously failed to pay a fee within 30 calendar days of the date of the billing, the requester will be required to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, as well as make an advance payment of the full amount of any estimated fee before processing a new or pending request continues.

(ii) For all other requests, advance payment, i.e., a payment made before work is commenced, will not be required. Payment owed for work already completed is not an advance payment; however, responses will not be held pending receipt of fees from requesters with a history of prompt payment. Fees should be paid by certified check or postal money order forwarded to the Director, External Relations, and made payable to the Treasurer of the United States.

§ 296.5 Appeals.

Any person denied access to records, denied a fee waiver, or who considers a no record determination to be adverse in nature, may, within 60 days after notification of such denial, file an appeal to the Freedom of Information Act Appellate authority, National Reconnaissance Office. Such an appeal shall be in writing addressed to the Freedom of Information Act Appellate Authority, National Reconnaissance Office, 1040 Defense Pentagon, Washington, DC 20301–1040, shall reference the initial denial, and shall contain in sufficient detail and particularity, the grounds upon which the requester believes release of the information, or granting of the fee waiver, is required. The Freedom of Information Act Appellate Authority shall normally make a final determination on an appeal within 20 working days after receipt of the appeal.

Dated: August 2, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–18682 Filed 8–4–93; 8:45 am]

BILLING CODE 5000–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–217; RM–8286]

Radio Broadcasting Services; Grand Gorge, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Sound of Life, Inc., seeking the allotment of Channel 287A to Grand Gorge, New York, as the community's first local service. Petitioner is requested to provide further information demonstrating that Grand Gorge is a community for allotment purposes. Channel 287A can be allotted to Grand Gorge in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (6.9 miles) northeast, at coordinates North Latitude 42–26–39 and West Longitude 74–24–54, to avoid a short-spacing to Station WYCY, Channel 287A, Hawley, Pennsylvania. Canadian concurrence is required since Grand Gorge is located within 320 within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before September 20, 1993, and reply comments on or before October 5, 1993.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Russell C. Powell, Esq., Taylor Thiemann & Aitkin, 908 King Street, suite 300, Alexandria, Virginia 22314 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–217, adopted July 13, 1993, and released July 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–18649 Filed 8–4–93; 8:45 am]

BILLING CODE 6712–01–M

---

47 CFR Part 73

[MM Docket No. 91–252; RM–7650]

Radio Broadcasting Services; Opelousas and Berwick, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies the petition for rule making filed by Cavaness Broadcasting, Inc., licensee of Station KVOL–FM, Channel 290A, Opelousas, Louisiana, requesting the substitution of Channel 290C3 for Channel 290A at Opelouses and modification of Station KVOL–FM's license to specify operation on the higher powered channel. To accommodate the upgrade at Opelousas, Cavaness also requested the substitution of Channel 295A for Channel 290A at Berwick, Louisiana, and the modification of Station KVPO–FM's license accordingly. See 56 FR 43576, August 3, 1991. With this action, this proceeding is terminated.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91–252, adopted July 9, 1993, and released July 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., sute 140, Washington, DC 20037.

Federal Communications Commission.

Michael C. Ruger,

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

[FR Doc. 93–18650 Filed 8–4–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. 89–8; Notice 7]

RIN 2127–AC98

Schedule of Fees Authorized by the National Traffic and Motor Vehicle Safety Act

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice reviews and proposes adjustments in the fees authorized by the Imported Vehicle Safety Compliance Act of 1988 relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS). The proposed adjustments would become effective as of October 1, 1993.

The agency has tentatively concluded that the annual fee for the registration of a new importer should be increased from $255 to $456, and that the annual fee for renewal of registration should be reduced from $255 to $240. The fee required to reimburse the U.S. Customs Service for bond processing costs would increase by $0.40, from $4.55 to $4.95 per bond.

With respect to fees payable for determinations that nonconforming vehicles are capable of conversion to meet the FMVSS, the agency proposes an increase from $100 to $104 for petitions that are based on the argument that the vehicle petitioned for is substantially similar to conforming vehicles. With respect to vehicles that have no substantially similar counterpart, the fee would rise from $500 to $520. In benefits by a determination would be $93, regardless of whether the determination is made pursuant to a petition or by NHTSA on its own initiative.

DATES: The comment closing date for the proposal is August 27, 1993. The anticipated effective date of the final rule will be October 1, 1993.

ADDRESSES: Comments should refer to Docket No. 89–8; Notice 7, and be submitted to: Docket Section, room 5109 400 Seventh Street, SW, Washington, DC 20590 [Docket hours are from 9:30 a.m. to 4 p.m.].

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION:

Introduction

On September 29, 1989, NHTSA adopted 49 CFR part 594, establishing the initial fees authorized by section 108 of the National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, Public Law 100–562 (54 FR 40100). These fees were applicable in Fiscal Year 1990 (FY90). Section 108(c)(3)(B) of the Vehicle Safety Act (15 U.S.C. 1397(c)(3)(B)) provides that the amount or rate of fees shall be reviewed and, if appropriate, adjusted at least every 2 years. Further, the fees applicable in any fiscal year shall be established before the beginning of such year.

In accordance with these requirements, NHTSA reviewed and adjusted fees for FY91 (55 FR 40664) and for FY92 and FY93 (56 FR 49427).

The statute authorizes an annual fee to cover the costs of the importer registration program, an annual fee or fees to cover the cost of making import eligibility determinations, and an annual fee or fees to cover the cost of processing the bond furnished to the

Customs Service. The purpose of this notice is to propose appropriate fees that would apply in FY94 and thereafter, until further changes are deemed required. As a general statement applicable to consideration of all fees, there has been a slight increase in hourly costs in FY92 and FY93 attributable to the 4.2 percent raise in salaries of employees on the General Schedule that became effective January 1, 1992, and 3.7 percent on January 1, 1993.

Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

Section 108(c)(3)(A)(iii) of the Vehicle Safety Act provides that registered importers must pay "such annual fee as the secretary establishes to cover the cost of administering the registration program. * * *." The annual fee attributable to the registration program is payable both by new applicants and by registered importers seeking to renew their registration. The reader is referred to the notice of September 29, 1989, for a fuller discussion of the fee and its components.

In accordance with the statutory directive, NHTSA has reviewed the existing fees and their bases in an attempt to establish appropriate fees for the next two fiscal years at least which would be sufficient to recover the costs of administering the importation program. The initial component of the Registration Program Fee is the portion of the fee attributable to processing and action upon registration applications. The agency estimates that this portion of the fee should be increased from $86 to $356 for new applications, and from $86 to $140 for renewals. Agency experience has shown that the average cost of handling a new application is almost three times that of its renewal.

Other costs attributable to maintenance of the registration program arise from reviewing a registrant's annual statement and verifying the continuing validity of information already submitted. These costs also include costs attributable to revocation or suspension or a registration.

The total portion of the fee attributable to maintenance of the registration program as estimated by NHTSA is approximately $100, a reduction of $69. This reflects the fact that, to date, costs have not been incurred for processing suspensions or revocations. When added to the $356 representing the registration application component, the cost to an applicant equals $456. This fee is proposed by NHTSA. It represents an increase of $201. When the $100 is added to the $140 representing the renewal component, the cost to a renewing registered importer is $240. This fee is also proposed. It represents a decrease of $15.

Sections 594.7, 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Determinations

Section 108(c)(3)(A)(iii)(II) also requires registered importers to pay "such other annual fee or fees as the Secretary reasonably establishes to cover the cost of * * * making the determinations under this section." Pursuant to part 593, these determinations are whether the vehicle sought to be imported is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, and certified as meeting the FMVSS, and whether it is capable of being readily modified to meet those standards. Alternatively, where there is no substantially similar U.S. motor vehicle, the determination is whether the safety features of the vehicle comply with or are capable of being modified to comply with the FMVSS. These determinations are made in response to petitions submitted by registered importers or pursuant to determinations made upon the Administrator's initiative. Because a substantially different procedure was adopted for the second year of this program, FY91, the reader is referred to the notice appearing at 55 FR 40664 for a fuller discussion of the cost factors of such determinations.

For FY 92 and FY93, NHTSA continued the restructured fee schedule that was adopted for FY91. Under the restructuring, the fee for a vehicle imported under a determination made on the agency's initiative is payable by the importer of any vehicle covered by any determination made on the agency's initiative. The fee for a vehicle imported under a determination pursuant to a petition is payable in part by the petitioner and in part by importers. However, the fee to be charged for a vehicle is a pro rata share of the costs in making all the eligibility determinations in the fiscal year.

The fees that were adopted in FY91 were retained unchanged for FY92 and FY93. They were based upon NHTSA's best estimates of the number of petitions that would be filed, and the number of vehicles that would be imported pursuant to determination of eligibility made upon granting those petitions. As NHTSA noted in the preamble to the final rule establishing the FY92 fees (56 FR at 49428), the agency would proceed to compare the accuracy of its estimates with the compliance data that in fact appear, so as to formulate a basis upon which to propose appropriate future fees.

NHTSA's review showed that fees collected from importers of cars covered by determinations on the agency's own initiative exceeded the agency's actual costs, while fees related to petitions did not. This was due principally to the agency's overestimation of the quantity of vehicles that would be entered under each petition. Experience has shown that an average of only one vehicle a year enters under each granted petition. The average cost of processing a "substantially similar" petition was $1,256 in 1992, but declined to $550 in the first quarter of 1993 because of elimination of unnecessary steps in the petition process. Since only one petition has been granted to date for a vehicle which is not "substantially similar" to a certified model, there is not yet an average cost figure for this category. NHTSA has decided that costs for both types must be studied over a further period of time before it can determine with a greater deal of assurance the fees required to cover the importation program. To account for inflation and the small raises under the General Schedule, NHTSA is therefore proposing that there be an increase from $100 to $104 in the fee required to accompany a "substantially similar" petition, and from $500 to $520 for other petitions.

The importer of each vehicle covered by a petition must pay $83 upon its importation, while those whose vehicles are covered by a determination on the agency's initiative must pay $156 (other than Canadian vehicles covered by code VSA–1). The agency proposes that a fee of $93 be paid by both categories of importer. At this time, NHTSA has tentatively decided that an increase for petitioners from $83 to $93 is warranted to recover costs associated with publishing notices in the **Federal Register**. On the other hand, a decrease from $156 to $93 for vehicles subject to a determination made on the agency's initiative appears warranted by the agency's tentative conclusion that such a sum is more representative of the actual costs incurred by NHTSA in this type of determination.

Section 594.9—Fee To Recover the Costs of Processing the Bond

Section 108(c)(3)(A)(iii)(II) also requires a registered importer to pay "such annual fee or fees as the Secretary reasonably establishes to cover the cost of processing the bond furnished to the Secretary of the Treasury" upon the

importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time or if the vehicle is not brought into compliance within such time, that is exported, without cost to the United States, or abandoned to the United States.

The statute contemplates that NHTSA make a reasonable determination of the cost for the United States Customs Service of processing the bond. In essence, the cost to Customs is based upon an estimate of the time that a GS 9 Step 5 employee spends on each entry, which was judged to be 20 minutes. For a fuller discussion of these costs, the reader is again referred to prior notices of Docket 89–8.

Because of the 4.2 percent and 3.7 percent salary raises in the General Schedule that were effective at the beginning of 1992 and 1993, NHTSA proposes that the current processing fee be increased by $0.40, from $4.55 per bond to $4.95.

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition or reconsideration for other administrative proceedings before parties may file suit in court.

Anticipated Effective Date

The anticipated effective date of the final rule is October 1, 1993.

Rulemaking Analyses

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

After considering the impacts of this rulemaking action, NHTSA has determined that the action is not major within the meaning of Executive Order 12291 "Federal Regulation". It further implements Public Law 100–562 under which fees may be established to cover the costs of administering the program for registration of vehicles not originally manufactured to conform to the FMVSS, of determinations that nonconforming vehicles are capable of conformity to the FMVSS, and of reimbursing or advancing the U.S. Customs Service its costs in processing safety standards conformance bonds. It is not significant under Department of Transportation regulatory policies and procedures. The action does not involve any substantial public interest or controversy. There is no substantial effect upon State and local governments. There is no substantial impact upon a major transportation safety program. Both the number of registered importers and determinations are estimated to be comparatively small, and the number of vehicles to be imported by or through such importers in coming fiscal years is estimated to be 600 per year. Nevertheless, a regulatory evaluation analyzing the economic impact of the final rule adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

The agency has also considered the effects of this action in relation to the Regulatory Flexibility Act. I certify that this action would not have a substantial economic impact upon a substantial number of small entities. Although entities that currently modify nonconforming vehicles are small businesses within the meaning of the Regulatory Flexibility Act, the agency has no reason to believe that a substantial number of these companies could not pay the fees proposed by this action. The cost to owners or purchasers of modifying nonconforming vehicles to conform with the FMVSS may be expected to increase to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of administering the registration program and making eligibility determinations, and to compensate Customs for its bond processing costs. Governmental jurisdictions would not be affected at all since they are generally neither importers or purchasers of nonconforming motor vehicles.

C. Executive Order 12612 (Federalism)

The agency has analyzed this action in accordance with the principles and criteria contained in Executive Order 12612 "Federalism" and determined that the action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action would not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers would not vary significantly from that existing before promulgation of the rule.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

PART 594—[AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR part 594 be amended as follows:

1. The authority citation for part 594 would continue to read as follows:

Authority: Pub. L. 100–562, 15 U.S.C. 1401, 1407; delegation of authority at 49 CFR 1.50

§ 594.6 [Amended]

2. In § 594.6(a) introductory, (b), (d), (h), and (i), the year "1991" would be revised to read to "1993".

3. Section 594.9(c) would be revised to read:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 1993, for which a certificate of conformity is furnished, is $4.95.

Issued on: July 30, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–18635 Filed 8–4–93; 8:45 am]

BILLING CODE 4910–59–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC–180 (Sub-No. 2)]

Rulemaking-Payment of Discounts by Motor Carriers of Property to the Nonpayer of Freight Charges

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking; extension of comment due date.

SUMMARY: By notice served June 4, 1993 (58 FR 32340, June 9, 1993), the Commission instituted a proceeding to determine whether off-bill discounting does or may result in a misrepresentation of shipping charges that should be found to be an unreasonable practice or unlawful. Written comments were sought by August 9, 1993.

By letters filed July 27, 1993, the National Small Shipments Traffic Conference and the National Industrial Transportation League requested an extension of the comment due date until after Congress has completed its legislative agenda on a pending undercharge bill. The request is reasonable and will be granted.

DATES: Comments must be received by October 15, 1993.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 180 (Sub-No. 2) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Charles E. Langyher III, (202) 927–5160 or Ronald A. Hall, (202) 927–5595. [TDD for the hearing impaired: (202) 927–5721].

Decided: July 30, 1993.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–18729 Filed 8–4–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB88

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Hawaiian Hawk From Endangered to Threatened Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify the Hawaiian hawk (*Buteo solitarius*) from endangered to threatened status. This action is the result of information gained during recovery activities, such as conducting censuses, which resulted in substantial improvement in the knowledge of the distribution of this species, indicating that the bird was more numerous than reported when it was listed in 1967. Islandwide surveys estimate the total population size has remained at the minimum recovery goal for threatened status identified in the Hawaiian Hawk Recovery Plan. In addition, whereas the species was once thought to be restricted to undisturbed native habitat, it is now known to occupy disturbed habitat and also exploit alien prey species as a food resource. This rule is proposed under the Endangered Species Act of 1973, as amended (Act), and is based on a thorough review of all information currently available for the species. The proposed change in classification reflects an improvement in status and will not significantly alter the protection of this species under the Act. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by October 4, 1993. Public hearing requests must be received by September 20, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian hawk or ìo (*Buteo solitarius*) is the only member of the family Accipitridae found in the Hawaiian Islands (Berger 1981). This endemic hawk is restricted to the island of Hawaii, although vagrant individuals have been recorded from the other Hawaiian Islands (Banko 1980), and fossil remains have been found on the island of Molokai (Olson and James 1982). The Hawaiian hawk occupies a variety of habitats, including lowland agricultural areas and forests dominated by alien plant species to mid-elevation pasture lands and native rain forests (Griffin 1985). The species is generally solitary except in the breeding season, when pairs build nests and lay eggs. Although this species was first described in the late 1800's, until recently the breeding biology and habitat use of this species was very poorly understood.

The Hawaiian hawk was added to the List of Endangered and Threatened Wildlife on March 11, 1967 (32 FR 4001). At the time of listing, the population was believed to number in the low hundreds (Berger 1981). Extensive habitat modification caused by logging and grazing of nonnative ungulates was assumed to be a direct threat to the existence of the species. Shooting was also reported to be a factor contributing to the low number of individuals.

Population records of the Hawaiian hawk are nonexistent prior to European exploration of the Hawaiian Islands that began in 1778. Between the late 1700's and the early 1900's, records from five naturalists indicate that the species was a resident in all major districts on the island of Hawaii and occupied a broad range of elevations (Banko 1980). In an attempt to establish population trends, Banko (1980) compiled all historical records of the hawk and compared them

to recent records. Although the hawk had been recorded recently in all districts where it had been present 80 or more years ago, close examination of the data, according to Banko (1980), suggested a long-term population decline. Other authors also depict the hawk as declining in numbers during recent times (Berger 1981, Munro 1944). However, Banko (1980) indicated that conclusions based on these relatively scattered records and the lack of complete knowledge on the breeding biology must be considered tentative. In fact, Morrison (1969), who compiled site records for 1967 and 1968 in Volcanoes National Park, concluded that the hawk could be found in woody vegetation anywhere in the park. Although the data compiled by Morrison (1969) documented a relatively small but stable population in a protected habitat and was based mostly on incidental observations, this was one of the first surveys that had been completed for this species at that time. Tomich (Banko 1980) suggested that in the late 1960's and early 1970's the population in one of the districts in Hawaii was more numerous than in earlier years. Tomich (Banko 1980) and Morrison's (1969) surveys may have been the first indications that the Hawaiian hawk was indeed more numerous than previously reported.

Beginning in 1980 and continuing though 1982, a study was initiated to determine the distribution, habitat, reproductive biology, and breeding and foraging behaviors of the Hawaiian hawk (Griffin 1985). Griffin's study represents the first comprehensive work on the hawk. The authors of the Hawaiian Hawk Recovery Plan relied extensively on the data that Griffin collected (USFWS 1984).

Prior to Griffin's (1985) study, the hawk population was believed to be severely reduced in numbers due to habitat encroachment by humans. Both urban development and agricultural practices of land-clearing for grazing and logging were determined to be the factors leading to the hawk's decline (Berger 1981). As with many other native species of Hawaiian birds, the hawk was presumed to rely exclusively on native habitats so that loss of habitat would naturally lead to decline. Moreover, the introduction and proliferation of alien mammals (e.g., rats (*Rattus sp.*), mongooses (*Herpestes auropunctatus*), feral domestic cats (*Felis catus*)) that prey upon many native species' nests were assumed to be a factor in the hawk's reproductive success.

According to Griffin (1985), the Hawaiian hawk has adapted adequately to increased habitat modification and the introduced predators. The hawk has been found in a variety of habitats including lowland agricultural areas and forests dominated by alien plants to mid-elevation pasture land and native rainforests (Griffin 1985). Although all habitats were not sampled, nest sites were equally divided among all habitats with no differences in nest success reported (Griffin 1985). A wide variety of nest tree species were reported, with the native *Metrosideros polymorpha* ('ohi'a) being the most common, but several types of large alien tree species were also used for nesting.

When the Hawaiian hawk first colonized the Hawaiian Islands, it undoubtedly specialized on bird prey since no native land mammals (with the exception of the Hawaiian hoary bat (*Lasiurus cinereus semotus*)), reptiles, or amphibians were present. After the introduction of small mammals (e.g., rats, house mice (*Mus musculus*)) and some alien bird species (e.g., common myna (*Acridotheres tristis*), Japanese white-eye (*Zosterops japonicus*)) to Hawaii, the variety of available prey increased dramatically. However, it was not known until recently that the introduced species of mammals and birds were actually exploited by the hawk as prey. Griffin (1985) reports that the hawk is very adaptable and versatile in its feeding habits and exploits introduced species as food items. Prey selection varies with habitat type, with the hawk feeding on birds in the forested and agricultural areas that it frequents and primarily on mammals in pasture lands.

The Hawaiian Hawk Recovery Plan (1984) includes the following prime objective:

"To ensure a self-sustaining 'io population in the range of 1,500 to 2,500 adult birds in the wild, as distributed in 1983, and maintained in stable, secure habitat. For purposes of tracking the progress of recovery, 2,000 will be used as a target to reclassify to threatened status. Criteria for complete delisting will be further developed."

Based on the best current estimates available, the Service believes that the breeding population on the island of Hawaii numbers between 1,400 and 2,500 individuals distributed as in 1983 (Griffin 1985, Scott *et al.* 1986). With regard to securing habitat, the recovery plan includes a goal to maintain optimum or suitable habitat for feeding/nesting, which includes the conservation of forest habitat and the protection of occupied territories in nonnative forests and agricultural areas. The Service believes that enough secure habitat is presently available for reclassification of the species to threatened status, but not enough for delisting.

Summary of Factors Affecting the Species

The Service proposes to reclassify the Hawaiian hawk (*Buteo solitarius*) from endangered to threatened status. The Service's listing regulations (50 CFR part 424) provide for a review of five factors when reclassifying (or listing or delisting) a species (§ 424.11). The Service has studied the relevant information available for the Hawaiian hawk in Hawaii and summarizes this information for each of these five factors below:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Historically, the Hawaiian hawk was probably more widespread than it is today and habitat loss or modification certainly contributed to the decline. Colonization of the Hawaiian Islands by both Polynesian and European settlers undoubtedly contributed to at least partial curtailment of its range. The species may have occurred on other islands, certainly on the island of Molokai (Olson and James 1982); however, the distribution of the hawk is currently limited to the island of Hawaii. At the time of listing, the species was estimated to number somewhere in the low hundreds, although that figure may have been an underestimate.

The Hawaiian hawk population seems to have undergone periods of fluctuation; perturbation by humans may have had a particularly negative effect during the last two or three centuries. Habitat modification from logging and the grazing by nonnative ungulates reduced the quantity and quality of nesting habitat at least in terms of native forest reduction and modification. However, the hawk appears to have adapted to human colonization and at least some native habitat alteration (Scott *et al.* 1986). Recent studies have shown that the hawk will occupy nonnative areas (e.g., pasture lands, agricultural fields, forests dominated by alien plants) as nesting habitat. As these modified areas expand with an increasing human population, the hawk may be one of the few native Hawaiian birds with the versatility to adapt to a changing landscape.

Currently, the range of the hawk extends partially over private property that is used for grazing, logging, or agriculture. In some modified areas, densities of hawks are similar to native habitats, and the birds are able to

exploit introduced mammals as prey. However, these areas are not managed specifically for the hawk and the current land use could change to a habitat that is entirely unsuitable for the hawk (e.g., areas with no or few trees). In addition to habitat change, the prey densities or species could change and the hawk may not adapt quickly. Therefore, although modified habitat can be occupied by the hawk, managed native habitat is also a key to the recovery of the species. Hakalau National Wildlife Refuge, Hawaii Volcanoes National Park, and State of Hawaii Puu Waawaa Wildlife Sanctuary are sites that are managed for native bird populations. Given that the hawk shows site fidelity and maintains territories year-round, the importance of maintaining the necessary habitat requirements is significant.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Historically, some specimens of the hawk were taken for scientific collection and also may have been taken by the early Hawaiians for either food or feathers. Neither of these factors are considered to have had a significant impact on the hawk population. Currently, the species is not known to be taken or used for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Prior to human colonization of the Hawaiian Islands, predation on the hawk population would have been relatively insignificant. With few co-existing native predators, the hawk was probably only vulnerable during the nesting season, when some eggs or young may have been taken by native Hawaiian crow (*Corvus hawaiiensis*) or Hawaiian owl (*Asio flammeus*).

With the introduction of nonnative potential predators, such as rats, mongooses, and domestic cats, many native Hawaiian forest birds have been virtually decimated by predation. However, there has been no evidence that the hawk has been significantly affected by any introduced mammals. Undoubtedly chicks or fledglings that fall out of the nest could succumb to one of the predators, but the number would be very small each breeding season.

Disease is a relatively unknown factor in the survival of the hawk. Recent studies have suggested that the hawk is probably somewhat resistant to diseases introduced to the Hawaiian Islands that have devastated many other endemic forest birds. Griffin (1985) has suggested that the hawk's immunogenetic capability for avian malaria is sufficient to be unaffected by the disease. However, the testing methods in Griffin's study may not have been sensitive enough to detect either chronic low levels or to determine whether malaria was being actively transmitted in the sample area. Avian pox-like lesions have been reported for the hawk (Griffin 1985), but no studies have been conducted to determine whether this disease is common. Compared to other endemic forest birds that are extremely vulnerable to the two introduced avian diseases, neither disease appears to be a significant factor affecting the hawk population. However, further study of the effects of disease is recommended.

D. The Inadequacy of Existing Regulatory Mechanisms

This species is protected by the Endangered Species Act of 1973, as amended, and the Migratory Bird Treaty Act. It is also currently designated as endangered by the State of Hawaii. If the proposed reclassification to threatened status becomes final, no substantive change in the protection afforded this species under these regulatory mechanisms is anticipated. Existing regulatory mechanisms determined necessary to protect this species and its essential habitat will remain in effect.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Any endemic insular species is vulnerable to a variety of environmental and human-caused factors that could affect the species' survival. Because the hawk is found on only a single island, potential threats from disease or environmental catastrophes are such that there is no true source pool of individuals (at the species' range extremes for example) that would escape such threats. The island of Hawaii is relatively large, as is the hawk's range on the island, so the species is unlikely to suffer greatly from natural environmental catastrophes, although hurricanes can be considered potential threats.

Shooting by people who considered the hawk to be a threat to small farm animals may have been a significant factor to the population in the past. Human disturbance at the nest site is also considered to reduce reproductive success where the disturbances occur. Nest site disturbance may increase with increased urbanization and modification of native habitat. Shooting is probably insignificant, given greater exposure of endangered species issues and public education.

Based on a careful assessment of the best scientific and commercial information available regarding past, present, and future threats faced by this species, the preferred action is to reclassify the Hawaiian hawk from endangered to threatened status. The Service will recommend that this species be delisted when recovery criteria as outlined in the recovery plan are reached (see **SUPPLEMENTARY INFORMATION** (Background) section). For reasons discussed below, critical habitat is not being proposed at this time.

If made final, this rule would change the status of the Hawaiian hawk at 50 CFR 17.11 from endangered to threatened. This rule would formally recognize the relative security of this species from no longer being in imminent danger of extinction throughout a significant portion of its range. This proposed change in classification would not significantly alter the protection for this species under the Endangered Species Act. Anyone taking, attempting to take, or otherwise possessing a Hawaiian hawk in an illegal manner would still be subject to penalty under section 11 of the Act. There would be no difference in penalties for the illegal take of an endangered species versus a threatened species. Section 7 of the Act would also continue to protect this species from Federal actions that would jeopardize the continued existence of the species.

Critical Habitat

Section 4(a)(3) of the Act requires critical habitat to be designated to the maximum extent prudent and determinable at the time a species is listed as endangered or threatened. The Service has concluded that designation of critical habitat for the Hawaiian hawk is not prudent at this time. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when such designation would not be beneficial to the species. As discussed below, very few, if any, Federal agencies are involved with activities that would adversely affect the Hawaiian hawk. Consequently, critical habitat designation would offer little if any additional protection to the Hawaiian hawk. Furthermore, the Hawaiian hawk occupies a number of habitat types, including agricultural areas (where some trees remain) and forests dominated by alien plant species. Thus, a designation of critical habitat would not very likely offer additional benefits to the species. Landowners can be notified of the presence of the species and of the importance of maintaining certain habitat features. The recovery process will continue to be used to provide

protection to the Hawaiian hawk and its habitat.

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 activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such activities would continue to be practiced for the Hawaiian hawk. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, 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 its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out, are not likely to jeopardize the continued existence of listed species or result in destruction or adverse modification of critical habitat. If a proposed Federal agency action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Hawaiian hawk occurs on Federal land owned by the U.S. Fish and Wildlife Service and National Park Service. The Forest Service provides technical assistance to private landowners on Hawaii.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and economic hardship in certain circumstances.

Requests for copies of the regulations on listed wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Hawaiian hawk;

(2) The location of any additional populations of this species; and the reasons why any habitat should be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Hearing requests must be filed within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Banko, W.E. 1980. History of endemic Hawaiian birds. Part I. Population histories—species accounts. Forest birds: Hawaiian hawk ('io). CPSU/UH Avian History Report 6A. Dept. of Botany, Univ. of Hawaii. 85 pp.

Berger, A.J. 1981. Hawaiian Birdlife. The University Press of Hawaii. 260 pp.

Griffin, C.R. 1985. Biology of the endangered Hawaiian hawk: Ecology, life history, and environmental pollution problems. Unpublished Final Project Report. Cooperative Agreement Contract 14–16–0009–80–933. U.S. Fish and Wildlife Service. 222 pp.

Morrison, G.T. 1969. Hawaiian hawk. Elepaio 29(9):75–89.

Munro, G.C. 1944. Birds of Hawaii. Tongg Publ. Co., Honolulu. 192 pp.

Olson, S.L., and H.F. James. 1982. Prodromus of the fossil avifauna of the Hawaiian Islands. Smithsonian Contributions to Zoology, No. 365. 59 pp.

Scott J.M., S. Mountainspring, F.L. Ramsey, and C.B. Kepler. 1986. Forest Bird Communities of the Hawaiian Islands: Their Dynamics, Ecology, and Conservation. Studies in Avian Biology No. 9. 431 pp.

U.S. Fish and Wildlife Service. 1984. Hawaiian Hawk Recovery Plan. U.S. Fish and Wildlife Service, Honolulu. 48 pp.

Author

The primary author of this proposed rule is Mr. Scott Johnston, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850 (808/541–2749).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation 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]

It is proposed to amend § 17.11(h) by revising the entry under BIRDS for "Hawk, Hawaiian" to read as "T" under "Status".

Dated: July 8, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–18638 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–55–P

---

50 CFR Part 17

RIN 1018—AB97

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Dugong in the Trust Territory of the Pacific Islands, the Republic of Palau

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposed to extend endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for the dugong (*Dugong dugon*) throughout its range. Due to an inadvertent oversight, Individuals of the dugong that occur in the United States, specifically those that occur in the Trust Territory of the Pacific Islands (Republic of Palau), are not officially listed as endangered; however, all individuals that occur in foreign countries are listed as endangered. The dugong population in the Republic of Palau currently numbers fewer than 200 individuals and is the most isolated dugong population in the world. The Palauan population is seriously threatened by poaching. This proposal, if made final, would implement the Federal protection and recovery provisions provided by the Act. Comments and materials related to this proposal are solicited from the public.

DATES: Comments from all interested parties must be received by October 4, 1993. Public hearing requests must be received by September 20, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Robert P. Smith, Field Supervisor, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, room 6307, P.O. Box 50167, Honolulu, Hawaii 96850. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Karen W. Rosa at the above address (808/541–2749).

SUPPLEMENTARY INFORMATION:

Background

The dugong (*Dugong dugon*) (Muller 1776, as cited by Eldredge 1991) is the only species in the genus *Dugong* and one of only four extant species in the order Sirenia. The dugong is a strictly marine species that inhabits shallow, coastal waters in tropical seas. It was once distributed from the east coast of Africa to Australia and the Western Pacific. It has been exterminated throughout much of this range, mostly from hunting by humans, and few insular populations remain. One remnant population is found in the coastal waters of the Trust Territory of the Pacific Islands (the Republic of Palau). Surveys were conducted by the Service in 1977, 1978, 1983, and 1991. Results from these surveys indicate that fewer than 200 dugongs remain in Palau, and their numbers are decreasing (Marsh et al. 1991). The decrease in dugong numbers is mainly attributable to illegal hunting for meat, jewelry, and sport. Poaching, coupled with the dugong's naturally low reproductive potential (about one calf every 3 years) (Brownell et al. 1988), may lead to the extinction of the Palauan population by the end of this century (Brownell et al. 1979).

Previous Federal Action

Currently, the dugong is listed as endangered throughout its range, except in the United States (50 CFR 17.11). The exclusion of protection in the United States stems from the Service's former practice of preparing a "Native" list and a "Foreign" list under the Endangered Species Conservation Act of 1969 (Pub. L. 91–135; 83 Stat. 275). Under this former Act, the Service listed the dugong on the "Foreign" list of protected species (35 FR 18320; December 2, 1970). When the Endangered Species Act of 1973 (Pub. L. 93–205; 87 Stat. 884) became effective on December 28, 1973, it supplanted the Endangered Species Conservation Act of 1969, and the "Native" and "Foreign" lists were combined to create one list of endangered and threatened species (39 FR 1171; January 4, 1974). When the lists were combined, the dugong was listed as endangered wherever found, including within the United States. This inclusion of the United States, however, was made without prior notice to the affected State (i.e., the Republic of Palau), which is required under section 4(b)(5) of the Act. When this oversight was discovered in 1988, the Service amended the Code of Federal Regulations (50 CFR 17.11), deleting the United States from the range within which the dugong receives protection. Hence, the dugong population in Palau has been afforded no protection under the Act since 1988. Since the Republic of Palau has now been formally notified of this proposed action, the Service proposes to extend the Act's protection to the dugong within the United States.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the (*dugong dugon*) are as follows:

A. The Present or Threatened Destruction Modification or Curtailment of Its Habitat or Range

Habitat degradation associated with increased development and water projects in Palau could develop into a more serious threat as tourism and development in Palau continue to increase. Since the dugong is dependent on limited, near-shore waters with abundant sea grasses, any destruction or modification of these areas in Palau could have a serious effect on the already stressed dugong population.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Poaching of the dugong is the most serious threat to the species' survival. The animals are killed for their meat and hides and for creation of jewelry items crafted from the animal's ribs. Traditionally, the dugong was effectively conserved by the local chiefs of Palau. A bracelet made from the atlas vertebra of a dugong was worn only by chiefs. Now that the traditional role of chiefs in Palau has diminished, the species is afforded little protection from poaching, and people using speed boats, explosives, spear guns, and other items, are able to take much larger numbers of the animal than was possible in the past. Since the animals' habits are so well known and they stay in such close proximity to the shoreline to feed, they are easily located and hunted.

C. Disease or Predation

It is not known whether disease has been a factor in the decline of the dugong. However, given their low numbers and seclusion in the waters of Palau, any outbreak of disease could

foreseeably lead to the extirpation of that population. The most likely natural predator of dugong is the tiger shark (*Galeocerdo curvieri*) (John Naughtin, National Marine Fisheries Service, pers. comm., 1993). An attack by killer whales on a group of 40 dugongs has also been documented (Novak 1991).

D. The Inadequacy of Existing Regulatory Mechanisms

The purpose of this proposed rulemaking is to extend the protective status afforded by the Endangered Species Act of 1973, as amended, to the dugong population of Palau, since this population is not currently protected by the Act. Although Palauan law provides protection to the dugong, it is inadequately enforced, due to limited personnel and resources. As a marine mammal, the dugong should be afforded full protection under the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), under which it should bear the designation of "depleted." However, the definition of "United States" in section 3 of that Act does not include the Trust Territory of the Pacific Islands. As a result, it is difficult to extend the protection of the Marine Mammal Protection Act as it is currently worded to the dugong population in Palau.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The dugong population of Palau numbers fewer than 200 individuals and has a very low reproductive potential (about one calf every 3 years) (Brownell et al. 1988). The combination of these two factors leads to the risk of genetic inbreeding and makes the population extremely vulnerable to extinction from catastrophic events, such as floods, hurricanes, pollution, and disease.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to propose the dugong (*Dugong dugon*) as endangered throughout its range. The lack of protection under the Act for the Palauan population of the dugong since 1988 is due to an uncorrected technicality, rather than biological data. The dugong is endangered throughout its range, especially in the secluded archipelago of the Republic of Palau, where it numbers fewer than 200 and is seriously threatened by poaching activities. Critical habitat is not being proposed at this time for the dugong for reasons discussed in the "Critical Habitat" section of this proposal.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species. Such a determination would result in no known benefit to the dugong. The population is small and localized and is highly threatened by poaching. Publication of detailed critical habitat maps and descriptions in the **Federal Register** would very likely lead to increased poaching, and could, therefore, increase enforcement problems. Protection of habitat will be addressed through the recovery process. The Service, therefore, finds that designation of critical habitat for the dugong is not prudent at this time, because such a designation would increase the degree of threat from poaching or other human activities, and because it is unlikely to aid in the conservation of the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following a listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, 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 its critical habitat, if any is being proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No Federal action or involvement in the Republic of Palau that would affect the dugong is expected or known at this time.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered species of wildlife. All prohibitions of section 9(a)(1) of the Act, implemented by 50 CFR 17.21, would apply. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.22 and 17.23 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. It is anticipated that few trade permits would ever be sought or issued because the species is not common in captivity or in the wild.

On July 1, 1975, the dugong (*Dugong dugon*) was included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), except the Australian population which was included in Appendix II. The effect of this listing is that both export and import permits are generally required before international shipment may occur. Requests for copies of the regulations on protected wildlife and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife 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 connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Brownell, R.L., P.K. Anderson, R.P. Owen, and K. Ralls. 1979. The status of dugongs at Palau, an isolated island group. Pp. 11–23 *in* Proceedings of a Seminar/ Workshop on the Dugong, 8–13 May 1979. Department of Zoology, James Cook University of North Queensland.

Brownell, R.L., J. Engbring, K. Ralls, and G.B. Rathbun. 1988. Status of dugongs in waters around Palau. Marine Mammal Science 4(3):265–270.

Eldredge, L.G. 1991. Annotated checklist of the marine mammals of Micronesia. Micronesia 24(2):217–230.

Marsh, H., T. O'Shea, T. Preen, G.B. Rathbun. 1991. An assessment of the status of the dugong in Palau: A preliminary report to the Palauan Government. Unpublished, 3 pp.

Nowak, R.M. 1991. Walker's mammals of the world, fifth edition. The Johns Hopkins University Press, Baltimore and London, pp. 1294–1296.

Author

The primary author of this proposed rule is Karen W. Rosa, Pacific Islands Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation 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.

2. It is proposed to amend § 17.11(h) by revising the entry for the Dugong (*Dugong dugon*) under MAMMALS in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*		*
Dugong	Dugon, dugon	East Africa to southern Japan, including U.S.A. (Trust Territories).	Entire	4,___	NA	NA	
*	*	*	*	*	*		*

Dated: July 7, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–18636 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

RIN 1018–AC01

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Royal Snail and Anthony's Riversnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the royal snail (*Pyrgulopsis* (=*Marstonia*) *ogmorhaphe*) and Anthony's riversnail (*Athearnia anthonyi*) as endangered species under the Endangered Species Act of 1973, as amended (Act). The royal snail is known from only two spring runs on public and private lands in the Sequatchie River system, Marion County, Tennessee. The extremely limited distribution of the royal snail and the limited amount of occupied habitat make this species extremely vulnerable to extirpation. Anthony's riversnail is known from two small populations—one in the Sequatchie River, Marion County, Tennessee, and

one in Limestone Creek, Limestone County, Alabama. These populations are threatened by the general water quality deterioration that has resulted from siltation and other pollutants contributed by such factors as coal mining, poor land use practices, and waste discharges. Comments and information are sought from the public on this proposal.

DATES: Comments from all interested parties must be received by October 4, 1993. Public hearing requests must be received by September 20, 1993.

ADDRESSES: Comments, materials, and requests for a public hearing concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff or Mr. Richard G. Biggins at the above address (704/665–1195, Ext. 229 or 228, respectively).

SUPPLEMENTARY INFORMATION:

Background

Royal Snail

The royal snail (*Marstonia ogmorhaphe*) was described by Thompson in 1977 and was later reassigned to the genus *Pyrgulopsis* by Hershler and Thompson (1987). The royal snail is usually less than 5 millimeters (0.25 inches) in length. It is a short-lived (annual) species, distinguished from other closely related species by (1) relatively large size; (2) large number of whorls (5.2 to 5.8); (3) deeply incised, suture-producing, strongly shouldered whorls, which are almost flat above; (4) complete aperture, which is broadly ovate in shape with a rounded posterior corner; (5) outer lip that is slightly arched forward in lateral profile; (6) thin shell; (7) conical-terete shape; and (8) enlarged bursa copulatrix with a completely exposed duct (Thompson 1977).

The royal snail is known from only two spring runs in the Sequatchie River system in Marion County, Tennessee. Royal snails are generally found in the diatomaceous "ooze" and on leaves and twigs in the quieter pools downstream from the spring source.

While no populations of the royal snail are known to have been lost, the general deterioration of the water quality that has resulted from siltation and other pollutants contributed by coal mining, poor land use practices (e.g., lack of erosion control, improper application of pesticides, etc.), and waste discharges likely are impacting the species. This could result in serious, irreversible threats. Additionally, because both existing populations inhabit extremely limited areas, they are very vulnerable to extirpation from accidental toxic chemical spills or vandalism.

On December 17, 1992, the Service notified by mail (28 letters) the potentially affected Federal and State agencies, local governments, and interested individuals within the species' present range that a status review of the royal snail was being conducted. Three agencies and one private organization responded. The Tennessee Valley Authority supported proposing the species for listing. The Tennessee Wildlife Resources Agency, U.S. Soil Conservation Service, and the one responding private organization did not take a position on the potential listing.

Anthony's Riversnail

Anthony's riversnail was originally described from specimens collected in the "Holstein" (=Holston) River, near Knoxville, Tennessee ("Budd," in Redfield 1854). This relatively large freshwater snail, which grows to about 2.5 centimeters (1 inch) in length, is ovate and olive green to yellowish brown in color. Anthony's riversnail is listed by the Tennessee Department of Environment and Conservation as a threatened species (Bogan and Parmalee 1983). This rare aquatic snail, which coexists in the Sequatchie River with several federally listed species, was once fairly widespread in the Tennessee River system.

Anthony's riversnail is primarily a big-river species that was historically associated with shoal areas in the main stem of the Tennessee River and the lower reaches of some of its tributaries. There are historical records of the species from the lower French Broad River, Knox County, Tennessee; Nolichucky River, Green County, Tennessee; Clinch River, Jefferson County, Tennessee; Beaver Creek, Knox County, Tennessee; Little Tennessee River, Monroe and Loudon Counties, Tennessee; Tellico River, Monroe County, Tennessee; Sequatchie and Little Sequatchie River and Battle Creek, Marion County, Tennessee; South Chickamauga and Tiger Creeks, Catoosa County, Georgia; Limestone Creek, Limestone County, Alabama; and Tennessee River, Knox and Loudon Counties, Tennessee, and Jackson, Limestone, and Lauderdale Counties, Alabama (Bogan and Parmalee 1983; Gordon 1991; F. Thompson, Florida Museum of Natural History, personal communication, 1991). Presently, only two small populations are known to survive—one in the Sequatchie River, Marion County, Tennessee (M. Gordon, Tennessee Technological University, and S. Ahlstedt, Tennessee Valley Authority, personal communications 1991), and one in Limestone Creek, Limestone County, Alabama (Thompson, personal communication, 1991; Garner 1992). Many populations were lost when much of the Tennessee River and the lower reaches of its tributaries were impounded. The general deterioration of the water quality that has resulted from siltation and other pollutants contributed by coa mining, poor land use practices (e.g., lack of erosion control, improper application of pesticides, etc.), and waste discharges was likely responsible for the species' further decline. These factors continue to impact the Sequatchie River and Limestone Creek populations.

Both existing populations inhabit short river reaches; thus, they are very vulnerable to extirpation from accidental toxic chemical spills. Additionally, because these populations are isolated, their long-term genetic viability is questionable. As the Sequatchie River and Limestone Creel are isolated by impoundments from other Tennessee River tributaries, recolonization of any extirpated populations would be unlikely withou human intervention.

Anthony's riversnail (*Athearnia anthonyi*) first appeared as a candidate species (category 2) on May 22, 1984, in the Invertebrate Notice or Review (49 FR 21664–21675). This taxon was reclassified from category 2 to category 3B on January 6, 1989, in the Animal Notice of Review (54 FR 554–579). The reclassification was based on information that Anthony's riversnail was not a distinct species, but that it was instead the same as another category 2 species, the boulder snail (*Leptoxis* (=*Athearnia*) *crassa*). Gordon (1991) examined juveniles of both species and concluded that the two snails are distinct species. However, as the boulder snail is apparently extinct (Bogan and Parmalee 1983, Gordon 1991), recognition of the snail as a separate species is irrelevant.

On June 12, 1992, the Service notified by mail (37 letters) the potentially affected Federal and State agencies, local governments, and interested individuals within the species' present range that a status review of the Anthony's riversnail was being conducted. Four agencies responded.

The Tennessee Department of Environment and Conservation supported proposing the species for listing. The Tennessee Valley Authority, U.S. Soil Conservation Service, and Tennessee State Planning Office responded to the notification letter but did not take a position on the potential listing.

On October 27, 1992, based on available information, the Service concluded that each of these snails qualified as a category 1 candidate species. The royal snail was assigned a listing priority of 5, and the Anthony's riversnail was assigned a listing priority of 2 (see **Federal Register** for September 21, 1983, (48 FR 43098) for a discussion of the Service's listing priority system).

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act (16 U.S.C. 1531 et seq.) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the royal snail (Pyrgulopsis (=Marstonia) ogmorhaphe) and Anthony's riversnail (Athearnia anthonyi) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The royal snail is known from only two spring runs in the Sequatchie River system in Marion County, Tennessee, and has never been found outside these areas. This extremely limited distribution, the limited amount of occupied habitat, the ease of accessibility, and the species' annual life cycle make the royal snail extremely vulnerable to extirpation. Threats to the species include siltation; road construction; logging; agricultural, municipal, industrial, and mining runoff (both direct and from subsurface flows); cattle grazing; vandalism; and pollution from trash thrown in the springs. Further, timber harvesting for wood chip mills proposed for southeastern Tennessee and northeastern Alabama could impact this species.

Anthony's riversnail was once rather widespread in the Tennessee River system. (See "Background" section for a discussion of the species' historic range.) Presently, only two small populations are known to survive—one in the Sequatchie River, Marion County, Tennessee (Gordon and Ahlstedt, personal communications, 1991), and one in Limestone Creek, Limestone County, Alabama (Thompson, personal communication, 1991; Garner 1992).

Anthony's riversnail is primarily a big-river species that was historically associated with shoal areas in the main stem of the Tennessee River and the lower reaches of some of its tributaries. When the Tennessee River impoundments were constructed, most of the Tennessee River's riverine habitat was lost, and the lower reaches of its tributaries were also inundated. Populations that were able to survive in the remaining, limited free-flowing habitat were apparently lost due the general deterioration of water quality that has resulted from siltation and other pollutants contributed by coal mining, poor land use practices (e.g., lack of erosion control, improper application of pesticides, etc.), and waste discharges. These factors continue to impact the Sequatchie River and Limestone Creek populations. Additionally, timber harvesting for wood chip mills proposed for southeastern Tennessee and northeastern Alabama could impact the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There is no indication that overutilization has been a problem for the royal snail or Anthony's riversnail. The specific areas inhabited by these species are presently not known by the general public; until a proposed rule is published, they will likely be unaware of the presence of these rare snails. If the specific areas inhabited by these two species were revealed, it would be extremely easy for vandals to seriously impact them. Therefore, the present range of these species has been described only in general terms. Although scientific collecting is not presently identified as a threat to these species, take by private and institutional collectors could pose a threat. Federal protection could help to minimize the negative impact of illegal or inappropriate take.

C. *Disease or predation.* Although the royal snail and Anthony's riversnail are consumed by predatory animals, there is no evidence that predation or disease are serious threats to the species.

D. *The inadequacy of existing regulatory mechanisms.* The State of Tennessee prohibits taking fish and wildlife, including freshwater snails, for scientific purposes without a State collecting permit. However, the royal snail and Anthony's riversnail are generally not protected from other threats. Federal listing will provide additional protection for these species from collectors by requiring Federal endangered species permits to take these species and by requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may adversely affect the species.

E. *Other natural or manmade factors affecting its continued existence.* Because the royal snail is presently restricted to two small spring runs, it is very vulnerable to extirpation from accidental toxic chemical spills; and because the populations are physically isolated from each other, recolonization of any extirpated population would not be possible without human intervention. Additionally, because natural gene flow among populations is not possible, the long-term genetic viability of these remaining, isolated populations is questionable.

Both existing Anthony's riversnail populations inhabit short river reaches; thus, they are very vulnerable to extirpation from accidental toxic chemical spills. Additionally, because these populations are isolated, their long-term genetic viability is questionable. As the Sequatchie River and Limestone Creek are isolated by impoundments from other Tennessee River tributaries, recolonization of any extirpated populations would be unlikely without human intervention.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose these rules. Based on this evaluation, the preferred action is to list the royal snail and Anthony's riversnail as endangered species. The royal snail is known from only two populations in spring runs in Marion County, Tennessee. Anthony's riversnail is currently known from two small populations—one in the Sequatchie River, Marion County, Tennessee, and one in Limestone Creek, Limestone County, Alabama. These snails and their habitat have been and continue to be threatened, and Anthony's riversnail has undergone a significant range reduction. Their limited distribution also makes them very vulnerable to toxic chemical spills. Because of their restricted distributions and both snails' vulnerability to extinction, endangered status appears to be the most appropriate classification for these species. (See "Critical Habitat" section for a discussion of why critical habitat is not being proposed for these snails.)

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the

Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) the designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for these species, as both of the above situations are applicable.

Section 7(a)(2) and regulations codified at 50 CFR part 402 require Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify its critical habitat, if designated. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. (See "Available Conservation Measures" section for a further discussion of Section 7.) As part of the development of this proposed rule, Federal and State agencies were notified of the snails' general distribution, and they were requested to provide data on proposed Federal actions that might adversely affect the two species. No specific projects were identified. Should any future projects be proposed in areas inhabited by these snails, the involved Federal agency will already have the general distributional data needed to determine if the species may be impacted by their action; if needed, more specific distributional information would be provided.

The Section 7 regulations referenced above provide for both a "jeopardy" standard, based on the listing of a species, and a "destruction or adverse modification" standard, for cases where there is a designation of critical habitat. Each of the snails occupies very restricted stream reaches, making their future existence highly precarious. Any significant adverse modification or destruction of these species' habitat would also likely jeopardize their continued existence. Under these conditions, no additional protection for the species would accrue from critical habitat designation that would not also accrue from listing the species. Therefore, when listed, habitat protection for these species will be accomplished through the Section 7 jeopardy standard and Section 9 prohibitions against take.

In addition, because these species are very rare, with populations restricted to extremely short stream reaches, unregulated taking for any purpose could threaten their continued existence. The publication of critical habitat maps in the **Federal Register** and local newspapers and any other publicity accompanying critical habitat designation could increase the collection threat and increase the potential for vandalism, especially during the often controversial critical habitat designation process (see "Summary of Factors Affecting the Species" section for a further discussion of threats to these species from vandals). The locations of populations of these species have consequently been described only in general terms in this proposed rule. Precise locality data is available to appropriate Federal, State, and local government agencies and individuals from the Service office described in the "ADDRESSES" section and from the Service's Cookeville Field Office, 446 Neal Street, Cookeville, Tennessee 38501.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species 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 Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, 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 its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Service notified Federal agencies that could have programs affecting these species. No specific proposed Federal actions were identified that would likely affect the species. Federal activities that could occur and impact the species include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, wastewater facility development, pesticide registration, and road and bridge construction. It has been the experience of the Service, however, that nearly all section 7 consultations can be resolved so that the species is protected and the project objectives are also met.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued for a specified time to relieve undue economic hardship that would be suffered if such relief were not available. These species are not in trade, and such permit requests are not expected.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other

concerned government agencies, the scientific community, industry, or any other interested party concerning these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the royal snail or Anthony's riversnail;

(2) The location of any additional populations of the royal snail or Anthony's riversnail and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject area and their possible impacts on the royal snail or Anthony's riversnail.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and should be addressed to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

National Environmental Policy Act

The Fish and Wildlife 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 connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Bogan, A. E., and P. W. Parmalee. 1983. Tennessee's rare wildlife, Volume II: the mollusks. 123 pp.

Garner, J. T. 1992. A survey for Anthony's river snail, *Athearnia anthonyi* ("Budd," in Redfield 1854), in tributaries of the middle reaches of the Tennessee River. Unpublished report prepared for the U.S. Fish and Wildlife Service. 25 pp.

Gordon, M. E. 1991. Species accounts for Anthony's riversnail (*Athearnia anthonyi*). Unpublished reports to The Nature Conservancy. 4 pp.

Hershler, Robert, and Fred G. Thompson. 1987. North American Hydrobiidae (Gastropoda: Rissoacea): Redescription and Systematic Relationships of *Tryonia* Stimpson, 1865, and *Pyrgulopsis* Call and Pilsbry, 1886. The Nautilus 101(1):25–32.

Redfield, J. H. 1854. Descriptions of new species of shells. Ann. Lyc. Nat. Hist. New York 6:130–132.

Thompson, Fred G. 1977. The Hydrobiid snail genus *Marstonia*. Bull. Florida State. Mus., Biol. Sci., Vol. 21, No. 3, pp. 113–158.

Author

The primary authors of this proposed rule are Mr. J. Allen Ratzlaff and Mr. Richard G. Biggins (see "ADDRESSES" section) (704/665–1195, Ext. 229 and 228, respectively).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation 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.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order, under snails, to the List of Endangered and Threatened Wildlife, to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
• • •	• • •	•	•	•	•		
SNAILS							
• • •	• • •	•	•	•	•		
Riversnail, Anthony's	*Athearnia anthonyi*	U.S.A. (TN, AL)	NA	E		NA	NA	
• • •	• • •	•	•	•	•		
Snail, royal	*Pyrgulopsis (=Marstonia) ogmorhaphe.*	U.S.A. (TN)	NA	E		NA	NA	
• • •	• • •	•	•	•	•		

Dated: July 12, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–18640 Filed 8–4–93; 8:45am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AC01

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Plants Ayenia limitaris (Texas Ayenia) and Ambrosia cheiranthifolia (South Texas Ambrosia) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list the plants *Ayenia limitaris* (Texas ayenia) and *Ambrosia cheiranthifolia* (South Texas ambrosia) as endangered species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). This proposal, if made final, will implement Federal protection provided by the Act for Texas ayenia and South Texas ambrosia. Critical habitat is not being proposed.

Texas ayenia is known from a single site in Hidalgo County, Texas. South Texas ambrosia has been verified recently from seven sites, four in Nueces County and three in Kleberg County, Texas. These species are threatened by habitat destruction and fragmentation through alteration and conversion of native plant communities to agricultural fields, improved pastures, and urban areas. They are also threatened with displacement by invasive non-native grasses, and possible vulnerability from lowered genetic diversity due to their present low population numbers.

DATES: Comments from all interested parties must be received by October 4, 1993. Public hearing requests must be received by September 20, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to Field Supervisor, U.S. Fish and Wildlife Service, Ecological Services Field Office, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Drive, Corpus Christi, Texas 78412. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Angela Brooks, at the above address (Telephone 512/994–9005).

SUPPLEMENTARY INFORMATION:

Background

Texas ayenia, a member of the cacao family, was first collected in Hidalgo County, Texas, by C.G. Pringle in 1888, and was named *Nephropetalum pringlei* by B.L. Robinson and J.M. Greenman in 1896. In 1960, Carmen Cristóbal revised the genus *Ayenia* and described *Ayenia limitaris* as a new species. The previously described *Nephropetalum pringlei* was not mentioned in the revision. Prior to Cristóbal's description of *Ayenia limitaris* in 1960, South Texas specimens of this species had been identified as *A. berlandieri*, a species of tropical Mexico. In 1986, Laurence Dorr and Lisa Barnett transferred *Nephropetalum pringlei* to the genus *Ayenia* and reduced it to synonymy with *Ayenia limitaris*.

Texas ayenia is a pubescent, suffrutescent shrub approximately 60–150 cm (2–5 ft) tall, with alternate, simple leaves. The cordate-based leaves are approximately 8 cm (3 in.) long and 3.5 cm (1.4 in.) wide. The inflorescences are axillary, up to 4 per node, with each inflorescence supporting two or more perfect flowers. Flower color has been reported as green, pink, or cream. The fruit is a 5-celled, pubescent capsule approximately 8 mm (0.3 in.) long, with short, curved prickles (Damude and Poole 1990).

Texas ayenia occurs at low elevations in dense subtropical woodland communities that are found on alluvial sandy clay-loam soils of Rio Grande floodplains and terraces. Although the present population occurs in the shaded understory of a remnant brush tract, previous collectors have found the plant in openings within chaparral and along the edges of thickets (Correll and Johnston 1979). The present site is a Texas Ebony-Anacua (*Pithocellobium flexicaule-Ehretia anacua*) plant community located within the Arroyo Colorado drainage. This area was once an active floodplain; however, the extent to which past flooding affected Texas ayenia is unknown.

The Texas Ebony-Anacua plant community once covered much of the Rio Grande delta. The community occurs on well drained, but heavy, soils on riparian terraces (Diamond 1990). The canopy cover in this climax community type is close to 95 percent (Damude and Poole 1990). Associated species within the community include la coma (*Bumelia celastrina*), brasil (*Condalia hookeri*), granjeno (*Celtis pallida*), and snake-eyes (*Phaulothamnus spinescens*). The Texas Ebony-Anacua community grades into the Texas Ebony-Snake-eyes community in the drier portions of the woodland habitat (Diamond 1990). Both plant communities have been reduced to discontinuous fragments, often surrounded by agricultural fields, pastures, or urban development, and now cover less than 5 percent of their original area (Jahrsdoerfer and Leslie 1988).

Texas ayenia occurred historically in Cameron and Hidalgo counties in the U.S., and the states of Coahuila, Nuevo Leon, and Tamaulipas in Mexico. The only recent collection in Mexico was from a Tamaulipan population in 1981; however, the present status of this population is unknown (Damude and Poole 1990). Texas ayenia has not been relocated at any of the historic Cameron County locations since the early 1960's. The status report by Damude and Poole (1990) noted an observation in 1988 of six spindly individuals at the Hidalgo County site. The following year this population was noted as being reduced to one individual. Searches were undertaken in 1990 and 1991 by a number of personnel from the Service and the Texas Parks and Wildlife Department; however, no Texas ayenia individuals were relocated. In 1992, Jim Everitt of the U.S. Department of Agriculture and Service personnel relocated the remaining individual at the Hidalgo County site. This location on private property is the only recently verified site for the species.

South Texas ambrosia was first collected in San Fernando, Tamaulipas, Mexico, by Luis Berlandier in 1835, and was named *Ambrosia cheiranthifolia* by A. Gray in 1859. The first U.S. collection was made in 1932 by Robert Runyon from an area near Barreda (now Russelltown) in Cameron County, Texas (Turner 1983).

South Texas ambrosia, a member of the aster family, is a herbaceous, erect, silvery to grayish-green, rhizomatous perennial, 10–30 cm (0.3–1.0 ft) tall. Its simple leaves are usually opposite on the lower portion of the plant and alternate above. The male flower heads are arranged in inconspicuous terminal racemes 5–10 cm (2–4 in.) long. The female flower heads are in small clusters in the leaf axils just below the male racemes (Turner 1983). Due to its rhizomatous growth, a single plant may be represented by hundreds of clonal stems.

South Texas ambrosia grows at low elevations in open prairies and savannas of South Texas on soils varying from clay-loams to sandy-loams. Much of the original native habitat for South Texas ambrosia has been converted to agricultural fields, improved pastures, or urban areas. Many savanna areas

have been cleared and planted to non-native grasses, such as buffelgrass (*Cenchrus ciliaris*), which outcompete the native vegetation. South Texas ambrosia does not appear to survive plowing, blading, or disking. Other potential prairie habitat may now be invaded by thorny shrub and tree species as a result of fire suppression or overgrazing. Associated native grasses found at the existing sites include Texas grama (*Bouteloua rigidiseta*), buffalo grass (*Buchloe dactyloides*), Texas speargrass (*Stipa leucotricha*), and tobosa (*Hilaria mutica*). Invading non-native grasses found at the sites include buffelgrass, King Ranch bluestem (*Bothriochloa ischaemum* var. *songarica*), bermuda grass (*Cynodon dactylon*), and St. Augustine grass (*Stenotaphrum secundatum*) (U.S. Fish and Wildlife Service 1988). Associated native woody species found scattered throughout the existing sites include mesquite (*Prosopis glandulosa*), huisache (*Acacia smallii*), huisachillo (*Acacia schaffneri*), brasil (*Condalia hookeri*), granjeno (*Celtis pallida*), and lotebush (*Ziziphus obtusifolia*).

Historically, South Texas ambrosia occurred in Cameron, Jim Wells, Kleberg, and Nueces counties in South Texas, and the state of Tamaulipas in Mexico. The current status of any Mexican populations is unknown. The historic populations in Cameron and Jim Wells counties have not been relocated. Only one location noted in the status report (Turner 1983) is known to still be extant. Three populations, two in Nueces County, and one in Kleberg County, were discovered by Ruth O'Brien (Corpus Christi State University, Corpus Christi, Texas, pers. comm. 1993). Two Nueces County populations were discovered in 1992 and 1993 by William Carr (Texas Parks and Wildlife Department, Austin, Texas, pers. comm. 1993). The extant populations occur on private land, highway and railroad rights-of-way, and the Kingsville Naval Air Station. Four known locations for South Texas ambrosia, one extirpated and three extant, also support the endangered slender rush-pea (*Hoffmannseggia tenella*), which was federally listed as endangered (50 CFR 45624; November 1, 1985) because of threats similar to those affecting South Texas ambrosia.

Federal action involving these species began with section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) accepting the Smithsonian report as a petition within the context of section 4(c)(2) of the Act, now section 4(b)(3)(A), and of its intention thereby to review the status of the plants named therein. *Ambrosia cheiranthifolia* was included as endangered, and *Ayenia limitaris*, then under the name *Nephropetalum pringlei*, was included as extinct in the Smithsonian report and Service notice.

On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered. *Ambrosia cheiranthifolia* was included in the June 16, 1976, proposal.

The 1978 amendments to the Act required that all proposals over two years old be withdrawn, although a one year grace period was given to proposals already over two years old. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice withdrawing the June 16, 1976 proposal, along with four other proposals which had expired.

A list of plants under review for listing as endangered or threatened species was published in the December 15, 1980, **Federal Register** (45 FR 82523). *Ambrosia cheiranthifolia* was included in Category 2 of the candidate list and *Nephropetalum pringlei* was included in Category 1*. Category 2 candidate species are those for which available information indicates listing as endangered or threatened may be appropriate, but for which substantial data are not currently available to support the immediate preparation of proposed rules. Category 1 candidate species are those for which the Service currently has on file substantial biological information to support the appropriateness of proposing to list them as endangered or threatened species, but the immediate publication of proposed rules is precluded by work on other listing actions of higher priority. Category 1* species also include those whose status in the recent past is known to support listing, but that may have already become extinct.

Section 4(b)(3)(B) of the Act, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments to the Act further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all of the plants contained therein, including *Nephropetalum pringlei* (=*Ayenia limitaris*) and *Ambrosia cheiranthifolia*, were treated as being newly petitioned on October 13, 1982. In each year from 1983 through 1992, the Service found that the petitioned action was warranted, but listing of *Ayenia limitaris* and *Ambrosia cheiranthifolia* was precluded by other listing actions of higher priority, and that additional data on vulnerability and threats were still being gathered.

A status report on South Texas ambrosia was completed May 20, 1983 (Turner 1983). This report provided sufficient information on biological vulnerability and threats to support preparation of a proposed rule to list South Texas ambrosia as endangered.

Notices revising the 1980 list of plants under review for listing as endangered or threatened species were published in the **Federal Register** on September 27, 1985 (50 FR 39626), and February 21, 1990 (55 FR 6184). *Nephropetalum pringlei* (=*Ayenia limitaris*) was included in Category 2 and *Ambrosia cheiranthifolia* was included in Category 1 of these notices.

A status report on Texas ayenia was completed December 1, 1990 (Damude and Poole 1990). This report provided sufficient information on biological vulnerability and threats to support preparation of a proposed rule to list Texas ayenia as endangered.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists of endangered and threatened species. A species may be determined to be an endangered or threatened species based on the best scientific and commercial information available regarding one or more of the five factors described in section 4(a)(1). These factors and their application to *Ayenia limitaris* Cristóbal (Texas ayenia) and *Ambrosia cheiranthifolia* Gray (South Texas ambrosia) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Habitat destruction is the primary threat to Texas ayenia and South Texas ambrosia. The past and current practice of converting native South Texas brush and woodlands to agricultural fields, improved pastures, and urban areas, or clearing brush and woodlands for urban water development or flood control has destroyed 95 percent of this native vegetation (Jahrsdoerfer and Leslie 1988). Most native Texas Gulf Coast

prairies have been converted to agricultural fields or improved pastures. The amount of conversion of these plant communities in Mexico is similar though not quantified. The remaining remnant native prairie, brush, and woodland tracts are often surrounded by agricultural fields, pastures, or urban development. These modified habitats pose potential threats to the native areas through agricultural chemical drift from aerial spraying, chemical runoff following rains, invasion of non-native grasses such as buffelgrass, guineagrass (*Panicum maximum*), King Ranch bluestem, and Angleton bluestem (*Dichanthium aristatum*), and trampling and possible collection pressures due to easy accessibility from nearby urban areas. The few remaining populations of these species are vulnerable to extinction if any of their remaining habitat is modified.

Even roadside remnants of native vegetation in South Texas are often bladed, or plowed and seeded with exotic grasses such as buffelgrass and King Ranch bluestem. Herbicides are often used to control vegetation around signs, guard rails, and bridge abutments, and to kill shrubby vegetation encroaching on the right-of-way. Due to the rarity of Texas ayenia and South Texas ambrosia, the likelihood of their being directly impacted by roadway maintenance is small, but almost any impact could lead to the extinction of either species.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

No commercial trade is known to exist for either of these species; however, the potential exists for vandalism and collection. Listing these species, with the resulting publicity, will highlight their rarity and may increase their attractiveness to some collectors. Excessive recreational or scientific use is not known or anticipated for either species.

C. Disease or Predation

Although the Texas ayenia population has shown no evidence of disease or predation, Cristóbal (1960) notes the floral buds of *Ayenia* species are often deformed by Hymenopteran larvae. Cristóbal also notes *Ayenia* fruits can be deformed by Dipteran larvae thus inhibiting seed release. No evidence of grazing or browsing has been observed for Texas ayenia.

No threats of disease or predation are known for South Texas ambrosia; however, damage to stems and rhizomes is possible in situations of severe trampling or grazing.

D. The Inadequacy of Existing Regulatory Mechanisms

Presently, neither species is protected by Federal or state law.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

With only one known verified population, Texas ayenia may have low genetic variability, which could limit its ability to adapt to environmental changes. It is unknown whether past flooding created or maintained habitat for Texas ayenia. However, since the present population occurs within a previously active drainage of the Arroyo Colorado (Damude and Poole 1990), a flood could negatively impact the species. Observers have noted that the population declined during the recent drought in the Lower Rio Grande Valley (J. Everitt, U.S.D.A. Agricultural Research Station, Weslaco, Texas, pers. comm. 1992). The extreme rareness of this species makes it vulnerable to extinction from any number of chance events.

South Texas ambrosia may also be vulnerable to extinction due to lowered genetic variability. Populations are clonal, so despite having many stems, the populations may actually represent very few genetically different individuals. It has been noted that species like South Texas ambrosia that were once more widespread, but are now reduced to low numbers, may be more vulnerable to the detrimental effects of lowered genetic diversity than species that were always rare (Huenneke 1991).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list Texas ayenia and South Texas ambrosia as endangered. The status of endangered is appropriate because of these species' limited distribution, low population numbers, and imminent threats of habitat destruction.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. Pursuant to 50 CFR 424.12(a)(1), designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not presently prudent for this species. As discussed under Factor B in the "Summary of Factors Affecting the Species" section of this rule, Texas ayenia and South Texas ambrosia are potentially threatened by taking or vandalism. These activities are difficult to enforce against and are only regulated by the Act with respect to plants in cases of (1) removal and reduction to possession of listed plants from lands under Federal jurisdiction, or their malicious damage or destruction on such lands; and (2) removal, cutting, digging up, or damaging or destroying in knowing violation of any state law or regulation, including state criminal trespass law. Such provisions are difficult to enforce, and publication of critical habitat descriptions and maps would make Texas ayenia and South Texas ambrosia more vulnerable to collecting or vandalism and increase enforcement problems. All involved parties and principal landowners have been notified of the location and importance of protecting the habitat of these species. Protection of the habitat for these species will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for Texas ayenia and South Texas ambrosia.

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 acquisition and cooperation with the states and authorizes recovery plans for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, 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 its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the

Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Some Federal actions that may affect Texas ayenia or South Texas ambrosia include brush clearing for flood control by the International Boundary and Water Commission, management recommendations to landowners by the Soil Conservation Service for activities funded by the Agricultural Stabilization and Conservation Service, and agricultural pesticide registration by the Environmental Protection Agency. Additionally, a population of South Texas ambrosia occurs on Kingsville Naval Air Station and may be affected by maintenance or construction activities at this facility.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any state law or regulation, including state criminal trespass law. Certain exceptions apply to agents of the Service and state conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits would ever be sought or issued because these species are not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 420C, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received by 45 days from the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and addressed to Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife 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 connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cristóbal, C.L. 1960. Revision del género *Ayenia* L. (Sterculiaceae). Opera Lilloana 4:1–230.

Damude, N. and J. Poole. 1990. Status Report on *Ayenia limitaris*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

Diamond, D. 1990. Plant Communities of Texas (series level). Texas Parks and Wildlife Department, Austin, Texas.

Dorr, L.J. and L.C. Barnett. 1986. The identity of *Nephropetalum* (Sterculiaceae). Taxon 35(1):163–164.

Huenneke, L.F. 1991. Ecological implications of genetic variation in plant populations. *In* D. Falk and K. Holsinger, eds. Genetics and Conservation of Rare Plants. Oxford University Press, New York.

Jahrsdoerfer, S.E. and D.M. Leslie, Jr. 1988. Tamaulipan brushland of the Lower Rio Grande Valley of south Texas: description, human impacts, and management options. U.S. Fish and Wildlife Service, Biol. Rep. 88(36). 63 pp.

Turner, B.L. 1983. Status Report on *Ambrosia cheiranthifolia*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

U.S. Fish and Wildlife Service. 1988. Slender Rush-pea (*Hoffmannseggia tenella*) Recovery Plan. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 38 pp.

Author

The primary author of this proposed rule is Angela Brooks, U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office (see **ADDRESSES** section).

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.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the plant families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
• • •	•	•	•	•		
Asteraceae—Aster family:						
• • •	•	•	•	•		
Ambrosia cheiranthifolia	South Texas ambrosia	U.S.A. (TX), Mexico	E	—	NA	NA
• • •	•	•	•	•		
Sterculiaceae—Cacao family:						
• • •	•	•	•	•		
Ayenia limitaris	Texas ayenia	U.S.A. (TX), Mexico	E	—	NA	NA
• • •	•	•	•	•		

Dated: July 12, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–18639 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AC00

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Four Plants and Proposed Threatened Status for Four Plants From Vernal Pools in the Central Valley of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to list *Orcuttia inaequalis* (San Joaquin Valley Orcutt grass), *Orcuttia pilosa* (hairy Orcutt grass), *Orcuttia viscida* (Sacramento Orcutt grass), and *Tuctoria greenei* (Green's tuctoria) as endangered and *Castilleja campestris* ssp. *succulenta* (fleshy owl's-clover), *Chamaesyce hooveri* (Hoover's spurge), *Neostapfia colusana* (Colusa grass), and *Orcuttia tenuis* (slender Orcutt grass) as threatened pursuant to the Endangered Species Act of 1973, as amended (Act). These species grow in the basins and margins of vernal pools of the Central Valley of California. Habitat loss and degradation due to urbanization, agricultural land conversion, livestock overgrazing, off-highway vehicle use, flood control projects, highway projects, landfills, and competition from weedy nonnative plants imperil the continued existence of these species. This proposal, if made final, would extend the Act's protection to these plants. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by November 3, 1993. Public hearing requests must be received by September 20, 1993.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ken Fuller at the above address or at 916–978–4866.

SUPPLEMENTARY INFORMATION:

Background

Vernal pools in the Central Valley of California were a common and widespread feature in pre-European times (Holland and Jain 1977). Holland (1978 and *in litt.*, September 18, 1992) estimated that urbanization and other factors have eliminated up to 90 percent of the vernal pools in the Central Valley. Since the plants discussed herein grow only in vernal pools in California, they have experienced minor to major population reductions via the loss of vernal pool habitat throughout their respective ranges. California vernal pools are generally small, seasonally aquatic ecosystems that are inundated in the winter and dry slowly in the spring and summer. Cyclical wetting and drying create an unusual ecological situation supporting a unique biota. Many plants and animals are specifically adapted to this environment and cannot survive outside these temporary pools.

The Central Valley of California consists of the Sacramento Valley in the north and the San Joaquin Valley in the southern half of the State. Within the Central Valley, vernal pools are found in four physiographic settings, each possessing an impervious soil layer relatively close to the surface. These four settings include high terraces with iron-silicate or volcanic substrates, old alluvial terraces, basin rims with claypan soils, and low valley terraces supporting silica-carbonate hardpans. Vernal pool habitats and the eight plants discussed herein are found over a very limited, discontinuous, fragmented area within the Central Valley.

Orcuttia, *Neostapfia*, and *Tuctoria* are the three genera of the grass tribe Orcuttieae, within the subfamily Chloridoidae, in the grass family (Poaceae). All three genera consist of small-statured annual grasses that produces a viscid (sticky), odoriferous, acid-tasting exudate and are covered with small glandular hairs. Plants typically have few to many slender stems terminating in a spike-like inflorescence. The leaves lack ligules (small membranous flaps at the base of the leaf blade), and little or no distinction exists between the leaf blade and the leaf sheath. Members of *Orcuttia* have long, thin, floating, juvenile leaves, two vertical rows of ranks of spikelets on the axis of the inflorescence, and five-toothed lemmas (the lower bract enclosing the grass floret). Spikelets are retained when the plants mature. Members of *Neostapfia* lack the ribbon-like, juvenile leaves of the *Orcuttia* species. In addition, spikelets are spirally arranged on the axis of the

inflorescence and have entire (undivided) lemmas. These plants do not retain their spikelets when mature. Members of *Tuctoria* also lack ribbon-like, juvenile leaves. Spikelets are spirally arranged on the axis of the inflorescence, and lemmas are entire or finely toothed. *Tuctoria* retains its spikelets when mature.

Neostapfia colusana, (Colusa grass) is a robust, tufted annual that grows 7 to 30 centimeters (cm) (3 to 12 inches (in)) in height. The stems are decumbent toward the base with the upper portion erect and terminating in spike-like inflorescences that are cylindrical, dense, and resemble small ears of corn. Because of its unique inflorescence, this species is not easily confused with any others.

Burtt-Davy (1898) collected and first described *Neostapfia colusana* as a member of the genus *Stapfia*. However, since the name *Stapfia* was already used pending subsequent revisions, Burtt-Davy (1899) later renamed this genus *Neostapfia*. Shortly thereafter, Scribner (1899) submerged *Neostapfia* within the genus *Anthochloa*. Hoover (1940) placed this species in the resurrected monotypic genus *Neostaphia*. *Neostaphia colusana* has been extirpated from its type locality in Colusa County. Five occurrences in Merced and Stanislaus Counties have been lost as well. The 36 remaining occurrences are concentrated along a 200-kilometer (km) (98-mile) stretch of the eastern edge of the San Joaquin Valley in Stanislaus and Merced Counties. One disjunct population exists in Solano County in the Sacramento Valley. All populations exist on private lands. In addition to the population on The Nature Conservancy's (TNC) Jepson Prairie Preserve in Solano County, this plant is afforded some protection via a 970-hectare (ha) (2,400-acre) conservation easement purchased by TNC at the Flying M Ranch in Merced County.

Orcuttia inaequalis, (San Joaquin Valley Orcutt grass) is a tufted annual that reaches 5 to 15 cm (2 to 6 in) in height. The grayish, pilose (bearing soft, straight hairs) plants have several spreading to erect stems, each terminating in a spike-like inflorescence. At maturity, the spikelets of the plant are aggregated into a dense, hat-shaped cluster, which separates them from other members of the genus *Orcuttia*. Additionally, the lemmas are deeply cleft into five prominent teeth, which may be sharp-pointed or have awns that are up to 0.5 millimeter (mm) (0.2 in) long. The middle tooth is conspicuously longer than the four laterals. *Orcuttia inadequalis* does not occur with any other species of *Ocruttia*. The species most closely resembles *O. californica* and *O. viscida*. The former does not have the long central lemma tooth and lacks the grayish appearance; whereas, the spikelets of the latter are more congested toward the apex of the inflorescence, but not as much as in *O. inaequalis*. *Orcuttia inaequalis* also has smaller lemmas, noncurving lemma teeth, and smaller seeds. *Orcuttia inaequalis* grows with *Neostapfia colusana* at five sites in the San Joaquin Valley.

Klyver first collected and identified *O. inaequalis* as *Orcuttia californica* near Lane's Bridge in Fresno County in 1927 (Klyver 1931). Hoover (1936a) described *O. inadqualis* as a distinct species, but reduced it to varietal status under *O. californica* in 1941 (Hoover 1941). Reeder (1982) determined *O. inaequalis* to be a distinct species based on seed proteins, chromosome numbers, and other morphological characteristics. *Orcuttia inaequalis* has 12 occurrences, mostly in the southeastern San Joaquin Valley in Fresno, Merced, and Madera Counties, over a 79-km (36-mile) range. Only one population is on Federal land, managed by the Bureau of Land Management (Bureau), while the remaining 11 populations are found on private lands. Three populations of *O. inaequalis* are protected by a conservation easement with TNC at the Flying M Ranch in Merced County.

Orcuttia pilosa (hairy Orcutt grass) is a densely-tufted, usually densely-pilose annual reaching about 5 to 20 cm (2 to 8 in) in height. The stems are erect or decumbent at the base. The inflorescence is spike-like and rather elognate, with the spiklets remote on the axis below and usually strongly congested above. The equal-length lemmas are deeply cleft into fine teeth that are sharp-pointed or short-awned. *Orcuttia pilosa* and *O. tenuis* grow together over a portion of their respective ranges but are readily distinguished, as the stems of *O. pilosa* are simple, tiller freely from the base and never branch from the upper nodes. Additionally, the spikelets of *O. pilosa* are strongly congested at the apex of the inflorescence and the stems and leaves are larger. *Orcuttia pilosa* occurs infrequently with *Tuctoria greenei* but these two grasses can be readily distinguished.

Hoover collected *O. pilosa* in 1938 from a single locality in eastern Stanislaus County, at the time considering this material to be a more robust form of *O. tenuis*. He used one of these specimens as the type for a new species, *O. pilosa*, which he described after examining additional collections from Merced and Madera Counties (Hoover 1941). *Orcuttia pilosa* occurs along a 490-km (223-mile) stretch on the eastern margin of the San Joaquin and Sacramento Valleys from Tehama County south to Stanislaus County and through Merced and Mariposa Counties. Previously, 30 occurrences of O. pilosa were known, although this number has been reduced to 19 extant populations, all occurring on private lands. Of these 19 extant populations, only 6 occurrences are considered to be stable (Stone *et al.* 1988). In recent years, the once widespread plant has become extirpated in Merced County, and has been reduced to only four populations in Stanislaus and Madera Counties. Ten populations occur in Tehama County, four of which are located on TNC's Vina Plains Preserve. However, only one of these sites is excluded from an agreement allowing continued cattle grazing by the previous landowner (Stone *et al.* 1988).

Orcuttia viscida (Sacramento Orcutt grass) is a densely tufted, pilose annual that reaches 2 to 10 cm (1 to 4 in) in height. The erect stems terminate in spike-like inflorescences that are congested at the apex. The plants are viscid even when young and more so at maturity. *Orcuttia viscida* develops five-toothed lemmas 6 to 7 mm (0.24 to 0.28 in) long with the middle tooth conspicuously longer than the four laterals. The lemma teeth curve outward at maturity, giving the inflorescence a distinct bristly appearance. Although *O. viscida* is geographically isolated from all other congeners, it most closely resembles *O. inaequalis*, but can be separated as described above under the discussion of *O. inaequalis*.

Hoover collected *O. viscida* in 1941 from a vernal pool near Folsom in Sacramento County and described it as a variety of *O. Californica* (Hoover 1941). Reeder (1980) elevated *O. viscida* to specific status based on differences in chromosome number, seed size, and other morphological characteristics (Reeder 1982). *Orcuttia viscida* has the narrowest range of the eight species proposed for listing herein. It occurs within a 350 square Km (135 square mi) area in eastern Sacramento County. Only 40 km (18 mi) separates the northern from the southernmost population. Two of the nine known populations of *O. viscida* have been extirpated. Presently, three populations are found on private lands and four are located on non-Federal public lands (one area owned by a public municipality, one owned by the Country, one by the City of Fair Oaks,

and one by the California Department of Fish and Game).

Tuctoria greenei (Greene's tuctoria) is a tufted, more or less pilose, annual grass that grows 5 to 15 cm (2 to 6 in) tall. The plant develops several to many erect stems, the outermost decumbent to spreading at the base, each terminating in a spike-like inflorescence that may be partially enveloped by the uppermost leaf. The lemmas are strongly curved and more or less truncate at the apex.

Vasey (1891) described *Tuctoria greenei* as *Orcuttia greenei* from specimens collected by Greene near Chico in Butte County in 1890. It remained in the genus *Orcuttia* until Reeder (1982) described the genus *Tuctoria* and placed the former *O. greenei* into the new genus *Tuctoria*. The 17 remaining occurrences of *T. greenei* occur in Merced, Stanislaus, Butte, Tehama, and Shasta Counties. The plant has been extirpated in Fresno, Madera, and Tulare Counties. The range of this species extends 567 km (258 miles). All populations are on private lands, including four on TNC's Vina Plains Preserve.

Orcuttia tenuis (slender Orcutt grass) is a weekly-tufted and sparsely-pilose annual grass. It grows about 5 to 15 cm (2 to 6 in) in height, producing one to several erect stems that often branch from the upper nodes. The inflorescence of this plant is elongate, with the spikelets usually remote along the axis and slightly, if at all, congested toward the apex. The lemmas are deeply cleft into fine, equal-length, prominent teeth that are sharp-pointed or short-awned. *Orcuttia tenuis* and *O. pilosa* are found growing together over a portion of their respective ranges but are readily distinguished as described in the discussion of *O. pilosa*.

Eastwood first collected *Orcuttia tenuis* in 1912 in Shasta County. These specimens were considered to be *O. californica* prior to the designation of *O. tenuis* as a new species in 1934, based upon spikelet arrangement as well as lemma tooth morphology (Hitchcock 1934). *Orcuttia tenuis* has been extirpated from its type locality in Shasta County and four other sites in the vicinity of the Redding Municipal Airport. Disjunct populations occur in vernal pools on remant alluvial fans and high stream terraces and recent basalt flows across 440 km (220 miles) (Stone et al. 1988). *Orcuttia tenuis* is restricted to northern California, with one population in Sacramento County, two in Lake County, 27 in Tehama County, 13 in Shasta County, and 2 in Siskiyou County. The Forest Service and the Bureau have jointly prepared a management guide for the eight populations on lands administered by the Bureau and the four populations on those lands administrated by the Lassen National Forest. All other populations are on private lands. In addition to the populations on TNC's Vina Plains Preserve in Tehama County, The Trust for Public Lands has purchased a conservation easement on the Inks Creek Ranch in Shasta County to protect one population of this plant.

Castilleja campestris ssp. *succulenta* (fleshy owl's-clover) is a glabrous (hairless), hemiparasitic (partly parasitic) annual herb belonging to the snapdragon family (Scrophulariacease). The stems are simple or branched, generally 5 to 25 cm (2 to 10 in) tall with brittle-succulent, entire, alternate leaves. The branches end in dense, short, green inflorescences with bracts equaling or exceeding the bright yellow to white flowers that appear in May. *Castilleja campestris* ssp. *succelenta* occurs with *C. campestris* ssp. *campestris* in Stanislaus County, but the latter can be distinguished by its usually more brittle leaves, shorter bracts, larger corollas, and longer stigmata. Hoover (1936b) described the plant as *Orthocarpus campestris* var. *succulentus*. He subsequently elevated it to a full species, *O. succulentus*, distinguishing it from *O. campestris* on the basis of leaf and bract shape and flexibility, corolla color and morphology, and anther cell length (Hoover 1968). Chuang and Heckard (1991) significantly revised the concept of *Orthocarpus*, subsuming most of what had been called *Orthocarpus* into the genus *Castilleja*. They also proposed the new combination *C. campestris* ssp. *succulenta*. This small annual plant was formerly more widespread in the Central Valley and is now extirpated from its type locality near Ryer in Merced County. It occurs in the San Joaquin Valley over a range of 145 km (66 miles) extending through eastern Merced, southeastern Stanislaus, Madera, and northern Fresno Counties. One population occurs on lands managed by the Bureau of Reclamation, and one population on land managed by the Bureau of Land Management. The remaining 31 populations occur on private lands. Of these 31 populations, 7 occur at the Flying M Ranch, where TNC has a conservation easement.

Chamaesyce hooveri (Hoover's spurge), a member of the spurge family (Euphorbiaceae), is a prostrate, glabrous annual herb. The leaves are gray-green, asymmetric at the base, rounded to kidney-shaped and have small, narrow white teeth around the margins. The small flowers occur singly in the leaf axils. *Chamaesyce ocellata* can occur with *C. hooveri* but is readily distinguished by its spreading rather than prostrate habit, yellowish-green color, and entire leaf margins. *Chamaesyce serpyllifolia* can occur with *C. hooveri* in San Joaquin County. Both species have a gray-green color and may be prostrate, but *C. serpyllifolia* has less rounded leaves, and the marginal teeth are shorter and are usually limited to the leaf apex.

Hoover first collected this plant in Tulare County in 1937. Wheeler (1940) described it as *Euphorbia hooveri*. Koutnik (1985) places this species in the genus *Chamaesyce* based on the presence of a sheath around the vascular bundle, its sympodial (lateral branching) growth habit, and its photosynthetic pathway. *Chamaesyce hooveri* is found in vernal pools on remnant alluvial fans and related depositional stream terraces for a stretch of 528 km (240 miles) along the eastern margin of the Central Valley. Of the 23 extant occurrences, four populations are known from Stanislaus and Tulare Counties. Two populations occur at the northern end of Butte County, and the remainder are located in Tehama County. Four of the Tehama County populations occur on TNC's Vina Plains Preserve. All populations are on privately owned lands.

Previous Federal Action

Federal actions on seven of these eight species began as a result of section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those species considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *Castilleja campestris* ssp. *succulenta* (as *Orthocarpus succulentis* [sic]), *Neostapfia colusana*, *Orcuttia inaequalis* (as *O. californica* var. *inaegualis*), *O. pilosa*, *O. tenuis*, and *O. viscia* (as *O. californica* var. *viscida*) as endangered, and *Chamaesyce hooveri* (as *Euphorbia hooveri*) as threatened. The Service published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of its acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and its intention to review the status of the species named therein. The seven plants above were included in the July 1, 1975, notice. On June 16, 1976, the Service published a proposal in the **Federal Register** (42 FR 24523) to determine approximately 1,700 vascular plant

species to be endangered species pursuant to section 4 of the Act. This list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Castilleja campestris* ssp. *succulenta, Chamaesyce hooveri, Neostapfia colusana, Orcuttia inaequalis, O. pilosa, O. tenuis,* and *O. viscida,* were included in the June 16, 1976, **Federal Register** document.

General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. On December 10, 1979, the Service published a notice in the **Federal Register** (44 FR 70796) of the withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82480). This notice included *Castilleja campestris* ssp. *succulenta, Chamaesyce hooveri, Neostapfia colusana, Orcuttia inaequalis, O. pilosa, O. tenuis, O. viscida,* and *Tuctoria greenei* as Category 1 candidates. Category 1 candidates are those for which the Service has on file substantial information on biological vulnerability and threats to support a proposal to list. On November 28, 1983, the Service published in the **Federal Register** a supplemental to the notice of review (48 FR 53640), which changed *Castilleja campestris* ssp. *succulentus* and *Neostapfia colusana* to Category 2 candidates. Category 2 species are those for which data in the Service's possession indicate that listing is possibly appropriate, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. The plant notice was again revised on September 27, 1985 (50 FR 39526), and the status of the eight plants remained unchanged from the 1983 supplement. In the revision of the plant notice published on February 21, 1990 (55 FR 6184), *Neostapfia colusana* was returned to Category 1 status. In 1991 and 1992, the Service received additional information regarding the status and threats to *Castilleja campestris* ssp. *succulenta,* and has therefore returned this species to Category 1 status.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Castilleja campestris* ssp. *succulenta, Chamaesyce hooveri,* Neostapfia colusana, Orcuttia inaequalis, O. pilosa, O. tenuis, and *O. viscida,* because the 1975 Smithsonian report had been accepted as a petition. In October of 1983, 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991, the Service found that the petitioned listing of the above seven plant taxa was warranted but precluded by other higher priority listing actions. Publication of this proposal constitutes the final finding for the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one of more of the five factors described in section 4(a)(1). These factors and their application to *Castilleja campestris* (Benth.) Chuang and Heckard ssp. *succulenta* (Hoover) Chuang and Heckard, *Chamaesyce hooveri* (Wheeler) Koutnik, *Neostapfia colusana* (Davy) Davy, *Orcuttia inaequalis* Hoover, *Orcuttia pilosa* Hoover, *Orcuttia tenuis* Hitch., *Orcuttia viscida* (Hoover) J. Reeder, and *Tuctoria greenei* (Vasey) J. Reeder are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

The habitat of these eight species has been reduced and fragmented throughout their respective ranges as vernal pools continue to be eliminated by urbanization, flood control projects, landfill projects, overgrazing, highway development, and agricultural conversion. Lands on the floor of the Central Valley are closer to existing, expanding cities and farms than the valley rim, which is steeper, less fertile, and more removed from cities. As a result, valley floor vernal pools, along with open rangeland, have been and continue to be favored for urban and agricultural development. Within the last 20 years, agricultural land conversion is known to have extirpated one population of *Chamaesyce hooveri* in Tulare County; four populations of *Neostapfia colusana* in Stanislaus County and one in Merced County; five populations of *Orcuttia inaequalis* in Stanislaus County, four in Madera County, three in Merced County, and one in Fresno County; four populations of *O. pilosa* in Stanislaus County and one in Merced County; one population of *O. tenuis* in Shasta County; and one population of *Tuctoria greenei* in Tulare County, three in Fresno County, one in Madera County, and four in San Joaquin County (Stone et al. 1988). Agricultural conversion threatens 8 extant populations of *O. pilosa* in Madera and Stanislaus Counties, 2 populations of *Chamaesyce hooveri* in Stanislaus County, 1 population of *castilleja campestris* ssp. *succulenta* in Madera County and 1 in Fresno County, 14 populations of *Neostapfia colusana* in southeastern Stanislaus County, 7 populations of *T. greenei* in Merced County, and 2 populations of *O. inaequalis* in Madera County (Stone et al. 1988).

Additionally, numerous activities associated with agricultural development have caused habitat degradation severe enough that many populations of the species proposed for listing herein have not been seen for 2 consecutive years and are presumed to be extirpated (Stone et al. 1988). For example, livestock pond construction has inundated one population of *Neostaphia colusana* in Merced County. Irrigated agriculture and associated run-off have likely eliminated one population of *N. colusana* in Merced County, and one population each of *Orcuttia inaequalis* and *Tuctoria greenei* in Madera County. Overgrazing and hay production likely have destroyed one population of *O. inaequalis* in Tehama County. Discing combined with grazing presumably has destroyed one population of *t. greenei* in Merced County. Discing also has destroyed one population of *N. colusana* in Tulare County. Discing has likely eliminated one population of *Castilleja campestris* ssp. *succulenta* in Fresno County (Stone et al. 1988, RareFind 1992). In addition, five of the eight remaining populations of *Orcuttia pilosa* in Stanislaus, Merced, and Madera Counties have been damaged by discing or discing combined with grazing (Stone et al. 1988).

Human activities that alter the hydrology of vernal pools, including changes in the amount of water or the length of inundation, directly and indirectly affect vernal pool plants. for example, a vernal pool known to contain *Orcuttia tenuis* was channelized for mosquito abatement. It is likely that the population was extirpated as a result

(Stone et al. 1988, RareFind 1992). Pond construction for recreational waterfowl hunting in Colusa County presumably has eliminated one population of *Neostapfia colusana*. Additionally, hydrological modifications have destroyed two Merced County and one Fresno County population of *O. inaequalis*, and three populations of *O. tenuis* in Shasta County (Stone et al. 1988). The Merced County Stream Channel Project of the U.S. Army Corps of Engineers (Corps) threatens three populations of *O. inaequalis*, and four populations each of *N. colusana* and *Castilleja campestris* ssp. *succulenta* in Merced County (R. Keck, U.S. Fish and Wildlife Service, pers. comm., 1992).

Because the human population of the Central Valley is rapidly expanding, numerous populations of these eight vernal pool plants have been extirpated and continue to be threatened by urban development projects. For example, two major proposed urban developments are likely to adversely affect significant amounts of vernal pool habitat in the Central Valley, one of 80,000 people in southwest Placer County and one of 40,000 people in southeastern Yolo County. In El Dorado County, a 728-ha (1,800-acre) community near Georgetown is proposed as the first of 15 more large-scale urban developments. Four new cities, projected to house 142,000 people, are proposed for Sutter County in the Sacramento Valley (Weigand 1991). Urbanization has extirpated one population of *Orcuttia inaeqaualis* in Fresno County, three populations of *o. pilosa* in Madera County, and one population of *Tuctoria greenei* in Tehama County (Stone et al. 1988). In the Sacramento Valley, eight populations of *o. tenuis* are considered threatened by urbanization around Redding in Shasta County (Stone et al. 1988). Numerous proposed housing developments in Sacramento County threaten vernal pool areas that may provide habitat for *o. tenuis* and *o. viscida*, including Aspen VI, County Creek Estates, Granite, Laguna Commons, Laguna Creek, Laguna Palms, Laguna Springs, Laguna Vista, Roseville 150, and Strawberry Creek (M. Littlefield, U.S. Fish and Wildlife Service, pers. comm., 1992).

In addition to the numerous housing developments discussed above, increasing urbanization of the Central Valley can affect vernal pool habitats via landfills, highway projects, and recreational and industrial developments. For example, of the seven Sacramento County populations of *Orcuttia viscida*, one population is threatened by a public landfill expansion, one by an industrial park development, and one by a frisbee golf course (Stone *et al.* 1988). A proposed expansion of State Highway 168, housing tract developments, and a proposed landfill imperil four populations of *Castilleja campestris* ssp. *succulenta* in Fresno County (RareFind 1992). An additional population is threatened by proposed expansion of State Highway 41 in Madera County.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization is not currently known to be a factor for these species, although some taxa have become vulnerable to collecting by curiosity seekers as a result of increased publicity following publication of a listing proposal.

C. Disease or Predation

All eight taxa occur mostly on private land and some Federal rangelands managed by the Forest Service and the Bureau that are subject to livestock grazing. The intensity and, more importantly, the timing of this activity affect how livestock grazing impacts vernal pool plants (Stone *et al.* 1988). Overgrazing can occur as a result of inappropriate timing or intensity of grazing or both. Of the eight plants, overgrazing is a serious threat to *Neostapfia colusana, Orcuttia inaequalis, O. pilosa, O. tenuis, O. viscida,* and *Tuctoria greenei*. These vernal pool plants mature later in the growing season than the California upland annual grasses. When early season forage dries up, these plants are still green, making them more attractive for consumption by grazing animals. Although *N. colusana* tends to be avoided by livestock because its high exudate content decreases its palatability and it continues tillering after grazing, this species has been extirpated from two sites due to overgrazing (Stone *et al.* 1988). *Orcuttia inaequalis, O. pilosa,* and *T. greenei* are especially vulnerable to grazing impacts. One population of *O. pilosa* in Merced County and a population of *T. greenei* in San Joaquin County have been extirpated by overgrazing (Stone *et al.* 1988). One population of *O. inaequalis* in Madera County, one population of *O. pilosa* in Tehama County, and six populations of *T. greenei* (one in Stanislaus County, two in Tehama County, and three in Merced County) are presumed extirpated due to overgrazing (Stone *et al* 1988) In addition, grazing adversely affects two populations of *O. inaequalis* in Merced County and one in Madera County, two populations of *O. tenuis* in Madera County and one in Shasta County, two populations of *Castilleja campestris* ssp. *succulenta* in Fresno County and seven in Stanislaus County, and four populations of *N. colusana* in Merced County (Stone *et al.* 1988, RareFind 1992). In Tehama County on the TNC Vina Plains Preserve, three of the four populations of *Tuctoria greenei* and three of the four populations of *O. pilosa* are damaged and possibly declining due to grazing (Stone *et al.* 1988). The effects of grazing on *T. greenei* are discussed further under Factor E in this section. Grazing practices used on private lands that support the vernal pool plant populations proposed for listing herein are not known.

D. The Inadequacy of Existing Regulatory Mechanisms

Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of fill into waters of the United States, which includes navigable and isolated water, headwaters, and adjacent wetlands. The section 404 Regulations require that applicants obtain an individual permit to place fill for projects affecting greater than 10 acres (4 ha) of waters of the United States.

Nationwide Permit (NWP) No. 26 (33 CFR part 330) was established by the Corps to facilitate authorization of discharges of fill into isolated waters (such as vernal pools) that cause the loss of less than 10 acres (4 ha) of waters of the United States, and that cause only minimal individual and cumulative environmental impacts. Projects that qualify for authorization under NWP 26 and that affect less than 1 acre of isolated waters or headwaters may proceed without notifying the Corps. Evaluation of impacts of such projects through the section 404 permit process is thus precluded.

Corps District and Division Engineers may require that an individual section 404 permit be obtained if projects otherwise qualifying under NWP 26 would have greater than minimal individual or cumulative environmental impacts. However, the Corps has been reluctant to withhold authorization under NWP 26 unless the existence of a listed threatened or endangered species would be jeopardized, regardless of the significance of the affected wetland resources.

Regardless of the type of permit deemed necessary under section 404, candidate species receive no special consideration

Additionally and equally important, the upland watersheds of vernal pools

are not provided any protection. Disturbance or loss of watersheds have extirpated several populations of these species as discussed previously in Factor A. Thus, as a consequence of the small scale of many vernal pools (most are less than 1 acre in size) and the lack of protection of associated upland watersheds, these vernal pool plants currently receive insufficient protection under section 404 of the Clean Water Act.

The *Orcuttia tenuis* Species Management Guide written by the Lassen National Forest and the Susanville District of the Bureau (Corbin and Schoolcraft 1990a) gives long-term management direction for those Forest Service and Bureau populations in Shasta and Siskiyou Counties in northern California. However, the extent to which these management recommendations are being implemented is questionable since the sites are not fenced to exclude livestock, for example, and no enforcement exists to protect the plants.

The California Department of Fish and Game has listed *Castilleja campestris* ssp. *succulenta*, *Neostapfia colusana*, *Orcuttia inaequalis*, *O. pilosa*, *O. tenuis*, and *O. viscida* as endangered, and *Tuctoria greenei* as rare under the California Endangered Species Act (Chapter 1.5 sec. 2050 *et seq.* of the California Fish and Game Code and Title 14 California Code of Regulations 670.2). *Chamaesyce hooveri* is not State-listed. Though the "take" of State-listed plants is prohibited (California Native Plant Protection Act, Chapter 10 sec. 1908 and California Endangered Species Act, Chapter 1.5 sec. 2080), State law appears to exempt the taking of such plants via habitat modification or land use changes by the owner. After the Department of Fish and Game notifies a landowner that a State-listed plant grows on his or her property, State law evidently requires only that the land owner notify the agency "at least 10 days in advance of changing the land use to allow salvage of such plant" (Native Plant Protection Act, Chapter 1.5 sec. 1913).

Part of the environmental review under the California Environmental Quality Act (CEQA) for projects that result in the loss of sites supporting these species sometimes includes the development of mitigation plans. Such plans usually involve the transplantation of the plant species to another existing vernal pool, or the artificial creation of vernal pool habitat. Transplantation and habitat creation efforts are experimental in nature, and are generally not successful (Fiedler 1991, Hall-Cather 1984). Following development of the transplantation plan the original site is destroyed. Therefore, when the mitigation effort fails, the resource has already been lost.

The public agency with primary authority over a project (the lead agency) is responsible for conducting an environmental review and consulting with other agencies concerned with the resources affected by the project. However, the lead agency may approve projects that cause significant environmental damage, such as the destruction of State-listed endangered species, and does not always require adequate mitigation for the replacement or protection of the affected resources. The protection of listed species under CEQA is therefore dependent upon the discretion of the lead agency.

Conservation easements do not currently insure adequate protection for these vulnerable plant species. For example, although four populations of *Orcuttia pilosa* are located on TNC's Vina Plains Preserve, only one of these sites is excluded from an agreement allowing continued cattle grazing by the previous landowner, and the other populations have all been damaged by grazing (Stone *et al.* 1988). Fewer than 8 percent of the populations of these eight taxa are within existing conservation easements.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Native and exotic plant species have invaded many vernal pools of the Central Valley, thus limiting the amount of habitat available to these eight taxa. For example, at six of the seven extant sites, the distribution and abundance of *Orcuttia viscida* is significantly restricted by *Eleocharis macrostachya* (pale spike-rush), a species that inhabits ponds and marshes (Stone *et al.* 1988). At least 13 populations of *O. tenuis* are similarly affected (Stone *et al.* 1987, 1988). In the Sacramento Valley, potentially significant weed problems were observed at several sites on the Vina Plains, involving *Xanthium strumarium*, *Convolvulus arvensis*, *Proboscidea louisianica*, and *Asclepias fascicularis* in large vernal pools that provide habitat for *O. pilosa* and *Chamaesyce hooveri*.

In addition, soil disturbance from cattle grazing combined with competition from introduced species adversely affects several populations of *Tuctoria greenei* in the Sacramento and San Joaquin Valleys (Stone *et al.* 1987, 1988). Although *Neostaphia colusana* can withstand some degree of trampling associated with grazing, this species has been extirpated from two areas that were heavily grazed (Stone *et al.* 1988). *Tuctoria greenei* appears to be the most susceptible to negative grazing impacts of the eight plants in this listing proposal because its preference for marginal sites in vernal pools (e.g. along the outer edges of the pool) makes it more susceptible to livestock trampling damage and competition from nonnative weeds such as *Lolium multiflorum*, *Polypogon monspeliensis*, and *Phalaris paradoxa* (Stone *et al.* 1987). All populations of *T. greenei* are subject to grazing. Several populations of *T. greenei* are damaged and declining, and at least eight sites have been extirpated or are presumed extirpated from grazing impacts (Stone *et al.* 1988). It is therefore likely that all remaining populations of *T. greenei* are threatened by grazing (Stone *et al.* 1988).

Since vernal pools are fairly localized habitats in close proximity to urban and agricultural areas, uncontrolled visits by groups or individuals could result in trampling of vernal pool plants.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these eight taxa in determining to issue this rule. Based on this evaluation, the preferred action is to list *Orcuttia inaequalis*, *Orcuttia pilosa*, *Orcuttia viscida*, and *Tuctoria greenei* as endangered and to list *Castilleja campestris* ssp. *succulenta*, *Chamaesyce hooveri*, *Neostapfia colusana*, and *Orcuttia tenuis* as threatened. Large-scale human population increases and attendant urban growth, as well as agricultural land uses in adjacent areas, have destroyed significant quantities of the plants' vernal pool habitat and continue to eliminate many plant populations. As a result, all eight species have fragmented, highly restricted habitats within the Central Valley, most of which are vulnerable to on-going and future threats. Relatively few populations of these plants are afforded permanent protection.

The plants proposed for listing as endangered face numerous threats and have been reduced to fewer than 20 populations each. Of the 12 extant populations of *Orcuttia inaequalis*, 7 are threatened by overgrazing, competition with nonnative weeds, urbanization, agriculture, and a flood control project. Twelve of the 19 extant populations of *O. pilosa* are variously threatened by overgrazing, urbanization, irrigated agriculture, a highway expansion project, discing, and competition from nonnative weeds. Of the seven extant populations of *O. viscida*, five populations are threatened by one or more of the following factors: overgrazing, landfill projects, urban

developments, a frisbee golf course, off-highway vehicle use, and competition from nonnative weeds. All 17 extant populations of *Tuctoria greenei* are threatened by overgrazing and/or irrigated agriculture. Because these plants are in danger of extinction throughout all or a significant part of their ranges, they fit the definition of endangered as defined in the Act.

The four taxa proposed to be listed as threatened face fewer existing threats but are likely to become increasingly imperiled in the foreseeable future unless current trends of urban development and agricultural conversion are reversed. Of the 33 extant populations of *Castilleja campestris* ssp. *succulenta*, nearly half are threatened by one or more of the following: discing, grazing, flood control projects, urbanization, agriculture, a proposed highway expansion project, and a proposed landfill. About one-third of the 23 populations of *Chamaesyce hooveri* are threatened by a combination of irrigated agriculture, overgrazing, and competition with nonnative weeds. Of the 36 populations of *Neostapfia colusana*, 19 are damaged and declining due to one or more of the following factors: overgrazing, discing, flood control projects, competition with exotic plants, and agricultural activities. Fifteen of the 40 extant populations of *Orcuttia tenuis* are threatened either by overgrazing and competition from introduced species, or by urbanization. For the reasons discussed below, the Service is not proposing to designate critical habitat for these plant species at this time.

Critical Habitat

Section 4(a)(3) of the Act requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that determination of critical habitat is not prudent for these species at this time. Since vernal pool habitats are small and easily identified, it is likely that the publication of precise maps and descriptions of critical habitat in the **Federal Register** would increase the vulnerability of these plant species to incidents of collection and general vandalism. The listing of these plants as endangered or threatened elevates awareness of their rarity and makes them more sought after by curiosity seekers, researchers, and rare plant collectors. Such increased visits to vernal pools could contribute to the decline of existing populations through vandalism. Protection of the habitats of the eight taxa will be addressed through the recovery process and through the section 7 consultation process. The Service believes that Federal involvement in areas where these plants occur can be identified without the designation of critical habitat. Therefore, the Service finds that designation of critical habitat for these eight plants is not prudent at this time, because such designation would likely increase the degree of threat from vandalism, collecting, and other human activities.

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 activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) 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 its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provisions of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Corps will become involved with these species through its permitting authority under section 404 of the Clean Water Act, as well as water projects in the Central Valley such as the Merced County Streams Project. By regulation, nationwide permits may not be issued where a federally listed endangered or threatened species would be affected by the proposed project without first completing formal consultation pursuant to section 7 of the Act. The presence of a listed species would highlight the national importance of these resources. In addition, insurance of housing loans by the Department of Housing and Urban Development in areas that presently support these eight species would be subject to review by the Service under section 7 of the Act. The Bureau of Reclamation will become involved under its Friant water contract renewal program to the extent that these species may occur within the 404,700 ha (1 million acre) water delivery area (M. Kohl, U.S. Fish and Wildlife Service, pers. comm., 1992). Other future Bureau of Reclamation contract renewals will provide additional potential for section 7 involvement. The Bureau and the Forest Service will become involved as they are responsible for authorizing grazing and other land uses of areas containing vernal pools. Highway construction and maintenance projects that receive funding from the Department of Transportation (Federal Highways Administration) will be subject to review under section 7 of the Act.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 for endangered species and 17.71 and 17.72 for threatened species set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. With respect to the eight vernal pool plants, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 or 17.71 would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export; remove and reduce to possession such species from areas under Federal jurisdiction; maliciously damage or destroy any such species from any such area; or to remove, cut, dig, damage or destroy these plants on any other area in knowing violation of any State law or regulation or in the course of any violation of a state criminal trespass law; deliver, receive, carry, transport, or ship these species in interstate or foreign commerce in the course of a commercial activity; or sell or offer for sale these species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant taxa are exempt from these prohibitions provided that a statement "of cultivated origin" appears on the shipping containers. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also

provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. Since none of these eight plants are common in the wild or in cultivation, trade permits likely would not be sought. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, rm. 432; Arlington, Virginia 22203–3507 (703/358–2092).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these agencies;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject area and their possible impacts on these species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846.

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 connection 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 94244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor of the Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Kenneth W. Fuller, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, 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.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the families indicated, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* *	*	*	*	*	*	*
Euphorbiaceae—Spurge family:						
* *	*	*	*	*	*	*
Chamaesyce hooveri ...	Hoover's spurge	U.S.A. (CA)	T	.....	NA	NA
* *	*	*	*	*	*	*
Poaceae—Grass family:						
* *	*	*	*	*	*	*
Neostapfia colusana	Colusa grass	U.S.A. (CA)	T	.....	NA	NA
* *	*	*	*	*	*	*
Orcuttia inaequalis	San Joaquin Valley Orcutt grass.	U.S.A. (CA)	E	.....	NA	NA
* *	*	*	*	*	*	*
Orcuttia pilosa	Hairy Orcutt grass	U.S.A. (CA)	E	.....	NA	NA
* *	*	*	*	*	*	*
Orcuttia tenuis	Slender Orcutt grass	U.S.A. (CA)	T	.....	NA	NA
* *	*	*	*	*	*	*
Orcuttia viscida	Sacramento Orcutt	U.S.A. (CA)	E	.....	NA	NA
* *	*	*	*			
Tuctoria greenei	.....	U.S.A. (CA)	E	.....	NA	NA

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * *	*	*	*	*	*	*
Scrophulariaceae—Snapdragon family:						
* * *	*	*	*	*	*	*
Castilleja campestris ssp. *succulenta*	Fleshy owl's-clover	U.S.A. (CA)	T		NA	NA
* * *	*	*	*	*	*	*

Dated: July 13, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–18637 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 58, No. 149
Thursday, August 5, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee will be convened on Thursday, August 19, 1993, 10 a.m. to 2 p.m., Council Chambers, City Hall, 15 Loocherman Street Plaza, Dover, Delaware 19901. The purpose of the meeting is to announce new appointments, including newly appointed Chairperson Emily G. Morris of Dover, conduct an administrative orientation, plan program areas, and review project activity on the recent factfinding meeting regarding implementation of the Americans With Disabilities Act in Delaware.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Emily G. Morris at 302–674–0839, or John I. Binkley, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–18620 Filed 8–4–93; 8:45 am]

BILLING CODE 6335–01–P

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6:30 p.m. and adjourn at 8 p.m., on August 26, 1993, at the Holiday Inn Crowne Plaza, 333 Poydras Street, New Orleans, Louisiana 70130. The purpose of the meeting is to discuss current projects and to plan for future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TDD 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 26, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–18619 Filed 8–4–93; 8:45 am]

BILLING CODE 6335–01–P

U.S. COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will be held on September 9, 1993, from 6 p.m. until 8 p.m. at the Doubletree Hotel, 616 West 7th Street, Tulsa, Oklahoma 74217. The purpose of the meeting is to plan for future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816–426–5253 (TTY 816–426–5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 30, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–18700 Filed 8–4–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 35–93]

Foreign-Trade Zone 79—Tampa, Florida, Application for Subzone, Group Technologies Corporation Plant, (Electronic/Computer/Communication Equipment), Tampa, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Tampa, Florida, grantee of FTZ 79, requesting special-purpose subzone status for the electronic/computer/telecommunication equipment manufacturing facility of Group Technologies Corporation (GTC) in Tampa, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 26, 1993.

The GTC facility (38 acres) is located at 10901 Malcolm McKinley Drive, Tampa, Florida. The facility (850 employees) is used to produce a range of electronic equipment, including printed circuit board assemblies, power supplies, computers and components, telecommunication and communication security equipment, avionics, medical equipment, and testing equipment. While GTC has been a supplier primarily to U.S. government agencies, it is shifting towards commercial markets to compensate for reductions in defense-related contractors.

The company purchases or will purchase certain parts and materials from abroad, including telephones, computer cathode ray tubes, monitors, liquid crystal displays, flat panel displays, disc drives, tape drives, modems, circuit boards, capacitors, resistors, transistors, integrated circuits, diodes, and aluminum housings.

Zone procedures would exempt GTC from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (3.9 to 8.5%). The duty rates on foreign-source components range from duty-free to 10 percent. The application indicates that zone savings will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 4, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 19, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port Director's Office, U.S. Customs Service, 2203 N. Lois Avenue, Tampa, FL 33601.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 28, 1993.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 93–18751 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket No. 33–93]

Proposed Foreign-Trade Subzone; Chevron U.S.A. Products Co., (Oil Refinery), Pascagoula, Mississippi

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Gulfport/Biloxi Foreign-Trade Zone, Inc., grantee of FTZ 92, requesting special-purpose subzone status for the oil refinery of Chevron U.S.A. Products Company (Chevron), located in Pascagoula, Mississippi. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 21, 1993.

The facility (3,100 acres) is located on the Mississippi Sound, east of Pascagoula, some 35 miles east of Gulfport, in Jackson County, Mississippi. The refinery (approx. 295,000 BPD; 1,195 employees) is used to produce fuel and chemical products. Fuels produced include gasoline, jet fuel, fuel oil, diesel fuel, and light naphtha. Chemical products produced include refinery gases such as liquified petroleum gas, propane, and butane; petrochemical feedstocks, such as paraxylene and propylene; and refinery byproducts, such as asphalt, sulfur, and petroleum coke. The company also has plans to add a processing plant to produce benzene for petrochemical use. All of the petroleum coke and 9 percent of the fuels are exported. Up to 90 percent of the crude oil (95 percent of imputs) is sourced abroad.

The application requests authority to use zone procedures primarily for export activity at this time and indicates that Chevron will accept approval subject to the standard oil refinery restrictions (privileged foreign status on incoming foreign merchandise and full duties on fuel consumed). At the outset, one of the main uses of zone procedures would involve the refining of foreign crude oil for jet fuel that is sold for international flights, which could displace foreign-sourced jet fuel that is imported duty- and tax-free under the bonded fuel program.

Zone procedures would exempt Chevron from Customs duty payments on the foreign products used in its exports, including jet fuel sold for international flights. The company would be able to defer Customs duties on finished products shipped to U.S. markets. (The duty on crude oil ranges from 5.25 to 10.5 cents/barrel.) Jet fuel sold for international flights also would be exempt from state sales and excise taxes. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is October 4, 1993. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 19, 1993).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations.

Port Director's Office, Port of Pascagoula, U.S. Customs Service, Suite 402, Pascagoula-Moss Point Bank Bldg., Pascagoula, Mississippi 39568.
Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: July 28, 1993.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 93–18750 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–055]

Acrylic Sheet From Japan; Intent To Revoke Antidumping Finding

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

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on acrylic sheet from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1976, the Treasury Department published an antidumping finding on acrylic sheet from Japan (41 FR 36497). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity to Object

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to

the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–18757 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–307–701]

Aluminum Rod From Venezuela; Intent To Revoke Antidumping Duty Order

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

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on aluminum rod from Venezuela. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Gail Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1988, the Department of Commerce (the Department) published an antidumping duty order on aluminum rod from Venezuela (53 FR 31903). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity To Object

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–18760 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–427–098]

Anhydrous Sodium Metasilicate From France; Preliminary Results of Antidumping Duty Administrative Review

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioner, the PQ Corporation, the Department of Commerce has conducted an administrative review of the antidumping duty order on anhydrous sodium metasilicate from France. This review covers Rhone Poulenc Chime deBase, a manufacturer/exporter of this merchandise to the United States, and the period January 1, 1992 through December 31, 1992. The firm failed to respond to our questionnaire. As a result, we have determined to use best information available for cash deposit and appraisement purposes.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph A. Fargo or Richard Rimlinger, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On January 13, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 4148) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on anhydrous sodium metasilicate (ASM) from France. On January 26, 1993, the petitioner, the PQ Corporation, requested an administrative review of Rhone Poulenc Chime DeBase (Rhone Poulenc), a manufacturer/exporter of this merchandise to the United States. We initiated the review, covering January 1, 1992 through December 31, 1992, on March 8, 1993 (58 FR 12931). The Department is now conducting this review in accordance with section 751 of the Tariff Act of 1930 as amended (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of ASM, a crystallized silicate (Na_2SiO_3) which is alkaline and readily soluble in water. Applications include waste paper de-inking, ore-flotation, bleach stabilization, clay processing, medium or heavy duty cleaning, and compounding into other detergent formulations. This merchandise is classified under Harmonized Tariff Schedules (HTS) item numbers 2839.11.00 and 2839.19.00. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers Rhone Poulenc and the period January 1, 1992 through December 31, 1992.

Use of Best Information Available

We mailed the antidumping questionnaire to Rhone Poulenc, the only manufacturer/exporter of this merchandise to the United States. Rhone Poulenc failed to respond to our questionnaire. The Department has therefore decided to use the best

information available (BIA) in determining the rate for this firm.

When a company fails to provide the information requested in a timely manner, or otherwise significantly impedes the Department's review, the Department considers the company uncooperative and generally assigns to that company the higher of: (a) The highest rate assigned to any company in a previous review or the investigation or (b) the highest rate for a responding company with shipments during the review period. See 19 CFR 353.37(b) and Final Results of Antidumping Duty Administrative Review Portable Electric Typewriters from Japan (November 4, 1991, 56 FR 56393). In this case, for BIA, we used 60 percent, the highest rate from a prior review. See Final Results of Antidumping Duty Administrative Review, Anhydrous Sodium Metasilicate from France (52 FR 33856, September 8, 1987).

Preliminary Results of the Review

As a result of our review, we preliminarily determine that a margin of 60 percent exists for Rhone Poulenc during the period January 1, 1992 through December 31, 1992.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

Upon completion of this administrative review, the Department will issue appraisement instructions directly to the Customs Service.

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of ASM from France, entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be that established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value investigation, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping orders. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping order, the "all others" rate for the purposes of this review will be 60 percent, the "all others" rate established in the LTFV investigation.

These deposit requirements when imposed shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 23, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–18762 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–704]

Brass Sheet and Strip From Japan; Intent to Revoke Antidumping Duty Order

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

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on brass sheet and strip from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Chip Hayes, Thomas Killiam, or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3601.

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1988, the Department of Commerce (the Department) published an antidumping duty order on brass sheet and strip from Japan (53 FR 38454). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25 (d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity To Object

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant

Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–18758 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–035]

Cadmium From Japan; Intent To Revoke Antidumping Finding

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

ACTION: Notice of intent to revoke antidumping finding.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping finding on cadmium from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Roy Unger or Thomas Futtner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1972, the Treasury Department published an antidumping finding on cadmium from Japan (37 FR 15700). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this finding for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping finding.

Opportunity To Object

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping finding.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the finding is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–18756 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–504]

Candles From the People's Republic of China; Intent To Revoke Antidumping Duty Order

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

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on candles from the People's Republic of China (the PRC). Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Valerie Turoscy, or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3601.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1986, the Department of Commerce (the Department) published an antidumping duty order on candles from the PRC (51 FR 30686). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than August 31, 1993, domestic interested parties, as defined in § 353.20(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–18754 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–533–809]

Preliminary Determination of Sales at Less Than Fair Value: Certain Forged Stainless Steel Flanges From India

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

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Jenkins or Brian Smith, Office of Antidumping Investigations, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1756 or 482–1766, respectively.

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that certain forged stainless steel flanges (flanges) from India are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 21, 1993 (58 FR 6619, February 1, 1993), the following events have occurred.

On February 16, 1993, the International Trade Commission (ITC) notified us of its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of subject merchandise that is allegedly sold in the United States at less than fair value.

On March 9, 1993, the American Consulate in Bombay informed us of the names and relevant history of the firms producing flanges in India. On March 11 and 27, 1993, we sent mini-Section A questionnaires that requested volume and value of shipments to the United States to Indian producers named by the petitioners and by the American Consulate. We received responses to the Department's mini-Section A questionnaires from March 16 through April 26, 1993. However, two of the respondents, Bombay Forgings Pvt., Ltd. and Dynaforge, did not respond to our mini-Section A questionnaire. Consequently, we have assigned a rate to Bombay Forgings Pvt., Ltd. and Dynaforge using best information available (BIA). For further discussion, see the "Best Information Available" section of this notice.

Based on our analysis of the responses to the mini-Section A responses and information received from the American Consulate in Bombay, we determined that sales by Mukand Ltd. (Mukand) and Akai Impex Ltd. (Akai) represented a significant percentage of exports of subject merchandise from India. These companies, Mukand and Akai, together accounted for at least 60 percent of known sales to the United States during the period of investigation (POI). (See, 19 CFR 353.42(b)). Accordingly, on March 18, and 19, 1993, respectively, we sent Mukand and Akai antidumping questionnaires. On March 25, 1993, the Department met, with counsel for Mukand, at its request, to discuss Mukand's date of sale methodology. On March 29, 1993, Mukand submitted a description of its sales process. Also on March 29, 1993, the Department requested that Mukand provide clarification of information submitted on purchase orders relating to sales of subject merchandise. On March 31, 1993, the Department contacted Mukand and requested that it describe the relationship between Mukand and its trading company, Sunstar Metals, Ltd. (Sunstar).

On April 1, 1993, Mukand responded to Section A of the Department's antidumping questionnaire requesting information concerning organizational structure, accounting practices, merchandise, and total sales of subject merchandise in all markets. On April 2, 1993, Akai informed the Department that it had no home market or third country sales. Therefore, we forwarded to Akai Section D of the Department's antidumping questionnaire, (the section regarding constructed value). On April 7, 1993, Mukand informed the Department that it had no home market sales and asked if it should report third country sales or constructed value. On April 8, 1993, Mukand submitted clarification of the sales information provided on March 29, 1993. On April 8, 1993, Mukand also submitted a supplement to its submission earlier that day. On April 15, 1993, Mukand submitted a response to questions concerning the date of sale issue. Also on April 15, 1993, Echjay Forgings Private Ltd. (Echjay) requested that it be treated as a voluntary respondent in this investigation.

On April 16, 1993, we notified parties that we were modifying the scope of this investigation by inserting the term "forged" and adding a statement that forged flanges sold in the United States are generally made to specification ASTM A–182. We also added a statement that cast stainless steel flanges were specifically excluded from the scope of the investigation. Petitioners agreed that the intended scope of this investigation was stainless steel flanges made to specification ASTM A–182. We informed petitioners and respondents of the modification. (See, Memorandum to Richard W. Moreland, Acting Deputy Assistant Secretary for Investigations (April 16, 1993).)

On April 19, 1993, we received Akai's response to section A of the Department's questionnaire. Because the Department needed to determine whether Mukand or its trading company, Sunstar, was the possible price discriminator, the Department served its antidumping questionnaire on Sunstar by international courier on April 22, 1993. On April 22 and 29, 1993, the Department requested additional information from Mukand in order to determine the appropriate date of sale methodology for this company. On April 29, 1993, we also requested that Mukand submit U.S. sales and third country sales shipped directly from India or from its trading company's warehouse. On April 30, 1993, we sent Echjay an antidumping questionnaire. On April 30, 1993, we also requested export statistics from Akai, Echjay, Mukand and Sunstar for use in determining whether critical circumstances exist.

On May 3, 1993, at its request, we sent Mukand Section D of the Department's antidumping questionnaire. On May 5, 1993, petitioners requested a 50-day postponement of the Department's preliminary determination. On May 7, 1993, we requested that Sunstar submit its selling, general, and administrative expenses, with relation to selling subject merchandise in the United States. On May 10, 1993, Mukand and Sunstar both submitted responses to the Department's April 22, 1993, supplemental questions. Both of these submissions conflicted with information previously submitted to the Department.

On May 11, 1993, Mukand submitted its response to Section C of the Department's questionnaire requesting sales to the United States and other data necessary to calculate United States Price. On May 12, 1993, we extended the preliminary determination until July 29, 1993 (58 FR 29195, May 19, 1993). On May 14, 1993, Echjay withdrew its request for voluntary respondent status before the questionnaire was due. On May 15, 1993, we received Akai's Section C response. On May 28, and June 10, 1993, we issued deficiency letters to Akai. On June 8, 18, and 23, 1993, Akai submitted its responses.

On June 11, 1993, Sunstar submitted its response to additional information requested by the Department on May 7, 1993. On June 15, 1993, Mukand responded to the Department's May 27, 1993, deficiency letter. On June 15, 1993, we sent Mukand a deficiency letter regarding its Section D response. Mukand responded to this letter on June 29, 1993. Also on June 29, 1993, we received Akai's section D response.

On July 19, 1993, respondents Mukand and Sunstar submitted a written explanation of the circumstances surrounding the

submission of their data. and also requested that the Department postpone the final determination should the preliminary determination be affirmative. As noted in the July 29, 1993, concurrence memorandum, the Department has determined that because respondents have seriously impeded this proceeding, there is a compelling reason not to grant the request for a postponement of the final determination. On July 23, 1993, we sent Akai a supplemental deficiency letter. On July 26, 1993, Meera Shankar and Niraj Srivastava of the Embassy of India met with Deputy Assistant Secretary Barbara Stafford. (See the July 27, 1993, *ex-parte* memorandum.)

Period of Investigation

The POI is July 1, 1992 through December 31, 1992.

Scope of Investigation

The products covered by this investigation are certain forged stainless steel flanges from India both finished and not-finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes 5 general types of flanges. They are weld neck, used to make butt-weld line connections, threaded, used to make threaded line connections, slip-on & lap joint, used to make stub end/butt-weld line connections, socket weld, used to fit pipe into machined recessions, and blind, used to seal off lines. The sizes of the flanges within in the scope range generally from one to six inches; however, all sizes of the above described merchandise are included within the scope. Specifically excluded from the scope of this investigation are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this investigation are currently classifiable under subheading 7307.211.1000 and 7307.215.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Best Information Available

Mukand and Sunstar

In analyzing the numerous responses concerning sales and distribution of flanges from India submitted by respondents Mukand and Sunstar during the course of the investigation, the Department discovered significant inconsistencies in the respondents' certified submissions. (See the June 29, 1993, memorandum to Barbara R. Stafford, outlining these inconsistencies.) These certified submissions form a record of misleading and contradictory responses, such that the Department has not been able to proceed normally with its antidumping duty investigation. In particular, information on the nature of Mukand's and Sunstar's relationship, as well as on the issue of who is responsible for setting prices, both critical issues in determining what information to use in calculating United States price and/or foreign market value, differed significantly from submission to submission. Furthermore, until July 19, 1993, neither respondent attempted to provide an explanation for the significant contradictions reported in their certified submissions.

In order to determine whether sales are made in the United States at less than fair value, it is imperative that the Department be provided with accurate and reliable sales information in a timely basis to be used in its analysis. Because of Mukand's and Sunstar's inconsistent and contradictory information, the Department does not have a reliable source of information on which to base its determination. Section 776(c) of the Act provides that whenever a party significantly impedes an investigation, the Department shall use the best information otherwise available, (BIA) (19 U.S.C. section 1677e). We have done so in this investigation.

As BIA, for Mukand and Sunstar we are assigning the highest margin contained in the petition, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospaco Co.* v. *U.S.* Slip-Op. 93–104 (CAFC) (June 22, 1993); *see also Krupp Stahl AG et al v. the United States,* Slip Op. 93–84 (CIT May 26, 1993).). The highest margin contained in the petition is 210 percent. Because the history of the responses indicates that the information reported is highly unreliable, we will not conduct verification for these companies.

Bombay Forgings Pvt. Ltd. and Dynaforge

On March 11 and 29, 1993, the Department sent mini-Section A questionnaires to producers and exporters named in the petition and those named by the American Consulate in Bombay. The purpose of these questionnaires was to obtain volume and value of flange shipments to the United States in order to determine which companies should be designated as respondents to the Department's questionnaire. Two of these producers/exporters, Bombay Forgings Pvt. Ltd and Dynaforge, did not respond to the Department's mini-Section A questionnaire. Because Bombay Forgings Pvt. Ltd and Dynaforge have refused to provide the information requested in the form required, as BIA we have assigned them the highest rate in the petition, 210 percent.

Akai

Akai has submitted its questionnaire responses to the Department and has also responded to the Department's deficiency letters. Even so, we find that numerous deficiencies remain and that the information submitted by this company is so incomplete or unclear that we cannot use it for our preliminary determination. However, we have given Akai an additional opportunity to correct these deficiencies. Should the Department determine that Akai has responded in a timely manner to correct the remaining deficiencies identified by the Department, we will verify the information submitted by Akai, and Akai's responses will be considered in making our final determination.

Because Akai's submissions are too deficient to be used by the Department in making its preliminary determination, we are assigning Akai a BIA rate. In determining what rate to use as BIA, the Department again follows a two-tiered methodology, whereby the Department may assign lower rates for those respondents which cooperate in an investigation and rates based on more adverse assumptions for those respondents which do not cooperate in an investigation. Because Akai cooperated in this investigation, we are assigning as BIA a simple average of the margins provided in the petition.

All Others Rate

The all others rate is the average of the company margins applied in this determination, 185.15 percent.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of flanges from India. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that

there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

In determining importer knowledge of dumping, we normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise, or margins of 15 percent or more sufficient to impute knowledge of dumping under section 733(e)(1)(A)(ii) for exporters sales price sales, and margins of 25 percent or more for purchase price sales. (See e.g. Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987). Since the preliminary margins for flanges from India for Mukand, Sunstar, Bombay Forgings Pvt. Ltd., Dynaforge and Akai are above 25 percent, we determine in accordance with section 733(e)(1)(A)(ii) of the Act that there is a reasonable basis to believe or suspect that knowledge of dumping existed for flanges exported from those companies.

As BIA for Mukand, Sunstar, Bombay Forgings Pvt. Ltd. and Dynaforge, we are making the adverse assumption that imports have been massive over a relatively short period of time in accordance with section 733(e)(1)(B) of the Act. Based on this analysis, we determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of flanges from India for Mukand, Sunstar, Bombay Forgings Pvt. Ltd. and Dynaforge.

Under 19 CFR 353.16(f)(2), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we will not consider the imports "massive." Based on this analysis, using Akai's response, we find that imports of subject merchandise from Akai during the period subsequent to receipt of the petition have not been massive. Since we do not find that there have been massive imports, pursuant to section 733(e)(1) of the Act, for Akai, we preliminarily determine that critical circumstances do not exist.

Suspension of Liquidation

In accordance with section 733(e)(2) (19 U.S.C. 1673b(e)(2)) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of flanges from India, as defined in the "Scope of Investigation" section of this notice, for Mukand, Ltd., Sunstar Metals, Ltd., Bombay Forgings Pvt., Ltd. and Dynaforge that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the Federal Register. For all other entries, we are directing the U.S. Customs Service to suspend liquidation of all entries of flanges from India, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the foreign market value of the subject merchandise exceeds the United States Price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
Mukand Ltd.	210.00
Sunstar Metals Ltd.	210.00
Bombay Forgings Pvt. Ltd.	210.00
Dynaforge	210.00
Akai Impex Pvt. Ltd.	75.76
All others	183.15

ITC Notification

In accordance with section 733(f) of the Act, 19 U.S.C. 1673b(f), we have notified the ITC of our determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments must be submitted, in at least ten copies, to the Assistant Secretary for Import Administration no later than September 17, 1993, and rebuttal briefs no later than September 22, 1993. In addition, a public version and five copies should be submitted by the appropriate date if the submission contains business proprietary information. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held, if requested, at 9:30 a.m. on September 24, 1993, at the U.S. Department of Commerce, room 1411, 14th Street and Constitution Avenue NW., Washington DC., 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099 within ten days of the date of publication of this notice. Requests should contain: an executive summary in conjunction with case briefs of no more than two pages on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where the cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), oral presentations will be limited to arguments raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: July 29, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–18764 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–821]

Preliminary Determination of Sales at Less Than Fair Value; Certain Forged Stainless Steel Flanges From Taiwan

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

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Pamela Ward, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1174.

Preliminary Determination

The Department of Commerce (the Department) preliminarily determines that certain forged stainless steel flanges (flanges) from Taiwan are being, or likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated

margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the notice of initiation on January 21, 1993 (58 FR 6619, February 1, 1993), the following events have occurred.

On February 11, 1993, the American Institute of Taiwan in Taipei informed us of the names and relevant history of the firms producing flanges in Taiwan.

On February 16, 1993, the International Trade Commission (ITC) issued an affirmative preliminary determination.

On March 5, 1993, the Department presented its questionnaire to Enlin Steel Corporation (Enlin). On March 9, 1993, the Department sent "mini-Section A" questionnaires that requested the volume and value of shipments to the United States to all other known Taiwanese exporters of subject merchandise, in order to determine which companies should be designated as questionnaire respondents.

On March 19, 1993, Enlin submitted its response to section A of the Department's questionnaire.

We received responses to the Department's March 9, 1993, questionnaires from March 16, 1993, through March 23, 1993. However, some of these responses were not properly filed. We requested that each of these parties properly file its response in accordance with the Department's regulations. Because we did not receive a properly filed response by Tay Precision Industries Co., Ltd. (Tay Precision), on June 23, 1993, we returned its improperly-filed submission. Consequently, we have assigned a rate to Tay Precision using best information available (BIA). For further discussion, see the "Best Information Available" section of this notice.

Based on our analysis of the responses to the March 9, 1993, questionnaires, we determined that sales by Ta Chen Stainless Pipe Co., Ltd. (Ta Chen) represented a significant percentage of exports of subject merchandise from Taiwan. The two Taiwanese producers, Ta Chen and Enlin, together accounted for at least 60 percent of known sales to the United States during the period of investigation (POI). (See, 19 CFR 353.42(b).) Accordingly, on March 24, 1993, we issued Ta Chen a questionnaire.

On March 26, 1993, Enlin requested that the scope of the investigation be clarified to exclude cast flanges.

On April 7, 1993, Ta Chen submitted its section A questionnaire response.

On April 16, 1993, we notified parties that we were modifying the scope of this investigation by inserting the term "forged" and adding a statement that forged flanges sold in the United States are generally made to specification ASTM A–182. We also added a statement that cast stainless steel flanges were specifically excluded from the scope of the investigation. Petitioners agreed that the intended scope of this investigation was only stainless steel flanges made to specification ASTM A–182. We informed petitioners and respondents of the modification. (See, Memorandum to Richard W. Moreland, Acting Deputy Assistant Secretary for Investigations (April 16, 1993).)

On April 23, 1993, Enlin missed the deadline for submitting its section B and C response. On April 30, 1993, Enlin sent a letter notifying the Department that it would not respond to the Department's questionnaire. Consequently, we have based our margin calculation for Enlin on BIA. For further discussion, see the "Best Information Available" section in this notice.

Also on April 30, 1993, we requested critical circumstances data from Ta Chen. On May 5, 1993, Ta Chen submitted its sections B and C response. On May 6, 1993, Ta Chen submitted critical circumstances data.

On May 17, 1993, petitioners requested a postponement of the preliminary determination. We granted this request, and on May 20, 1993, we postponed the preliminary determination until July 29, 1993 (58 FR 30144 (May 26, 1993)).

On June 2, 1993, petitioners submitted a timely allegation that Ta Chen had made sales in the home market below the cost of production (COP). On June 29, 1993, we initiated a COP investigation of Ta Chen's home market sales. Because Ta Chen subcontracts all of its production to outside companies, on July 9, 1993, we issued COP questionnaires to Ta Chen and its subcontractors. These responses are due August 6, 1993, and will be considered for the final determination.

On June 4, 1993, we issued a supplemental questionnaire to Ta Chen. We received the response to this questionnaire on June 25, 1993.

On July 27, 1993, we issued another supplemental questionnaire to Ta Chen. The response to this questionnaire is due on August 10, 1993, and will be considered for the final determination.

Scope of Investigation

The products covered by this investigation are certain forged stainless steel flanges both finished and not-finished, generally manufactured to specification ASTM A–182, and made in alloys such as 304, 304L, 316, and 316L. The scope includes five general types of flanges. They are weld neck, used for butt-weld line connections, threaded, used for threaded line connections, slip-on & lap joint, used with stub ends/butt-weld line connections, socket weld, used to fit pipe into a machined recession, and blind, used to seal off a line. The sizes of the flanges within in the scope range generally from one to six inches; however, all sizes of the above described merchandise are included in the scope. Specifically excluded from the scope of this investigation are cast stainless steel flanges. Cast stainless steel flanges generally are manufactured to specification ASTM A–351. The flanges subject to this investigation are currently classifiable under subheading 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation remains dispositive.

Period of Investigation

The POI is July 1, 1992, through December 31, 1992.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise. We made all product merchandise comparisons on the basis of identical merchandise.

Best Information Available

As noted in the "Case History" section of this notice, the preliminary dumping margins for two exporters, Enlin and Tay Precision, are based on BIA.

Regarding Enlin, this company did not file a response to sections B and C of the Department's questionnaire, due by April 23, 1993. On April 30, 1993, Enlin stated in writing that it would not be responding to the Department's questionnaire and requested a suspension agreement. Because Enlin refused to answer the Department's questionnaire, we find it has been uncooperative in this investigation. Accordingly, we are using the highest margin provided in the petition as BIA. (See Concurrence Memorandum, July 21, 1993, for a full discussion.)

Regarding Tay Precision, on March 9, 1993, the Department requested that this company, as well as all other known Taiwanese exporters of subject

merchandise, provide data on the volume and value of flanges shipments to the United States in order to determine which companies should be designated as respondents to the Department's questionnaire. Tay Precision submitted a response to the Department's request for data. In this submission Tay Precision requested proprietary treatment; however, it failed to provide a public summary of its response as required by 19 CFR 353.32(b)(1) and 19 CFR 353.32(b)(2). The Department requested that Tay Precision provide a public version of its submission and informed Tay Precision that if a public version was not submitted that the Department would return its response. Because Tay Precision did not respond to the Department's request and properly file a response to our questionnaire, on June 23, 1993, we returned its response in accordance with 19 CFR 353.32(d) and have used BIA to determine the dumping margin for this company. Because Tay Precision refused to provide the information requested in proper form, we have assigned it the highest rate in the petition.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department may assign lower rates for those respondents which cooperate in an investigation and rates based on more adverse assumptions for those respondents which do not cooperate in an investigation.

According to the Department's two-tiered BIA methodology outlined in the Final Determination of Sales at Less Than Fair Value: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, Italy, Japan, Romania, Sweden, Thailand, and the United Kingdom, 54 FR 18992, 19033 (May 3, 1989), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) The margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation. This two-tiered methodology for assigning BIA has been recently upheld by the Federal Circuit Court of Appeals in *Allied-Signal* v. *U.S.* Slip-Op. 93–104 (CAFC) (June 22, 1993). The dumping margin calculated for Ta Chen was lower than the highest rate in the petition of 48 percent. Therefore, as BIA, the dumping margin assigned to Enlin and Tay Precision for purposes of this preliminary determination is 48 percent.

Fair Value Comparisons

To determine whether sales of flanges from Taiwan to the United States by Ta Chen were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based the calculation of USP for Ta Chen on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated.

We calculated purchase price based on packed F.O.B. prices to unrelated customers. In accordance with section 772(d)(2)(A) of the Act, we made deductions, where appropriate, for foreign inland freight, foreign brokerage and handling expenses, marine insurance, and harbor construction tax.

On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision of the Court of International Trade in *Zenith Electronics Corporation* v. *United States*, Slip Op. 92–1043, –1044, –1045, –1046, ruled that section 772(d)(1)(C) of the Act provides for an addition to USP to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice and will no longer make a circumstance-of-sale adjustment. Also, we will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to USP the absolute amount of tax assessed on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to USP, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to USP.

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated USPs net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and will begin the rule making process as soon as possible.

Foreign Market Value

In order to determine whether there were sufficient sales of flanges in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of flanges to the volume of third country sales of the same product, in accordance with section 773(a)(1)(A) of the Act. Ta Chen had a viable home market with respect to sales of flanges during the POI.

Petitioners alleged that Ta Chen was selling in the home market at prices below the COP. Based on petitioners allegation, we requested data on the production costs of Ta Chen and its subcontractors. This cost data was not be submitted in time to be considered for the preliminary determination. However, Ta Chen and its subcontractors' cost data will be examined at verification and will be analyzed for purposes of our final determination.

In accordance with 19 CFR 353.58, we compared U.S. sales to home market sales at the same level of trade.

We calculated FMV based on packed ex-factory prices charged to unrelated customers in the home market. Pursuant to 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses and bank charges.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act. In its sales listing, respondent reported packing expenses that were incurred during the POI. Respondent also reported that merchandise is packed at the time of shipment. Because a large number of shipments occurred after the POI, we have determined that it is appropriate to use the packing expenses incurred during the period over which sales made during the POI were shipped rather than expenses incurred during the POI.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Critical Circumstances

Petitioners allege that "critical circumstances" exist with respect to imports of flanges from Taiwan. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) the volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of the domestic consumption accounted for by imports.

In determining importer knowledge of dumping, we normally consider either an outstanding antidumping order in the United States or elsewhere on the subject merchandise, or margins of 25 percent or more for purchase price sales sufficient to impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act. (See, *e.g.*, Final Determination of Sales at Less Than Fair Value: Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987.) Since the preliminary margins for flanges from Taiwan for Enlin and Tay Precision are above 25 percent, we determine in accordance with section 733(e)(1)(A)(ii) of the Act that there is a reasonable basis to believe or suspect that knowledge of dumping existed for flanges for those companies.

As BIA for Enlin and Tay Precision, we are making the adverse assumption that imports were massive over a relatively short period of time in accordance with section 733(e)(1)(B) of the Act. Based on this analysis, we determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of flanges from Taiwan for Enlin and Tay Precision.

However, regarding Ta Chen, since there are no outstanding antidumping orders on flanges from Taiwan, and the preliminarily-determined dumping margin for this company is less than 25 percent, we cannot impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act. Since the criteria necessary to find the existence of critical circumstances under section 733(e)(1)(A)(i) and 733(e)(1)(A)(ii) are not present for Ta Chen, we do not need to determine whether imports of subject merchandise have been massive over a relatively short period. Therefore, in accordance with section 733(e)(1)(A) of the Act, we preliminarily determine that, for Ta Chen, critical circumstances do not exist with respect to imports of subject merchandise.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of flanges from Taiwan, except those of Ta Chen, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Enlin Steel Corporation	48.00
Ta Chen Stainless Pipe Co., Ltd.	0.00
Tay Precision Industries Co., Ltd.	48.00
All Others	48.00

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments with at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than September 13, 1993, and rebuttal briefs no later than September 17, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 21, 1993, at 10 a.m. at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In addition, an executive summary of no more than two pages on the major issues to be addressed should be submitted with case briefs. Briefs should contain a table of authorities. Citations to the Department's determinations and court decisions should include the page number where the cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: July 29, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–18765 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–602]

Court Decision and Amended Determination; Certain Forged Steel Crankshafts From the United Kingdom

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

EFFECTIVE DATE: May 21, 1993.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Telephone: (202) 482–3464.

SUMMARY: On May 11, 1993, in *United Engineering and Forging* v. *United States*, Court No. 92–1489 (CAFC May 11, 1993), a lawsuit challenging the Department of Commerce's (the Department) final determination of sales

at less than fair value and antidumping duty order on certain forged steel crankshafts (crankshafts) from the United Kingdom, the Court of Appeals for the Federal Circuit (CAFC) affirmed the decision of the Court of International Trade (CIT) to uphold the Department's results of redetermination on remand. See *United Engineering and Forging* v. *U.S.*, Slip. Op. 92–124 (CIT August 3, 1992). As a result of the redetermination, the final weighted-average margin percentage for the period of investigation (POI) for United Engineering and Forging, and for all other firms has decreased from 14.67% to 6.55%. Consistent with the decision of the CAFC in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), a "conclusive" decision in this case has now been reached.

SUPPLEMENTARY INFORMATION:

Scope of Order

The products covered by this order are certain forged carbon or alloy steel crankshafts with a shipping weight between 40 and 750 pounds, whether machined or unmachined. The products are currently classifiable under items 8483.10.10.10, 8483.10.10.30, 8483.10.30.10, and 8483.10.30.50 of the Harmonized Tariff Schedule of the United States (HTSUS). Neither cast crankshafts nor forged crankshafts with shipping weights of less than 40 pounds or more than 750 pounds are subject to this order. Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of this proceeding is dispositive.

Background

On September 1, 1987, the Department published notice of its final determination of sales at less than fair value in connection with the antidumping duty investigation of certain forged steel crankshafts from the United Kingdom. Final Determination of Sales at Less than Fair Value, Certain Forged Steel Crankshafts from the United Kingdom (52 FR 32951). In that determination, the Department set forth its finding of a dumping margin of 14.67% for United Engineering and Forging (UEF) during the POI, October 1, 1985 through October 31, 1986. The rate for all other firms was also 14.67%.

Subsequent to the Department's determination, respondent filed a lawsuit with the CIT challenging this determination. Thereafter, the CIT issued an order in *United Engineering and Forging* v. *United States*, 779 F. Supp. 1375 (CIT, November 18, 1991) remanding the Department's determination in order to: (1) Consider the use of and, if appropriate, apply a six-month forward exchange rate; (2) recalculate U.S. imputed credit expense using the lower of the U.S. or U.K. exchange rates; and (3) reconsider U.E.F.'s claim of reimbursement for certain retooling expenses. On remand, the Department allowed these three adjustments (including use of a U.S. interest rate for the imputed credit expense). On May 4, 1992, the Department filed its required remand results with the CIT. On August 3, 1992, the CIT affirmed the remand results.

UEF appealed to the CAFC the CIT's determination that the Department had acted in accordance with law in selecting foreign-market comparison models, an issue that was contested but not remanded to the Department. On May 11, 1993, the CAFC affirmed without opinion the decision of the CIT. As a result, UEF's dumping margin for certain forged steel crankshafts from the United Kingdom has decreased from 14.67% to 6.55% for the POI. The "all other" rate has also decreased from 14.67% to 6.55% for the POI.

In its decision in *Timken*, the CAFC held that the Department must publish a notice of a decision of the CIT or the CAFC which is not "in harmony" with the Department's determination. Publication of this notice fulfills this obligation. The CAFC also held that in such a case, the Department must suspend liquidation until there is a "conclusive" decision in the action. The decision of the CAFC in *United Engineering and Forging* represents a "conclusive" decision, as all issues in the case are now resolved.

This notice is published in accordance with section 735(d) of the Tariff Act of 1930, as amended, and 19 CFR 353.20(a)(4).

Dated: July 30, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–18763 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–007]

Pagers From Japan; Intent To Revoke Antidumping Duty Order

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

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on pagers from Japan. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT:

Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On August 16, 1983, the Department of Commerce (the Department) published an antidumping duty order on pagers from Japan (48 FR 37058). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumpng duty order.

Opportunity To Object

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–18755 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

[A-549-601]

Pipe Fittings From Thailand; Intent To Revoke Antidumping Duty Order

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

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on pipe fittings from Thailand. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Carlo Cavagna or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-4733.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1987, the Department of Commerce (the Department) published an antidumping duty order on pipe fittings from Thailand (52 FR 31440). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-18759 Filed 8-4-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-423-602]

Industrial Phosphoric Acid From Belgium Intent To Revoke Antidumping Duty Order

AGENCY: Intentional Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on industrial phosphoric acid from Belgium. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-3601.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1987, the Department of Commerce (the Department) published an antidumping duty order on industrial phosphoric acid from Belgium (52 FR 31439). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by section 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity To Object

No later than August 31, 1993, domestic interested parties, as defined in section 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-18753 Filed 8-4-93; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-806]

Preliminary Results of Antidumping Duty Administrative Review, Silicon Metal From Brazil

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

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by our manufacturers/exporters, the Department of Commerce has conducted an administrative review of the antidumping duty order on silicon metal from Brazil. This review covers four manufacturers/exporters and the period March 29, 1991 through June 30, 1992. The review indicates the existence of dumping margins for certain firms during the period.

As a result of this review, we have preliminarily determined to assess antidumping duties equal to the differences between U.S. price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-4475/5253.

SUPPLEMENTARY INFORMATION:

Background

On July 12, 1991, the Department of Commerce (the Department) published in the Federal Register (56 FR 36135) the antidumping duty order on silicon metal from Brazil. In July 1992, four manufacturers/exporters requested, in accordance with section 353.22(a) of the Commerce Regulations, that we conduct an administrative review for the period March 29, 1991 through June 30, 1992. We published a notice of initiation of the antidumping duty administrative review on August 26, 1992 (57 FR 38667).

The Department initiated a review for Companhia Brasileira Carburetto de Calcio (CBCC), Companhia Ferroligas Minas Gerais Minasligas (Minasligas), Eletroila, S.A. (currently known as Eletrosilex Belo Horizonte (Eletrosilex)), and Rima Eletrometalurgia S.A. (Rima).

The Department has now conducted a review for this period in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The merchandise covered by this review is silicon metal containing at least 96.00 but less than 99.99 percent of silicon metal from Brazil. Silicon metal is currently provided for under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff schedule (HTS) as a chemical product, but is commonly referred to as a metal. Semiconductor grade silicon (silicon metal containing by weight not less than 99.99 percent of silicon and provided for in subheading 2804.61.00 of the HTS) is not subject to the order. HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers 4 manufacturers/exporters of Brazilian silicon metal, and the period March 29, 1991 through June 30, 1992.

United States Price

In calculating U.S. price, we used purchase price as defined in section 772 of the Tariff Act. Purchase price was based on the packed, f.o.b., or C. & F. price to the first unrelated purchasers in the United States.

We made deductions, where appropriate for foreign inland freight, ocean freight, customs charges, and duty drawback. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value (FMV), we used third-country price or constructed value as defined in section 773 of the Tariff Act, as appropriate.

We used third-country sales to Japan for CBCC because CBCC had insufficient sales of such or similar merchandise in the home market, and because we determined that CBCC had sufficient sales of such or similar merchandise above the cost of production (COP).

Third-country price was based upon the C.&F. price to unrelated purchasers in Japan. Where appropriate, we made adjustments for brokerage and handling expenses, foreign inland freight, ocean freight, and for differences in packing and credit expenses. No other adjustments were claimed or allowed.

Based upon a timely sales below cost allegation received from the petitioner in this case, we tested the home market sales of Minasligas, Eletrosilex, and RIMA, and the third-country sales of CBCC against the merchandise's COP to determine whether those home or third-country sales were appropriate for use in the derivation of FMV Since the Brazilian economy was hyper-inflationary during the period of review, we instructed respondents to follow our long-standing methodology for hyper-inflationary economies, including the use of replacement costs. (See Final Determination of Sales at Less Than Fair Value, Silicon Metal from Brazil, 56 FR 26977 (June 12, 1992).)

Because general and administrative (G&A) expenses are period costs which should be based on the annual period in which they were incurred, we did not use the monthly calculation of replacement costs submitted by each of the respondents in our COP and constructed value (CV) calculations. Instead, we used the ratio of G&A expenses to cost of goods sold (COGS) shown in Minasligas's Electrolsilex's, IRMA's or CBCC's income statement to calculate G&A expenses.

We used CBCC's above-cost sales since more than 10 percent of its third-country sales were above the COP. We did not use Eletrosilex's or RIMA's home market sales, since more than 90 percent of their home market sales were found to be below the home market COP. We determined that CBCC's, Eletrosilex's, and RIMA's below-cost sales were made over an extended period of time because they were made in more than two months of the review period. Furthermore, no evidence was presented to indicate that home market COP. We determined that CBCC's, Eletrosilex's, and RIMA's below-cost sales were made over an extended period of time because they were made in more than two months of the review period. Furthermore, no evidence was presented to indicate that below-cost COP prices would permit recovery of all costs within a reasonable period of time in the normal course of trade.

Minasligas did not have a sale of such or similar merchandise above the COP during the month of its U.S. sale. In cases in which the home market is hyperinflationary, our normal practice is to use home market sales only if they occur during the same month as the U.S. sale. We, therefore, did not use Minasligas's home market sales in our calculation of FMV.

In accordance with section 773(b) of the Tariff Act we used CV for RIMA, Minasligas, and Eletrosilex, because we could find no contemporaneous, home-market or third-country sales of silicon metal above the COP. (See Final Determination of Sales at Less Than Fair Value, Silicon Metal from Brazil, 56 FR 26977 (June 12, 1992).) As with our COP test, we applied our long-standing methodology for hyper-inflationary economies in our CV calculations. In accordance with section 773(e) of the Tariff Act, CV consisted of the sum of the costs of materials, fabrication, general expenses, profit, and the cost of export packing. Because the actual amount for general expenses exceeded the statutory minimum of 10 percent, we added the actual amount. Because the statutory minimum of eight percent of the sum of the cost of materials, fabrication, and general expenses exceeded the actual profit, we added the statutory minimum. See section 773(e)(1)(B) of the Tariff Act.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margins exist for the period March 29, 1991 through June 30, 1992:

Manufacturer/exporter	Margin (percent)
CBCC	0.00
Minasligas	.00
Eletrosilex	88.24
RIMA	.00

Interested parties may request a disclosure within 5 days of publication of this notice and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will

include the results of its analysis of issues raised in any such case briefs.

The Department shall determine, and the Customs service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of silicon metal from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rates for reviewed firms will be those established in the final results of this review;

(2) For merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation, the cash deposit will continue to be the rate published in the final determination for which the manufacturer or exporter received a company specific rate;

(3) If the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or the original investigation. In accord with the Court of International Trade's decisions in *Flora Trade Council* v. *United States*, Slip, Op. 93–97, and *Federal Mogul Corporation and the Torrington Company* v. *United States*, Slip. Op. 93–83, the cash deposit for all other manufacturers and exporters will be 91.06 percent.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 26, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–18752 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

INTERNATIONAL TRADE ADMINISTRATION

[A–351–819]

Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rods From Brazil

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

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC. 20230; telephone: (202) 482–2778.

PRELIMINARY DETERMINATION: We preliminarily determine that stainless steel wire rods from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice. The statutory deadline for the final determination is October 11, 1993.

Case History

Since the initiation of this investigation on January 19, 1993 (58 FR 6115, January 26, 1993), the following events have occurred.

On January 25, 1993, the Department sent a cable to the American Embassy in Brazil requesting information on the names of any Brazilian companies that produce and export the subject merchandise to the United States, and the corresponding value and quantity of sales to the United States for the period July 1, 1992 to December 30, 1992.

On January 28, 1993, Eletrometal-Metais Especiais S.A. (Eletrometal), requested that it be treated as a voluntary respondent if it were not selected as a mandatory respondent in this investigation.

On February 16, 1993, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On February 17 and 26, 1993, we received comments on the Department's matching criteria outlined in Appendix V of our questionnaire from petitioners. Also on February 26, 1993, we received from the American Embassy in Brazil shipment statistics for one company, Acos Finos Piratini SA (Piratini).

On March 5, 1993, the Department sent mini-Section A antidumping duty questionnaires to Piratini, Acos Villares SA (Villares), and Eletrometal, the three companies named in the petition, requesting value and quantity statistics for the subject merchandise exported to the United States. On March 19, 1993, we received a response to our questionnaire from Eletrometal, but we received no responses from Piratini or Villares. On March 24, 1993, the Department selected Eletrometal as one of the three respondents since they were the only producer to answer the questionnaire and had already requested voluntary status in this investigation (See memorandum dated March 24, 1993, from John Beck to David L. Binder). We also selected Piratini and Villares as respondents since they received and did not reply to mini-Section A questionnaires. Also, on March 24, 1993, we sent the complete antidumping duty questionnaire to Eletrometal.

On April 2, 1993, Eletrometal requested an extension of time to file its response to Section A of the Department's questionnaire, and on April 6, 1993, we granted the request. Then, on April 19, 1993, Eletrometal requested an extension of time to file its response to Sections B and C of the Department's questionnaire. On April 21, 1993, Eletrometal submitted its response to Section A of the Department's questionnaire.

On April 22, 1993, petitioners urged the Department to grant an extension for Sections B and C for a limited period only. The Department granted an extension until May 7, 1993.

On April 27, 1993 the Department determined that this investigation was "extraordinarily complicated" and postponed the preliminary determination until no later than July 28, 1993 (58 FR 26531, May 4, 1993). On May 4, 1993, petitioners submitted comments on Eletrometal's response to Section A of the Department's questionnaire. Then on May 6, 1993, Eletrometal requested a five-day extension to file its response to Sections B and C of the Department's questionnaire. On May 7, 1993, we granted this request, and on May 12, 1993, Eletrometal submitted its Sections B and C responses. On May 18, 1993, the Department requested that Eletrometal resubmit the product concordance section of its response to the Department's questionnaire based

on the matching criteria described in the updated Appendix V.

On May 21 and 26, 1993, petitioners submitted their comments on Eletrometal's response to Sections A, B and C of the Department's questionnaire. On June 8, 1993, the Department sent a deficiency questionnaire to Eletrometal for Sections A, B and C, informing Eletrometal of the special instructions for reporting sales in a hyper-inflationary economy.

On June 14, 1993, petitioners requested a postponement of the deadline for submission of a sales below cost allegation, and on June 16, the Department granted the postponement until July 9, 1993. However, we did not receive a cost allegation from petitioners.

On June 30, 1993, Eletrometal submitted its response to the Department's June 8, 1993 deficiency questionnaire.

On July 13, 1993, petitioners submitted a second amendment to its petition that revised the estimated margins of dumping included in its original petition. Also on July 13, the Department sent another deficiency questionnaire to Eletrometal. On July 14, 1993, petitioners provided the Department with further comments regarding the questionnaire responses submitted by Eletrometal, along with arguments regarding the choice of BIA for the preliminary determination.

The Petition Amendment

The Department has rejected petitioners' July 13, 1993 arguments that the estimated margins of dumping included in petitioners' pre-initiation amendment to the original petition should be further amended. The original petition was filed in this investigation on December 30, 1993. On January 15, 1993, petitioners submitted an amendment to the petition that revised the reported home market prices and included an estimate of $.069 per pound for home market freight charges. In that amendment, petitioners stated that they did not reduce U.S. prices for foreign inland freight, since they could not estimate foreign inland freight charges for U.S. sales with a high degree of accuracy.

In a July 13, 1993 amendment, however, petitioners recalculated U.S. prices by deducting the same foreign inland freight charge of $.069 per pound from U.S. prices as was deducted from home market prices in the first amendment. In addition, they deducted from U.S. price an additional amount for U.S. credit expenses, based on payment period information in Eletrometal's response. We have rejected petitioners' proposed revisions in its July 13, 1993 amendment because: (1) The use of information from responses to Department questionnaires as a basis for a post-initiation amendment of a petition is not appropriate, and (2) the freight and credit adjustments are not reasonable adjustments that have been properly supported by adequate information on the record.

In general, the use of response information as a basis for post-initiation amendment of a petition, even for BIA purposes, is not appropriate. Since the purpose of a response is to provide data to the Department so that it can conduct an analysis within the bounds of the statute, it is inappropriate for petitioners to selectively extract information from a response to amend its petition, after initiation, for the purposes of calculating a BIA rate. The purpose of the BIA provision, in turn, is to encourage respondents to submit full and accurate responses to the Department's questionnaire. Allowing petitioners to selectively utilize data contained in responses in order to increase the margins alleged in the petition would serve as a disincentive to respondents to provide full and accurate responses. Therefore, we have rejected petitioners' arguments that the estimated petition margins should be amended, and have based BIA on the margins contained in petitioners' pre-initiation amendment of January 15, 1993.

With respect to credit expenses, petitioners have used actual credit expense data reported in Eletrometal's responses in order to calculate imputed credit on Piratini's U.S. price quotations contained in the petition. Even if it were appropriate for petitioner to amend its petition with data furnished in the questionnaire responses, it is not reasonable for petitioners to assume that the credit period for Eletrometal is a reasonable estimate for Piratini's credit period; in fact, the credit period cited for Piratini in the petition is different from that reported by Eletrometal. Moreover, petitioners have made no credit adjustment to home market prices, only to U.S. prices.

The amendment for freight expenses in the home market is based on a petition quotation for shipment of 25 tons of SSWR between Porto Alegre and Sao Paulo. The U.S. price quotations from Piratini reported in the petition include foreign inland freight. However, it is not clear what the distance is between Piratini's plant and the Brazilian port. Therefore, it is not appropriate to assume that the freight quotation for shipment between Porto Alegre and Sao Paulo on a home market sale is a reasonable estimate for shipping merchandise from Piratini's plant to the Brazilian port of export for a U.S. sale. In fact, petitioners recognized this problem in their January 15, 1993 amendment, stating that they could not estimate foreign inland freight for U.S. sales with a high degree of accuracy, and it did not use the $.069 per pound expense as a freight adjustment to U.S. prices. Therefore, we have not accepted this adjustment to U.S. prices for freight costs.

Scope of Investigation

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled annealed and pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are always sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-sectional shape, annealed and pickled. The most common size is 5.5 millimeters in diameter. Pursuant to the Customs Service's March 25, 1993, recommendation, we have deleted the qualifying phrase "* * * for subsequent cold-drawing or cold-rolling" contained in the initiation notice scope language. (See the March 25, 1993, memorandum from Customs to the Department.)

The SSWR subject to these investigations are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1992 through December 31, 1992.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of BIA is appropriate for sales of subject merchandise in this investigation. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to

produce information requested in a timely manner and in the form required. In this case, the exporters of SSWR from Brazil did not do so. Consequently, we based our preliminary determination in this investigation on BIA.

Piratini and Villares

During the course of this investigation, the Department encountered serious problems in obtaining the volume and value data needed for its analysis. As outlined in the "Case History" section of this notice, the Department attempted to solicit this information, stating that if we did not receive a response to our requests, we might have to make our determination on the basis of BIA. In spite of this attempt, we did not receive any information from either Piratini or Villares, the two manufacturers and exporters named in the petition.

Since Piratini and Villares did not respond to our questionnaires, we selected as BIA the highest margin contained in the January 15, 1993 pre-initiation amendment to the petition in this investigation, 26.50 percent.

Eletrometal

Since Eletrometal did respond to our questionnaires, we have analyzed its responses for purposes of this preliminary determination. After a complete analysis of Eletrometal's Sections B and C sales responses, however, we have concluded that we cannot use them for our preliminary determination. The responses contain major deficiencies which cannot be corrected or adjusted in time for use in our preliminary determination because there is not enough information in the responses to enable us to do so. Therefore, we cannot use them in calculating dumping margins in our preliminary determination.

Specifically, Eletrometal did not follow the Department's instructions for price-to-price comparisons in a hyper-inflationary economy. It did not make identical or similar price-to-price comparisons within the same month, based on the date of sale. Furthermore, Eletrometal did not calculate its difference-in-merchandise adjustments (difmers) using replacement costs of manufacture, as requested by the Department, and it did not report any cost of production (COP) or difmer data which would allow us to make our own price-to-price comparisons. Finally, Eletrometal did not report any constructed value (CV) information which would allow us to compare unmatched U.S. sales to CV where an appropriate home market match was not available.

However, since Eletrometal did respond to our questionnaires in a timely manner and is cooperating with the Department, we are assigning it the average of the margins contained in the January 15, 1993 amendment to the petition, 24.63 percent. In addition, we have issued another deficiency questionnaire to Eletrometal, requesting that it correct these deficiencies so that we may use its response in our final determination.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from Brazil. Section 733(e)(1) of the Act provides that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports, if such data is available.

Pursuant to 19 CFR 353.16(a)(1)(ii) in determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act for exporters sales price sales, and margins of 25 percent or more for purchase price sales. (See, e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987).

Since the preliminary margins for SSWR from Brazil for Piratini and Villares are above 25 percent, we determine in accordance with section 733(e)(1)(A)(ii) of the Act that there is a reasonable basis to believe or suspect that knowledge of dumping existed for SSWR from Brazil for these two companies.

Since Piratini and Villares have not responded to our questionnaire, we are making the adverse assumption, as BIA, that imports from Piratini and Villares were massive over a relatively short period of time. See section 733(e)(1)(B) of the Act. Based on this analysis, we preliminarily find that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of SSWR from Brazil for Piratini and Villares.

Since all of Eletrometal's sales to the United States are purchase price sales, and the margin assigned to Eletrometal is less than 25 percent, we determine that there is not a reasonable basis to believe or suspect that knowledge of dumping existed for SSWR from Brazil for Eletrometal. Furthermore, no allegation has been made that there is a history of dumping in the SSWR industry. Since the first prong of the critical circumstances test is not met for Eletrometal, it is not necessary to examine whether there have been massive imports of SSWR over a relatively short period. Therefore, we find that critical circumstances do not exist with respect to Eletrometal.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain stainless steel wire rods from Brazil manufactured or exported by Piratini or Villares, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain stainless steel wire rods from Brazil manufactured or exported by Eletrometal and all other manufactures that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the margins listed below on all entries of SSWR from Brazil. This suspension of liquidation will remain in effect until further notice. The estimated dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Eletrometal—Metais Especiais S.A.	24.63
Acos Finos Piratini SA	26.50

Manufacturer/producer/exporter	Margin percentage
Acos Villares SA	26.50
All Others	25.88

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than September 3, 1993, and rebuttal briefs no later than September 8, 1993. We request that parties in this case provide an executive summary of no more than two pages in conjunction with case briefs on the major issues to be addressed. Furthermore briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 15, 1993, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: July 28, 1993.

Barbara S. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–18747 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–427–811]

Preliminary Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From France

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

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2778.

PRELIMINARY DETERMINATION: We preliminarily determine that certain stainless steel wire rods from France are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on January 19, 1993 (58 FR 6115, January 26, 1993), the following events have occurred.

On January 22, 1993, the Department of Commerce (the Department) sent a memo to the Customs Service requesting information on the scope of the investigation. On January 25 and February 11, 1993, the Department sent cables to the American Embassy in Paris requesting volume and value information. On February 4, 1993, Weil, Gotshal & Manges entered an appearance on behalf of Imphy S.A. and Ugine-Savoie and their related U.S. entities, Metalimphy Alloys Corp (MAC) and Techalloy Co. Inc. (Techalloy) (hereinafter referred to collectively as "Imphy" or "respondents").

On February 10, 1993, respondents submitted comments on the matching criteria outlined in a draft of appendix V of the Department's questionnaire. On February 12, 1993, the Department received the volume and value information for the producers of the subject merchandise in France. On February 17, 1993, petitioners, Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc. and United Steelworkers of America, AFL-CIO/CLC, submitted comments on the appendix V matching criteria.

On March 3, 1993, the Department sent a single antidumping duty questionnaire to Imphy S.A. and Ugine-Savoie. On March 9, 1993, Imphy requested Section E of the Department's questionnaire and asked for an extension of time in which to submit responses to Sections B and C. On March 11, 1993, the Department granted an extension giving Imphy until April 19, 1993, on submit responses to Sections B and C. On March 17, 1993, Imphy submitted its response to Section A. On March 22, 1993, the Department sent Section E of the questionnaire to Imphy. On March 29, 1993, Imphy requested an extension of time to respond to Sections B, C and E. On March 31, 1993, the Department denied the requested extension for responses to Sections B and C but granted an extension for the response to Section E until May 10, 1993.

On April 1, 1993, the Department received suggested scope language revisions from the U.S. Customs Service, and petitioners submitted comments on Imphy's Section A response. On April 19, 1993, Imphy submitted its Sections B and C responses. On April 22, 1993, petitioners requested that the preliminary determination be postponed.

On April 23, 1993, petitioners alleged that Imphy was selling in its home market at prices below its cost of production (COP) and requested that a cost investigation be initiated. On April 27, 1993, we postponed the preliminary determination until no later than July 28, 1993 (58 FR 26531, May 4, 1993). On May 10, 1993, the Department revised the appendix V matching criteria, and Imphy submitted its response to Section E. On May 11, 1993, the Department requested that Imphy provide a new product concordance based on the revisions to appendix V. On May 19, 1993, we initiated a COP investigation of Imphy. On May 21, 1993, the Department requested additional information in a deficiency letter for Sections A, B and C. On May 25, 1993, the Department sent Imphy Section D of the questionnaire for COP.

On May 27, 1993, Imphy requested an extension of time to respond to the Department's deficiency letter, and on June 1, 1993, the Department granted the extension until June 14, 1993. Then, on June 14, 1993 Imphy submitted its Section A, B and C deficiencies

responses, and on June 25, 1993 submitted its Section D response. On July 1, 1993, the Department sent Imphy additional questions concerning its sales responses, and on July 7, 1993, sent a Section E deficiency questionnaire. On July 14, 1993, petitioners submitted comments on deficiencies and omissions in Imphy's responses. On July 20, 1993, Imphy submitted comments responding to petitioners' July 14, 1993, submission.

On July 19, 1993, the Department sent Imphy a deficiency letter regarding its Section E–2 computer tape. On July 21, 1993, Imphy requested an extension of time to respond to the Department's request regarding Imphy's Section E–2 computer tape and to respond to the Department's July 7, 1993, Section E deficiency questionnaire. On July 22, 1993, the Department granted Imphy extensions until August 5, 1993, to respond to the Department's request regarding the Section E–2 computer tape, and until July 23, to respond to the Section E deficiency questionnaire. The Department is preparing a deficiency questionnaire to be sent to Imphy on its Section D COP response.

Scope of Investigation

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled annealed and pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of allow steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are always sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed and pickled. The most common size is 5.5 millimeters in diameter. Pursuant to the Customs Service's March 25, 1993, recommendation, we have deleted the qualifying phrase * * * for subsequent cold-drawing or cold-rolling" contained in the initiation notice scope language. (See the March 25, 1993, memorandum from Customs to the Department.)

The SSWR subject to this investigation is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 1992 through December 31, 1992.

Such or Similar Comparisons

We have determined for purposes of the preliminary determination that the product covered by this investigation comprises a single category of "such or similar" merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of: (1) Grade; (2) diameter; (3) further manufacturing. We made adjustments for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(4)(C) of the Act.

Fair Value Comparisons

To determine whether sales of SSWR from France to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For Imphy, we based USP for some U.S. sales on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price (ESP) methodology, in those instances, was not otherwise indicated. We accepted all of respondent's classifications of purchase price sales (See memorandum dated July 16, 1993, from the Team to Office Director Richard Moreland). We excluded certain U.S. sales with zero prices or zero quantities because these sales constituted an insignificant portion of total U.S. sales.

In addition, for Imphy, where certain sales to the first unrelated purchaser took place after importation into the United States, we based USP on ESP, in accordance with section 772(c) of the Act.

For purchase price and ESP sales, we made deductions, where appropriate, for discounts, and the following movement charges: foreign brokerage, foreign inland freight, marine insurance, ocean freight, U.S. brokerage, U.S. duty, and U.S. inland freight. We added amounts for billing adjustments and freight revenue.

For ESP sales only, we deducted commissions, direct U.S. selling expenses, including credit expenses, warranty expenses, warehousing, and other direct non-U.S. selling expenses, indirect selling expenses, inventory carrying costs, and premiums for product liability insurance.

In addition, we made deductions, where appropriate, for all value added in the United States pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with further manufacturing the imported product, including a proportional amount of any profit related to the further manufacture. We calculated profit attributable to further manufacturing in the United States by deducting from the sales price all applicable costs incurred in producing the further manufactured product. The total profit was then allocated proportionally to all components of cost. Only the profit attributable to the value added in the United States was deducted. In determining the costs incurred to produce the further manufactured products, the Department included (1) the costs of manufacture; (2) movement and packing expenses; and (3) general, selling and administrative expenses, and interest expenses. We adjusted respondents' further manufacturing cost data for certain general and administrative (G&A) expenses which had been excluded. This adjustment was specific to each further manufacturing facility. For those sales of further manufactured merchandise where respondent did not specify the facility of further manufacture, we made this adjustment by using the highest G&A rate applied to any facility as best information available (BIA).

For price-to-price comparisons only, we added to U.S. price the absolute amount of value-added tax (VAT) paid on the comparison sale in France. On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision of the Court of International Trade in *Zenith Electronic Corporation* v. *United States*, Slip. Op. 92–1043, –1044, –1045, –1046, ruled that section 772(d)(1)(C) of the Act provides for an addition to USP to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice and will no longer make a circumstance-of-sale adjustment. Also, we will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to USP the absolute amount of tax assessed on

the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to USP, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to USP.

In addition, we will propose a change in 19 CFR 353.2(f)(2) to provide that we will calculate weighted-average dumping margins by dividing the aggregated dumping margins, calculated as described above, by the aggregated USPs net of taxes. This change would result in weighted-average dumping margin rates which are neither inflated nor deflated on account of our methodology of accounting for taxes paid in the home market but rebated or not collected by reason of exportation. We are in the process of drafting this proposed change, and will begin the rule making process as soon as possible.

Foreign Market Value

We compared the volume of home market sales of SSWR to the volume of third country sales to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV. We found that the home market was viable for sales of SSWR.

We used the Department's related party test to determine whether sales to related customers were made on an arm's-length basis. See Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37077, July 9, 1993) for more information on the Department's related party test. We did not include in our analysis any sales to related customers that we determined were not at arm's-length.

Cost of Production

Petitioners alleged that Imphy's home market sales of SSWR were made at price below COP. On the basis of petitioners' allegations, we gathered data on production costs. We compared the weighted-average home market prices to the COP.

If over 90 percent of the Imphy's sales of a given model were at prices equal to or greater than the COP, we did not disregard any below-cost sales because we determined that Imphy's below-cost sales were not made in substantial quantities. If between ten and 90 percent of Imphy's sales of a given model were at prices equal to or greater than the COP, we disregarded only the below-cost sales, if they were found to be made over an extended period of time and not at prices which permit the recovery of all costs within a reasonable period of time in the normal course of trade. Where we found that more than 90 percent of Imphy's sales were at prices below the COP, we disregarded all sales for that model and calculated FMV based on constructed value (CV), if those sales were made over an extended period of time.

We disregarded such below-cost sales because the respondent failed to demonstrate, as requested by the Department in the COP questionnaire, that those below-cost sales were made at prices permitting the recovery of all costs within a reasonable period of time in the normal course of trade.

In order to determine whether below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If Imphy sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if Imphy sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time.

In order to determine whether home market prices were above the COP, we calculated the COP based on the sum of Imphy's cost of materials, fabrication, selling, general and administrative (SG&A) expenses, and interest expenses. We compared home market selling prices, net of movement charges and discounts and rebates to each product's COP.

Price-to-Price Comparisons

For those products for which we have an adequate number of sales at prices equal to or greater than the COP, we based FMV on home market prices. For the subject merchandise, we calculated FMV based on delivered prices, inclusive of packing and VAT, to unrelated customers in the home market and to related customers, sales to which we determined to be at arm's-length under the related party methodology. We deducted inland freight, inland insurance, discounts and rebates from these prices. We also deducted home market packing costs and added U.S. packing costs.

For purchase price comparisons, pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments for credit expenses, warranties, and interest revenue.

Where commissions were deducted from USP, we deducted indirect selling expenses from FMV, capped by the U.S. commission amount in purchase price comparisons and by the sum of U.S. indirect selling expenses and the U.S. commission amount in ESP comparisons. Although respondents reported related party commissions in the home market, respondents have not claimed them as direct selling expenses and, instead, included these expenses in indirect selling expenses. Therefore, we have not adjusted for these commissions.

For ESP comparisons, where there were no U.S. commissions, we offset the indirect selling expenses in the United States by providing for a corresponding deduction for indirect selling expenses in the home market, capped by the total indirect selling expenses incurred on the U.S. sale in the comparison.

Constructed Value

For those products without an adequate number of sales at prices above the COP, we based FMV on constructed value (CV). We calculated CV based on the sum of the cost of materials, fabrication, general expenses, and U.S. packing cost. We included the company's reported general expenses in CV since these expenses were greater than the statutory minimum of ten percent of the cost of manufacture (COM). We recalculated the weighted-average profit from the adjusted home market net sales prices and reported COPs. Since this amount was greater than the statutory minimum of eight percent of the COM, we used the recalculated profit for CV.

Where USP is based on purchase price sales, we made circumstance-of-sale adjustments for differences in credit and warranty expenses and interest revenue, where appropriate.

Where commissions were deducted from USP, the amount of indirect selling expenses deducted from CV was capped by the U.S. commission amount in purchase price comparisons and by the sum of U.S. indirect selling expenses and the U.S. commission amount in ESP comparisons. Although respondents reported related party commissions in the home market, respondents have not claimed them as direct selling expenses and, instead, included these expenses in indirect selling expenses. Therefore, we have not adjusted for these commissions.

For ESP comparisons, where there were no U.S. commissions, we offset the indirect selling expenses in the United States by providing for a corresponding deduction for indirect selling expenses in the home market, capped by the total indirect selling expenses incurred on the U.S. sale in the comparison.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Critical Circumstances

Petitioners allege that "critical circumstances" exist, within the meaning of section 733(e) of the Act, with respect to imports of SSWR from France. Section 733(e)(1) of the Act provides that critical circumstances exist if there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

To determine whether or not there have been massive imports of SSWR, we compared export volumes for the five months subsequent to the filing of the petition to the five months prior to the filing of the petition. We found that exports of this merchandise from respondents during the period subsequent to receipt of the petition had decreased. Accordingly, we do not need to determine whether there is a history of dumping in the United States or elsewhere or whether there is knowledge that the exporter was selling the merchandise at less that its fair value, and preliminarily determine that critical circumstances do not exist.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of SSWR from France, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Manufacturer/producer/exporter	Weighted-average margin percentage
Imphy and Ugine-Savoie	23.82
All others	23.82

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (ITC) of our determination.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than September 7, 1993, and rebuttal briefs no later than September 14, 1993. We requested that parties in this case provide an executive summary of no more than 2 pages in conjunction with case briefs on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 21, 1993, at 9:30 a.m. at the U.S. Department of Commerce, room 4830, 14th Street and Constitution Avenue NW., Washington, DC. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: July 28, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–18748 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–P

Preliminary Determination of Sales at Less Than Fair Value: Certain Stainless Steel Wire Rods From India

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

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0116.

PRELIMINARY DETERMINATION: We preliminarily determine that certain stainless steel wire rods (SSWR) are being, or are likely to be, sold in the United States at less than fair market value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice. The statutory deadline for the final determination is 75 days from the date of publication of this notice. However, we may expedite the final determination.

Case History

Since the initiation of this investigation on January 19, 1993, (58 FR 6115, January 26, 1993), the following events have occurred.

On January 22, 1993, the Department of Commerce (the Department) sent a memorandum to the Customs Service describing the scope of the investigation. On January 26, 1993, the Department cabled the U.S. Embassy in New Delhi, India, to obtain assistance in identifying producers of the subject merchandise. On February 11, 1993, the Department again cabled the U.S. Embassy in New Delhi, India, to obtain assistance in identifying producers of the subject merchandise. On February 17 and 26, 1993, petitioners filed comments on the proposed product matching criteria contained in Appendix V of the Department's questionnaire. On March 5, 1993, the Department sent out minisection A questionnaires to ascertain the respective quantity and volume of

subject merchandise produced and exported by Indian manufacturers during the period of investigation (POI).

On March 19, 1993, Ferro Alloys Corporation Limited (FACOR) and Mukand submitted their respective responses to the Department's mini-section A questionnaire. In its response, FACOR reported that it did not manufacture or sell subject merchandise during the POI. On March 24, 1993, the Department served its antidumping duty questionnaire on Mukand. The Department did not serve an antidumping duty questionnaire on FACOR because it neither manufactured nor sold SSWR during 1992. (See the March 24, 1993, memorandum from John Beck to Acting Office Director David Binder). On March 25, 1993, customs officials responded to the Department's January 22, 1993, memorandum, informing the Department of potential problems with one part of the initiation scope language. The Department took Custom's response into consideration when modifying the language in the scope section of this notice. On March 25, 1993, Grand Foundry Ltd. (Grand Foundry) submitted its response to the mini-section A questionnaire.

On March 26, 1993, Mukand's counsel met with Department officials to raise issues concerning Mukand's sales policies. On March 29, 1993, Mukand submitted a description of its sales process. On April 7, 1993, FACOR submitted proper certification for its March 19, 1993, response. On April 7, 1993, Mukand submitted its response to section A of the Department's questionnaire. On April 8, 1993, Mukand submitted supplementary sales documentation. On April 8, 1993, Mukand also submitted under separate cover responses to several questions posed by Department officials by telephone. On April 15, 1993, Mukand submitted responses to additional questions posed by a Department official by telephone. On April 16, 1993, petitioners submitted comments on Mukand's response to section A. On April 19, 1993, Mukand requested that the Department postpone the preliminary determination, and also requested an extension for submitting responses to sections B and C of the questionnaire. On April 20, 1993, petitioners submitted their objection to a postponement of the preliminary determination.

Because the Department needed to determine whether Mukand or its trading company, Sunstar Metals Ltd. (Sunstar), was the possible price discriminator, the Department served its antidumping duty questionnaire on Sunstar by international courier on April 22, 1993. (See the April 20, 1993, memorandum from Bill Crow to the file.) On April 22, 1993, the Department granted Mukand an extension until May 7, 1993, to submit the response to sections B and C of the questionnaire. On April 22, 1993, the Department sent both Mukand and Sunstar a list of questions concerning their relationship. On April 27, 1993, the Department postponed the preliminary determination until no later than July 28, 1993, because we determined that the investigation was extraordinarily complicated (58 FR 26531, May 4, 1993). On April 28, 1993, the Department presented its questionnaire to Sunstar's U.S. counsel. On May 6, 1993, Mukand again requested an extension for responding to sections B and C of the Department's questionnaire. On May 7, 1993, petitioners objected to respondent's request for an extension. On May 7, 1993, the Department granted Mukand a partial extension, until May 11, 1993, for responding to sections B and C of the Department's questionnaire.

On May 10, 1993, Mukand submitted its response to the Department's April 22, 1993, questions concerning the relationship of Mukand and Sunstar. On May 10, 1993, Sunstar submitted both its response to section A of the Department's antidumping duty questionnaire and a response to the Department's April 22, 1993, questions concerning its relationship to Mukand. On May 11, 1993, Mukand submitted its response to sections B and C of the questionnaire; the public version was submitted on May 12, 1993. On May 12, 1993, the Department sent both Mukand and Sunstar the revised Appendix V of the Department's questionnaire.

On May 25, 1993, Sunstar requested an extension of two weeks to respond to sections B and C of the Department's questionnaire. On May 25, 1993, the Department granted a partial extension to Sunstar to submit its sections B and C response by June 4, 1993. On May 26, 1993, Mukand resubmitted its computer tape to replace the technically deficient tape submitted on May 11, 1993. On May 27, 1993, petitioners submitted comments on Mukand's May 11, 1993, response to sections B and C of the Department's questionnaire. On June 1, 1993, the Department rejected a late response by Grand Foundry to the Department's March 5, 1993, mini-section A questionnaire. On June 2, 1993, petitioners alleged that critical circumstances exist with respect to SSWR from India.

On June 3, 1993, Sunstar submitted its response to sections B and C of the Department's questionnaire. On June 4, 1993, the Department sent Sunstar a set of questions regarding corporate relationship and sales processes. On June 10, 1993, petitioners requested that the Department initiate an investigation of sales below the cost of production. On June 11, 1993, Sunstar responded to the questions set forth in the Department's June 4, 1993, letter. On June 15, 1993, the Department notified Mukand and Sunstar that the classification and bracketing of proprietary information in previous submissions was overly broad and instructed respondents to resubmit those sections of previous submissions, together with new public versions with proper summarization of proprietary data. On June 16, 1993, petitioners filed comments in which they stated that the nature of direct contradictions made by respondents in their submissions warranted the use of BIA based on information provided in the petition. On June 17, 1993, Mukand and Sunstar resubmitted sections of previous submissions with revised bracketing of proprietary information; on June 18, 1993, each submitted the public versions of the revised sections of their responses. On June 17, 1993, Sunstar also requested that the Department modify the public version of the Department's June 4, 1993, letter before placing the document on the record. On June 23, 1993, petitioners submitted comments on Sunstar's June 4, 1993, response to sections B and C of the Department's questionnaire.

On July 6, 1993, the Department informed respondents' counsel by phone that the Department would not issue any further requests for information such as deficiency letters. On July 7, 1993, counsel for Mukand and Sunstar met with the Director of the Office of Antidumping Investigations to voice their concerns about the investigation. (See the July 8, 1993, memoranda from Bill Crow and Richard Moreland.) On July 19, 1993, Rajesh V. Shah, the executive director of Mukand Ltd., met with Barbara Stafford, Deputy Assistant Secretary for Investigations, to explain the circumstances surrounding the submission of their data. (See the July 20 1993, ex-parte memorandum.)

On July 19, 1993, respondents submitted a written explanation of the circumstances surrounding the submission of their data, and also requested that the Department postpone the final determination should the preliminary determination be affirmative. On July 19, 1993, petitioners submitted comments supporting the Department's decision not to solicit further information in the

investigation. On July 22, 1993, petitioners submitted comments opposing respondent's request for an extension of the final determination. On July 26, 1993, Meera Shankar and Niraj Srivastava of the Embassy of India met with Deputy Assistant Secretary Barbara Stafford. (See the July 27, 1993, ex-parte memorandum.) On July 27, 1993, counsel for petitioners met with Department officials to discuss their concern regarding possible circumvention of a potential duty order. (See the July 27, 1993, memorandum to the file.) As noted in the July 26, 1993, concurrence memorandum, the Department has determined that because respondents have seriously impeded this processing, there is a compelling reason not to grant the request for a postponement of the final determination.

Scope of the Investigation

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled annealed and pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with our without other elements. These products are only manufactured by hot-rolling and are always sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter. Pursuant to Custom's March 25, 1993, recommendation, we have deleted the qualifying phrase" * * * for subsequent cold-drawing or cold-rolling" contained in the initiation notice scope language. (See the March 25, 1993, memorandum from Customs to the Department.)

The SSWR subject to this investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, ourwritten description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is July 1, 1992, through December 31, 1992.

Best Information Available

Mukand and Sunstar

In analyzing the numerous responses concerning sales and distribution of SSWR from India submitted by respondents Mukand and Sunstar during the course of the investigation, the Department discovered significant inconsistencies in the respondents' certified submissions. (See the June 22, 1993, memorandum for Barbara R. Stafford, outlining these inconsistencies.) These certified submissions form a record of misleading and contradictory responses, such that the Department has not been able to proceed normally with its antidumping duty investigation. In particular, information on the nature of Mukand's and Sunstar's relationship, as well as on the issue of who is responsible for setting prices, both critical issues in determining what information to use in calculating U.S. price and/or foreign market value, differed significantly from submission to submission. Furthermore, up until July 6, 1993, the date on which the Department informed counsel for Mukand and Sunstar that it would not issue any further requests for information such as deficiency letters (See July 7, 1993, memorandum to the file), neither respondent had provided an explanation for the significant contradictions reported in their certified submissions. Because the Department determined not to solicit further information from either Mukand or Sunstar, the Department did not consider petitioners' allegation of sales below the cost of production.

In order to determine whether sales are made in the United States at less than fair value, it is imperative that the Department be provided with accurate and reliable sales information to be used in analysis. Because of Mukand's and Sunstar's inconsistent and contradictory information, the Department does not have a reliable source of information on which to base its determination. Section 776(c) of the Act provides that whenever a party significantly impedes an investigation, the Department shall use the best information available (BIA) (19 U.S.C. 1677e). We have done so in this investigation.

As BIA for Mukand and Sunstar, we are assigning the highest margin contained in the petition, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospace Co.* v. *the United States*, Slip Op. 93–1049 (Fed Cir. June 22, 1993); see *also Krupp Stahl AG. et al* v. *the United States*, Slip Op. 93–84 (CIT May 26, 1993).) The highest margin contained in the petition is 48.80 percent. Because the history of the responses indicates that the information reported is highly unreliable, we will not conduct verification.

Grand Foundry

We have determined, in accordance with section 776(c) of the Act, that the use of BIA is appropriate for Grand Foundry Ltd. (Grand Foundry). In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, Grand Foundry failed to provide the information requested in the form required.

The Department sent Grand Foundry a mini-section A questionnaire on March 5, 1993. The Department did not receive Grand Foundry Ltd.'s response until March 25, 1993, after the March 19, 1993, deadline for responding. In addition, Grand Foundry did not file the response in proper number and form. On June 1, 1993, the Department rejected the late response by Grand Foundry. Failure to provide the Department with this information denied the Department the information required to establish the relative size and importance of Grand Foundry's sales.

Consequently, we have determined that it is appropriate to assign Grand Foundry the highest margin contained in the petition, 48.80 percent, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding.

All Others Rate

The all others rate is the average of the company margins applied in this determination, 48.80 percent.

Critical Circumstances

Petitioner alleges that "critical circumstances" exist with respect to imports of the subject merchandise from India. Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if we determine that there is a reasonable basis to believe or suspect that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports.

In determining knowledge of dumping, we normally consider margins of 15 percent or more sufficient to impute knowledge of dumping under section 733(e)(1)(A)(ii) for exporters sales price sales, and margins of 25 percent or more for purchase price sales. (See e.g., Final Determination of Sales at Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy, 52 FR 24198, June 29, 1987). Since the preliminary margins for SSWR from India for Mukand, Sunstar and Grand Foundry are above 25 percent, we determine in accordance with section 733(e)(1)(A)(ii) of the Act that there is a reasonable basis to believe or suspect that knowledge of dumping existed for SSWR from India for those companies.

As BIA for Mukand, Sunstar, and Grand Foundry, we are making the adverse assumption that imports were massive over a relatively short period of time in accordance with section 733(e)(1)(B) of the Act. Based on this analysis, we determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of SSWR from India for Mukand, Sunstar, and Grand Foundry.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain stainless steel wire rods from India, that are entered, or withdrawn from warehouse, for consumption on or after the date 90 days prior to the date of publication of this notice in the Federal Register. The Customs Service shall require a cash deposit or posting of a bond equal to the margins below on all entries of SSWR from India. This suspension of liquidation will remain in effect until further notice. The estimated dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Mukand Ltd	48.80
Sunstar Metals Ltd	48.80
Grand Foundry Ltd	48.80
All others	48.80

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than August 30, 1993, and rebuttal briefs, no later than September 7, 1993. We request that parties in this case provide an executive summary of no more than 2 pages in conjunction with case briefs on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on September 13, 1993, at 1:30 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: July 28, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Imports Administration.

[FR Doc. 93-18749 Filed 8-4-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-479-601]

Tapered Roller Bearings From Yugoslavia; Intent to Revoke Antidumping Duty Order

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

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on tapered roller bearings from Yugoslavia. Domestic interested parties who object to this revocation must submit their comments in writing no later than August 31, 1993.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis Askey or Wendy Frankel, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482-4114.

SUPPLEMENTARY INFORMATION

Background

On August 14, 1987, the Department of Commerce (the Department) published an antidumping duty order on tapered roller bearings from Yugoslavia (52 FR 30417). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than August 31, 1993, domestic interested parties, as defined in § 353.2(k)(3), (4), (5), and (6) of the Department's regulations, may object to

the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by August 31, 1993, or domestic interested parties do not object to the Department's intent to revoke by August 31, 1993, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: July 28, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–18761 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–DS–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On July 9, 1933, two Requests for Panel Review were filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the United States-Canada Free Trade Agreement, requesting binational panel review of the Final Determination of Sales at Less Than Fair Value respecting Certain Cold-Rolled Carbon Steel Flat Products from Canada made by the Department of Commerce, International Trade Administration and published in the Federal Register on July 9, 1993, (58 FR 37099). The Secretariat has assigned File No. USA–93–1904–01 to this panel review.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

FILING INFORMATION: Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on July 9, 1993, requesting panel review of the final dumping determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 9, 1993);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 23, 1993); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 30, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat

[FR Doc. 93–18766 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–GT–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notioce of first request for panel review.

SUMMARY: On July 9, 1993, two Requests for Panel Review were filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the United States-Canada Free Trade Agreement, requesting binational panel review of the Final Determination of Sales at Less then Fair Value respecting Certain Corrosion-Resistant Carbon Steel Flat Products from Canada made by the Department of Commerce, International Trade Administration and published in the Federal Register on July 9, 1993, (58 FR 37099). The Secretariat has assigned File No. USA–93–1904–03 to this panel review.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews

("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

FILING INFORMATION: Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on July 9, 1993, requesting panel review of the final dumping determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 9, 1993);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 23, 1993); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 30, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93-8768 Filed 8-4-93; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On July 9, 1993, a Request for Panel Review was filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the United States-Canada Free Trade Agreement, requesting binational panel review of the Final Determination of Sales at Less Than Fair Value respecting Certain Cut-to-Length Carbon Steel Products from Canada made by the Department of Commerce, International Trade Administration and Published in the **Federal Register** on July 9, 1993, (58 FR 37099). The Secretariat has assigned File No. USA-93-1904-04 to this panel review.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules as amended.

FILING INFORMATION: Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on July 9, 1993, requesting panel review of the final dumping determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 9, 1993);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 23, 1993); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 30, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93-18769 Filed 8-4-93; 8:45 am]

BILLING CODE 3510-GT-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On July 9, 1993, two Requests for Panel Review were filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the United States-Canada Free-Trade Agreement, requesting binational panel review of the Final Determination of Sales at Less Than Fair Value respecting Certain Hot-Rolled Carbon Steel Flat Products from Canada made by the Department of Commerce, International Trade Administration and published in the **Federal Register** on July 9, 1993 (58

FR 37099). The Secretariat has assigned File No. USA–93–1904–02 to this panel review.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, NW., Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the Federal Register on December 30, 1988 (58 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the Federal Register on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the Federal Register on June 15, 1992 (57 FR 26698). The panel review in this matter will be conducted in accordance with these Rules, as amended.

FILING INFORMATION: Rule 35(2) requires each Secretary of the FTA Binational Secretariat to publish a notice that a first Request for Panel Review has been received. A first Request for Panel Review was filed with the U.S. Section of the Binational Secretariat, pursuant to Article 1904 of the Agreement, on July 9, 1993, requesting panel review of the final dumping determination described above.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is August 9, 1993);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is August 23, 1993); and

(c) The panel review shall be limited to the allegations or error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: July 30, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93–18767 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–GT–M

National Institute of Standards and Technology

[Docket No. 930776–3176]

Opportunity to Join a Cooperative Research and Development Consortium to Develop and Conduct Interoperability Testing on Implementations of the BACnet Communication Protocol.

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of opportunity to join a Cooperative Research and Development Consortium.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks industrial and academic parties interested in entering into a cooperative research consortium on the development of new technology to assist the building controls industry in conducting interoperability tests on various implementations of the Building, Automation and Control Network (BACnet) communication protocol. The program will be undertaken within the scope and confines of The Federal Technology Transfer act of 1986 (15 U.S.C. 3710a), which provided federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment and facilities—but no funds—to the cooperative research program. Members will be expected to make contributions to the consortium's efforts in the form of materials, equipment, personnel and/or funds. The first phase of the research program is expected to last one to two years. This is not a grant program.

DATES: Interested parties should contact NIST at the address or telephone number shown below but no later than September 7, 1993.

ADDRESSES: Mr. Steven Bushby, Electronics Engineer, Mechanical Systems and Control Group, Building 226, room B–114, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Bushby, (301) 975–5873.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology (NIST) seeks industrial and academic parties interested in entering into a cooperative research consortium on the development of new technology to assist the building controls industry in conducting interoperability tests on various implementations of the BACnet communication protocol. The overall goals of the consortium project are:

(1) Assist control system manufacturers in verifying the correctness and interoperability of their proprietary BACnet implementations;

(2) Verify the technical soundness of the BACnet protocol;

(3) Identify errors or omissions in the BACnet protocol specification before it becomes a final standard;

(4) Identify ambiguities in the BACnet protocol specification which might lead to implementations which cannot interoperate and;

(5) Develop insight into testing requirements which should be included in a future American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE) standard for testing conformance of the BACnet protocol.

This program is being undertaken within the scope and confines of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a), which authorizes government owned and operated federal laboratories, including NIST, to enter into cooperative research and development agreements (CRADAs) with qualified parties. Under the law, a CRADA may provide for contributions from the federal laboratory of personnel, facilities and equipment, but not direct funding.

Dated: August 2, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93–18746 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–13–M

National Institutes of Standards and Technology

AGENCY: National Institutes of Standards and Technology; Commerce.

ACTION: Notice of Government Owned Inventions Available for Licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government, as represented by the Department of Commerce, and are available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: Mary Beth Pignone, National Institute of Standards and Technology, Office of Technology Commercialization, Division 222, Building 221, room B256, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. for the relevant invention as indicated below.

SUPPLEMENTAL INFORMATION:

(Note: These inventions were developed at NIST in the early 1980s and the patents issued before March, 1986)

The inventions available for licensing are:

NIST Docket No. 79–001

Title: Sampling Current and Method Therefor.

Description: This invention is an apparatus that provides a circuit for measuring the value of analog current signals using a Josephson with minimum acquisition time. The apparatus consists of two Josephson junctions. The first one acts as a pulse generator and the second as an amplitude discriminator. An analog current signal is analyzed by triggering a pulse. This method provides a decreased bias in response to a signal.

NIST Docket No. 79–002

Title: Ultra Black Coating due to Surface Morphology.

Description: This invention is a method of preparing a black surface coating by plating the surface with an electroless nickel-phosphorus ally, then submerging it in a bath of nitric acid. The resulting surface has a unique morphology which gives it a special refractrance from 0.5 to 1.0% at wavelengths of light from 320 to 2140 nanometers. The surface is also an excellent solar conductor.

NIST Docket No. 81–008

Title: Rotating Tool Wear Monitoring Apparatus.

Description: This invention employs a time-domain analysis that reduces complexity and cost. It does this by using adaptive techniques to determine a reference level for triggering an output signal, and by employing synchronous detection related to the period of rotation

NIST Docket No. 82–002

Title: Optical Fiber Thermometer.

Description: A thermometer with an elongated optical fiber, a blackbody cavity, and a high temperature fiber and light detector. The thermometer can read temperatures up to 2400 degrees Celsius. Measurements made using the inventive device are free from the interference effects caused by strong nuclear and electromagnetic fields. Therefore, the thermometer is applicable in power generation equipment, nuclear energy systems, and space applications.

NIST Docket No. 83–002

Title: Image Processor.

Description: This invention is an improvement on image processors that utilizes a sequence of identical stages. A programmer specifies the task each stage is to perform to ensure overall performance. An important feature of the processor is the provision of forward, recursive, and backward paths in order to allow the image data to participate in temporal as well as spatial neighborhood operations. Also, the processor specially provides for a multi-resolution capability which enables global events to be made local.

Dated: August 2, 1993.

Arati Prabhakar,

Director.

[FR Doc. 93–18745 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

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

ACTION: Notice of receipt of application for scientific research permit (P553).

Notice is hereby given that the Florida Department of Environment Protection, Florida Marine Research Institute has applied in due form for a Permit to take endangered and threatened species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR parts 217–227).

The applicant requests authorization to take for scientific research, 600 Loggerhead (*Caretta caretta*), 300 of which would be hatchlings, 250 Green (*Chelonia mydas*), 100 Kemp's ridley (*Lepidochelys kempi*), 25 Hawksbill (*Eretmochelys imbricata*) and 5 Leatherback (*Dermochelys coriacea*) sea turtles. This research would take place within the marine and estuarine waters off the State of Florida.

The turtles would be taken year round and would include all life history stages from post-hatchling through adult. All captured turtles would be weighed, measured, flipper tagged, photographed, and blood sampled. The applicant proposes to perform several other procedures that would be conducted on only a portion of the turtles. These include: Laparascopic examinations, lavages, and tumor sampling.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 8268, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 8268, Silver Spring, MD 20910 (301/713–2322); and

National Marine Fisheries Service, Southeast Region, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813/893–3141).

Dated: July 29, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources.

[FR Doc. 93–18701 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

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

ACTIONS: Issuance of a third Modification to Robert van Dam, Permit No. 790 (P509). Issuance of Permit 871

to the Public Service Gas and Electric Company (P548).

On September 2, 1992 (57 FR 41477), Robert van Dam, Physiological Research Laboratory, Scripps Institution of Oceanography, University of California, San Diego was issued Permit No. 790 under the authority of the Endangered Species Act of 1973 (ESA) (U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227). Permit No. 790 authorizes the Physiological Research Laboratory to take listed Hawksbill sea turtles (*Eretmochelys imbricata*) for the purposes of scientific research and enhancement. On May 13, 1993, (58 FR 29392) as authorized by the ESA, NMFS issued a Modification to Permit No. 790, extending the effective date of the Permit through December 31, 1993. Only July 8, 1993, (58 FR 36653) as authorized by the ESA, NMFS issued a second Modification to Permit No. 790. This modification authorized an increase in the number of listed Hawksbills to be captured, measured, tagged and photographed.

Notice is hereby given that on July 23, 1993 Robert van Dam was issued a third Modification, authorizing laparoscopic examinations on a portion of the turtles previously authorized for stomach sampling. Only one of these procedures may be performed on any one turtle.

On May 3, 1993, (58 FR 26288) the Public Service Electric and Gas Company applied for a Permit to take listed loggerhead (*Caretta caretta*), Kemp's ridley (*Lepidochelys kempi*), and green (*Chelonia mydas*) sea turtles for the purposes of scientific research as authorized by the ESA and the NMFS regulations governing listed fish and wildlife permits.

Notice is hereby given that on July 28, 1993 as authorized by the provisions of the ESA, NMFS issued Permit Number 871 for the above taking subject to certain conditions set forth therein.

Issuance of this Modification and Permit were based on a finding that such documents: (1) Were applied for in good faith; (2) will not operate to the disadvantage of the listed species which are the subject of these documents; (3) are consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Modification and Permit were also issued in accordance with and are subject to parts 217–227 of title 50 CFR, the NMFS regulations governing listed species permits and modifications. The Modification for Mr. van Dam will be valid for the duration of the Permit, through December 31, 1993. The Public Service Gas and Electric Permit will be valid through October 31, 1996.

The application, Permit, Modifications and supporting documentation are available for review by interested persons in the following offices (by appointment):

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, suite 8268, Silver Spring, MD 20910 (301/713–2232); and

Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141).

Dated: July 28, 1993.

William W. Fox, Jr.,

Acting Director, Office of Protected Resources.

[FR Doc. 93–18616 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

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

ACTION: Notice of receipt of application for scientific research permit (P504C).

Notice is hereby given that the U.S. Army Corps for Engineers, Walla Walla District has applied in due form for a permit to take endangered and threatened species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing endangered fish and wildlife permits (50 CFR part 217–227).

The applicant requests authorization to conduct scientific research on adult listed Snake River fall chinook salmon (*Oncorhynchus tshawytscha*). The research would include possible harassment of approximately 300 listed fall chinook salmon while conducting surveys below Lower Granite, Little Goose, Lower Monumental, and Ice Harbor Dams to determine if Snake River fall chinook salmon are spawning in the tailwaters of the four lower Snake River dams, and if they are, to determine the number and spawning habitant characteristics of the spawners. The research would be conducted on two to four dates between October 15, 1993 and December 15, 1993.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., room 8268, Silver Spring, Md 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., suite 8268, Silver Spring, MD 20910 (301/713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (502/230–5400).

Dated: July 26, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources.

[FR Doc. 93–18617 Filed 8–4–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of an Import Restraint Limit for Certain Cotton Textile Products Produced or Manufactured in Myanmar

July 30, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a limit.

EFFECTIVE DATE: September 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to continue the restraint limit on Categories 347/348 for an additional twelve-month period, beginning on September 1, 1993 and extending through August 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel

Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 41925, published on September 14, 1992.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 30, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on September 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 347/348, produced or manufactured in Myanmar and exported during the period beginning on September 1, 1993 and extending through August 31, 1994, in excess of 131,659 dozen.

Imports charged to this category limit for the period September 1, 1992 through August 31, 1993 shall be charged against that level of restraint to the extent of any unfilled balance. Goods in excess of that limit shall be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-18770 Filed 8-4-93; 8:45 am]

BILLING CODE 3510-DR-F

Extension of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Myanmar

July 30, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending a limit.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to continue the restraint limit on Categories 340/640 for an additional twelve-month period, beginning on October 1, 1993 and extending through September 30, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 46541, published on October 9, 1992.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 30, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made-fiber textile products in Categories 340/640, produced or manufactured in Myanmar and exported during the period beginning on October 1, 1993 and extending through September 30, 1994, in excess of 93,975 dozen.

Imports charged to this category limit for the period October 1, 1992 through September 30, 1993 shall be charged against that level of restraint to the extent of any unfilled balance. Goods in excess of that limit shall be subject to the limit established in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-18771 Filed 8-4-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on September 2, 1981, an arbitration panel rendered a decision in the matter of *The State of Texas (Texas State Commission for the Blind)* v. *The Department of Defense* (Docket No. R-S/79-4). This panel was convened by the Secretary of the U.S. Department of Health, Education, and Welfare pursuant to the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d-1(b), upon receipt of a complaint filed by the State of Texas on May 14, 1979. The Randolph-Sheppard Act is now administered by the Department of Education. The Act creates a priority for blind individuals to operate vending facilities on Federal property. Under 20 U.S.C. 107d-1(b), the State licensing agency (SLA) may file a complaint with the Secretary if the State licensing agency determines that an agency managing or controlling Federal property fails to comply with the Act or regulations implementing the Act. The Secretary then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue SW., room 3230, Switzer Building, Washington, DC 20202-2738. Telephone: (202) 205-9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the **Federal Register**.

Background

This dispute involves the interpretation of the Randolph-

Sheppard Act (20 U.S.C. 107d-3(d)). The Act was amended in 1974 to ensure that blind persons share in the assignment of vending machine income from vending facilities located on Federal property. Section 107d-3(d), however, exempts "vending machines" within retail sales outlets under the control of exchange or ships' stores systems authorized by Title 10 from income sharing. The complainant, the Texas State Commission for the Blind (TSCB), interpreted section 107d-3(d) to exempt only that income from vending machines located physically inside the four walls of retail stores operated by military exchanges. The respondent, the U.S. Department of Defense (DOD), interpreted the section to exempt all income from exchange vending operations regardless of the location of the vending machines.

Arbitration Panel Decision

Upon receipt of a complaint filed in May 1979 by the Texas State Commission for the Blind pursuant to 20 U.S.C. 107d-1(b), the Secretary of Health, Education, and Welfare convened an arbitration panel that scheduled a hearing on January 29, 1981. Although DOD objected to arbitration on various grounds, DOD agreed to proceed without prejudice to its right to assert its objections to arbitration at a later time.

The issues before the panel were (1) whether TSCB on behalf of blind vendors had a right to a share of vending machine income from military exchanges; and (2) the extent of the exemption contained in section 107d-3(d) for vending machines within retail stores under the control of exchange or ships' stores systems authorized by title 10.

The arbitration panel in a split decision issued September 2, 1981, held that section 107d-3(d) exempts only income from vending machines physically located inside a retail store of an exchange. The panel directed DOD to reimburse TSCB for all income due since the effective date of the 1974 amendments to the Randolph-Sheppard Act.

The majority of the panel determined that the statutory language of the section was not ambiguous as to the meaning of "within retail sales outlets." They interpreted this phrase to mean inside the four walls of an exchange system store. The panel also relied on the legislative history of the Act and determined that Congress intended the exemption to apply only to vending machines actually within the retail outlets. This conclusion was reinforced by the congressional intent to increase benefits to blind persons under the Act and by HEW's position to limit the nature of the exemption.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education. This case subsequently went into the Federal courts.

Dated: July 30, 1993.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–18666 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on July 18, 1983, an arbitration panel rendered a decision in the matter of *The State of Oklahoma (Oklahoma Department of Social and Rehabilitative Services)* v. *United States Postal Service (USPS)* (*Docket No. R-S/80–1*). The Oklahoma Division of Rehabilitation and Visual Services is the State licensing agency (SLA). Upon receipt of a complaint filed by the State of Oklahoma on January 24, 1980, the Secretary of the U.S. Department of Education convened a panel pursuant to 20 U.S.C. 107d-1(b). The Randolph-Sheppard Act creates a priority for blind vendors to operate vending facilities on Federal property. Under this section of the Randolph-Sheppard Act (the Act), the SLA may file a complaint with the Secretary if the SLA determines that an agency managing or controlling Federal property fails to comply with the Act or regulations implementing the Act. The Secretary then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue SW., room 3230, Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the **Federal Register**.

Background

This dispute involves violations of the priority provisions of the Randolph-Sheppard Act in awarding vending contracts to SLAs for licensed blind vendors.

The 1974 amendments to the Act require Federal agencies and departments to grant the SLA priority in the operation of vending facilities, including cafeterias, on Federal property. Priority in the operation of a cafeteria is contingent on the SLA submitting a proposal within the "competitive range." The Act also requires the Federal entity to share income from vending machines on its property with any blind licensee operating a vending facility on the property or with the SLA that administers the Randolph-Sheppard program.

Prior to 1976, the Oklahoma City Employee Social and Recreation Committee (Employee Committee) handled food services at the Oklahoma City Main Post Office. The Employee Committee operated the second floor eating facility and the vending machines throughout the post office except for the vending facility in the lobby. A blind licensed vendor operated the vending facility in the lobby pursuant to the Randolph-Sheppard Act.

In 1976, the USPS solicited bids for the second floor eating facility. The SLA and Canteen Services Corporation, a commercial vendor, submitted separate proposals. The SLA also submitted an application for a "permit" to operate the facility under the priority provisions of the Act. The USPS rejected the SLA's proposal and awarded the contract to Canteen Services Corporation. The SLA requested a hearing under the arbitration process of the Act.

Arbitration Panel Decision

Upon receipt of a complaint filed by the State of Oklahoma (Oklahoma Division of Rehabilitation and Visual Services) on January 24, 1980, the Secretary of Education convened an arbitration panel that conducted a hearing on August 20, 1980. The central issue was whether the USPS violated the priority provisions of the Randolph-Sheppard Act, 20 U.S.C. 107(b)2 and 107d–3(e), when it awarded a contract to a commercial vendor rather than to the State licensing agency.

The USPS contended that, according to the terms of the Act, the second floor eating facility constituted a cafeteria,

which must be awarded by contract. Under the Act and its regulations, the SLA is awarded a cafeteria contract when its bid falls within the "competitive range." According to the USPS, the SLA's offer was outside the competitive range; therefore, the SLA was not awarded the contract.

The parties reached a settlement agreement that the arbitration panel adopted on April 23, 1982. The agreement was made part of the award.

The settlement agreement included the following provisions: (1) The USPS would exercise its option to terminate the cafeteria contract with Canteen Services Corporation under the 90-day termination clause. (2) The USPS and the SLA agreed to enter into a contract whereby the SLA would operate the cafeteria on the second floor of the Main Post Office, and if the USPS deemed service inadequate, the USPS had the option to immediately terminate the contract. (3) The SLA agreed to improve the operation of the first floor vending area, the blind vendor would provide sufficient stock in the machines for all three postal tours, the vendor would not sell any item after the suggested last date of sale had expired, and the SLA would expand the vending facility on the first floor to a snack bar operation.

(4) The SLA would operate the two vending machines in the Vehicle Maintenance Facility under permit. (5) The USPS would make no back payments to the blind vendor or the SLA in connection with the dispute. (6) The SLA agreed to withdraw any claim against the USPS in connection with the dispute.

Dated: July 30, 1993.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–18667 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on July 18, 1983, an arbitration panel rendered a decision in the matter of Ohio Rehabilitation Services Commission, Bureau of Services for the Visually Impaired v. United States Postal Service (Docket No. R-S/82–5). This panel was convened by the Secretary of the U.S Department of Education pursuant to 20 U.S.C. 107d-1(b), upon receipt of a complaint filed by the Ohio Rehabilitation Services Commission, Bureau of Services for the Visually Impaired, on May 21, 1982. The Randolph-Sheppard Act creates a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Randolph-Sheppard Act (the Act), the State licensing agency (SLA) may file a complaint with the Secretary if the SLA determines that an agency managing or controlling Federal property fails to comply with the Act or regulations implementing the Act. The Secretary then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Switzer Building, Washington, DC. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the **Federal Register**.

Background

The United States Postal Service (USPS) solicited bids for its cafeteria contract at the Main Post Office in Dayton, Ohio. Ohio's Bureau of Services for the Visually Impaired, the SLA, submitted its bid for the contract. However, the USPS awarded the contract to a commercial vendor rather than to the SLA. The SLA claimed the USPS violated the priority provisions of the Act when the USPS failed to award its cafeteria contract to the SLA. The SLA alleged that its proposal was rejected due to the use of incorrect and prejudicial data in the evaluation process. The USPS contended that it denied the contract to the SLA because the SLA's proposal did not fall within the "competitive range" required by the Act and the Department of Education's implementing regulations.

Arbitration Panel Decision

Upon receipt of a complaint filed by the Ohio Rehabilitation Services Commission on May 21, 1982, the Secretary of Education convened an arbitration panel that scheduled a hearing on February 1, 1983. The central issue was whether the USPS violated section 7(e) of the Act, 20 U.S.C. 107d-3(e), and its implementing regulations, 34 CFR 395.33, which afford priority to the SLA for the operation of a cafeteria by a blind person if the proposal is judged to be in the competitive range.

The parties reached a settlement agreement at the hearing. The arbitration panel adopted the agreement and made it part of the award issued on July 18, 1983. The settlement agreement provided that nine provisions would be added to a contract governing the operation of the cafeteria at the Main Post Office by the SLA. These provisions included (1) staffing requirements for the cafeteria; (2) a two-part survey conducted by the SLA among the postal employees at the Main Post Office to determine the employees' desires; (3) the SLA's efforts to charge competitive prices at all times; (4) the appointment of individuals by the Dayton Postmaster and the SLA to resolve any disputes between the USPS and the SLA; (5) advertising notices to employees about the food selections offered in the cafeteria; (6) operation of the facility for one year by the SLA; (7) a mutually agreed upon method of processing and resolving employee complaints about the cafeteria's food service; (8) the introduction of new food items; and (9) the procedure for processing the SLA's request for price increases. Subject to these additions, the contract was extended for a one-year trial period from the date of the award.

Dated: July 30, 1993.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–18668 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on February 28, 1980, an arbitration panel rendered a decision in the matter of James Mayfield v. Tennessee Department of Human Services (Docket No. R-S/78–2). This panel was convened by the Secretary of the then U.S. Department of Health, Education, and Welfare pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner, James Mayfield, on April 20, 1978. The Randolph-Sheppard Act creates a priority for blind individuals to operate vending facilities on Federal

property. Under this section of the Randolph-Sheppard Act (the Act), a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Switzer Building, Washington, DC. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the **Federal Register**.

Background

James Mayfield, complainant, is a blind vendor licensed by the respondent, the Tennessee Department of Human Services, the SLA, pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 et seq. The SLA, through its Department of Rehabilitation, operates the Tennessee Vending Facility Program for blind vendors. The purpose of the program is to establish and support blind vendors operating vending facilities on Federal property.

Mr. Mayfield operated a vending facility in Memphis, Tennessee, for many years at various locations. In November 1977 the SLA opened a new vending facility at the Tennessee Valley Authority (TVA) steam plant in Cumberland, Tennessee. Mr. Mayfield bid for this location. However, the SLA awarded the new vending facility to another licensed blind vendor.

Based on his assessment of the relative qualifications between himself and the successful bidder, Mr. Mayfield believed that his rights under the Randolph-Sheppard Act had been denied. He requested and received a full evidentiary hearing to contest the selection process and criteria used by the SLA in making the assignment to the other blind vendor. Having exhausted the administrative remedies to this dispute, Mr. Mayfield demanded a hearing under the arbitration process of the Randolph-Sheppard Act.

Arbitration Panel Decision

Upon receipt of a complaint filed by Mr. Mayfield in 1978, the Secretary of the then Department of Health, Education, and Welfare convened an arbitration panel that conducted a hearing on January 23, 1980. The central issue was whether the SLA had used inappropriate criteria in the selection process and assignment of the new vending facility at the TVA steam plant.

At the January 23rd hearing, the parties agreed to settle the dispute and reached an agreement outlined in a consent order. The arbitration panel affirmed and adopted the written consent order as the panel's final decision and award.

The consent order provided the following:

1. Mr. Mayfield had first choice of any vending facility that became available statewide from March 1, 1980, to March 1, 1981.

(a) The SLA would give him this choice before it offered the vending facility to other program vendors or before managers were allowed to bid on the facility.

(b) Mr. Mayfield had 30 days to respond to the SLA's Supervisor of Business Enterprises as to his intentions to accept or reject a facility offered during the one-year period.

2. Mr. Mayfield could elect to receive the Kingston vending facility whenever it became available, in lieu of the "first choice" option. If the Kingston vending facility was not available within the one-year period (March 1, 1980, to March 1, 1981), Mr. Mayfield was assured this facility if he forfeited the "first choice" option and awaited the Kingston opening.

3. Mr. Mayfield agreed to continue operating his current vending facility to the best of his ability and according to the rules and regulations of the Tennessee Business Enterprises Program.

4. Mr. Mayfield agreed to dismiss any claims against the SLA for compensatory damages relating to this dispute and for his application for appointment to the TVA vending facility prior to November 1977.

Dated: July 30, 1993.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–18669 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that, in 1981, an arbitration panel rendered a decision in the matter of *Geraldine Jackson* v. *Massachusetts (Massachusetts Commission for the Blind)* (Docket No. R–S/78–4). This panel was convened by the Secretary of the U.S. Department of Health, Education, and Welfare pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Geraldine Jackson, in the winter of 1978. The Randolph-Sheppard Act creates a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Randolph-Sheppard Act (the Act), a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the Federal Register.

Background

The complainant, Geraldine A. Jackson, is a blind vendor licensed by the respondent, the Massachusetts Commission for the Blind, pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 et seq. The Commission is the SLA responsible for the operation of the Massachusetts vending stand program for blind individuals. The purpose of the program is to establish and support

blind vendors operating vending facilities on Federal property.

Ms. Jackson operated a vending facility since April 1972 in the lobby of Lemuel Shattuck State Hospital in Massachusetts. She originally sold candy and gift items at this facility, but over the years she expanded her inventory to include "wet" and "dry" goods. She eventually added the sale of food, increasing her gross annual sales to approximately $150,000.

Ms. Jackson had a cordial relationship with the previous hospital administrators with regard to her vending facility. The new hospital administrator complained that Jackson's vending facility drew "vermin." The administrator made it clear to Ms. Jackson that he did not want her to sell food in the lobby vending facility. He filed a complaint with the SLA and, in November 1976, met with the Director of the Vending Facilities Program at the SLA to resolve this problem. The SLA negotiated an agreement with the hospital administrator to place a "dry" vending facility in the hospital's lobby and a "wet" vending facility in the hospital's basement. Ms. Jackson was excluded from these negotiations.

In March 1977, Ms. Jackson was informed of the "two vending facilities" arrangement. Concerned with the impact that this new arrangement would have on her income, Ms. Jackson bid for a vending facility at the John F. Kennedy Federal Building. She believed that the annual gross sales at the Kennedy facility would be comparable to the gross sales at the hospital facility. However, the Kennedy site was awarded to another vendor with more seniority.

Ms. Jackson appealed the selection. She asserted that she was entitled to priority since she would suffer severe financial hardship as a result of the SLA and the administrator's agreement to make two separate vending facilities at the Shattuck Hospital. Her appeal was denied.

Ms. Jackson requested and received a fair hearing from the SLA on September 18, 1978. Dissatisfied with the results of this hearing, Ms. Jackson requested a hearing under the arbitration process of the Randolph-Sheppard Act.

Arbitration Panel Decision

Upon receipt of a complaint filed by Ms. Jackson in the Winter of 1978, the Secretary of Health, Education, and Welfare convened an arbitration panel that conducted a hearing in the Spring of 1978. The central issues were: (1) whether the State policy that allows for priority only if a stand is "lost" to the program was in effect in the Spring of 1978, and, if so, whether the complainant was entitled to receive a priority bid if she claims that her stand was "constructively lost" to the program through no fault of her own; and (2) whether the SLA violated its own policy by excluding the complainant from its negotiations with the hospital.

The panel determined that the SLA's policy at the time of the bid provided for priority only if a vending stand was lost to the State program. This policy was contained in the operational procedures and policies of the Vending Facilities Program at the time of complainant's bid. The panel further determined that although a blind vendor foresaw financial hardships at her present facility through no fault of her own, she was not entitled to a priority bid under that policy.

The panel also concluded that the exclusion of the complainant from negotiations between the SLA and the hospital administrator may have violated 45 CFR 1369.36(a) (now 34 CFR 395.36(a)). However, this did not entitle the complainant to a priority bid on another vending facility of equal gross sales.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: July 30, 1993.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–18670 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on March 2, 1984, an arbitration panel rendered a decision in the matter of *Lester Davenport* v. *Tennessee Department of Human Resources (Docket No. R–S/82–4)*. This panel was convened by the Secretary of the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Lester Davenport, on April 23, 1982. The Randolph-Sheppard Act creates a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Randolph-Sheppard Act (the Act), a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the **Federal Register**.

Background

The complainant, Lester Davenport, is a blind vendor licensed by the respondent, the Tennessee Department of Human Services, the SLA, pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.* The SLA, through its Division of Services for the Blind, Tennessee Business Enterprise Program (TBE), operates Tennessee's vending stand program for blind individuals. The purpose of the program is to establish and support blind vendors operating vending facilities on Federal property.

Mr. Davenport had managed the vending facility at the Sequoyah Nuclear Power Plant since May 10, 1976. On October 20, 1981, TBE placed Mr. Davenport on probation for 30 days after receiving continuous complaints from the power plant employees regarding the quality of the merchandise, uncleanliness, and inadequate staffing at the Sequoyah vending facility. Mr. Davenport's probationary letter from TBE cited the following reasons for probation: (1) Failure to provide "general cleanliness" in the vending facility. (2) Failure to adhere to the hours of operation specified in the rider to his licensing agreement. The probationary period was extended to December 23, 1981, when Mr. Davenport failed to comply with the specified hours of operation.

Mr. Davenport requested and received a fair hearing on this matter from the SLA on March 31, 1982. Based on findings from the hearing, the SLA

dismissed Mr. Davenport from the program. Mr. Davenport requested a hearing under the arbitration process of the Randolph-Sheppard Act.

Arbitration Panel Decision

Upon receipt of a complaint filed by Mr. Davenport on April 23, 1982, the Secretary of Education convened an arbitration panel. A hearing was conducted, and a decision was rendered on March 2, 1984. The central issue was whether the probationary period and revocation of the complainant's license were for good and proper cause.

The panel concluded that Mr. Davenport did not comply with the hours of operation provision in his license agreement. However, the panel decided that Mr. Davenport should be reinstated in the program, because the SLA failed to assist Mr. Davenport in certain aspects of the operation of the vending facility. The panel also directed the SLA to give Mr. Davenport the right to first choice of any vending facility vacancy that arose—an absolute, one-time preference for a period of two years from the date of the panel's decision. The SLA was ordered to notify Mr. Davenport of any vacancies in vending facilities. Notification had to be given 30 days or more prior to the SLA accepting other bids for the vacant facility. Mr. Davenport had to respond to the SLA within 30 days of notification to exercise his right to first choice of a vacant facility; otherwise, the facility would be available for bids in the normal manner.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: July 30, 1993.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–18671 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on January 11, 1982, an arbitration panel rendered a decision in the matter of *Hershel Bradford* v. *Department of Rehabilitation Services, State of Illinois Vending Stand Program for the Blind* (Docket No. R-S/78–3). This panel was convened by the Secretary of the U.S. Department of Health, Education, and Welfare pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioner, Hershel Bradford, on July 27, 1978. The Randolph-Sheppard Act creates a priority for the operation of vending facilities on Federal property by blind individuals. Under this section of the Randolph-Sheppard Act, a blind licensee dissatisfied with the State's operation or administration of the vending facility program authorized under the Act may request a full evidentiary hearing from the State licensing agency (SLA). If the licensee is dissatisfied with the State agency's decision, the licensee may complain to the Secretary, who then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the Federal Register.

Background

Hershel Bradford, complainant, is a blind vendor licensed by the respondent, the Illinois Department of Rehabilitation Services, pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107 et seq. The Department is the State licensing agency (SLA) responsible for the operation of the Illinois Vending Stand Program for the Blind. The purpose of the program is to establish and support blind vendors operating vending facilities on Federal property.

Mr. Bradford was assigned to the vending facility at the Chicago Post Office (U.S. Postal Service) from December 1974 until July 29, 1977. On August 2, 1977, the SLA suspended Mr. Bradford from his duties for 30 days. The suspension was based on allegations that he disregarded financial responsibility and good management principles in the operation of the facility. The suspension took place without a hearing. After the 30-day suspension, the SLA reassigned Mr. Bradford to the vending facility in the Everett Dirkson Federal Building.

Mr. Bradford, who had 18 years seniority, requested and received a full evidentiary hearing to contest the allegations and the transfer. The hearing officer decided that the suspension by the SLA was improper and cleared Mr. Bradford of all charges. The hearing officer also awarded him the first available facility and $105 per week reimbursement. After this decision, Mr. Bradford requested a transfer to his former facility at the Chicago Post Office and compensation for lost earnings as a result of the transfer. The SLA agreed to the lost earnings compensation, but it was unable to make an immediate reassignment due to various circumstances. Dissatisfied with this response, Mr. Bradford requested a hearing under the arbitration process of the Randolph-Sheppard Act.

Arbitration Panel Decision

Upon receipt of a complaint filed by Mr. Bradford in 1978, the Secretary of Health, Education, and Welfare convened an arbitration panel that conducted a hearing on January 11, 1982.

The case resulted in a stipulated agreement by the parties resolving all issues. This agreement was made a part of the award along with other verbally stipulated facts and conclusions.

The agreement provided that Mr. Bradford would accept a transfer back to the Chicago Post Office facility; he would operate in this location in a businesslike manner, subject to all Federal and State laws and regulations; the SLA would assist Mr. Bradford in pursuing good management goals and practices as required under the Randolph-Sheppard Act; and the SLA would provide certain training programs, especially in fiscal management. Mr. Bradford also agreed to waive all rights and claims to any previous payments and released the SLA from any liability related to this dispute.

Dated: July 30, 1993.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93–18672 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on January 17, 1986, an arbitration panel rendered a decision in the matter of *The Arizona Department of Economic Security* v. *United States Postal Service (Docket No. R-S/85-4).* This panel was convened by the Secretary of the U.S. Department of Education pursuant to 20 U.S.C. 107d-1(b), upon receipt of a complaint filed by The Arizona Department of Economic Security on December 19, 1984. The Randolph-Sheppard Act creates a priority for blind individuals to operate vending facilities on Federal property. Under this section of the Randolph-Sheppard Act (the Act), the State licensing agency (SLA) may file a complaint with the Secretary if the State licensing agency determines that an agency managing or controlling Federal property fails to comply with the Act or regulations implementing the Act. The Secretary then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Switzer Building, Washington, DC 20202-2738. Telephone: (202) 205-9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205-8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal property. With this synopsis, the Department is reducing a backlog of older decisions that had not been summarized and published in the **Federal Register**.

Background

The United States Postal Service (USPS) notified The Arizona Department of Economic Security, the SLA, of plans to construct a General Mail Facility in Phoenix, Arizona. The USPS planned to have an employee cafeteria and at least eight satellite vending locations within this facility. Pursuant to the Randolph-Sheppard Act, the SLA submitted a contract proposal to operate the cafeteria and a permit for the satellite vending locations. USPS denied the SLA's permit. Subsequently, the SLA filed a complaint with the Secretary pursuant to 20 U.S.C. 107d-1(b).

Arbitration Panel Decision

Upon receipt of a complaint filed by The Arizona Department of Economic Security in December 1984, the Secretary of Education convened an arbitration panel that scheduled a hearing on December 12, 1985. The specific issues before the panel were (1) whether the USPS refused to recognize the priority afforded licensed blind vendors under 20 U.S.C. 107(a) and 34 CFR 395.30; (2) whether the refusal to grant permits constituted a limitation on the placement or operation of vending facilities under 20 U.S.C. 107(b) and 34 CFR 395.30(b); (3) whether the USPS interfered with the selection of suitable facilities, contrary to 20 U.S.C. 107(b) and 34 CFR 395.31(c); and 4) whether the USPS failed to recognize the requirements under 20 U.S.C. 107d-3(b) and 34 CFR 395.32 to share vending machine income with a State licensing agency.

Prior to the hearing on December 12th, the parties agreed to resolve the matter subject to acceptance and confirmation by the arbitration panel. The panel accepted the agreement and made the following award on January 17, 1986: (1) The existing contract for the cafeteria at the Phoenix General Mail Facility was modified to extend the contract from five years to an indefinite period of time for operation by the SLA. (2) The contract was modified to state that neither the SLA nor its authorized licensee was required to reimburse the USPS for utilities. (3) The amount shared with the SLA under the income-sharing provisions of the Act was modified from the customary 50 percent to 40 percent of all income from the nine satellite vending locations in the General Mail Facility.

The agreement did not preclude the SLA from submitting a permit application to operate the satellite vending locations after the effective date of the agreement. If the SLA submits a permit application, the USPS must respond to it within six months. If the USPS accepts the SLA's permit, the USPS' acceptance is not effective until three years from the effective date of the agreement. If the USPS denies the SLA's permit, the SLA may appeal the decision through the appeal process of the Randolph-Sheppard Act.

Dated: July 30, 1993.

Judith E. Heumann,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 93-18673 Filed 8-4-93; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. JD93-13472T New Mexico-45]

United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 30, 1993.

Take notice that on July 27, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Dakota Formation underlying certain lands in the Jicarilla Area Basin Dakota Pool in Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 6,498 acres, more or less, consisting of 79% Jicarilla Apache, 10.5% State and 10.5% Federal Lands. The recommended area is described as follows:

Township 24 North, Range 5 West

Sections 5-6: All

Township 25 North, Range 5 West

Sections 21-22: S/2
Sections 27-28: All
Sections 31-32: All
Sections 33-34: N/2

Township 24 North, Range 6 West

Sections 1-2: All

The notice of determination also contains BLM's and the State of New Mexico's findings that the referenced portion of the Dakota 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93-18642 Filed 8-4-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD93–13473T New Mexico–46]

United States Department of the Interior, Bureau of Land Management; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

July 30, 1993

Take notice that on July 27, 1993, the United States Department of the Interior's Bureau of Land Management (BLM) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mesaverde Group underlying certain lands in the Williams Area Blanco Mesaverde Pool in Rio Arriba County, New Mexico, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The area of application covers approximately 3,840 acres, more or less, consisting 66.6% Federal, 16.7% State and 16.7% Fee Lands. The recommended area is described as

Township 26 North, Range 6 West

Sections 25–27: All
Sections 34–36: All

The notice of determination also contains BLM's and the State of New Mexico's findings that the referenced portion of the Mesaverde Group 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.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18643 Filed 8–4–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP86–41–012]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

July 30, 1993.

Take notice that Algonquin Gas Transmission Company (Algonquin) on July 26, 1993, tendered for filing certain revised tariff sheets to its FERC Gas Tariffs, Second Revised and Third Revised Volume No. 1 and Original Volume No. 2.

Algonquin states that the revised tariff sheets are submitted to comply with ordering paragraph (B) of the Commission's June 24, 1993 Order in Docket Nos. RP86–41–011, RP87–14–011, and RP90–22–018.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before August 6, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18644 Filed 8–4–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–59–000]

Blue Diamond Power Partners L.P.; Application For Commission Determination of Exempt Wholesale Generator Status

July 30, 1993.

On July 23, 1993, Blue Diamond Power Partners L.P. ("Blue Diamond") 191 Main Street, Annapolis, Maryland 21401 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Blue Diamond is developing and plans to construct a pumped storage hydroelectric project of up to 200 MW (the "Facility") to be located near Las Vegas, Nevada, that will be owned and operated by Blue Diamond. All of the Facility's electricity will be sold at wholesale.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before August 17, 1993 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18645 Filed 8–4–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PL93–2–002]

Prior Notice and Filing Requirements Under Part II of the Federal Power Act; Final Order

Issued July 30, 1993.

For the past two years, in a series of orders commencing with *Central Maine Power Company*, 56 FERC ¶ 61,200, reh'g denied, 57 FERC ¶ 61,083 (1991) (*Central Maine*), the Commission has addressed the prior notice and filing obligations of public utilities under the Federal Power Act (FPA) to encourage compliance with those obligations. To this end, the Commission has clarified the jurisdictional status of certain types of agreements, provided additional guidance as to when it will find "good cause" to support waiver of notice, opened a number of related "amnesty windows," and imposed refund obligations in certain cases for the unsupported and unauthorized late filing of jurisdictional agreements.

In this order, after approximately two years' experience, a technical conference, and review of numerous comments, we make a number of modifications to our existing policy in an effect to promote clarity and consistency, and to balance respect for the statutory requirement of prior notice and filing with the market realities of the public utilities we regulate under the FPA. These modifications, stated broadly, are as follows:

- The creation of a new, final amnesty for all agreements for jurisdictional service, to expire on December 31, 1993;
- A different remedy, for both cost-based and market-based rates, for the late filing of jurisdictional rates and agreements (when waiver of notice is denied);
- Clarification that contributions-in-aid-of-construction (CIAC) agreements, under which payment and construction were completed as of August 2, 1991 (the date of issuance of the first *Central Maine* order), are "expired" agreements that, absent a pending complaint, need not be filed with or reviewed by the Commission; and
- Elimination of the "extraordinary circumstances" standard of waiver for the filing of service agreements implementing service under filed tariffs of general applicability.

In addition, at the request of numerous participants in this proceeding, we attach to this order an Appendix that clarifies the jurisdictional status of, and the attendant need to file, various types of agreements identified by the participants.

Background

A. Central Maine and Subsequent Cases

Under section 205 of the FPA, 16 U.S.C. 824d (1988), and the Commission's implementing regulations, 18 CFR part 35, public utilities must file rates and charges for jurisdictional service, and all contracts and agreements relating to such service, at least 60 days in advance of the commencement of jurisdictional service. In *Central Maine*, the Commission was presented with the filing of 14 agreements for the short-term sale of capacity and energy at market-based rates after service under all of the agreements had commenced and, indeed, terminated. The Commission accepted the 14 late-filed agreements and waived the 60-day prior notice requirement, but did so on the condition that Central Maine Power Company (Central Maine) file revised rates reflecting a 100 percent contribution to the variable and fixed costs of the facilities used to provide service under the 14 agreements.

In acting on Central Maine's application, the Commission expressed concern with the increasing number of rate filings made after the commencement of jurisdictional service. The Commission took the opportunity to announce a policy statement of industry-wide application concerning implementation of the 60-day prior notice and filing requirement. To encourage compliance with this requirement, the Commission established a general "amnesty period," which expired on October 7, 1991 (60 days after publication of the *Central Maine* order in the **Federal Register**). During this amnesty period, utilities "transacting under existing agreements" not on file with the Commission, in violation of the prior filing requirement of Part II of the FPA, were afforded an additional opportunity to file such agreements for Commission review. Any utility filing rates (cost-based or market-based) for ongoing services prior to the close of the amnesty period, if otherwise just and reasonable, would be entitled to recover up to a 100 percent contribution to its variable and fixed costs of providing service. However, any utility filing rates for ongoing jurisdictional service after the close of the amnesty window would be entitled to receive no more than its variable operation and maintenance (O&M) expenses from the date of commencement of service until the date the Commission accepted such rates for filing. Any revenues collected under late-filed agreements in excess of the amounts ultimately allowed by the Commission (as well as interest calculated pursuant to 18 CFR 35.19a) would be subject to refund.[1]

In the past two years, the Commission has applied its "*Central Maine* policy" in a number of cases involving the late filing of jurisdictional agreements after the commencement of service. In *PacifiCorp Electric Operations*, 58 FERC ¶ 61,283, reh'g denied, 60 FERC ¶ 61,292 (1992), *reh'g pending*, for example, the Commission directed the refund of certain revenues because of the late filing of a jurisdictional transmission service agreement 13 years after the date of commencement of jurisdictional service, and one day after the close of the *Central Maine* amnesty window. In *Green Mountain Power Corp.*, 59 FERC ¶ 61,291, reh'g denied, 60 FERC ¶ 61,158, order on compliance filing, 61 FERC ¶ 61,203 (1992), the Commission directed the refund of certain revenues because of the late filing of two unit power sales agreements and a related capacity exchange agreement.

A series of *Central Maine* cases have involved the late filing of service agreements implementing service under filed tariffs of general applicability (which we will refer to as "umbrella" tariffs). The Commission initially ordered refunds to be paid in *Mississippi Power Co.*, 58 FERC ¶ 61,286, reh'g granted, 61 FERC ¶ 61,014 (1992), *New England Power Co.*, 59 FERC ¶ 61,253, reh'g granted, 61 FERC ¶ 61,015 (1992), and *Central Power & Light Co. and West Texas Utilities Co.*, 60 FERC ¶ 61,211, reh'g granted, 61 FERC ¶ 61,065 (1992). In these cases, the utilities claimed that they were providing service under tariffs that already had been filed with and accepted by the Commission and that, accordingly, the late filing of service agreements indicating only the names of new customers taking service under approved tariffs did not warrant the harsh "penalty" of refunds Recognizing that this matter was not entirely clear at the time of issuance of *Central Maine*, the Commission established an additional 30-day amnesty period (which expired on November 9, 1992) during which utilities could file service agreements implementing tariffs service at previously-approved tariff rates to particular customers, without risking *Central Maine*-type refunds. See *New England Power Co.*, 61 FERC ¶ 61,015 (1992); see also *New England Power Co.*, 61 FERC ¶ 61,123 (1992), reh'g denied, 63 FERC ¶ 61,108 (1993); *New England Power Co.*, 62 FERC ¶ 61,105, reh'g denied, 63 FERC ¶ 61,108 (1993).[2]

In another line of *Central Maine* cases, the Commission directed the payment of refunds for the late filing of jurisdictional agreements providing for the customer payment of contributions-in-aid-of-construction (CIAC agreements). See *Florida Power Corp.*, 58 FERC ¶ 61,161, reh'g denied, 60 FERC ¶ 61,003 (1992); see also *American Municipal Power Ohio, Inc.* v. *Ohio Edison Co.*, 57 FERC ¶ 61,358 (1991), reh'g denied, 58 FERC ¶ 61,182 (1992) (*AMP-Ohio*); *Western Massachusetts Electric Co.*, 59 FERC ¶ 61,091, reh'g denied, 61 FERC ¶ 61,182 (1992). The Commission explained that CIAC agreements have always been considered jurisdictional and subject to the statutory requirement of prior notice and filing. Nevertheless, the Commission recognized that this matter also was not entirely clear at the time the *Central Maine* amnesty window closed. Accordingly, the Commission established another 30-day amnesty period (which expired on November 18, 1992)in which to file with the Commission any unfiled CIAC agreements under which jurisdictional service has been provided. See *Florida Power Corp.*, 61 FERC ¶ 61,063 (1992). However, on November 16, 1992, the Commission indefinitely stayed the close of the amnesty period "until 30 days after the Commission issues a further order addressing the merits" of the CIAC issue. See *Florida Power Corp.*, 61 FERC ¶ 61,244 (1992).[3]

[1] Central Maine ultimately filed with the Commission a settlement agreement under which it agreed to refund approximately $2.6 million in refunds to certain of its customers. On April 17, 1992, the Commission issued a letter order approving the settlement. See *Central Maine Power Co.*, 59 FERC ¶ 61,092 (1992). On April 27, 1993, the Commission issued an order in response to additional arguments raised by Central Maine, declining to rescind the settlement in whole or in part. See *Central Maine Power Co. and New England Power Co.*, 63 FERC ¶ 61,108 (1993), reh'g pending.

[2] A more detailed discussion of the filing of service agreements implementing provisions of umbrella tariffs is found in the Discussion section of this order.

[3] Since that time, the Commission has issued a number of orders granting waiver of notice (because of the ongoing *Central Maine* "amnesty" for CIAC agreements) for CIAC agreements filed after the commencement of service, and addressing the justness and reasonableness of the rates charged thereunder. See *Alabama Power Company*, 63 FERC ¶ 61,309 (1993); *Appalachian Power Company*, 63 FERC ¶ 61,151, order on reh'g, 64 FERC ¶ 61,012 (1993); *Western Massachusetts Electric Company*.

In still other cases, the Commission has refrained in particular circumstances from directing *Central Maine* refunds for the late filing of jurisdictional rates and charges outside Commission-authorized amnesty periods. Thus, in *Fale-Safe, Inc.*, 59 FERC ¶ 61,385 (1992), the Commission refused to apply its *Central Maine* policy to the filing of rates under jurisdictional sales and transmission agreements after the commencement of service under the agreements, when the Commission previously had evaluated the rates and reviewed the operative agreements in filings made by another party to the transaction. In *PSI Energy, Inc.* 63 FERC ¶ 61,107 (1993), reh'g pending, the Commission refused to apply its remedial *Central Maine* policy because the late-filing utility was a net payor to non-jurisdictional entitles under certain agreements providing for the joint operation of a joint transmission system. And in *Barton Village, et al.* v. *Citizens Utilities Co.* (*Barton Village*), 63 FERC ¶ 61,329 (1993), the Commission determined that *Central Maine* refunds, on account of a utility's failure to file certain agreement relating to various services (which, the Commission determined, are jurisdictional services), were not appropriate in light of the utility's good faith reliance on its discussions with Commission staff.

B. Central Hudson and Subsequent Cases

As explained above, section 205 of the FPA and the Commission's implementing regulations, 18 CFR 35.3(a) (1992), require that utilities file rates for jurisdictional service at least 60 days prior to the commencement of service. Section 205(d) of the FPA, 16 U.S.C. 824d(d) (1988), and the Commission's regulations, 18 CFR 35.11, also give the Commission the discretion to grant waiver of the 60-days prior notice requirement for good cause shown.

In *Central Hudson Gas & Electric Corp. et al.*, 60 FERC ¶ 61,106, reh'g denied, 61 FERC ¶ 61,089 (1992) (*Central Hudson*), the Commission provided additional guidance as to when it is likely to grant waiver of the prior notice requirement. The Commission stated that waiver of notice generally will be appropriate when an uncontested filing has no rate impact or when a filing reduces rates or changes, or when a rate increase and its effective date are prescribed by a contract or settlement agreement on file with the Commission. The Commission stressed, however, that even in these circumstances there is the need for utilities to make their filings as soon as possible. The Commission stated that in other situations, such as rate increases not provided for in a contract or settlement on file with the Commission, or new services that will not result in rate decreases to customers, and that are not provided pursuant to an accepted contract or settlement, a strong showing of good cause will be required for waiver of the notice requirement. The Commission also stated that, absent "extraordinary circumstances," the Commission will not grant waiver of the notice requirement when an agreement for new service is filed on or after the date service has commenced.

In a number of orders issued after *Central Hudson*, the Commission has denied waiver of notice for the utility's failure to demonstrate "extraordinary circumstances" justifying filing after the commencement of new service (not provided pursuant to an accepted contract or settlement). See, *e.g.*, *United Illuminating Co.*, 61 FERC ¶ 61,186 (1992). When waiver has been denied, the Commission has applied its *Central Maine* remedy for the period of time preceding the effective date of the new rate or service. In other words, utilities failing to demonstrate good cause in support of waiver of notice have been directed to refund all revenues received under the late-filed agreements in excess of their variable O&M costs until 60 days after the filing was tendered.

C. Technical Conference

Recognizing that considerable uncertainty existed regarding the filing obligations of utilities under the FPA and, specifically, compliance with the Commission's *Central Maine* and *Central Hudson* policies, the Commission, on December 9, 1992, issued an order in this proceeding. That order scheduled a technical conference for January 28, 1993 (Technical Conference), and requested comments on a number of related issues. See Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 57 FR 59338 (December 15, 1992).

The Commission directed that participants refrain from commenting on specific requests for Commission action in ongoing proceedings. However, the Commission encouraged comments of general applicability, and suggested that the comments include, but not be limited to, discussion of the following issues: (1) How extensive a search for unfiled jurisdictional agreements should be required, and how burdensome this search obligation would be; (2) whether expired agreements need to be filed; (3) how to handle uncertainty as to the jurisdictional status of unfiled agreements, and how much, if any, reliability to attach to informal advice from Commission Staff; (4) how expansively to apply the amnesty windows for service agreements and CIAC agreements; (5) whether there had been sufficient time to comply with filing obligations under the remedial *Central Main* policy; and (6) whether the *Central Hudson* "extraordinary circumstances" test is detrimental to short-term economy transactions. In addition, interested persons were invited to file requests to participate in the Technical Conference, and those with similar positions were encouraged to file joint requests for participation.

Twenty-six entities filed comments (Initial Comments). Many argued that the various *Central Maine* pronouncements have generated considerable uncertainty, and that the Commission should issue a rule or policy statement a specifying or otherwise delineating which principles are to be followed in determining which transactions are jurisdictional. Many of the Initial Comments proposed that, after such delineation is made, the Commission establish a new, general amnesty period covering all jurisdictional transactions. Various proposals were made for reliance on Staff advice for future jurisdictional questions. Numerous comments argued that the Commission should not require terminated or expired agreements to be filed (except in the case of agreements that are the subject of customer complaints). Some of the participants proposed that searches of even active agreements be limited to a fixed number of years.

A number of the Initial Comments raised specific jurisdictional issues, and requested that the Commission make particular pronouncements on those questions. There were also complaints about the *Central Maine* (variable O&M) remedy, with utility groups arguing that it amounted to an impermissible "penalty," and customer representatives maintaining that it did not go far enough to prevent abuses in the future.

Finally, there was considerable opposition to the *Central Hudson* "extraordinary circumstances" standard for waiver of notice for agreements for new service (not provided pursuant to an accepted contract or settlement). Many participants maintained that this restrictive standard has the effect of stifling short-term economy

63 FERC ¶ 61,039 (1993), reh'g pending. A more detailed discussion of the filing and jurisdictional status of CIAC agreements is found in the Discussion section of, and the Appendix to, this order.

transactions, penalizes utilities for accommodating requests for service made on short notice, and disadvantages utilities in the competitive market. While umbrella agreements could cover most of these arrangements, some commenters noted that such agreements cannot be designed to cover all potential transactions with all potential customers.

The Commission held the Technical Conference on January 28, 1993. The participants discussed many of the same issues addressed in the Initial Comments. In particular, they stressed that the industry has "gotten the message" the Commission sent in *Central Maine* and subsequent cases, and fully desires to be in compliance with the FPA and the Commission's implementing regulations. Many of the participants expressed concern over potential refund liability for unfiled agreements for jurisdictional service that had expired or terminated. Another topic of concern was how to handle particular jurisdictional questions and whether these specific determinations would be better addressed through the Commission's Office of General Counsel (OGC) or Office of Electric Power Regulation (OEPR).

Significant discussion at the Technical Conference focussed on the Commission's *Central Hudson* rulings, with particular emphasis on how to structure umbrella tariffs, how to deal with transactions occurring under them on short notice, and how to handle exceptions. Many participants expressed the hope that, in cases where an umbrella tariff is on file, the Commission would relax its standards for finding good cause in certain circumstances for the late filing of service agreements implementing tariff service and agreements for other types of short-term or economy services not covered by that tariff. In this context, concern was raised over how to speed the filing system at the Commission, and electronic filings were proposed in certain circumstances.

At the Technical Conference, participants were requested to submit comments to the Commission on any of these topics by March 1, 1993.

D. Initial Order and Supplemental Comments

As a result of discussion at the Technical Conference, it became apparent that the industry was not entirely clear on the Commission's policy regarding the filing of expired or terminated agreements, and that this was creating considerable financial uncertainty.[4] Consequently, on February 10, 1993, the Commission issued in this proceeding an "Initial Post-Technical Conference Order on the Filing of Expired Agreements." *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 62 FERC ¶ 61,128 (1993). The Commission explained that, in most instances, no significant regulatory purpose would be furthered by the utility obligations to file, and the Commission obligation to review, agreements involving consensual jurisdictional transactions that commenced and expired prior to the issuance of the *Central Maine* order on August 2, 1991. The Commission explained further that its ability to review the justness and reasonableness of rates, terms, and conditions of services that have terminated necessarily is limited, and that it is not in the public interest to subject public utilities to the financial uncertainty created by the potentially large refund liability associated with unfiled agreements that may date as far back as the 1935 enactment of the FPA.

Accordingly, the Commission expressly declared that executed agreements under which jurisdictional service expired prior to August 2, 1991, and as to which a complaint had not yet been received, need not be filed with or reviewed by the Commission. Nonetheless, the Commission emphasized that this action should not be construed as countenancing the late filing (or non-filing) of rates, charges, and related agreements for jurisdictional service.

In response to the suggestion at the Technical Conference, twenty entities filed comments (Supplemental Comments), on or about March 1, 1993. In this set of comments as well, many participants continued to argue that the Commission should now grant an additional, unconditional amnesty period for all unfiled agreements for jurisdictional service. Again, some commenters maintained that a formal rulemaking is necessary to clarify what types of agreements are jurisdictional and must be filed for Commission review. Some of the commenters again raised particular jurisdictional questions; some argued that the Commission should delegate authority to resolve jurisdictional issues to its Staff. Many of the commenters continued to raise complaints about the perceived excessiveness of the *Central Maine* (variable O&M) remedy. Many discussed the practical implementation of umbrella tariffs. In that context, as well as more generally, the commenters discussed what should constitute good cause for waiver of the prior notice requirement for the filing of different types of jurisdictional agreements. Finally, some of the supplemental Comments suggested ways to speed filings with the Commission through electronic or other means.

On March 4, 1993, Gulf States Utilities Company (Gulf States) filed in this proceeding a motion for clarification or, alternatively, an application for rehearing of the Initial Order. On March 10, 1993, Southwestern Public Service Company (Southwestern) filed an answer in support of "certain" requests for clarification or, alternatively, an application for rehearing of the Initial Order. On March 12, 1993, Citizens Utilities Company (Citizens) filed a request for rehearing and clarification of the Initial Order.

The pleadings filed by Gulf States and Southwestern concern: (1) Whether the November 16, 1992 stay of the close of the amnesty period for the filing of CIAC agreements (*see supra* page 4) was lifted by the Commission action in the Initial Order; (2) whether the exemption for expired agreements applies to CIAC agreements under which construction and payment were completed prior to August 2, 1991 (the date of issuance of the original *Central Maine* order), even though the facilities may still be in service; and (3) whether jurisdiction over CIAC agreements should only be asserted prospectively. Citizens argues that the Initial Order unfairly singled out Citizens by creating the exception for cases involving a pending complaint concerning *Central Maine* and related notice and filing issues. Citizens notes that, at the time of filing of its rehearing, it was the utility respondent to the only such complaint on file with the Commission (filed by the Vermont Villages[5] in Docket No. EL92–33–000). Citizens also questions whether it alone should have a continuing obligation to file expired agreements.[6]

On June 18, 1993, EEI filed a second set of Supplemental Comments and

[4] The was true despite the fact that the original *Central Maine* order itself has applied to utilities that were "transacting under existing agreements."

[5] The Vermont Villages consist of Barton Village, Inc., the Village of Enosburg Falls Water & Light Department, the Village of Orleans, and the Village of Swanton, Vermont.

[6] On June 25, 1993, the Commission issued an order on the Vermont Villages' complaint. See *Barton Village, et al. v. Citizens Utilities Co.*, 63 FERC ¶ 61,329 (1993). The Commission granted the complaint to the extent it found that the agreements at issue provide for jurisdictional service and, accordingly, must be filed with and reviewed by Commission. The Commission denied the complaint to the extent it found that *Central Maine* refunds on account of Citizens' late filing were not appropriate in the circumstances presented.

requests for expedited consideration. EEI urges the Commission to expedite its consideration of the issues presented in this docket and to avoid resolving such issues in individual proceedings without consideration of the considerable record developed here. In particular, EEI argues that contractors involving the construction of jurisdictional facilities, regardless of whether the customer pays in one lump sum or over a period of time, should be considered CIAC agreements entitled to amnesty.

Discussion

A. New Amnesty Period

Public utilities and their customers now inform us that our efforts at providing further guidance as to the filing obligations of public utilities under Part II of the FPA have not been successful. Indeed, several participants suggest that the filing obligations of public utilities are less clear now than they were prior to issuance of the original *Central Maine* order. In particular, the utility industry remains unclear as to whether various types of agreements need to be filed for Commission review because of the uncertain jurisdictional status of particular types of agreements. This problem is exacerbated, we are told, by the increasingly large number of amnesty periods and *Central Maine* exceptions announced by the Commission which, collectively, serve to undermine the clarity and uniformity that is, after all, the goal of this generic proceeding.

We agree that the current framework, with its numerous "amnesties" and "exceptions," is, from the utility and customer perspective, difficult to understand; from the Commission perspective, it is difficult to administer. It certainly is not our intention to promote a policy that, as some participants suggest, imposes a regulatory minefield for the unwary and creates business opportunities for the legally clever. Therefore, we will simplify the process and provide a more comprehensive, unified framework. This revised structure consists of several components: (1) Increased guidance as to the jurisdictional status of various types of rates, charges, and related agreements that may have to be filed for Commission review; (2) a consolidation of the various amnesties and exceptions into one comprehensive, easy to understand, final general amnesty period; and (3) a relaxing of the standard for waiver of notice for the late filing of certain types of agreements.

To this end, we attach to this order an Appendix that responds to the jurisdictional inquiries of the participants filing comments and participating in the Technical Conference in this proceeding. In the Appendix, we answer the particular jurisdictional questions that have been identified by the participants. In addition, we also discuss the legal framework under the FPA, and the general criteria we use in making these jurisdictional determinations. Our hope is that this analysis will assist utilities in searching their files for agreements that now need to be filed for Commission review, as well as in assessing the jurisdictional status of any current or future transactions of which we have not yet been apprised.

By necessity, the jurisdictional guidance provided is general, rather than case-specific; it cannot begin to cover all of the possible twists and factual variations that may impact on the jurisdictional status of any one particular transaction. To the extent a utility remains uncertain, even after consulting this order and the Appendix, as to its obligation to file rates and charges for a particular transaction or type of transaction, it should assume the initiative to seek a specific ruling. The easiest and most efficient way to do this is to file the agreement pursuant to part 35 of the Commission's regulations, 18 CFR part 35, and simultaneously request the Commission to disclaim jurisdiction. A utility could also file a petition for a declaratory order (see 18 CFR 385.207(a)(2)) or an application for a written interpretation by the Office of the General Counsel (see CFR 388.104(a), (c)).[7]

In light of the additional jurisdictional guidance we are now providing, regarding the filing obligations of public utilities under the FPA, we see no excuse for failing to file all agreements under which jurisdictional service is being provided.

Accordingly, we will now establish an additional, but final, general amnesty period. This amnesty period will close on December 31, 1993. Any existing agreements which are jurisdictional under the criteria we lay out in the Appendix, as well as agreements which we have in the past determined to be jurisdictional, including those of the type addressed in the cases following *Central Maine*, should be filed during this period to obtain the amnesty.

This general amnesty has several specific features:

- The February 10, 1993 "Initial Order" in this proceeding remains intact (with the additional clarification for CIAC agreements provided below). Thus, consensual agreements under which jurisdictional service terminated prior to August 2, 1991 (the date of issuance of the original *Central Maine* order) need not be filed with the Commission unless they are the subject of a customer complaint filed as of February 10, 1993.
- All agreements under which jurisdictional service was being provided at any time between August 2, 1991 and the date of issuance of this order must now be filed for Commission review under this amnesty. Filing is mandatory, regardless of the directions contained in earlier amnesties or exceptions.
- If an agreement under which jurisdictional service was being provided (whether for cost-based or market-based rates) at any time between August 2, 1991 and the date of this order is filed with the Commission by December 31, 1993, or already has been filed (but not yet accepted), than waiver of notice will be granted and "*Central Maine* refunds for late filing will not be ordered. Such an agreement is still subject to examination (and possible refunds) to determine whether the rates charged are just and reasonable under the FPA.
- If an agreement under which jurisdictional service was being provided at any time on or after August 2, 1991 already has been accepted for filing, and the Commission already has ordered modification and "*Central Maine*" refunds for its late filing, the Commission will, in the near future, issue a supplemental order granting waiver of notice and rescinding the refund obligation. If the Commission has deferred judgment on the question of modification and refunds for the late filing of such an agreement, the Commission similarly will issue a supplemental order granting waiver and accepting the agreement without modification or "*Central Maine*" refunds.[8]

[7] Section 388.104(a) provides in part that "[o]pinions expressed by the staff do not represent the official views of the Commission, but are designed to aid the public and facilitate the accomplishment of the Commission's functions." At this time, we decline to adopt the suggestion of certain participants to designate any particular staff person as a contact person for the utility industry to direct questions about the jurisdictional status of certain types of agreements.

[8] We understand that a considerable number of pending cases are affected by this disposition. In initiating this proceeding, we asked participants to refrain from commenting on the specific facts and circumstances of specific cases involving the late filing of rates for jurisdictional transactions. 57 FR 59340 (December 15, 1992). We again ask utilities and their customers to refrain from raising specific

Continued

• Agreements under which jurisdictional service has not commenced as of the date of this order, if filed less than 60 days in advance of the commencement of (or proposed effective date for) service, will continue to require waiver of notice. Waiver decisions will continue to based on the standards articulated in *Central Hudson*, as clarified below in this order.

• Remedies for violations of the prior notice and filing requirement, in the event waiver is not granted, are discussed below.

No further amnesties will be provided. In our judgment, this amnesty is long enough (through December 31, 1993), and our instruction clear enough, to ensure that public utilities have sufficient time and ability to review this order and Appendix, to search their files, to consult with appropriate personnel, to make necessary inquiries with the Commission, and to prepare filings. If still unsure, utilities should take the precaution to file all questionable agreements as soon as possible (but, in no event, later than December 31, 1993).

In sum, all public utilities must have on file, by December 31, 1993, all agreements under which they provided jurisdictional services as of the August 2, 1991 issuance of the original *Central Maine* order or at any time thereafter up to the date of issuance of this order.

B. Future Violations

In the many actions taken by the Commission since issuance of the first *Central Maine* order, the Commission has attempted to convey to the electric utility industry the seriousness with which it viewed failures to comply with the prior notice and filing requirement contained in the EPA. Below, we clarify our remedial policy to be applied in the event rates or charges for jurisdictional service, or contracts affecting or relating to such service, are not filed with the Commission at least 60 days prior to the commencement or proposed effective date of jurisdictional service, and waiver of notice is not granted.

Many objections have been raised in the Initial and Supplemental Comments and at the Technical Conference to the remedy set out in *Central Maine*, permitting the recovery of only variable O&M expenses, where filings are not made on time and waiver is denied. Some argue that, because the variable O&M remedy is tied to the contribution to fixed costs in the rate, this remedy is not commensurate with the degree of non-compliance. They conclude that the variable O&M remedy, applicable in all cases of non-compliance, leads to inequitable results. Others point out that the FPA currently provides various penalties for a "willful" violation of that statute (i.e., willful failure to file a rate at least 60 days in advance of the commencement of service) in sections 314 to 316 of the FPA, 16 U.S.C. 825m–825o. They argue, as a result, that any further penalty is unnecessary. They also allege that the refund obligation is essentially a prohibited civil penalty; still others maintain that the remedy is unconstitutional because it amounts to a confiscatory taking.

Some commenters argue that the FPA does not distinguish between a filing which is timely and a filing which is untimely, but rather merely mandates that all rates filed be just and reasonable. They argue that the Commission cannot make a generic determination that variable O&M recovery is just and reasonable in all cases, but must engage in a case-specific analysis of each proposed rate and each proposed remedy to ensure that each is just and reasonable. Some claim that the requirement that rates be non-confiscatory must be balanced only against the consumer interest against exorbitant rates; i.e., any attempt to deter future violations cannot justify lowering a particular rate below the zone of reasonableness.

A related argument raised is that, especially in cases where the customer has actual notice of and agrees to the late filed rate, the customer receives a windfall in the event of a refund. Moreover, the utility presumably has already credited revenues from unfiled agreements into rate base or cost of service, reducing customer costs rather than itself receiving financial gain. Finally, it is proposed that the Commission create a "late filing fee" of $10,000 or some other amount, which would apply to all untimely filings, regardless of the length of the violation or the dollar amounts involved in the underlying transaction.

We will not now engage in a detailed discussion of each of the points raised on this matter. Some of the legal arguments raised, in an appropriate context, may have some merit. As a matter of policy, however, we now believe that the "*Central Maine*" variable O&M remedy for violations of the prior notice and filing requirement should be modified. The remedy can have harsh effects, amounting in some cases to millions of dollars, as to rates to which customers have consented and which we may have found to be just and reasonable had they been filed timely.[9]

Accordingly, we will lessen the severity of our refund policy. If a utility files an otherwise just and reasonable cost-based rate after new service has commenced, or if waiver is denied and the proposed rate goes into effect after service has commenced,[10] we will require the utility to refund to its customers the time value of the revenues collected, calculated pursuant to § 35.19a of our regulations (18 CFR 35.19a), for the entire period that the rate was collected without Commission authorization.[11] For example, if a utility began jurisdictional service on March 1, 1993, and does not file the proposed rate for such service until January 1, 1994 (one day after that close of the general amnesty period), the utility will be required to refund the time value of the revenues collected for a one-year period: The ten months the rates were collected prior to filing, plus an additional 60 days to account for the prior notice requirement.[12] Or if a rate for new service is filed on January 1, 1994, service at that rate is scheduled to commence on February 1, 1994, and waiver of notice (necessary because less than 60 days' advance notice is provided) is denied, refunds will be the time value of the revenues received for the one-month period from February 1, 1994 to March 1, 1994 (when the rate became effective).

We will implement a similar remedy for the unauthorized late filing of market-based rates. If a utility files a market-based rate less than 60 days prior to the proposed effective date of new service,[13] and waiver is denied, we

concerns about pending cases until we have applied this general amnesty in supplemental orders.

[9] There are two factors which go into cost-based rates, fixed costs and variable costs. Different proportions of the total costs of any particular transaction can be associated with either "fixed" or "variable" costs. This can lead to widely different refund obligations for any two transactions, even where the failures to file are for a similar duration.

However, the Commission must also take into account the fact that, in addition to violating the FPA and our implementing regulations, the failure to file a rate in a timely manner undermines the right of a utility's customers to protection from excessive rates. Moreover, the passage of time makes if often difficult (and particularly so in the case of a market-based rate) to determine accurately the justness and reasonableness of a rate which is not timely filed. Thus, true rate protection for customers in cases of untimely filings may be impossible.

[10] *See infra* note 13.

[11] Such refunds will be in addition to any refunds which may be required because the proposed rate is not found to be just and reasonable.

[12] If this rate, if otherwise just and reasonable, is filed one day earlier (on December 31, 1993), it will, by virtue of filing within the general amnesty announced above, not be subject to refund because of late filing.

[13] For rate increases under existing rates, the Commission will continue to order refunds, with interest, back to the last clean rate.

will require the utility to refund to its customers the time value of the revenues collected, calculated pursuant to § 35.19a of our regulations, for the entire period that the rate was collected without Commission authorization. In addition, the utility will be required to refund all revenues resulting from the difference, if any, between the market-based rate and a cost-justified rate.

In other words, the late-filing utility will receive the equivalent of a cost-based rate, less the time value remedy applicable to the unauthorized late filing of cost-based rates, until the date of Commission authorization. After that date, the utility will be able to charge only a cost-justified rate for the remainder of that contract's term. Thus, we will not bifurcate our consideration of late-filed market-based rates; the utility will not be permitted to present a market justification for the proposed rate for past or future periods under that contract. Rather, if a utility files a market-based rate less than 60 days prior to the proposed effective date of service, and waiver of notice is denied, then the utility can recover only a cost-justified rate for all periods (less the time value remedy for the period of time in which the rate was being charged without Commission authorization).

In our judgment, this remedy for the late filing of cost-based and market-based rates will encourage respect for and compliance with the prior notice and filing requirement, yet not impose such a severe financial burden on the utility filing rates that otherwise are just and reasonable. We believe this case-specific, time value remedy is preferable to other types of remedies suggested—especially fixed dollar amounts (say $10,000 or $50,000)—that have little or no relation to the duration or severity of the specific violation at issue.

C. Request for Rehearing

1. Request by Citizens

In the February 10, 1993 Initial Order in this docket, the Commission explained that, after reviewing the Initial Comments and the oral testimony presented in the Technical Conference, it generally has no continuing interest in agreements under which jurisdictional service terminated prior to August 2, 1991 (the date of issuance of the original *Central Maine* order). However, the Commission noted that the Vermont Villages [14] had argued in their comments and testimony in this proceeding that utilities should not be rewarded for conduct that precluded meaningful Commission review of the justness and reasonableness of jurisdictional rates prior to the commencement, or during the pendency, of jurisdictional service. Therefore, the Commission announced that it does have a continuing interest in cases involving a complaint filed prior to February 10, 1993, the date of the Initial Order, challenging a utility's failure to file agreements for jurisdictional service in a timely manner. 62 FERC at 61,824.[15] As a result, the complaint filed by the Vermont Villages Against Citizens (in Docket No. EL92–33–000) on June 5, 1992, which involved a number of agreements that had "expired" as of August 2, 1991, was not dismissed in whole or in part.

Notwithstanding that the Commission's June 25, 1993 order in *Barton Village* addressed the merits of that complaint (*see supra* note 6), we will now discuss Citizens' request for rehearing of the Initial Order issued in this proceeding. However, our determination here offers no comment on the merits of the particular allegations raised by the Vermont Villages in their complaint in Docket No. EL92–33–000. Thus, we will not discuss Citizens' arguments in its request for rehearing in this proceeding to the extent that they respond to the allegations raised in the complaint proceeding.

Citizens does not dispute the validity of the general rule announced in the Initial Order. It is the exception, for complaints filed as of February 10, 1993, which Citizens believes is directed specifically and exclusively at the complaint filed against Citizens by the Vermont Villages, that Citizens challenges as inappropriate and unfair disparate treatment. In addition, Citizens requests clarification that the Initial Order did not affirmatively require Citizens to file all expired agreements (in addition to those at issue in the Vermont Villages' complaint) at this time or suffer the application of *Central Maine* remedies for their late filing.

Citizens is correct that it is, in fact, receiving disparate treatment from the rest of the industry. However, that treatment is the direct result of the Vermont Villages' filing of a complaint against Citizens (concerning Citizens' failure to file certain agreements for jurisdictional service), which placed Citizens in a unique position. The complaint forced the Commission to single out either Citizens or its customers for "disparate" treatment. If we had not created the exception for pending complaints, the Initial Order unilaterally would have extinguished the Vermont Villages' case, without any reference to the merits of their position. In our judgment, it would have been much more "unfair" to vitiate the Vermont Villages' statutory right to file a complaint under sections 206 and 306 of the FPA, 16 U.S.C. 824e, 825e, (1988), than to consider the allegations raised against Citizens on their merits.

This position is particularly compelling because of the context of the arguments here. The *Central Maine* remedial policy was issued to remind utilities—not customers— of their obligation, under section 205 of the FPA, to file rates with the Commission in advance of the commencement of jurisdictional service, because of repeated violations of that important obligation by the electric utility industry. In *Central Maine*, we gave utilities an amnesty window in which to file jurisdictional rates. Subsequent to the original *Central Maine* order, we have excused certain other failures by utilities to file in a timely manner. Finally, in the Initial Order, we absolved utilities of their obligation to file terminated or expired agreements, absent a pending complaint on the subject. Our rulings in *Central Maine* and its progeny are not the result of customer actions or inactions of any kind. Accordingly, we will not penalize customers by cutting off their section 206 and 306 rights in the context of granting further forgiveness to a utility. Therefore, we will deny Citizens' request for rehearing.

Regarding Citizens' request for clarification, we reiterate that the Initial Order specifically stated that the "one exception" to the general pronouncement that expired agreements need not be filed "concerns *agreements as to which a complaint has been filed* as of the date of issuance of this order, challenging the utility's failure to file." 62 FERC at 61,824 n.2 (emphasis added). It is only those expired or terminated agreements that were the subject of the Vermont Villages'

[14] As explained above (*see supra* note 5 and accompanying text), the Vermont Villages are a group of municipal corporations in Vermont that filed a complaint (in Docket No. EL92–33–000) against Citizens, claiming their right to *Central Maine* refunds for Citizens' alleged failure to file certain agreements that, the Vermont Villages claimed (and the Commission ultimately found), provide for jurisdictional service.

[15] The Vermont villages also had expressed concern that customers will be subject to the intransigence of a selling utility with unequal bargaining strength. In response, the Initial Order explained that customers may file a complaint or make a call to the Commission's Enforcement "Hotline" alerting the Commission to the commencement of jurisdictional service under unfiled and unreviewed rates and related agreements. 62 FERC at 61,825.

complaint over which the Commission has a continuing interest. Citizens is not obligated, therefore, to file now any other of its expired agreements with the Commission.

2. Clarification Regarding CIAC Agreements

Gulf States and Southwestern request clarification that the Initial Order did not lift the November 16, 1992 indefinite stay (see supra page 4) of the close of the amnesty period for the filing of CIAC agreements. They point out that the Commission, in the Initial order, explicitly stated that it did "not act now on the numerous other issues raised in the comments and the testimony presented in this proceeding." 62 FERC at 61,825. However, they note that the Commission also stated that "all agreements for jurisdictional service that were ongoing as of August 2, 1991, must be filed for Commission review," *id.*, and wonder whether that includes CIAC agreements under which construction was completed and payment fully made as of that date.

Gulf States and Southwestern are correct that we did not intend for the Initial Order to affect the November 16, 1992 stay of the close of the amnesty period for the filing of CIAC agreements. However, as explained above, the specific, ongoing amnesty for the filing of CIAC agreements will be subsumed in the general amnesty for the filing of all agreements for jurisdictional service. Thus, all CIAC agreements over which the Commission has a continuing interest (i.e., those under which service did not expire by August 2, 1991) must be filed by the close of the general amnesty on December 31, 1993.

Gulf States and Southwestern also raise the issue of whether CIAC agreements under which construction was completed and all payment made prior to August 2, 1991 (the date of the original *Central Maine* order), whether or not the facilities constructed are still being used by utilities or their customers, constitute "expired" agreements for purposes of application of the Initial Order.[16] They, and a number of other participants in the Technical Conference, request a Commission determination that such agreements are considered "expired" agreements for purposes of application of the Initial Order.

In support of their position that it is appropriate for the Commission to treat these types of CIAC agreements as "expired" agreements, Gulf States and Southwestern argue that the same reasons for waiving the filing of other expired agreements apply to these agreements as well. Invoking language from the Initial Order, they assert that no "significant regulatory purpose would be furthered" by the filing and review of consensual CIAC agreements under which the relevant construction and payment has long been finalized and as to which no transactional matter remains open. *See* 62 FERC at 61,824. They also maintain that it is neither fair nor "in the public interest to subject utilities to the financial uncertainty created by the potentially large refund liability associated with unfiled [CIAC] agreements that may date as far back as 1935." *Id*, In addition, they argue that the substantial burden of searching for, uncovering, and filing pre-August 2, 1991 agreements is just as significant in cases where the CIAC agreements relate to facilities that are in operation after August 2, 1991 as to CIAC agreements for facilities which were taken out of operation prior to that date.

Finally, Gulf States and Southwestern distinguish between construction activity and sales or transmission *service* over the constructed facilities. Agreements governing ongoing jurisdictional service, they point out, must be filed with the Commission. This is true, they note, independent of the construction status of the underlying facilities. In contrast, they assert, finalized and completed construction activity is not an ongoing activity, but is finalized once the construction has been completed and payment has been tendered. Therefore, they conclude, CIAC agreements dealing with completed construction activity have indeed "expired."

While we find many of these arguments to be persuasive, as explained below, we find all CIAC agreements related to the sale for resale or the transmission of electric energy in interstate commerce by public utilities to be jurisdictional. See, *e.g.*, *AMP-Ohio*, 57 FERC at 62,160–61, 58 FERC at 61,565 n.14. That we may decline to require the filing or review or jurisdictional CIAC agreements in certain, limited circumstances in no way should be taken as a disclaimer of our jurisdiction or a diminution of our interest in such agreements. Nevertheless, we agree that the substantial burdens of searching for "expired" CIAC agreements, under which construction and payment were completed prior to August 2, 1991, are similar to those of other expired agreements. Our ability to review the justness and reasonableness of "expired" CIAC payments, like our ability to review rates for other expired services, is limited. In addition, we are cognizant of the financial uncertainty we would perpetuate by the potentially large refund liability associated with Commission review of all such agreements. Finally, we agree that, in general, no significant regulatory purpose would be furthered by our review of consensual CIAC agreements under which payment and construction have ceased as of August 2, 1991.

Accordingly, we find that consensual CIAC agreements under which all construction was completed and all payments were made prior to August 2, 1991 qualify as "expired" agreements within the meaning of the Initial Order. That is, they need not be filed for Commission review unless they are the subject of a customer-filed complaint, previously filed with the Commission, challenging the utility's failure to file. Finally, as we discuss in the Appendix, we reiterate that our holding regarding "expired" CIAC agreements has no bearing on our determination that jurisdictional CIAC agreements pursuant to which payments and/or construction were ongoing as of August 2, 1991 do need to be filed with the Commission. And of course, any new jurisdictional CIAC agreements must be filed with the Commission subject to the prior notice and filing requirement. In reviewing future rate applications, the Commission will take payments made pursuant to "unexpired" CIAC agreements into account in setting the rate for any jurisdictional service. Of course, consistent with the Commission's accounting and ratemaking requirements, the Commission would not permit costs recovered under expired CIAC agreements to be reflected in rate base.

D. Relaxing of "Extraordinary Circumstances" Standard for Waiver

This proceeding has generated much discussion about so-called "umbrella tariffs," tariffs of general applicability which a utility can file with the Commission. In the original *Central Maine* order, we noted that "[s]uch tariffs give the selling utility the flexibility to respond to market opportunities while satisfying its obligation to have its rate on file." 56 FERC at 61,819. This declaration however, led to some confusion, and in *Mississippi Power Co.*, 58 FERC ¶ 61,286 (1992) (*Mississippi Power*), the Commission explained that:

[t]ariffs can be structured to allow the amount and duration of service to vary once an approved service agreement is on file for a particular customer. The parties to such a

[16] While we discuss the jurisdictional status of CIAC agreements more thoroughly in the Appendix to this order, we will now briefly explain our determination in response to the motions by Gulf States and Southwestern.

service agreement may transact from time to time without requesting Commission approval of each specific transaction. However, the Commission did not suggest [in *Central Maine*] that utilities could apply a tariff rate to a new customer without first filing a service agreement and seeking Commission approval.

58 FERC at 61,897–98 (footnote omitted). The Commission further clarified that it never stated nor meant to imply that "short-term transactions under a tariff could take place without the utility in question filing a service agreement contemplating the transaction in question * * * [because] the Commission must be able to assure itself that a tariff rate extended to a new customer is appropriate for the new customer." *Id.* at 61,898.

This point was reiterated in *New England Power Co.*, 59 FERC ¶ 61,253 (1992) (*New England Power*). The Commission explained there that even in cases involving a short-term service tariff (*Mississippi Power* had involved long-term requirements service, though the Commission did explicitly address short-term service there), agreements covering service to new customers must be filed prior to the commencement of service under the tariff. Specifically, the Commission noted that "[i]n *Central Maine*, the Commission simply recognized that service arrangements or tariffs can be structured to allow the amount and duration of service to vary once that service arrangement or tariff has been approved and is on file for a particular customer." 59 FERC at 61,921. The Commission addressed this issue again in *Central Power & Light Co. and West Texas Utilities Co.*, 60 FERC ¶ 61,211 (1992) (*Central Power & Light*). We explained there that "[w]e do not believe that the execution and filing of a service agreement with respect to a particular customer undermines in any respect the flexibility offered by the tariff format." 60 FERC at 61,718 (footnote omitted). We also noted that a service agreement need not be an extensive document. *Id.* at 61,718 n.17.

As mentioned above, the Commission recognized that, despite the repeated, subsequent discussion of the issue, *Central Maine* itself may have given the industry the impression that the filing of service agreements would not be required if a tariff of general applicability already was on file. Accordingly, in companion orders on rehearing issued on October 5, 1992 in *Mississippi Power* and *New England Power*, the Commission created a new amnesty period for the filing of service agreements implementing tariff service at previously-approved tariff rates to particular customers. 61 FERC at 61,090 and 61 FERC at 61,092–93. This amnesty window expired on November 9, 1992.

The Commission's actions in the cases following *Central Maine*, requiring the prior filing of service agreements, were not meant to disparage the filing of umbrella tariffs. On the contrary, we envision them as providing the industry with assistance in meeting the filing requirements of the FPA and our regulations, while retaining maximum flexibility in transacting business in an evolving, increasingly competitive generation market. We encourage the filing of umbrella tariffs as a means of assisting the industry in making short-term economic transactions where speed is often essential.

Both at the Technical Conference and in the Supplemental Comments, it was clear that, in general, the industry supports the idea of increased use of umbrella tariffs (and we note that many utilities already have been utilizing this type of tariff). As was discussed at the Technical Conference, we envision that the umbrella tariffs will take a "menu" format, offering different types of service at different prices to any customer meeting certain eligibility criteria. The umbrella tariff should contain the general rates, terms, and conditions of service; the precise rate level should be included in the service agreements the utility will file for each customer. For the reasons we enumerated in *Mississippi Power*, *New England Power*, and *Central Power & Light*, we do need to have individual service agreements filed with us. The Commission must ensure that rates for service to a particular customer, even under tariff rates that already have been accepted for filing, are just and reasonable for that customer.

However, we will relax the grounds for finding waiver for service agreements implementing tariff service that are filed less than 60 days in advance of the proposed effective date. Currently, under the *Central Hudson* waiver standard for the filing of rates for new service not provided pursuant to an accepted contract or settlement, a utility must demonstrate "extraordinary circumstances" justifying the failure to file until on or after the date service commences. See background paragraph B "Central Hudson and Subsequent Cases" (explaining the *Central Hudson* grounds for waiver). We are told that this restrictive standard, which is "extraordinarily" difficult to satisfy,[17] has the practical effect of stifling many types of short-term, economic transactions that otherwise would benefit all parties to the transactions. We further are told that many short-term transactional opportunities are first discovered and discussed less than 60 days in advance of the proposed effective date. If we adhere to the "extraordinary circumstances" test for the filing of service agreements under umbrella tariffs, we are counseled, many such short-term transactions never will be negotiated or filed (because of the near certainty that waiver will be denied and refunds ordered). Similarly, many umbrella tariffs of the type we encourage (for the reasons discussed above) will not be negotiated and filed because of the perceived difficulty of implementing short-term service negotiated on short-notice under the tariffs.

This Commission does not want to stifle the efficiencies to be gained by permitting transactions to be made on short notice in response to changing market conditions. Accordingly, we wish to encourage the use of umbrella tariffs which allow substantial transactional flexibility. Having balanced the goal of encouraging efficient transactions on short notice and the purposes of the statutory prior notice requirement, we will eliminate the "extraordinary circumstances" test for waiver for the filing of service agreements under umbrella tariffs. For service agreements filed after the date of this order, and under which tariff service has not already commenced,[18] waiver of notice will be granted if service agreements are filed within 30 days after service commences.

Of course, permitting a utility to begin a particular service covered by an umbrella tariff on file with the Commission, prior to acceptance of a filed service agreement, is not in any way a declaration that such service is just and reasonable as extended to a particular customer. That determination can be made only after the service agreement is filed with the Commission, and only after the Commission has had the opportunity to evaluate the justness and reasonableness of the tariff rate as applied to a particular customer. Accordingly, any rates collected under such circumstances (prior to acceptance of a filed service agreement) will be subject to refund.

We will not relax the "extraordinary circumstances" standard of waiver for any other type of agreement for new service. We are told that no umbrella

[17] Little opposition has been articulated to the other *Central Hudson* standards for waiver.

[18] As explained above, if service already has commenced, filing by the December 31, 1993 close of the general amnesty period will justify waiver of notice.

tariff—no matter how expansively drafted—can accommodate all types of short notice, economic transactions with every potential customer. We further are told, for this reason, that we should not limit our concern solely to service agreements filed under umbrella tariffs.

In our judgment, we should not discourage the drafting and filing of umbrella tariffs, or further complicate the grounds for waiver of notice, by providing a separate relaxed standard of waiver for agreements for new service not implementing tariff service. We are not convinced that tariffs cannot be drafted to cover almost all types of economic transactions that may arise in the future. Further, those few emergency transactions of the type discussed by the participants at the Technical Conference and in their comments could, possibly, qualify as "extraordinary circumstances" justifying waiver.

Accordingly, we will retain, without modification, all of the other *Central Hudson* standards for waiver.

E. Remaining Issues

We have reviewed all remaining arguments raised in this proceeding as to all remaining issues. We conclude that no further modification to our implementation of the prior notice and filing requirement is justified.

The Commission orders:

(A) The requests for rehearing and motions for clarification filed in this proceeding by Citizens Utilities Company, Gulf States Utilities Company, and Southwestern Public Service Company are hereby denied to the extent and granted to the extent discussed in the body of this order.

(B) The Commission's implementation of the prior notice and filing requirement is hereby clarified to the extent discussed in the body of this order.

(C) The Secretary will promptly publish a copy of this order in the **Federal Register.**

By the Commission.

Lois D. Cashell,

Secretary.

Appendix—Response to Requests From Participants in the Technical Conference for Additional Guidance on Agreements the Commission Considers Subject to Filing Under Section 205 of the Federal Power Act

On January 28, 1993, the Commission held a technical conference in Docket No. PL93–2–000 to discuss how we should proceed with the enforcement of the Commission's policy concerning the late filing of jurisdictional rates and agreements for our review. At the conference and in comments submitted before and after the conference, numerous participants requested additional guidance as to the filing obligations of public utilities, and the Commission's enforcement of those obligations, under Part II of the Federal Power Act (FPA). The background to this proceeding, the issues raised at the technical conference and in initial and supplemental comments, and our disposition of these issues are discussed in the "Final Order" accompanying this Appendix.

We received comments or supplemental comments from the following participants in this proceeding: American Public Power Association (APPA); Baltimore Gas & Electric Company and Potomac Electric Power Company (PEPCO); Barton Village, et al. (Vermont Villages); Boston Edison Company, Central Vermont Public Service Corporation, Eastern Utilities Associates, El Paso Electric Company, Wisconsin Electric Power Company and the Wisconsin Public Service Commission (Boston Edison); Central Maine Power Company (Central ME); Citizens Utilities Company (Citizens); Consolidated Edison Company (Con Ed); the Edison Electric Institute (EEI); Energy Services, Inc. (ESI); Entergy Services, Inc. (Entergy); Green Mountain Power Company (Green Mt.); Gulf States Utilities Company (GSU); Iowa Illinois Gas & Electric Company (IA–IL); Jersey Central Power and Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company (Jersey Central); Kansas City Power and Light Company (KCPL); Montana Power Company (MT Power); New England Power Company (NEPCO); New York State Electric & Gas Company (NYSEG); Niagara Mohawk Power Company (NiMo); Northeast Utilities (NU); Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (NSP); PacifiCorp; Pennsylvania Power & Light Company (PP&L); Portland General Electric Company (PGE); Puget Sound Power & Light Company (Puget); Sacramento Municipal Utility District (SMUD); Southwestern Public Service Company (SPS); Washington Water Power Company (Washington Water); United Illuminating Company (UI); UNITIL Companies (UNITIL); and UtiliCorp United, Inc. (UtiliCorp).

In varying degrees, the comments request clarification on how we interpret the reach of our jurisdiction under sections 201 and 205 of the FPA, 16 U.S.C. 824, 824d (1988). In addition, at the conference and in the comments, many in the electric industry asked for additional guidance on whether we will require utilities to file certain types of agreements for Commission review. We have grouped the approximately 42 types of contracts participants inquired about into the following seven categories.

- Contributions in aid of construction (CIAC)
- Interconnection and service agreements between qualifying facilities (QFs) and third-party utilities (QF agreements)
- Exchanges
- Pole attachments
- Joint ownership agreements and operating and maintenance (O&M) agreements
- Borderline agreements
- *De minimis* contracts

As we explain in the Final Order, the jurisdictional guidance we provide in this Appendix is, by necessity, general. The intent here is to clarify further the filing obligations of public utilities, not to provide a comprehensive listing of all services that are jurisdictional and must be filed with and reviewed by the Commission. Public utilities unsure as to the jurisdictional status of a particular contract or type of contract should seek case-specific guidance from the Commission, as discussed in the Final Order.

Before proceeding to the issues involved in each of the above-listed categories of transactions, we think it appropriate first to provide a general overview of the filing requirements of section 205 of the FPA, as the court cases and our decisions have interpreted the law in this area. This review should be useful in helping public utilities and their customers analyze the jurisdictional status of, and the attendant need to file, any transactions that do not fit neatly within any of the above categories or that contain peculiar facts and circumstances that are not addressed below.

I. Jurisdictional Framework Under the FPA

A. Section 201

Our jurisdiction over the electric industry derives from Part II of the FPA. Section 201(b)(1) declares that Part II applies to:

The transmission of electric energy in interstate commerce and * * * the sale of electric energy at wholesale in interstate commerce * * * *

The section goes on to state that federal authority "shall not apply to any other sale of electric energy or deprive a State or State commission of its lawful authority now exercised over the exportation of hydroelectric energy which is transmitted across a state line."

Section 201(b)(1) also grants the Commission jurisdiction over "facilities for * * * transmission or [wholesale] sale of electric energy * * * * in interstate commerce." We may not, however, except as specifically provided in Parts II and III of the FPA, regulate "facilities used for the generation of electric energy or * * * facilities used for the generation of electric energy or * * * facilities used in local distribution [or transmission in intrastate commerce or for the transmitter's own use]."

Aside from prescribing the matters and facilities that fall within and outside our jurisdiction, section 201 also delineates the entities whom we may and may not regulate. If a transaction constitutes a wholesale sale or transmission in interstate commerce, the Commission has jurisdiction to regulate that transaction if service is provided by a public utility.

Section 201(d) defines a wholesale sale as "the sale of electric energy to any person for resale." Similarly, section 201(c) defines transmission in interstate commerce as energy transmitted "from a State and consumed at any point outside thereof: but only insofar as much transmission takes place within the United States."

The identity of the purchaser of wholesale energy or transmission service, whether publicly-owned or privately-owned, does not affect the Commission's jurisdiction under Part II of the FPA. The identity of the seller or transmitter, however, does make a

difference. For us to have jurisdiction under sections 205 and 206, a "public utility" must provide the service.

Section 201(e) defines the term "public utility" as "any person who owns or operates" facilities used for wholesale sales or transmission of electric energy in interstate commerce. Having broadly defined "public utility," section 201(f) excludes an entire class of publicly-owned utilities from the class of public utilities subject to Commission regulation:

No provision in this Part shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any of [those bodies], or any officer, agent, employee [of a federal, state, or local government] acting in [an official capacity] * * * *

In short, the statute defines jurisdictional service and facilities as well as jurisdictional public utilities. The rest of the Appendix will apply those definitions to the issues raised in the comments and at the technical conference concerning the extent of the obligation of public utilities to file rates for jurisdictional service in compliance with the prior notice and filing requirement of section 205 of the FPA, 16 U.S.C. 824d(d) (1988).

B. Section 205

Section 205(a) of the FPA gives the Commission authority to ensure that:

[A]ll rates and charges made, demanded, or received by any public utility *for or in connection with* the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations *affecting or pertaining to* such rates or charges shall be just and reasonable * * * *

(Emphasis added). If the Commission has jurisdiction to determine the justness and reasonableness of a particular rate, section 205(c) requires public utilities to file:

Schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classifications, practices, and regulations *affecting* such rates and charges, together with all contracts which in any manner *affect or relate to* such rates, charges, classifications, and services.

(Emphasis added).

Ascertaining the extent of what the industry must file depends on how expansively we define the terms "for," "in connection with," "affect/affecting," "pertaining to" and "relate to." As explained above, section 201 of the FPA describes the two services subject to the Commission's jurisdiction as the sale of electric energy at wholesale in interstate commerce and the transmission of electric energy in interstate commerce. As a general matter, then, the Commission typically requires parties to file arrangements involving:

1. A public utility selling or exchanging wholesale power in interstate commerce;

2. A public utility providing or exchanging transmission service in interstate commerce; and

3. Agreements or other arrangements involving the installation, operation or use of facilities for the transmission or delivery of power at wholesale in interstate commerce, if a public utility owns or operates the facilities.

To try to give some content to these broad headings, we next examine the legislative history and selective judicial and administrative case law on the scope of the Commission's jurisdictional authority under section 205. As explained above, our analysis is intended to be illustrative, not comprehensive; it provides a general understanding of the bounds of our authority under the FPA to require the filing of rates and practices for Commission review.

1. The Legislative history. The legislative history of section 205, which we examine in brief below, sheds no light on the extent of the rates or practices which must be filed.

The original versions of the Senate and House bills contained slightly different language from what now appears in section 205(a). In particular, Senator Wheeler's bill, S. 1725, as well as Congressman Rayburn's bill, H.R. 5423, provided in section 202(b):

All rates * * * for any service furnished or to be furnished and all rules and regulations *affecting or pertaining to* such rates and charges shall be just and reasonable. * * *

The Senate Committee on Interstate Commerce changed the numbering of section 202(b) to 205(a), but otherwise left the "affecting or pertaining to" language intact. *See* Senate Committee on Interstate Commerce, Confidential Committee Print at 39–40; S. Rep. No. 621, 74th Cong., 1st Sess. at 51 (1935).

The House Committee on Interstate and Foreign Commerce not only re-numbered the provision, but also added the predicate of "for or in connection with" service subject to our jurisdiction to the "affecting or pertaining to" language that covered rules and regulations. "[A]ffecting or pertaining to" remained as the second clause of section 205(a). *See* House Committee on Interstate and Foreign Commerce, Confidential Committee Print at 15–16.

The House gave no explanation for the amendment. The House Report stated only that "subsection (a) imposes upon public utilities the duty of charging just and reasonable rates. * * *" H. Rep. No. 1318, 74th Cong., 1st Sess. at 29 (1935).

The legislative history of section 205(c) contains no definition of "affecting or relating." The Senate Report, S. Rep. No. 621, at 51, states only that the provision "requires the filing with the Commission of schedules showing the charges for any services subject to the jurisdiction of the Commission."

The House Report contains a similarly terse explanation: "Subsection (c) requires the filing of schedules and contracts relating to all rates and charges subject to the jurisdiction of the Commission. * * *" H. Rep. No. 1318 at 29.

2. The court cases. The case law, in contrast, provides numerous examples indicating that the Commission has considerable flexibility in determining what rates and practices are "for or in connection with," "affecting," "pertaining" or "relat[ing] to" jurisdictional service and, accordingly, must be filed for Commission review.

For example, in the most recent and comprehensive court decision on the subject, *Northern Natural Gas Company* v. *FERC*, 929 F.2d 1261 (8th Cir.), *cert denied*, 112 S. Ct. 169 (1991), the court broadly construed the Commission's authority to require the filing of rates for certain services, even when the physical act of providing the services is not jurisdictional, when the rates are "in connection with" the provision of jurisdictional service. Specifically, in the context of examining the Commission's ratemaking authority under section 4 of the Natural Gas Act (NGA), 15 U.S.C. 717c (1988), which contains the same "for or in connection with" language as section 205 of the FPA,[1] the court discussed the Commission's jurisdiction over the rates an interstate pipeline charged for gathering (assembling gas from the fields) it performed as part of its transportation services. The pipeline claimed that because the NGA denied to the Commission jurisdiction over the physical process of gathering, the agency lacked the authority to require the filing of rates for gathering. After reviewing a series of Supreme Court and lower court cases on the subject, the court affirmed the Commission's finding of jurisdiction.

In particular, the court of appeals 929 F.2d at 1269, placed great emphasis on *Colorado Interstate Gas Company* v. *FPC*, 324 U.S. 581 (1945). There, the Court sustained the Commission's consideration of the cost of nonjurisdictional gathering activity as part of its assessment of the justness and reasonableness of a pipeline's sales rates. In describing the Supreme Court's holding, the *Northern Natural* court explained:

Of course, the Commission's approved sales rate was affected by the gathering rate the companies charged because the gathering rate was "bundled" [*i.e.*, included] in the sales rate. Therefore, it would not have been possible to set a sales rate without effectively including a gathering charge.

929 F.2d at 1270.[2] The court concluded that the "in connection with" language gives the Commission "the ability to regulate other aspects of the * * * industry as necessary to make effective its primary control over interstate transportation and sales." Id. at 1273.

A number of other court decisions have given the Commission considerable discretion in developing content to the phrases "affecting," "pertaining to," or "relat[ing] to" jurisdictional service. In *City of Cleveland* v. *FERC*, 773 F.2d 1368 (D.C. Cir. 1985), for example, the Commission ordered the utility to file in more detail than usual its rules for service to a particular

[1] Courts have long found that the ratemaking provisions of the NGA and the FPA are "in all material respects substantially identical," and have used precedent under one statute in construing the relevant provisions of the other. E.g., Arkansas Louisiana Gas Company v. Hall, 453 U.S. 571, 577 n.7 (1981) (citation omitted).

[2] For additional support, the *Northern Natural* court cited *Interstate Natural Gas Company* v. *FPC*, 331 U.S. 682 (1947), for the proposition that the Commission has jurisdiction to require the filing of rates for nonjurisdictional gathering because those charges "'become perpetuated in large part in fixed items of costs which must be covered by rates charged subsequent purchasers of gas. * * *'" 929 F.2d at 1270 (quoting 331 U.S. at 693).

municipal customer. The customer, on the other hand, wanted even greater detail. The court declined to order it, finding as follows:

[T]here is an infinitude of practices affecting rates and service. The statutory directive must reasonably be read to require the recitation of only those practices that affect rates and service *significantly*, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous. It is obviously left to the Commission, within broad bounds of discretion, to give concrete application to this amorphous directive.

773 F.2d at 1376 (emphasis in original).

In addition, the court in *Public Service Commission of New York, et al.* v. *FERC*, 813 F.2d 448, 454 (D.C. Cir. 1987), another case interpreting the nearly identical ratemaking section of the NGA, similarly held that the Commission properly excused utilities from filing policies or practices that dealt only with matters of "practical insignificance" to serving customers. In short, the cases have upheld the Commission's "rule of reason" approach to how much detail a utility must provide in its rate schedules.

3. *The administrative cases.* Below, we discuss briefly three recent Commission decisions that illustrate the considerable discretion we possess under section 205 to require the filing of practices affecting or relating to jurisdictional rates or service, as well as rates that, more indirectly, are "in connection with" jurisdictional service.

In *Central and Southwest Services, Inc.*, 48 FERC ¶ 61,197, reh'g denied, 49 FERC ¶ 61,118 (1989), for example, the Commission directed the utility to file its planning reserve (the margin of safety it uses for planning purposes) with the Commission as part of its rate schedules. The Commission has no authority to fix planning reserve margins. In that instance, however, the Arkansas Public Service Commission pointed out that the "planning reserve level is central to a determination of [certain inter-company] payments" and, therefore, the rate customers pay. 48 FERC at 61,732.

The Commission agreed that the company included the planning reserve as part of the formula that governed inter-company payments for the common physical plant. The planning reserve, therefore, affected the rate charged for jurisdictional service. *Id.* at 61,733. Thus, the Commission may require any matter that forms any significant part [3] of the calculation of the rate customers actually pay for jurisdictional service to be filed for Commission review.

Simiarly, in *American Municipal Power-Ohio, Inc., et al.* v. *Ohio Edison Company* (*AMP-Ohio*), 57 FERC ¶ 61,358 (1991), reh'g denied, 58 FERC ¶ 61,182 (1992), the Commission required the filing of an agreement providing for the customer payment of contributions in aid of construction (we discuss "CIAC agreements" in greater detail infra), even though construction activity itself, as explained above, is outside the scope of the Commission's jurisdiction. Ohio Edison, which provided wholesale transmission service to AMP-Ohio, contracted to build new facilities for its customer. AMP-Ohio agreed to pay for them in advance, rather than over the life of the transmission service the facilities helped bring about. The Commission held that the agreement covered facilities that Ohio Edison uses "in connection with" transmission service subject to our jurisdiction under section 205.

The order found (57 FERC at 62,161):

A utility's rates for jurisdictional service * * * are developed to recover the costs of providing that service. Moreover, it is well settled that the costs of the facilities that provide the service are among the costs that may be included * * * * The [CIAC agreement] affects transmission service and the rate for such service because it involves facilities necessary in order to provide jurisdictional service * * * * In this instance, instead of attempting to recover such costs over time as is typically the case (i.e., through depreciation), Ohio Edison has opted to recover the costs of the interconnection in the form of lump sum payments.

(Footnotes omitted). Because the CIAC charges received by the public utility constructing new facilities are "for or in connection with" jurisdictional transmission service and, indeed, ultimately become part of the rate charged for jurisdictional service, section 205(a) makes the CIAC payments themselves subject to our jurisdiction.[4]

We have further expanded on our *AMP-Ohio* holding in our most recent case, *New York State Electric & Gas Corporation, et al. (NYSEG)*, 63 FERC ¶ 61,312 (1993). There, two public utilities filed agreements under which they physically altered the transmission grid to accommodate the transmission of a state agency's power. The state agency used the utilities' integrated grid as it sent the power from its own generating plants to its customers. We found the agreements to be subject to our jurisdiction.

We rejected the utilities' argument that their agreements differed from the CIAC agreement at issue in *AMP-Ohio* because that agreement facilitated the provision of transmission service by a Commission-regulated public utility (Ohio Edison), rather than by a non-jurisdictional state agency. We held, mimeo at 7:

The fact that Ohio Edison's charges * * * happened to be part of a broader package of services * * * provided to AMP-Ohio in no way supports the Petitioners' argument here that the charges would not have been jurisdictional absent those other services. Ohio Edison's charges would have been jurisdictional even if [the utility] had provided no other services he AMP-Ohio because Ohio Edison assessed the charge for use of its transmission facilities. As such Ohio Edison's charge to AMP-Ohio was a charge for jurisdictional service. Similarly, here, the Petitioners assess [the state agency] a charge for the use of their transmission facilities, and, accordingly, [the utilities'] charges to [the state agency] are for a jurisdictional service or use * * *

In sum, while only selective, these cases indicate that charges by a public utility for or in connection with transmission in interstate commerce, including charges for the "use" of transmission facilities moving electric energy in interstate commerce, such as in *NYSEG*, fall within the filing requirement of section 205. In addition, contracts "affecting" such charges or services (as in *Central and Southwest*) are jurisdictional.

In contrast, a utility sometimes earns money from putting utility property to unregulated use, for instance, renting its outdoor poles to a cable television company. In that instance (as we elaborate in Section II. B. below), the utility need not file the contract under section 205.

II. Answers to Specific Filing Questions

Below, we provide a brief analysis of the jurisdictional status of the various types of agreements identified by the participants in this proceeding, as organized into general categories. In our judgment, breaking down the following categories into smaller sub-categories of agreements is nearly impossible, given that many of the agreements identified by the participants overlap or fall into several categories. In addition, providing further detail may be, in the context of this generic proceeding (without the benefit of specific facts as to specific transactions), misleading, or otherwise counter-productive.

As explained above, this analysis is general in nature and is intended to be illustrative of the Commission's current thinking on these subjects. As such, nothing presented below is new. Rather, the analysis provides a convenient compilation of Commission discussion on these subjects found in various sources. Because of the general nature of this analysis, and the generic nature of this proceeding, we believe that this is not the best vehicle for argument that the Commission's current analysis is incorrect. We discourage the filing of rehearings solely to express disagreement with our current thinking, and instead, encourage participants to save further argument for case-specific proceedings involving particular circumstances.

A. Contributions In Aid of Construction (CIAC) Agreements

AMP–Ohio, described above, established with certainty the Commission's position that it has jurisdiction over CIAC agreements for or in connection with interstate transmission service provided by a public utility. None of the comments challenges that basic determination. Rather, those bringing up the subject seek additional clarification. In particular, EEI, PGE, MT Power and Boston Edison ask that we not require public utilities to file jurisdictional CIAC agreements under which the customer has already paid. SMUD,

[3] The Commission may exercise significant judgment in these matters. For example, a formula rate may have a component covering labor costs. Obviously, if the public utility enters into a new wage agreement, this will affect the rate to be charged. However, the wage agreement would not need to be filed with the Commission, although it might have to be produced in the course of discovery in a litigated case or in an audit.

[4] Again, however, the Commission will exercise judgment, so as to require the filing of, and review of, those things that are necessary for the Commission to exercise effective jurisdiction over transmission and sales for resale in interstate commerce.

on the other hand, urges that we require the filing of CIAC agreements if the utility is still providing jurisdictional transmission service.

We deal with this issue in the Discussion section of the Final Order accompanying this Appendix. In our discretion, we have determined that if both customer payment and construction of the facilities at issue in the CIAC agreements ended prior to August 2, 1991, and no complaint has been filed challenging the utility's failure to file the CIAC agreement at issue in a timely manner, then we will consider the agreement to be "expired." In other words, for the reasons stated in the Final Order and in the Initial Order issued in this proceeding on February 10, 1993, the "expired" CIAC agreement need not be filed for Commission review—even if the utility continues to use the facilities constructed under the agreement to provide jurisdictional service. Rates for jurisdictional transmission or wholesale power sales transacted over the facilities must, of course, continue to be filed for Commission review. In reviewing future rate applications, the Commission will take payments made pursuant to "unexpired" CIAC agreements into account in setting the rate for any jurisdictional service. Of course, consistent with the Commission's accounting and ratemaking requirements, the Commission would not permit costs recovered under expired CIAC agreements to be reflected in rate base.

In addition, EEI and Boston Edison request clarification of the Commission's definition of CIAC agreements. EEI argues that contracts involving construction of facilities subject to our jurisdiction, whether or not the customer pays in one lump sum or over a period of time, fall into the CIAC category.

In support, EEI contends that, as long as the customer did not pay for the facilities as part of the rates for the jurisdictional sales or transmission service transacted over the facilities, the industry historically considered the contract to be a "CIAC" contract that is not subject to our jurisdiction. Therefore, according to EEI, the specific, ongoing amnesty for CIAC agreements announced in *Florida Power Corp.*, 61 FERC ¶61,063, order extending amnesty, 61 FERC ¶61,244 (1992), should apply even to those construction agreements that call for periodic payment. EEI cites to several Commission cases in which the issue has arisen and questions what it considers to be an arbitrary distinction, for purposes of designating agreements as CIAC agreements, between lump sum payments and periodic payments.

We agree with the jurisdictional result EEI advocates. In general, the question of our jurisdiction over a particular ontract depends on whether the contract contains a rate or charge for or in connection with the transmission or sale of electric energy in interstate commerce, or whether the contract affects or relates to such rates or service. It does not depend on the timing of payment under the contract. The historical confusion about filing is based on the fact that certain of these agreements separated the payment for the construction of the facilities at issue from the rate for sales or transmission service subject to our jurisdiction. The industry assumed, we are told, that because the customer made a discrete arrangement for the construction of the facilities, the transaction fell outside our jurisdiction (regardless of the method of payment).

In *AMP-Ohio*, the Commission clarified that this historical assumption was misguided. As the Commission recited on rehearing in that case, 58 FERC ¶61,182 at 61,565 (1992).

> Ohio Edison argues that because the [CIAC] is a separate and distinct contract [it] is nonjurisdictional * * *. [W]e find that the [agreement] cannot be neatly disconnected from the provision of jurisdictional service.

The Commission further clarified that characterization of a particular arrangement as a facilities agreement (under which periodic payments are made over all or a portion of the life of the facilities) or as a CIAC agreement (under which a single lump sum payment is made) is irrelevant because both types of agreements provide for construction "for or in connection with" jurisdictional service and, accordingly, must be filled for Commission review. Similarly, in *Florida Power Corp.*, 58 FERC ¶61,161, reh'g denied, 60 FERC ¶61,003 (1992), the case which ultimately resulted in the specific amnesty for CIAC agreements, we explained (60 FERC at 61,017) that CIAC agreements do not lose their jurisdictional status simply because they must operate as "stand alone" contracts separate and distinct from agreements for the provision of jurisdictional service over the facilities constructed under the CIAC agreements.

The only reason the distinction between agreements providing for a single lump sum payment for the construction of facilities and agreements providing for periodic payment had any relevance was the existence of a specific amnesty for the filing of CIAC agreement (which automatically justified waiver of notice). Because, as explained in the Final Order, that amnesty is being subsumed in a general amnesty for the filing of all jurisdictional agreements (which expires on December 31, 1993), it no longer matters whether an agreement is considered to be a jurisdictional CIAC agreement or a jurisdictional facilities agreement. Neither type of agreement is now afforded any special type of treatment for purposes of compliance with the prior notice and filing requirement.

Boston Edison asks us to clarify that CIAC agreements subject to out jurisdiction do not include contracts for the construction of generating facilities or other matters, such as rights of way, over which the Commission has no jurisdiction. While we stop short of Boston Edison's request for a blanket clarification, we will clarify that CIAC agreements that must be filed for Commission review must relate to transmission in interstate commerce or sales for resale of electric energy in interstate commerce.

As we noted earlier, even in *NYSEG*, out most recent order on the subject, we held that in order to come within our purview, the agreement must contain a charge connected to jurisdictional service. We exercise no jurisdiction over generating facilities as such. Our authority, however, encompasses sales for resale in interstate commerce. Therefore, if a customer of a utility makes a payment related to the construction of generating facilities in lieu of a per unit charge for wholesale service, the Commission will require that it be filed.

This is because the charges under the contract are in connection with the sale for resale of electric energy in interstate commerce and just as in *AMP-Ohio*, the charges would otherwise go into a wholesale rate (through the utility's rate base). In that instance, the agreement resembles another advance payment, for construction work in progress (CWIP), which falls within the filing requirement of section 205. (For the extent which utilities may collect CWIP in rates, *see Mid-Tex Electric Co-operative* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985); 822 F.2d 1123 (D.C. Cir. 1987); 864 F.2d 156 (D.C. 1988)).

B. OF Agreements

In *Western Massachusetts Electric Company*, 59 FERC ¶ 61,091 reh'g denied, 61 FERC ¶ 61,182 (1992), the Commission addressed the boundary between state and federal jurisdiction over agreements under which QFs, within the meaning of the Public Utility Regulatory Policies Act (PURPA), interconnect with the transmission grid.

In that case, the Commission, citing 18 CFR 292.306, held that the states have exclusive jurisdiction over direct interconnections between a QF and the public utility which purchases its power. Conversely, the Commission held that it alone exercises authority over QF interconnections with utilities standing between the QF and its purchaser, i.e., agreements under which third-party utilities, which do not purchase QF-generated power, nevertheless transmit QF power in interstate commerce. Several of the comments, e.g. those filed by PP&L, NU, PGE, GSU, ESI, UNITIL, Central ME and NiMo, urge us to reconsider that holding and leave the matter entirely to the states or, at a minimum, to apply the ruling "prospectively."

We are presented with no reason to overturn our precedent or to apply it prospectively only. As our reasoning in *Western Massachusetts* shows, we always have had jurisdiction over QF interconnections with intermediary utilities (not purchasing QF power). Interconnection agreements between utilities come within section 205 of the FPA. Congress, in PURPA, and the Commission, in its PURPA regulations, made an exception for ties between QFs and purchasing utilities. We do not believe that utilities reasonably should have interpreted the Commission regulation that refers to the direct purchase from a QF as extending state regulation to interconnections with another public utility's integrated grid.

Nor do we see any reason to lessen the jurisdictional reach of our decision in *Western Massachusetts* by applying it "prospectively" or granting some other from of leniency (such as opening a new amnesty period for the filing of jurisdictional QF agreements). Because, as explained in the Final Order, we are adopting a general amnesty for the filing of all jurisdictional agreements, to end on December 31, 1993, there is no need to carve out specific exceptions or amnesties for particular types

of jurisdictional agreements (such as QF interconnection agreements with transmitting public utilities). Of course , jurisdictional QF agreements, like all other jurisdictional agreements, need not be filed for Commission review if service terminated prior to August 2, 1991 and a complaint was not filed by February 10, 1993, the date of the Initial Order.

MT Power asks us to disclaim jurisdiction over interconnection agreements with QFs if those agreements do not also involve transmission. In addition, the utility urges that we consider these contracts outside our jurisdiction even if the QF later expands the relationship to include transmission. In this regard, we decline to go beyond the direct/indirect distinction we set out in *Western Massachusetts*.

Our jurisdiction over interconnection agreements derives from our section 205 authority over matters relating to the wholesale sale or transmission of electric energy in interstate commerce. As we pointed out in *PSI Energy, Inc.*, 56 FERC ¶ 61,237 at 61,908 n.4 (1991), citing 16 U.S.C. 824(b) (section 201(b) of the FPA):

[While] we have no authority with respect to construction obligations [,] the Commission's jurisdiction over the facilities [interconnection] agreement is limited to the provisions of the agreement that facilitate the exchange of energy between the parties, i.e., the sale of electric energy at wholesale in interstate commerce.

Similarly, even if the QF or the utility customer does not actually take transmission service as soon as the line enters the grid, the interconnection agreement "facilitates" future service and falls within our section 205 jurisdiction.

C. Exchanges

PacifiCorp suggests that we declare outside our jurisdiction agreements under which utilities renounce their rights to use transmission lines or acquire electricity and, instead, substitute other arrangements. As an example, the company mentions the Canadian Entitlement Exchange Agreement between Bonneville Power Administration (BPA) and 48 utilities. PacifiCorp informs us that each of the utilities assigned back its "entitlement," and BPA promised to provide capacity or power, instead.

Rather than respond only to the specific facts regarding BPA, we will also discuss the matter as if the exchange occurred between two public utilities. Our regulatory authority over the rates of federal agencies, such as BPA, derives from specific laws, not the FPA. In the case of BPA, the Northwest Power Planning and Conservation Act, 16 U.S.C. 839e, gives us limited rate jurisdiction.

That statute, according to the case law, *e.g.*, *Aluminum Company of America* v. *FERC*, 903 F.2d 585 (9th Cir. 1989), *cert. denied*, 111 S. Ct. 672 (1990); *California Energy Commission* v. *Bonneville Power Administration*, 831 F.2d 1467 (9th Cir. 1987), cert. denied 488 U.S. 818 (1988), gives BPA more autonomy in its operations than public utilities enjoy under the FPA. We will, therefore, first address the issue in the larger context.

In simple terms, if public utilities assign back their entitlement to power or capacity in an exchange arrangement or enter a new agreement, the utilities must file the change because they had to file the agreement in the first place. Since exchanges involve transfers of electric energy at wholesale, even though for payment in kind, our regulations, 18 CFR 35.2 (1992), require public utilities to file those agreements. That provision states that utilities must submit to the Commission rate schedules governing "electric service." The regulation defines "electric service" as including transfers "without regard to the form of payment of compensation," and specifically mentions "exchanges."

A number of recent Commission decisions reiterate that filing requirement, including *Green Mountain Power Corp.*, 59 FERC ¶ 61,291, reh'g denied 60 FERC ¶ 61,158, order on compliance filing , 61 FERC ¶ 61,203 (1992), and *Barton Village, Inc., et al.* v. *Citizens Utilities Company*, 63 FERC ¶ 61,329 (1993). Indeed, in *Barton Village* we held that even if an arrangement involves an "exchange" of Canadian power for power the utility generates in the United States, the agreement falls under the filing requirement of section 205.

Therefore, unless both sides of the exchange occur outside the United States, for example, Canada, public utilities must also file amendments to exchange agreements that come within our jurisdiction. This allows us to review the justness and reasonableness of the new arrangements and to keep our files current. In fact, our regulations, 18 CFR 35.1(b) (1992), require utilities to file anything that "cancels" or "supersedes" an existing rate schedule.

We turn now to the situation with BPA. As we noted earlier, our jurisdiction over that agency, with the exception of the new amended FPA section 211, attaches to rates only. For example, questions regarding entitlement to capacity on the BPA's share of the Pacific Intertie lie elsewhere. We cannot gauge from the record what "entitlement" PacifiCorp refers to—whether to power or to capacity on transmission lines. To the extent that PacifiCorp's comments refer to changes in use of interties, whether the Pacific Intertie or any other BPA line, the utilities need not file.

If, on the other hand, PacifiCorp refers to entitlement to electric energy, the result changes. Public utilities must submit amendments to exchanges of the actual electric energy or entitlement to production of generating plants in the United States. As the Ninth Circuit held in *California Energy Commission*, 831 F.2d at 1472, dividing use of the transmission lines does not relate to charges for BPA service. An exchange of electric energy, as we noted above, amounts to a wholesale sale for payment in kind. Therefore, the utilities need not file agreements relating to capacity on any of the interties, but must submit those relating to electric energy.

D. Pole Attachments

Four submissions, those of PacifiCorp, KCPL, MT Power and Boston Edison, inquire about our jurisdiction over pole attachment agreements. As the name indicates, these arrangements involve utilities leasing space on their poles, allowing the lessee to attach wires. Those in need of the wires take advantage of " 'existing poles rather than [use] newly placed poles due to the reluctance of most communities * * * to allow an additional, duplicate set of poles to be placed.' " *Texas Power & Light Company* v. *Federal Communications Commission*, 784 F.2d 1265, 1267 (5th Cir. 1986) (citation omitted).

Pole attachments comprise a variety of wires, not just those carrying electric energy. For example, cable television operators use pole attachments for their wires. Lease charges for these attachments are not for or in connection with the transmission or sale for resale of electric energy in interstate commerce. Moreover, Congress gave authority over the rates for these attachments to the Federal Communications Commission. *See Texas Power & Light Company*, 784 F.2d at 1267–1268. Accordingly, public utilities need not file such agreements with us.

Similarly, if the pole attachment or charges involve any other matter over which this Commission has no jurisdiction (for example, telephone or retail electric service), public utilities need not file the agreements for Commission review.

E. Joint Ownership Agreements and Operating and Maintenance Agreements

Two utilities, PacifiCorp and KCPL, urge us to declare that we lack jurisdiction over joint ownership and O&M agreements covering generating plants. PacifiCorp and several others filing comments, EEI, GSU, ESI and SPS, request that we disclaim jurisdiction over agreements that call for utilities to provide O&M service for the owners of the facilities. In this regard, PacifiCorp inquires specifically about CIAC agreements under which utilities build, but the customer owns, the transmission line.

Agreements concerning joint ownership of transmission facilities are, clearly jurisdictional and must be filed for Commission review. On the other hand, joint ownership agreements covering generating plants fall outside our jurisdiction. As explained in Part I of this Appendix, section 201 of the FPA prohibits us from regulating the construction of generating facilities, except as specifically provided in Parts II and III of the FPA. Therefore, public utilities need not file agreements for the joint ownership of generation facilities unless those agreements contain provisions affecting or relating to rates for wholesale sales of energy in interstate commerce.[5]

The issue of joint ownership agreements may arise in rate cases, in the context of utilities basing their allocation of plant costs in wholesale rates on ownership shares in certain generating facilities. In those instances, utilities may need to produce joint ownership agreements, either as part of their submissions or on discovery.

O&M agreements of the type identified in the comments present a more complicated question. As we explained above, section 205 requires us to regulate the rates "public

[5] *See Mississippi Industries* v. *FERC*, 808 F.2d 1525 n. 74 (D.C. Cir 1987) ("under the clear terms of the statute, the Commission has been awarded jurisdiction over generating facilities * * * to the extent necessary to effectuate regulation of interstate wholesale rates.")

utilities" charge or receive for sales at wholesale or transmission in interstate commerce. Moreover, as we noted above, our authority encompasses rates "for or in connection with" service over which the FPA gives us jurisdiction.

To ascertain whether a person receiving charges or performing services under an O&M agreement has an obligation to file the agreement in a particular case, we must conduct two related inquiries. One, can we tie the O&M service at issue to wholesale sales or to transmission in interstate commerce? In other words does the O&M agreement contain rates or charges for or in connection with transmission or sales for resale in interstate commerce, or does it in any manner affect or relate to jurisdictional rates or services? Two, does a "public utility" provide the O&M service? If the answer to both questions is yes, then the O&M agreement must be filed for Commission review.

The first question requires us to determine the nature of the service the operator engages in—does the O&M agreement require the operator to perform services connected with sales at wholesale or transmission in interstate commerce, or does the contract involve, for example, distribution lines for service to retail customers? If the O&M agreement has to do with jurisdictional services, it has satisfied the first prong, because the payment for O&M service constitutes, at a minimum, a payment affecting a section 205 rate (for the customers ultimately pay for O&M service in their rates).

The answer to the second question depends on who "owns" or "operates" a facility, and requires a specific analysis in each case. "Ownership" depends on the law. Defining an "operator" turns on which entity keeps control and decisionmaking authority over major matters. If: (i) The entity performing the O&M service under the agreement at issue owns the facility or operates it by virtue of its control and decisionmaking authority;" and (ii) the O&M service it performs is related to jurisdictional service, then it must file the O&M agreement for Commission review. *See Bechtel Power Corp.*, 60 FERC ¶61,156 (1992). If, on the other hand, the entity performing the O&M service under the agreement acts merely as the agent of another party wielding authority to make main operational decisions, then it is not "operating" the facility, and, accordingly, it need not file the O&M agreement, even it if is a public utility.[6]

Thus, in recent years, the Commission has asserted jurisdiction over O&M agreements relating to transmission facilities if the contract gives the provider of the O&M service effective control over the facilities. For example, the agreement in *PSI Energy, Inc.* 63 ¶61,107 at 61,753 (1993), reh'g pending, provided for oversight by an administrative committee of the utility's operation and maintenance of a joint transmission system, but nevertheless limited the utility's discretion over O&M activities only by a "prudent utility practice" standard. We held there that the O&M agreement was jurisdictional and has to be filed for Commission review because of the general delegation of control and decisionmaking to the utility, which served to make it an "operator" of the transmission facilities. *See also Sierra Pacific Power Company*, 42 FERC ¶61,149 (1988).

Conversely, if an entity providing O&M service must have permission for all O&M actions beyond those that are routine or emergency in nature, then it is not "operating" the facilities and, accordingly, need not file the agreement. In this scenario, the provider acts as nothing more than an agent of another entity possessing control and decisionmaking authority. The Commission has employed much the same analysis in deciding to disclaim jurisdiction over certain lessor-owners in a number of sale and leaseback transactions involving transmission facilities. *See, e.g., Pacific Power & Light Company*, 3 FERC ¶61,119 (1978).

This analysis addresses the examples of "ownership" and "operation" PacifiCorp and the others have brought before us.

F. Borderline Agreements

Jersey Central and MT Power argue that we lack jurisdiction over "borderline agreements." The initial decision in *Town of Massena, New York* v. *Niagara Mohawk Power Corp.*, 13 FERC ¶63,036 at 65,147 (1980), vacated as moot, 20 FERC ¶61,406 (1982), described these as arrangements under which one utility (for convenience) serves the retail customers of a neighboring utility along the electric franchise areas common to both. The utility delivering the power, in turn, bills the nominal seller.

From the ultimate customer's point of view, it receives retail service. From the utilities' standpoint, the utility actually delivering the power "sells" electricity to the nominal seller, for the nominal seller to make the retail sale. In fact, the utility whose customers receive service pays the seller for providing the service.

For these reasons, the Commission has taken the view that borderline sales fall within section 205 of the FPA. This is because the sale at issue is to a neighboring utility within whose service territory the borderline loads are located—in other words, a sale for resale. *See Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers*, Order No. 435–A, FERC Stats. and Regs., Regs. Preambles 1982–1985 ¶30,713 at 30,040 (1986); *New York State Electric & Gas Company*, Docket No. ER78–321–000 (Dec. 8, 1978) (unpublished letter order). For example, in Order No. 435–A, the Commission stated that these arrangements constitute wholesale sales of electricity. For that reason, the Commission set fees for utilities to file borderline agreements.

Within the past year, in *Massachusetts Electric Company*, 61 FERC ¶61,278 (1992), we reiterated these points. We explained there that, in recognition of the character of the borderline service provided, the Commission has adopted as the wholesale rate the neighboring utility's retail rate, provided that the utility documents the state commission's approval of the retail rate. Accordingly, in *Massachusetts Electrtic*, we accepted for filing the wholesale rate that matched the retail rate the Massachusetts Department of Public Utilities set.

G. De Minimis Contracts

Two utilities (PGE and Central ME) request that we decline jurisdiction over de minimis contracts. PGE includes in this category contracts for support or for other ancillary services that do not form part of a jurisdictional transaction. The term usually denotes transactions producing revenue below a stated amount of money.

We discussed PGE's specific issue earlier in this Appendix, in connection with the case law under section 205 and, later, the discussion concerning pole attachments. While section 205 acquires public utilities to file agreements that relate to sales at wholesale or transmission in interstate commerce, these agreements may have an effect on rates customers pay, if the utility seeks to recover costs from or give credits to the ratepayers. In that instance, the Commission would deal with the rate impact of the transaction.

The general topic of jurisdiction over de minimis transactions has arisen in other contexts. The question has come up in two guises: one, whether Congress erected a jurisdictional threshold; the other, whether the Commission may, in its discretion, decline to regulate in marginal situations. As to the first, the courts have unequivocally held that Congress did not. The Commission, on the other hand, may selectively decline jurisdiction.

The FPA makes no mention of a "de minimis" exception for otherwise jurisdictional transactions. Moreover, the courts have rejected the notion. in Particular, the cases, *e.g., FPV* v. *Texaco* (*Texaco*), 417 U.S. 380 (1974), hold that the Commission may not, on *de minimis* grounds, exempt a class of utilities from regulation. The court pointed out, 417 U.S. at 394 (citation omitted):

> The Court of Appeals rejected what it apparently understood was "the Commission's contention * * * that the 'just and reasonable' standard was not mandatory and that the Commission can simply choose not to regulate * * * *" Whatever the position of the Commission * * * has been, it wisely does not challenge that aspect of the Court of Appeals judgment * * * * The Commission may have great discretion as to how to insure just and reasonable rates, but is it plain enough to us that the Act does not empower it to exempt [certain categories of] rates from compliance with that standard.
>
> * * * * *
>
> [The "necessary and proper" provision of the natural Gas Act also] does not authorize the Commission to set at naught an explicit provision of the Act.

In two notable earlier cases, parties made a "de minimis" argument to escape FPA regulation. In *Connecticut Light & Power* v. *FPC*, 324 U.S. 515 (1945), the Commission asserted accounting jurisdiction over a utility. The company argued, 324 U.S. at 535–536, that "the volume of energy passing

[6] The Commission in its direction could, however, require that a public utility receiving service under an O&M agreement file that agreement with the Commission when the public utility seeks to recover the O&M costs in its wholesale rates.

over certain of these facilities is insignificant in proportion to the total. Only about one-fifth of one per cent * * * was transmitted out of state during the [relevant] time. * * *"

The Court rejected that contention because, 324 U.S. at 536, "we do not find that Congress has conditioned the jurisdiction of the Commission upon any particular volume or proportion of interstate energy involved and we do not think it would be appropriate to supply such a jurisdictional limitation by construction."

The Court left the door open for some "de minimis" exemption. The majority opinion added in dictum, without elaboration, *id.*, that "Congress appears to have left to the Commission's sound administrative discretion to determine whether or not to assert its authority in such situations."

Similarly in the landmark *"Colton"* case, *FPC* v. *Southern California Edison Company*, 376 U.S. 205 (1964), the Court held that if some part of the electricity the utility sold to a municipality came from out of state, the company fell under Commission regulation. The majority opinion, 376 U.S. at 209 n.3, explicitly rejected the argument that "any out-of-state energy was de minimis in amount and that [Commission] jurisdiction did not attach to that amount." As the Court explained:

that fact would be relevant only on the question whether [the company] was a "public utility" over which the [Commission] in its discretion should assume jurisdiction. * * * Here, [it] is concededly a "public utility" and we agree * * * that [the Commission] has "no discretion to reject that jurisdiction."

(citations omitted)

Lower courts have recognized that the Commission, and administrative agencies generally, may, on their own, make allowances for "de minimis" cases and waive regulating in those instances. The courts have, however, required the agencies to act in individual cases and to strike an appropriate balance. For example, in *Central Power & Light Company* v. *FERC*, 575 F.2d 937, 939 (D.C. Cir. 1978), the court held that the Commission may, in individual circumstances, decide that the effort to regulate would produce minimal public benefit and would amount to a pointless exercise. The Commission must, however, justify in its order such an exercise of discretion "in light of all relevant factors, including 'antitrust considerations or any other component of a public interest determination.'" *id.*

Similarly, in a later decision, *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 357–362 (D.C. Cir. 1979), involving the Environmental Protection Agency's decision to grant a blanket waiver from air quality requirements to small polluters, the same court elaborated on the "de minimis" (and a related "administrative necessity") exemption to regulation. The court dealt with both types of exceptions: categorical and individual.

The court held, 636 F.2d at 357, that granting such exceptions, even on a categorical basis, fell within the inherent power of administrative agencies, except "in the face of the most unambiguous demonstration of congressional intent to foreclose them." The court, 636 F.2d at 358, cited *Texaco* and this Commission's rate regulation as an example of a statute that the Supreme Court found impervious to categorical exemption, even though the Court held the arguments in favor of exemption "persuasive."

Nevertheless, the court, 636 F.2d 357, discussed what it called the "'equitable' discretion of agencies to afford case-by-case treatment" to exempt parties from regulation. The court required an agency in that instance to:

tak[e] into account circumstances peculiar to individual parties in the application of the general rule to particular cases [that argue for relaxing regulation], or even in appropriate cases * * * grant[ing] dispensation from the rule's operation. The need for such flexibility * * * is generally recognized, and enhances the effective operation of the administrative process, though Congress may * * * restrain the agency by [allowing] no variance. * * *

636 F.2d at 357–358.

In discussing the "de minimis" standard (although as to a categorical exemption), the court held, 636 F.2d at 360, that the agency bore the burden of showing that the facts of the specific case fall within the rubric of an administrative de minimis exception. The court explained, 636 F.2d at 360–361 (emphasis added):

Unless Congress has been extraordinarily rigid, there is likely a basis for an implication of *de minimis* authority to provide exemption when the burdens of regulation yield a gain of trivial or no value. That implied authority is not available for a situation where the regulatory function does provide benefits, in the sense of furthering the regulatory objectives, but the agency concludes that the acknowledged benefits are exceeded by the costs. For [an exemption to apply,] any implied authority must be based * * * on a fair reading of the specific statute [and] legislative history.

In conclusion, the bases hold that: (1) The FPA contains no minimum threshold for Commission ratemaking jurisdiction; (2) the Commission has no authority to grant blanket *"de minimis"* exemptions from rate regulation; (3) in individual cases, however, the "Commission has administrative discretion to decline to exercise jurisdiction * * * [if] the public interest so requires" (*Union Transmission Company*, 41 FPC 816, 819 (1969) (Initial Decision)); and (4) in declining jurisdiction, the Commission must find that regulation will, in the words of the *Alabama Power* court (636 F.2d at 361), bring "trivial or no" public benefits.

Before reaching that decision, however, the Commission must balance all the equities, with *"de minimis"* counting as one factor. At this juncture, in the context of this generic proceeding, we cannot declare a blanket cut-off for which we will waive full-blown section 205 treatment. For now, we will make determinations as to whether to apply the administration de minimis exemption in individual cases under the criteria we have reviewed here. Of course, to do so, the matter must be filed with the Commission.

[FR Doc. 93–18679 Filed 8–4–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG93–60–000]

Dominion Management Argentina S.A.; Application for Commission Determination of Exempt Wholesale Generator Status

July 30, 1993.

On July 26, 1993, Dominion Management Argentina S.A. ("DMASA") filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to 18 CFR part 365 of the Commission's regulations.

DMASA, an Argentine corporation, is a wholly-owned subsidiary of Dominion Energy, Inc., which is a wholly-owned subsidiary of Dominion Resources, Inc.

DMASA operates an eligible facility in Neuquen Province, Argentina that consists of five turbines with a combined nominal power production capacity of 98 MW. DMASA will also operate a 450 MW hydroelectric plant located on the Neuquen River in Neuquen Province, Argentina. The plant has a nominal power production capacity of 450 MW. It consists of two 225 MW turbogenerators with associated equipment and five dams.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before August 20, 1993, and must be served on the applicant (c/o Michael W. Maupin, Esq., Hunton & Williams, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219). Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18680 Filed 8–4–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90–2086–001]

National Fuel Gas Supply Corp.; Petition to Amend

July 30, 1993.

Take notice that on July 27, 1993, National Fuel Gas Supply Corporation

(National Fuel), 10 LaFayette Square, Buffalo, New York 14203, field in Docket No. CP90–2086–001 a petition to amend the authorization issued by order issued on November 28, 1990, in Docket No. CP90–2086–000, to permit continued operation of the Allegany State Park (ASP) Storage Field located in Cattaraugus County, New York as well as facilities required for the continued operation of the storage field, for a period expiring on the earlier of December 31, 1995, or the effective date of a permanent certificate authorizing the operation of the storage field, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

National Fuel states that it was authorized by order issued November 28, 1990, inter alia, to acquire from Felmont Natural Gas Storage Company the ASP storage field and facilities required to attach the storage field to its Line K and to operate the storage field and connecting facilities for up to three years during which time it would assess the performance of the field and utilize the capacity and deliverability of the field in its system operations.

National Fuel indicates that, while it has gained considerable experience with the ASP field since the commencement of operations, it has found that its utilization of the field is constrained by the size of the connecting facilities. It is also noted that unless and until these connecting facilities are expanded, the pressure-volume relationship and operational characteristics of the ASP field will not be known with certainty. National Fuel also states that further drilling will be necessary to determine the thickness, porosity and permeability of the gas-bearing sandstone in the ASP field as well as the location of the gas-water contact. It is indicated that these activities would be performed pursuant to National Fuel's Subpart F blanket certificate, but that to date they have not been constructed.

National Fuel states that it is important that it continue to operate the ASP field beyond December 31, 1993, and during the pendency of the above-described expansion proposal. National Fuel requests that it be authorized to continue to operate the ASP field and connecting facilities to the earlier of December 31, 1995, or the effective date of a permanent certificate authorizing such operations.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before August 20, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–18641 Filed 8–4–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[FE Docket No. 93–76–NG]

Bay State Gas Co., Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Bay State Gas Company blanket authorization to import from Canada up to 40 Bcf of natural gas over a period of two years beginning on the date of the first delivery.

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

Issued in Washington, DC on July 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–18736 Filed 8–4–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–68–NG]

Jonan Gas Marketing Inc., Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Jonan Gas Marketing Inc. authorization to import and export a combined total of up to 100 Bcf of natural gas from and to Canada over a two-year term beginning on the date of first import or export delivery after September 2, 1993.

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, July 29, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–18739 Filed 8–4–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–77–NG]

Northern Utilities, Inc., Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice to order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Northern Utilities, Inc., blanket authorization to import from Canada up to 15 Bcf of natural gas over a period of two years beginning on the date of the first delivery.

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

Issued in Washington, DC on July 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–18737 Filed 8–4–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–55–NG]

Tennessee Gas Pipeline Co., Order Granting Blanket Authorization to Export Natural Gas to Mexico and Granting Intervention

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice

that it has issued an order granting Tennessee Gas Pipeline Company authorization to export up to 100 Bcf of natural gas to Mexico over a two-year term, beginning on the date of first delivery after August 13, 1993.

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, July 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–18735 Filed 8–4–93; 8:45 am]

BILLING CODE 6450–01–M

[FE Docket No. 93–56–NG]

Texas International Gas & Oil Co., Order Granting Blanket Authorization to Export Natural Gas to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Texas International Gas & Oil Company authorization to export up to 29.2 billion cubic feet of natural gas over a two-year term beginning on the date of first delivery after November 29, 1993.

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 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, July 30, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–18734 Filed 8–4–93; 8:45 am]

BILLING CODE 6450–01–M

Southeastern Power Administration

Notice of Issuance of Final Power Marketing Policy, Cumberland System of Projects

AGENCY: Southeastern Power Administration (Southeastern), Department of Energy.

ACTION: Notice.

SUMMARY: The Administrator has adopted the attached Final Power Marketing Policy for Southeastern's Cumberland System of Projects. It will be effective upon publication in the **Federal Register** and will be applicable to the sale of system power when contracts can be negotiated or existing contracts are renegotiated. The policy was developed in accordance with Southeastern's Procedure for Public Participation in the Formulation of Marketing Policy published in the **Federal Register** on July 6, 1978, 43 FR 29186. The process was initiated by the Administrator with a decision that a new written marketing policy for the Cumberland System of Projects was needed. A Notice of Intent to Formulate Power Marketing Policy was subsequently published in the **Federal Register** on February 14, 1992, 57 FR 5443, requesting, among other things proposals and recommendations for consideration by Southeastern. Seventy-two responses were received as a result of the Notice of Intent.

On September 17, 1992, a Proposed Power Marketing Policy for the Cumberland System of Projects was published in the **Federal Register**, 57 FR 42992. Seven comments were received relative to the proposed policy itself, during a Public Comment Forum held in Nashville, Tennessee, on November 18, 1992, or during the written comment period which ended December 4, 1992. Several consultations were held with representatives of entities or groups of entities interested in the proposed policy. Additionally, a number of conferences were held with the Corps of Engineers and Tennessee Valley Authority (TVA) to consider matters inherent in facilitating whatever policy might be finally adopted. All of the responses and comments from whatever source and within whatever timeframe were considered.

Thereafter, a Southeastern staff committee was selected by the Administrator to prepare a Staff Evaluation of all oral and written comments and responses received by Southeastern. The Staff Evaluation was completed on July 15, 1993.

Following the Staff Evaluation, the Administrator decided to adopt the policy as modified.

SUPPLEMENTARY INFORMATION: The Final Power Marketing Policy sets forth the guidelines which Southeastern will follow in the future disposition of power from the Cumberland System. The policy covers power from the Barkley, Center Hill, Cheatham, Cordell Hull, Dale Hollow, Laurel, Old Hickory, J. Percy Priest, and Wolf Creek projects. The policy establishes the marketing area for system power and deals with the allocation of power among or for the benefit of area customers. It also deals with utilization of area utility systems for essential purposes, wholesale rates, resale rates, and energy and economic efficiency measures.

Based on the Environmental Assessment of the proposed marketing policy, Southeastern and the Department of Energy concluded that the proposed policy would not have a significant effect upon the quality of the human environment. The Environmental Assessment is available at Southeastern's headquarters. The Final Power Marketing Policy is not modified sufficiently to alter this finding. A recital of the primary comments regarding the proposed marketing policy, brief responses or explanations to those comments, and specific decisions and changes in the proposed marketing policy approved by the Administrator, precede the text of the final policy as adopted.

Issued at Elberton, Georgia; July 20, 1993.

John A. McAllister, Jr.,

Administrator.

Final Power Marketing Policy Cumberland System of Projects

Introduction. The efforts to develop a new written power marketing policy for Southeastern Power Administration's (Southeastern) Cumberland System of Projects began on February 14, 1992. Southeastern has followed the step by step requirements of its Procedure for Public Participation in Formulation of Marketing Policy published in the **Federal Register** on July 6, 1978, 43 FR 29186. Numerous public comments have been received and evaluated. This public input, offered in an orderly and timely fashion, was carefully considered in the decisionmaking process.

Purpose and Legal Authority. The purpose of the policy is to establish with public input written guidelines which Southeastern will follow in the future to reasonably and equitably carry out the statutory requirements set forth in section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s. Southeastern's authority to formulate the policy and perform these functions are derived from section 302(a) of the Department of Energy Organization Act, 42 U.S.C. 7152, and delegations pursuant thereto.

Reasons for Marketing Policy. The current marketing policy became effective on March 16, 1983, and the earliest contracts executed under the marketing policy commenced at midnight, June 30, 1984. The current marketing policy provided that contracts negotiated under the policy would be for terms of approximately 10

years. The contracts also provide for a 37/36 month notification to effect termination.

Negotiations to market power to one group of customers included in the current marketing policy are still ongoing. One of the stated requirements in the negotiations was that the contracts be of a long term nature—20–30 years. This requirement could not be met under the current marketing policy.

Primary Comments and Responses. The primary comments to the proposed marketing policy were:

1. *Comment.* Tennessee Valley Authority (TVA) is over compensated for transmission of power. East Kentucky Power Cooperative (East Kentucky) should not pay wheeling on Laurel Project power.

Response. The marketing policy states that: "specific terms and conditions of arrangements between Southeastern and TVA and Southeastern and the other utilities will be the subject of negotiations."

These two comments regarding compensation for transmission services are rate matters and should not be considered in connection with the marketing policy. These issues should more appropriately be raised and considered in the next rate filing.

2. *Comment.* All preference customers, including TVA should be allocated equal hours use of capacity (energy).

Response. The Proposed Cumberland Power Marketing Policy states that the power available for allocation to the preference customers outside the TVA system will be peaking power only and will have limited energy. All of the energy marketed to the preference customers outside the TVA area is firm or guaranteed energy. A large percentage of the energy marketed to TVA is not firm, but is the energy remaining after the customers outside the TVA area receive their scheduled firm energy. It represents many hours of less valuable off-peak energy. Therefore, the Administrator has deemed that the present allocations of hours use is appropriate for the Cumberland power.

3. *Comment.* TVA is not a preference customer.

Response. This issue was raised and considered in comments found in 48 F.R. 11151 published March 16, 1983, on the current marketing policy. The conclusion arrived at in the staff evaluation for the existing policy is that "Southeastern could alternately market Cumberland power directly to the 160 TVA preference entities using TVA to wheel and facilitate, or it could arrange to pass the power and benefits through TVA to the preference customers. From an efficiency stand point, the latter is preferable." Since no new information has been introduced concerning the matter, the Administrator considers the prior disposition of the issue sufficient.

4. *Comment.* Proposed language in "Energy and Economic Efficiency Measures" should be revised to more adequately reflect Southeastern's Energy Resource Management Plan.

Response. The primary objective of Southeastern's Energy Efficiency and Renewable Resource Program is to promote the efficient use of electric power. Southeastern encourages and is fully supportive of Integrated Resource Plan development.

Therefore, each customer who purchases Southeastern's power is encouraged to participate in an integrated resource plan that considers both supply and demand side alternatives. It is recognized that some Southeastern customers are members of a power supply organization that does resource planning for said customer (i.e., power supply cooperatives and joint action agencies.) Where a Southeastern customer, or a power supply organization that does resource planning for a Southeastern customer, is responsible to a regulatory body or another Government agency for an integrated resource plan, the customer will make a copy of such integrated resource plan available to Southeastern. All Southeastern customers shall agree to encourage the efficient use of energy by ultimate customers.

5. *Comment.* The limit of scheduling a maximum of 220 hours of energy per KW-month is too restrictive.

Response. The policy states that: "specific terms and conditions of arrangements between Southeastern and TVA and Southeastern and the other utilities will be the subject of negotiations". The 220 hours of energy per month is an operational and contractual matter rather than a marketing policy matter. While this issue may be explored when the existing contracts are renegotiated or amended to extend their terms, the scheduling and disposition of Cumberland power is not deemed appropriate for consideration in conjunction with formulating the marketing policy.

6. *Comment.* Allow East Kentucky to schedule through TVA rather than through Southeastern.

Response. Southeastern is the marketing agency responsible for disposing of Federal power. The coordination and combining of the schedules of all the customers is done by Southeastern to provide a summary schedule for the efficient operation of the projects by the Corps of Engineers. Southeastern has determined that the present procedures for scheduling the Cumberland System power are appropriate and are in the best interest of the preference customers.

7. *Comment.* The longer term arrangement should provide a rolling 10-year termination notice.

Response. The published marketing policy proposed a contract term of approximately 20 years at the request of one of the parties which will be affected by the policy. No one expressed an objection to the proposed approximate 20-year contract term. Due to changes in the electric utility industry and the area, the policy will probably need to be revised after 20 years. Southeastern considers the 10-year termination notice unduly long, and traditionally notice provisions have been and continue to be subjects of contract negotiation. The present policy does not preclude extending the resultant contracts at the end of the 20-year period.

Changes or Revisions in Proposed Marketing Policy. The Energy and Economic Efficiency Measures section has been expanded to more clearly reflect the intent of Southeastern's Energy Resource Management Plan.

Final Power Marketing Policy Cumberland System of Projects

General. The projects and power subject to this policy are:

	Capacity (kilowatt) (name-plate)	Energy (mega-watt-hours) (average annual)
Barkley	130,000	[1] 550,000
Center Hill	135,000	385,000
Cheatham	36,000	165,000
Cordell Hull	100,000	360,000
Dale Hollow	54,000	125,000
Laurel	61,000	69,000
Old Hickory	100,000	475,000
J. Percy Priest	28,000	72,000
Wolf Creek	270,000	920,000

[1] Does not include increased output resulting from Barkley-Kentucky Canal.

The policy for the Cumberland System of Projects will be implemented as soon as contracts can be amended or negotiated.

The policy will be implemented through negotiated contracts for terms of approximately 20 years.

Southeastern will seek the use of transmission facilities owned by the Tennessee Valley Authority (TVA) and other utilities within the marketing area for all necessary purposes including bulk transmission and transmitting to load centers where required. Power deliveries may be made at the projects,

at utility interconnections with TVA or at customer substations, as determined by Southeastern. The projects will be hydraulically, electrically, and financially integrated and will be operated to make maximum contribution to the power supply of the utilities within the selected marketing area. Preference in the sale of power shall be given to public bodies and cooperatives.

Marketing Area. The marketing area will be the TVA service area and the service areas of the following utilities: Big Rivers Electric Corporation; Carolina Power and Light Company, Western Division; East Kentucky Power Cooperative; Kentucky Utilities Company; Municipal Energy Agency of Mississippi, the seven cooperative members of South Mississippi Electric Power Association currently receiving Cumberland power; and Southern Illinois Power Cooperative. The geographic marketing area will consist of approximately 148,000 square miles. Except where duplication of allocations would result, public bodies and cooperatives located outside the TVA service area and listed on Appendix A attached hereto are eligible to share in Cumberland power marketable under this policy; provided that Cumberland power shall not be made available to meet any portion of any preference entity demand within the selected Cumberland marketing area which is in part required to be met by power from any other Southeastern system. Power marketed to TVA will be for the sole benefit of the 160 preference customers on the TVA system and which are served by TVA.

Allocation of Power. Power available under this policy for allocation from the Cumberland System will be peaking power only. The power will be allocated as follows:

Customer	KW
Big Rivers Electric Cooperative ...	178,000
East Kentucky Power Cooperative	170,000
City of Henderson, Kentucky	12,000
Municipal Energy Agency of Mississippi for its eight municipal members	30,000
Southern Illinois Power Cooperative	28,000
South Mississippi Electric Power Association for its 7 cooperative members currently receiving Cumberland power	51,000
Tennessee Valley Authority	405,000
Municipalities in Kentucky Utilities Company area	62,000
CP&L Western Division Cooperatives & Municipality	14,000

The energy accompaniment of such capacity, except TVA, will be 1,500 kilowatt-hours per kilowatt per year, except that if additional energy is required in given utility areas to make viable capacity allocations under acceptable arrangements such additional energy will be made available from the Cumberland projects. All remaining capacity and energy will be allocated to TVA for the benefit of public bodies and cooperatives in its area. Capacity and associated energy reserved for the municipalities in the Kentucky Utilities Company area will continue to be marketed to TVA until contracts can be negotiated with the municipalities.

Utilization of Utility Systems. In the absence of transmission facilities of its own, Southeastern will acquire the use of area generation and transmission systems to integrate the Cumberland projects, provide firming, wheeling, exchange and other functions as may be necessary to dispose of system power under reasonable and acceptable marketing arrangements. Utility systems providing such services shall be entitled to adequate compensation. Southeastern will make declarations of all energy available from the Cumberland System to TVA and cooperatively determine the magnitude of delivery from particular projects in accordance with acceptable procedures generally followed by Southeastern and the Corps of Engineers with respect to its other systems. TVA will schedule and dispatch all of the Cumberland System power, excluding Laurel power, and will transmit portions of such power to its interconnections in response to appropriate schedules submitted by neighboring utilities entitled to receive designated quantities of system power. Laurel power will be scheduled by East Kentucky. Specific terms and conditions of arrangements between Southeastern and TVA and Southeastern and the other utilities will be the subject of negotiations. Distribution preference agencies directly affected by negotiations with wheeling utilities shall stand in an advisory role to Southeastern and shall be involved as determined by Southeastern and otherwise kept currently advised as to the status and progress of negotiations.

Wholesale Rates. Rate schedules shall be drawn so as to recover all costs associated with producing and transmitting the power in accordance with then current repayment criteria. Production costs will be determined on a system basis and rate schedules will be related to the integrated output of the projects. Transmission costs may cause rate schedules to vary between utility areas. Rate schedules may be revised periodically.

Resale Rates. Resale rate provisions requiring the benefits of Southeastern power to be passed on to the ultimate consumer will be included in each Southeastern customer contract which provides for Southeastern to supply more than 25 percent of the customer's total power requirements during the term of the contract.

Energy and Economic Efficiency Measures. Each customer who purchases Southeastern's power is encouraged to participate in an integrated resource plan that considers both supply and demand side alternatives. It is recognized that some Southeastern customers are members of a power supply organization that does resource planning for their customers (i.e., power supply cooperatives and joint action agencies). Where a customer, or a power supply organization that does resource planning for a Southeastern customer, is responsible to a regulatory body or another Government agency for an integrated resource plan, the customer will make a copy of such integrated resource plan available to Southeastern. All Southeastern customers shall agree to encourage the efficient use of energy by ultimate customers.

Appendix A—Preference Agencies in the Cumberland System Area

Kentucky

Big Rivers Electric Corporation
Member Cooperatives:
- Green River EC
- Henderson-Union REC
- Meade County REC
- Jackson-Purchase EC

Associated Utilities:
- Henderson Municipal Power & Light

East Kentucky Power Cooperative, Inc.,
Member Cooperatives:
- Big Sandy REC
- Blue Grass REC
- Clark RECC
- Cumberland Valley REC
- Farmers REC
- Fleming-Mason REC
- Fox Creek REC
- Grayson REC
- Harrison REC
- Inter-County REC
- Jackson County REC
- Licking Valley REC
- Nolin REC
- Owen County REC
- Salt River REC
- Shelby REC
- South Kentucky REC
- Taylor County REC

Kentucky Utilities Company Area
- Barbourville
- Bardstown
- Bardwell
- Benham
- Corbin

Falmouth
Frankfort
Madisonville
Nicholasville
Paris
Providence
Associated Utilities:
Owensboro Municipal Utilities
Mississippi
Municipal Energy Agency of Mississippi
Member Municipalities
Canton
Clarksdale
Durant
Greenwood
Itta Bena
Kosciusko
Leland
Yazoo City
South Mississippi Electric Power Association
Member Cooperatives:
Coahoma EPA
Delta EPA
Magnolia EPA
Southern Pine EPA
Southwest Mississippi EPA
Twin County EPA
Yazoo Valley EPA
North Carolina
Carolina Power & Light Company Area (Western Division)
Waynesville
French Broad EMC
Haywood EMC
Illinois
Southern Illinois Power Cooperative
Member Cooperatives:
Egyptian ECA
Southeastern Illinois EC
Southern Illinois EC
Tennessee
TVA area:
Aberdeen, Miss.
Albertville, Ala.
Alcoa, Tenn.
Amory, Miss.
Athens, Ala.
Athens, Tenn.
Benton County, Tenn.
Benton, Ky.
Bessemer, Ala.
Boliver, Tenn.
Bowling Green, Ky.
Bristol, Tenn.
Bristol, Va.
Brownsville, Tenn.
Carroll County, Tenn.
Chattanooga, Tenn.
Chickamauga, Ga.
Clarksville, Tenn.
Cleveland, Tenn.
Clinton, Tenn.
Columbia, Tenn.
Columbus, Miss.
Cookeville, Tenn.
Courtland, Ala.
Covington, Tenn.
Cullman, Ala.
Dayton, Tenn.
Decatur, Ala.
Dickson, Tenn.
Dyersburg, Tenn.
Elizabethton, Tenn.
Erwin, Tenn.
Etowah, Tenn.
Fayetteville, Tenn.
Florence, Ala.
Fort Payne, Ala.
Franklin, Ky.
Fulton, Ky.
Gallatin, Tn
Glasgow, Ky.
Greeneville, Tenn.
Guntersville, Ala.
Harriman, Tenn.
Hartselle, Ala.
Hickman, Ky.
Holly Springs, Miss.
Hopkinsville, Ky.
Humboldt, Tenn.
Huntsville, Al
Jackson, Tenn.
Jellico, Tenn.
Johnson City, Tenn.
Knoxville, Tenn.
LaFollette, Tenn.
Lawrenceburg, Tenn.
Lebanon, Tenn.
Lenoir City, Tenn.
Lewisburg, Tenn.
Lexington, Tenn.
Loudon, Tenn.
Louisville, Miss.
Macon, Miss.
Maryville, Tenn.
Mayfield, Ky.
McMinnville, Tenn.
Memphis, Tenn.
Milan, Tenn.
Monticello, Ky.
Morristown, Tenn.
Mount Pleasant, Tenn.
Murfreesboro, Tenn.
Murphy, N.C.
Murray, Ky.
Muscle Shoals, Ala.
Nashville, Tenn.
New Albany, Miss.
Newbern Tenn.
Newport, Tenn.
Oak Ridge, Tenn.
Okolona, Miss.
Oxford, Miss.
Paducah, Ky.
Paris, Tenn.
Philadelphia, Miss.
Princeton, Ky.
Pulaski, Tenn.
Ripley, Tenn.
Rockwood, Tenn.
Russellville, Ala.
Russellville, Ky.
Scottsboro, Ala.
Sevierville, Tenn.
Sheffield, Ala.
Shelbyville, Tenn.
Smithville, Tenn.
Somerville, Tenn.
Sparta, Tenn.
Springfield, Tenn.
Starkville, Miss.
Sweetwater, Tenn.
Tarrant City, Ala.
Trenton, Tenn.
Tullahoma, Tenn.
Tupelo, Miss.
Tuscumbia, Ala.
Union City, Tenn.
Water Valley, Miss.
Weakley County, Tenn.
West Point, Miss.
Winchester, Tenn.
Alcorn County, EPA, Corinth, Miss.
Appalachian EC, Jefferson City, Tenn.
Arab EC, Arab, Ala.
Blue Ridge Mountain EMC, Young Harris, Ga.
Caney Ford Ec, McMinnville, Tenn.
Central EPA, Carthage, Miss.
Cherokee EC, Centre, Ala.
Chickasaw EC, Somerville, Tenn.
Cullman EC, Cullman, Ala.
Cumberland EMC, Clarksville, Tenn.
Duck River EMC, Shelbyville, Tenn.
East Miss. EPC, Meridian, Miss.
Forked Deer EC, Halls, Tenn.
Ft. Loudoun EC, Madisonville, Tenn.
4-County EPA, Columbus, Miss.
Franklin EC, Russellville, Ala.
Gibson County EMC, Trenton, Tenn.
Hickman-Fulton Cos. RECC, Hickman, Ky.
Holston EC, Rogersville, Tenn.
Joe Wheeler EMC, Hartsell, Ala.
Marshall-DeKalb EC, Boaz, Ala.
Meriwether Lewis EC, Centerville, Tenn.
Middle Tenn. EMC, Murfreesboro, Tenn.
Middle Tenn. EMC, Murfreesboro, Tenn.
Monroe County EPA, Amorty, Miss.
Mountain EC, Mountain City, Tenn.
Natchez Trace EPA, Houston, Miss.
North Alabama EC, Stevenson, Ala.
Northcentral Miss. EPA, Byhalia, Miss.
Northeast Miss. EPA, Oxford, Miss.
North Georgia EMC, Dalton, Ga.
Pennyrile RECC, Hopkinsville, Ky.
Pickwick EC, Selmer, Tenn.
Plateau EC, Oneida, Tenn.
Pontotoc EPA, Pontotoc, Miss.
Powell Valley EC, Jonesville, VA
Prentiss County EPA, Booneville, Miss.
Sand Mountain EC, Rainsville, Ala.
Sequachee Valley EC, South Pittsburg, Tenn.
Southwest Tenn. EMC, Brownsville, Tenn.
Tallahatchie Valley EPC, Batesville, Miss.
Tenn. Valley EC, Savannah, Tenn.
Tippah EPA, Ripley, Miss.
Tishomingo Co. EPA, Luka, Miss.
Tombigbee EPA, Tupelo, Miss.
Tri-County EMC, LaFayette, Tenn.
Tri-State EMC, McCaysville, Ga.
Upper Cumberland EMC, Carthage, Tenn.
Volunteer EC, Decatur, Tenn.
Warren RECC, Bowling Green, Ky.
West Kentucky RECC, Mayfield, Ky.

[FR Doc. 93–18738 Filed 8–4–93; 8:45 am]
BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4687–8]

North Carolina: Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Region 4, Environmental Protection Agency.

ACTION: Notice of Tentative Determination to Fully Approve the Adequacy of North Carolina's Municipal Solid Waste Landfill Permitting

Program, Public Hearing and Public Comment Period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

North Carolina applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed North Carolina's MSWLF application and has tentatively determined that the North Carolina MSWLF permit program is adequate to assure compliance with the revised Federal MSWLF Criteria (40 CFR part 258).

North Carolina's application for program adequacy determination is available for public review and comment. Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has scheduled a public hearing on this determination to be held on the date given below in the "**DATES**" section.

DATES: All comments on North Carolina's application for a determination of adequacy must be received by the close of the public hearing which will be held on September 21, 1993, in Raleigh, North Carolina. The location and time of the hearing may be obtained by contacting the person in the "**CONTACTS**" section below. The State will participate in the public hearing.

ADDRESSES: Copies of North Carolina's application for adequacy determination are available during the hours of 8 a.m. to 5 p.m. at the following addresses for inspection and copying:

North Carolina Department of Environment, Health and Natural Resources, 401 Oberlin Road, Raleigh, North Carolina 27611, Attn: Mr. Dexter Matthews, telephone 919–733–0692;

U.S. EPA Region IV Library, 345 Courtland Street NE., Atlanta, Georgia, 30365, Attn: Ms. Priscilla Pride, telephone 404–347–4216.

Written comments should be submitted to: Ms. Patricia S. Zweig, Program Manager, mail code 4WD-RCRA, U.S. EPA Region IV, Office of Solid Waste, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, Program Manager, mail code 4WD-RCRA, telephone 404–347–2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. North Carolina

On March 12, 1993, North Carolina submitted an application for adequacy determination. EPA reviewed North Carolina's application and submitted comments to the State. North Carolina responded to EPA's comments and submitted a revised final application for adequacy determination on July 13, 1993. Region IV has reviewed North Carolina's revised final application and has tentatively determined that all portions of North Carolina's subtitle D program will ensure compliance with the revised Federal Criteria on October 9, 1993.

Copies of North Carolina's application are available for inspection and copying at the location indicated in the "Addresses" section of this notice. The public may submit written comments on EPA's tentative determination until the close of the public hearing. Written comments should be submitted to the person listed in the "Contacts" section of this notice. Comments may also be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

North Carolina does not have the statutory authority to enforce the MSWLF permit program on Indian Lands. MSWLFs located on Indian Lands are subject to the Federal Criteria.

EPA will consider all public comments on its tentative determination received during the public comment period and the public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for North Carolina's program. EPA expects to make a final decision on whether or not to approve North Carolina's program by October 1, 1993 and will give notice of it in the Federal Register. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance with Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 27, 1993.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 93-18588 Filed 8-4-93; 8:45 am]

BILLING CODE 6560-50-P

[FRL-4688-4]

State of Georgia; Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on Georgia application for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Georgia has applied for a determination of adequacy under section 4005 of RCRA. EPA Region IV has reviewed Georgia's MSWLF application and has made a tentative determination that all portions of Georgia's MSWLF permit program meet the requirements for full program approval and ensure compliance with the revised MSWLF Criteria. Georgia's application for program adequacy determination is available from EPA Region IV and the State for public review and comment. Although, RCRA does not require EPA to hold a public hearing on a determination to approve a State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the **DATES** section. The Region will notify all persons who submit comments on this notice if it is determined that a hearing is necessary. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **"CONTACTS"** section below.

DATES: All comments on Georgia's application for a determination of adequacy must be received by the close of business on September 7, 1993.

If there is sufficient interest, a public hearing will be held on September 22, 1993 in the Floyd Room of the Twin Towers West Building, 200 Piedmont Avenue, SE., Atlanta, Georgia 30334. The State will participate in the public hearing held by EPA.

ADDRESSES: Copies of Georgia's application for adequacy determination are available between the hours of 8 a.m. and 5 p.m., Monday through Friday, at the following addresses for inspection and copying: Georgia Department for Natural Resources, Environmental Protection Division, Land Protection Branch, 4244 International Parkway, suite 100, Atlanta, Georgia 30354, Attn: Mr. John Taylor, telephone (404) 362-2537; and U.S. EPA Region IV Library, 345 Courtland Street NE., Atlanta, Georgia 30365, Attn: Ms. Priscilla Pride, telephone (404) 347-4216. Written comments should be submitted to Ms. Patricia S. Zweig, mail code 4WD-RCRA, EPA Region IV, Office of Solid Waste, 345 Courtland Street NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: EPA Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, mail code 4WD-RCRA, telephone (404) 347-2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under

part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Georgia

On April 15, 1993, Georgia submitted an application for adequacy determination. EPA Region IV has reviewed Georgia's application and has tentatively determined that all portions of the Georgia's Subtitle D program meet the requirements necessary to qualify for full program approval and ensure compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until September 7, 1993. Copies of Georgia's application are available for inspection and copying at the location(s) indicated in the **ADDRESSES** section of this notice. If a public hearing is held, comments may be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

The application included new regulations developed by the State of Georgia to be technically comparable to the federal criteria. The text and the numbering system used by Georgia are nearly identical to the federal regulations. Georgia's regulations became effective on June 27, 1993, and have been determined to be technically comparable to the federal criteria.

EPA Region IV will consider all public comments on its tentative determination which are received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Georgia's program. EPA Region IV expects to make a final decision on whether or not to approve Georgia's program by October 1, 1993, and will give notice of it in the **Federal Register**. The final notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance with Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 29, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93–18722 Filed 8–4–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4688–3]

Tennessee: Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Tentative Determination to Fully Approve the Adequacy of the State of Tennessee's Municipal Solid Waste Permitting Program, Public Hearing, and Public Comment Period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the

approval status of a State/Tribe and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Tennessee has applied for a determination of adequacy under section 4005 of RCRA. Region IV of EPA has reviewed Tennessee's MSWLF application and has made a tentative determination that Tennessee's MSWLF permit program meets the requirements for full program approval and ensures compliance with the revised MSWLF Criteria. Tennessee's application for program adequacy determination is available from EPA Region IV and the State for public review and comment. Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given below in the **DATES** section. The Region will notify all persons who submit comments on this notice if it is determined that a hearing is necessary. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the **CONTACTS** section below.

DATES: All comments on Tennessee's application for a determination of adequacy must be received by the close business on [September 7, 1993. Thirty(30) days from publication date]. If there is sufficient interest, the public hearing will be held on September 23, 1993 at 6 p.m., at the Legislative Plaza, room #16, at the Corner of Union and Sixth Avenue, Nashville Tennessee 37243–0026. The State will participate in the public hearing held by the EPA.

ADDRESSES: Copies of Tennessee's application for adequacy determination are available during the hours of 8 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Division of Solid Waste Management, Tennessee Department of Environment and Conservation, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535, Attn: Mr. Frank Victory, telephone 615–532–0780; and U.S. EPA Region IV Library, 345 Courtland Street, NE., Atlanta, Georgia, 30365, Attn: Ms. Priscilla Pride, telephone 404–347 4216. Written comments should be submitted to Ms. Patricia S. Zweig, mail code 4WD-RCRA, EPA Region IV, Office of Solid Waste, 345 Courtland Street, NE., Atlanta, Georgia 30365.

FOR FURTHER INFORMATION CONTACT: EPA Region IV, 345 Courtland St. NE., Atlanta, Georgia 30365, Attn: Ms. Patricia S. Zweig, mail code 4WD-RCRA, telephone 404–347–2091.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

The EPA Region IV will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. State of Tennessee

On May 17, 1993, Region IV of EPA received Tennessee's final MSWLF permit program application for adequacy determination. Region IV has reviewed Tennessee's application and has tentatively determined that all portions of Tennessee's Subtitle D program meet the requirements necessary to qualify for full program approval and ensures compliance with the revised Federal Criteria.

The public may submit written comments on EPA's tentative determination until September 7, 1993. Copies of Tennessee's application are available for inspection and copying at the locations indicated in the "Addresses" section of this notice. If a public hearing is held, comments may be submitted as transcribed from the discussion of the hearing or in writing at the time of the hearing.

The State of Tennessee proposed and passed amendments to rule chapter 1200–1–7 of the Tennessee Solid Waste Disposal Act to make changes necessary to implement a solid waste disposal program that is equivalent to subtitle D of RCRA. The amendments developed by the State of Tennessee became effective on July 10, 1993, and the State of Tennessee's MSWLF regulations have been determined to be technically comparable to the federal criteria.

EPA will consider all public comments received on its tentative determination during the public comment period and during the public hearing. Issues raised by those comments may be the basis for a determination of inadequacy for Tennessee's program. EPA intends to make a final decision on whether or not to approve Tennessee's program by October 9, 1993, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this notice from the

requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: July 29, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93–18723 Filed 8–4–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4688–5]

Notice of Public Meeting of the Phosphoric Acid Production Waste Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: Federal Advisory Committee Meeting.

SUMMARY: As required by the Federal Advisory Committee Act, we are giving notice of the August meeting of the Phosphoric Acid Production Waste Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to continue to review information regarding process changes that will reduce the volume and/or toxicity of phosphogypsum and process wastewater from the production of phosphoric acid.

DATES: The Committee meeting will be held on August 25, 1993 from 10 a.m. to 4:30 p.m. and August 26 from 8 a.m. to 3 p.m.

ADDRESS: The meeting will be held at the Sheraton National Hotel, Columbia Pike and Washington Blvd., Arlington, Virginia 22204; (703) 521–2122.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the technical or scientific matters related to phosphoric acid wastes should contact Dr. Daniel R. Bushman, Office of Pollution Prevention and Toxics, Economics, Exposure and Technology Division, TS–779, Environmental Protection Agency, Washington, DC 20460; phone (202) 260–6700. Persons needing further information on the committee's procedural and logistical matters should call the Committee's facilitator, Greg Bourne, Southeast Negotiation Network, Georgia Institute of Technology, Atlanta, GA (404) 853–9846.

Dated: July 28, 1993.

Deborah Dalton,

Designated Federal Official, Office of Regulatory Management & Evaluation, Office of Policy, Planning and Evaluation.

[FR Doc. 93–18721 Filed 8–4–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–60048; FRL–4638–5]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____for Failure to Comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice for _____Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Registration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section (3)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be

conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data

Requirements Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A.—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Bonide Products Inc.	00000400062	Sulfur	Bonide Sulphur Plant Fungicide Micronized Spray	7/16/93
	00000400107	Sulfur	Bonide Garden Dust	7/16/93
Boyer Corporation	00050000022	Sodium Hydroxide	Boyer Sewer Root Destroyer	6/21/93
Griffin Corporation	00181200295	Sulfur	Kocide 404S Flowable Agricultural Fungicide	7/16/93
PIC Corporation	00309500028	Sulfur	PIC Sulfur Candle Fumigator	7/16/93
Schall Chemical Inc.	00346800028	Sulfur	Thiodan Sulfur	7/16/93
Wallace C. Tharp	00633000013	Sulfur	Perma-Guard Dust 40% Sulphur D-40	7/16/93
	00633000015	Sulfur	Perma-Guard Dust 10% Sulphur D-42	7/16/93
Southern Mill Creek Products	00672000436	Sulfur	Pratt Fruit Tree Spray	7/16/93
Voluntray Purchasing Group, Inc.	00740100081	Sulfur	Sevin-Sulfur 10-40 Dust	7/16/93
	00740100188	Sulfur	Ferti-Lome Dusting Sulfur	7/16/93
	00740100214	Sulfur	Ferti-Lome Improved Rost Dust	7/16/93

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B.—LIST OF REQUIREMENTS

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due Date
Sodium Hydroxide	Boyer Corporation	90–Day Response		1/1/93
Sulfur	Schall Chemical Inc.	Chemical Identity	61–1	12/18/91
		Beginning Materials & Manufacturing Process	61–2	12/18/91
		Discussion of Formation of Impurities	61–3	12/18/91
		Preliminary Analysis of Product Samples	62–1	12/18/91
		Analytical Method to Verify Certified Limits	62–3	12/18/91
		Certification of Ingredient Limits	62–2	12/18/91
		Odor	63–4	12/18/91
		Melting Point	63–5	12/18/91
		Boiling Point	63–6	12/18/91
		Density, Bulk Density, or Specific Gravity	63–7	12/18/91
		Solubility	63–8	12/18/91
		Vapor Pressure	63–9	12/18/91
		Dissociation Constant	63–10	12/18/91
		Octanol/Water Partition Coefficient	63–11	12/18/91
		pH	63–12	12/18/91
		Stability	63–13	12/18/91
		Oxidizing/Reducing Action	63–14	12/18/91
		Flammability	63–15	12/18/91
		Explodability	63–16	12/18/91
		Storage Stability	63–17	12/18/91
		Viscosity	63–18	12/18/91
		Miscibility	63–19	12/18/91
		Corrosion Characteristics	63–20	12/18/91
		Dielectric Breakdown Voltage	63–21	12/18/91
		Acute Oral Toxicity – Rat	81–1	*2/18/91

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due Date
		Acute Dermal Toxicity – Rabbit/Rat	81–2	12/18/91
		Acute Inhalation Toxicity – Rat	81–3	12/18/91
		Primary Eye Irritation – Rabbit	81–4	12/18/91
		Primary Dermal Irritation	81–5	12/18/91
		Dermal Sensitization	81–6	12/18/91
		Confidential Statement of Formula (CSF) Form		12/18/91
		Certification Form: Data Citation		12/18/91
		Certification Form: Offer to Cost Share		12/18/91
		Certification Form: Data Compensation		12/18/91
	Wallace C. Tharp	Chemical Identity	61–1	12/18/91
		Beginning Materials & Manufacturing Process	61–2	12/18/91
		Discussion of Formation of Impurities	61–3	12/18/91
		Preliminary Analysis of Product Samples	62–1	12/18/91
		Certification of Ingredient Limits	62–2	12/18/91
		Analytical Method to Verify Certified Limits	62–3	12/18/91
		Odor	63–4	12/18/91
		Melting Point	63–5	12/18/91
		Boiling Point	63–6	12/18/91
		Density, Bulk Density, or Specific Gravity	63–7	12/18/91
		Solubility	63–8	12/18/91
		Vapor Pressure	63–9	12/18/91
		Dissociation Constant	63–10	12/18/91
		Octanol/Water Partition Coefficient	63–11	12/18/91
		pH	63–12	12/18/91
		Stability	63–13	12/18/91
		Oxidizing/Reducing Action	63–14	12/18/91
		Flammability	63–15	12/18/91
		Explodability	63–16	12/18/91
		Storage Stability	63–17	12/18/91
		Viscosity	63–18	12/18/91
		Miscibility	63–19	12/18/91
		Corrosion Characteristics	63–20	12/18/91
		Dielectric Breakdown Voltage	63–21	12/18/91
		Acute Oral Toxicity – Rat	81–1	12/18/91
		Acute Dermal Toxicity – Rabbit/Rat	81–2	12/18/91
		Acute Inhalation Toxicity – Rat	81–3	12/18/91
		Primary Eye Irritation – Rabbit	81–4	12/18/91
		Primary Dermal Irritation	81–5	12/18/91
		Dermal Sensitization	81–6	12/18/91
		Certification Form: Data Citation		12/18/91
		Certification Form: Offer to Cost Share		12/18/91
		Certification Form: Data Compensation		12/18/91
		Confidential Statement of Formula (CSF) Form		12/18/91
	Bonide Products Inc.	Confidential Statement of Formula (CSF) Form		12/18/91
		Chemical Identity	61–1	12/18/91
		Beginning Materials & Manufacturing Process	61–2	12/18/91
		Discussion of Formation of Impurities	61–3	12/18/91
		Preliminary Analysis of Product Samples	62–1	12/18/91
		Analytical Method to Verify Certified Limits	62–3	12/18/91
		Certification of Ingredient Limits	62–2	12/18/91
		Odor	63–4	12/18/91
		Melting Point	63–5	12/18/91
		Boiling Point	63–6	12/18/91
		Density, Bulk Density, or Specific Gravity	63–7	12/18/91
		Solubility	63–8	12/18/91
		Vapor Pressure	63–9	12/18/91
		Dissociation Constant	63–10	12/18/91
		Octanol/Water Partition Coefficient	63–11	12/18/91
		pH	63–12	12/18/91
		Stability	63–13	12/18/91
		Oxidizing/Reducing Action	63–14	12/18/91
		Flammability	63–15	12/18/91
		Explodability	63–16	12/18/91
		Storage Stability	63–17	12/18/91
		Viscosity	63–18	12/18/91
		Miscibility	63–19	12/18/91

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due Date
		Corrosion Characteristics	63–20	12/18/91
		Dielectric Breakdown Voltage	63–21	12/18/91
		Acute Oral Toxicity – Rat	81–1	12/18/91
		Acute Dermal Toxicity – Rabbit/Rat	81–2	12/18/91
		Acute Inhalation Toxicity – Rat	81–3	12/18/91
		Primary Eye Irritation – Rabbit	81–4	12/18/91
		Primary Dermal Irritation	81–5	12/18/91
		Dermal Sensitization	81–6	12/18/91
		Certification Form: Data Citation		12/18/91
		Certification Form: Offer to Cost Share		12/18/91
		Certification Form: Data Compensation		12/18/91
	Griffin Corporation	Chemical Identity	61–1	12/18/91
		Beginning Materials & Manufacturing Process	61–2	12/18/91
		Discussion of Formation of Impurities	61–3	12/18/91
		Preliminary Analysis of Product Samples	62–1	12/18/91
		Certification of Ingredient Limits	62–2	12/18/91
		Analytical Method to Verify Certified Limits	62–3	12/18/91
		Color	63–2	12/18/91
		Physical State	63–3	12/18/91
		Odor	63–4	12/18/91
		Melting Point	63–5	12/18/91
		Boiling Point	63–6	12/18/91
		Density, Bulk Density, or Specific Gravity	63–7	12/18/91
		Solubility	63–8	12/18/91
		Vapor Pressure	63–9	12/18/91
		Dissociation Constant	63–10	12/18/91
		Octanol/Water Partition Coefficient	63–11	12/18/91
		pH	63–12	12/18/91
		Stability	63–13	12/18/91
		Oxidizing/Reducing Action	63–14	12/18/91
		Flammability	63–15	12/18/91
		Explodability	63–16	12/18/91
		Storage Stability	63–17	12/18/91
		Viscosity	63–18	12/18/91
		Miscibility	63–19	12/18/91
		Corrosion Characteristics	63–20	12/18/91
		Dielectric Breakdown Voltage	63–21	12/18/91
		Acute Oral Toxicity – Rat	81–1	12/18/91
		Acute Dermal Toxicity – Rabbit/Rat	81–2	12/18/91
		Acute Inhalation Toxicity – Rat	81–3	12/18/91
		Primary Eye Irritation – Rabbit	81–4	12/18/91
		Primary Dermal Irritation	81–5	12/18/91
		Dermal Sensitization	81–6	12/18/91
		Confidential Statement of Formula (CSF) Form		12/18/91
		Certification Form: Data Citation		12/18/91
		Certification Form: Offer to Cost Share		12/18/91
		Certification Form: Data Compensation		12/18/91
	PIC Corporation	Chemical Identity	61–1	12/18/91
		Beginning Materials & Manufacturing Process	61–2	12/18/91
		Discussion of Formation of Impurities	61–3	12/18/91
		Preliminary Analysis of Product Samples	62–1	12/18/91
		Analytical Method to Verify Certified Limits	62–3	12/18/91
		Certification of Ingredient Limits	62–2	12/18/91
		Odor	63–4	12/18/91
		Melting Point	63–5	12/18/91
		Boiling Point	63–6	12/18/91
		Density, Bulk Density, or Specific Gravity	63–7	12/18/91
		Solubility	63–8	12/18/91
		Vapor Pressure	63–9	12/18/91
		Dissociation Constant	63–10	12/18/91
		Octanol/Water Partition Coefficient	63–11	12/18/91
		pH	63–12	12/18/91
		Stability	63–13	12/18/91
		Oxidizing/Reducing Action	63–14	12/18/91
		Flammability	63–15	12/18/91
		Explodability	63–16	12/18/91
		Storage Stability	63–17	12/18/91
		Viscosity	63–18	12/18/91

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due Date
		Miscibility	63–19	12/18/91
		Corrosion Characteristics	63–20	12/18/91
		Dielectric Breakdown Voltage	63–21	12/18/91
		Acute Oral Toxicity – Rat	81–1	12/18/91
		Acute Dermal Toxicity – Rabbit/Rat	81–2	12/18/91
		Acute Inhalation Toxicity – Rat	81–3	12/18/91
		Primary Eye Irritation – Rabbit	81–4	12/18/91
		Primary Dermal Irritation	81–5	12/18/91
		Dermal Sensitization	81–6	12/18/91
		Confidential Statement of Formula (CSF) Form		12/18/91
		Certification Form: Data Citation		12/18/91
		Certification Form: Offer to Cost Share		12/18/91
		Certification Form: Data Compensation		12/18/91
	Southern Mill Creek Products	Confidential Statement of Formula (CSF) Form		12/18/91
		Certification Form: Data Citation		12/18/91
		Certification Form: Offer to Cost Share		12/18/91
		Certification Form: Data Compensation		12/18/91
		Chemical Identity	61–1	12/18/91
		Beginning Materials & Manufacturing Process	61–2	12/18/91
		Discussion of Formation of Impurities	61–3	12/18/91
		Preliminary Analysis of Product Samples	62–1	12/18/91
		Analytical Method to Verify Certified Limits	62–3	12/18/91
		Certification of Ingredient Limits	62–2	12/18/91
		Odor	63–4	12/18/91
		Melting Point	63–5	12/18/91
		Boiling Point	63–6	12/18/91
		Density, Bulk Density, or Specific Gravity	63–7	12/18/91
		Solubility	63–8	12/18/91
		Vapor Pressure	63–9	12/18/91
		Dissociation Constant	63–10	12/18/91
		Octanol/Water Partition Coefficient	63–11	12/18/91
		pH	63–12	12/18/91
		Stability	63–13	12/18/91
		Oxidizing/Reducing Action	63–14	12/18/91
		Flammability	63–15	12/18/91
		Explodability	63–16	12/18/91
		Storage Stability	63–17	12/18/91
		Viscosity	63–18	12/18/91
		Miscibility	63–19	12/18/91
		Corrosion Characteristics	63–20	12/18/91
		Dielectric Breakdown Voltage	63–21	12/18/91
		Acute Oral Toxicity – Rat	81–1	12/18/91
		Acute Dermal Toxicity – Rabbit/Rat	81–2	12/18/91
		Acute Inhalation Toxicity – Rat	81–3	12/18/91
		Primary Eye Irritation – Rabbit	81–4	12/18/91
		Primary Dermal Irritation	81–5	12/18/91
		Dermal Sensitization	81–6	12/18/91
	Voluntary Purchasing Group, Inc.	Confidential Statement of Formula (CSF) Form		12/18/91
		Certification Form: Data Citation		12/18/91
		Certification Form: Offer to Cost Share		12/18/91
		Certification Form: Data Compensation		12/18/91
		Chemical Identity	61–1	12/18/91
		Beginning Materials & Manufacturing Process	61–2	12/18/91
		Discussion of Formation of Impurities	61–3	12/18/91
		Preliminary Analysis of Product Samples	62–1	12/18/91
		Analytical Method to Verify Certified Limits	62–3	12/18/91
		Certification of Ingredient Limits	62–2	12/18/91
		Odor	63–4	12/18/91
		Melting Point	63–5	12/18/91
		Boiling Point	63–6	12/18/91
		Density, Bulk Density, or Specific Gravity	63–7	12/18/91
		Solubility	63–8	12/18/91
		Vapor Pressure	63–9	12/18/91
		Dissociation Constant	63–10	12/18/91
		Octanol/Water Partition Coefficient	63–11	12/18/91
		pH	63–12	12/18/91

TABLE B.—LIST OF REQUIREMENTS—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due Date
		Stability	63–13	12/18/91
		Oxidizing/Reducing Action	63–14	12/18/91
		Flammability	63–15	12/18/91
		Explodability	63–16	12/18/91
		Storage Stability	63–17	12/18/91
		Viscosity	63–18	12/18/91
		Miscibility	63–19	12/18/91
		Corrosion Characteristics	63–20	12/18/91
		Dielectric Breakdown Voltage	63–21	12/18/91
		Acute Oral Toxicity – Rat	81–1	12/18/91
		Acute Dermal Toxicity – Rabbit/Rat	81–2	12/18/91
		Acute Inhalation Toxicity – Rat	81–3	12/18/91
		Primary Eye Irritation – Rabbit	81–4	12/18/91
		Primary Dermal Irritation	81–5	12/18/91
		Dermal Sensitization	81–6	12/18/91

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Sodium Hydroxide

On September 30, 1992, EPA issued the Phase 5 Reregistration Eligibility Document Data Call–In Notice imposed pursuant to sections 4(g)(2)(B) and 3(c)(2)(B) of FIFRA which required registrants of products containing sodium hydroxide used as an active ingredient to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g). Failure to comply with the requirements of a Phase 5 Reregistration Eligibility Document Data Call–In Notice is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Sodium Hydroxide Phase 5 Reregistration Eligibility Document Data Call–In Notice dated September 30, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you dated December 28, 1992, requesting a waiver of data required for the subject pesticide product. Your December 28, 1992, letter requesting a waiver of data requirements for the continued registration/reregistration of the subject pesticide product was not sufficient to support a waiver. The Agency informed you of its decision in a letter dated February 9, 1993, and further required a response from you within 15 days from your receipt of the letter to correct the inadequacies or to choose appropriate options to address the data requirements. To date, you have not responded to the Agency.

Because the Agency has not received an adequate response from you as a sodium hydroxide registrant to undertake the required testing or any other appropriate response, the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

B. Sulfur

On April 16, 1991, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing sulfur to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Sulfur Phase 5 Reregistration Data Requirements Notice dated April 16, 1991, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you in which you committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: July 29, 1993.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 93–18719 Filed 8–4–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–60047; FRL–4638–4]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected

by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____for Failure to Comply with the Section 4 Reregistration Requirements Notice for _____Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) and 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to Section 4 of FIFRA. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. The affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Data Requirements for Reregistration. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix

(Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:
Attachment I - Product List
Attachment II - Requirement List
Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a product list for which a letter of notification has been sent:

TABLE A.—PRODUCT LIST

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Union Carbide Chemicals & Plastics Company Inc.	01035200036	Paraclox	Piror P–15 Paper Slimicide and Water Treatment	7/2/93
	01035200042	Paraclox	Piror P–05 Paper Slimicide and Water Treatment	7/2/93

III. Basis for Issuance of Notice of Intent; Requirement List

The following company failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference Number	Original Due–Date
Paraclox	Union Carbide Chemicals & Plastics Company Inc.	Hydrolysis	161–1	7/24/91

IV. Attachment III Suspension Report––Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

Paraclox

In March 1990, EPA issued the Phase 3 Data Requirements for Reregistration Notice imposed pursuant to section 4(e) of FIFRA which required registrants of products containing paraclox to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(e). Failure to comply with the requirements of a Phase 3 Data Requirements Notice is a basis for

suspension under sections 3(c)(2)(B) and 4 of FIFRA.

The Paraclox Reregistration Data Requirements Notice dated March 1990, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a signed response from you dated July 25, 1990, in which you as a paraclox registrant committed to undertake required testing. The Notice further required that data be submitted by the deadline noted for the subject data requirement on Attachment II. This deadline has passed and to date the Agency has not received adequate data to satisfy this data requirement. Because you have failed to provide an appropriate or adequate response within the time provided for the data requirement listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

Dated: July 29, 1993.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 93–18718 Filed 8–4–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–66179; FRL–4633–2]

Notice of Intent to Cancel the Registration of WipeOut Cold Sterilizing Disinfecting Solution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to cancel.

SUMMARY: This Notice announces the Agency's intent to cancel the registration of the pesticide product WipeOut Cold Sterilizing Disinfecting Solution (EPA Reg. No. 58994–1). This action is based in part on a determination that continued sale, distribution, and use of the product would cause unreasonable adverse effects on the environment. This determination is based upon data and other information showing that this product is not efficacious when used as a sterilant in accordance with its label claims. This Notice describes additional bases for cancellation of this product. As required by section 6(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), this Notice announces that the Agency intends to cancel the registration for this product.

DATES: Requests for a hearing by a registrant or other adversely affected parties must be received by the Office of the Hearing Clerk at the address given below on or before September 7, 1993 or within 30 days from receipt of this notice by the registrant, whichever occurs later.

ADDRESSES: Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Additional information supporting this action is available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Branch, Program Management and Support Division (H-7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Vivian Prunier, Special Review and Reregistration Division (H–7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 3rd Floor, Crystal Station #1, 2800 Crystal Drive, Arlington, VA, Telephone: 703–308–8034.

SUPPLEMENTARY INFORMATION:

I. Introduction

This Notice announces EPA's intent to cancel the registration of the pesticide product WipeOut Cold Sterilizing Disinfecting Solution (WipeOut) (EPA Reg. No. 58994–1). For the reasons set forth below, the Administrator has determined that this product, when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment. This determination is based primarily on laboratory data and other information indicating that this product is not efficacious as a sterilant or sporicide and does not meet its label claims for those purposes. Any reference in this Notice to "sterilant" also includes "sporicide"; EPA considers these terms to be synonymous. Additional bases for cancellation of this product are described in this Notice.

A. Organization of this Notice

This Notice is divided into 13 units. This unit provides introductory information and describes the legal authority for this action. Unit II discusses the role of pesticides used to control pest microorganisms that pose a threat to human health. Unit III discusses the testing protocols used to test this product and other matters leading to this action. Unit IV presents the results of the Agency's testing and the Agency's assessment of the risk from continued use of this product. Unit V discusses the Agency's benefits assessment of this proposed cancellation. Unit VI presents the Agency's risk/benefit assessment. Unit VII presents additional bases for cancellation. Unit VIII describes the role of the Scientific Advisory Panel and the Secretary of Agriculture relating to this action. Unit IX sets forth the Agency's determination that the product registration must be canceled. Unit X discusses disposition of existing stocks of product. Unit XI outlines the procedures for implementing the actions required by this Notice, as well as the procedures for requesting a hearing. Unit XII identifies the references. Unit XIII gives information on the public docket.

B. Legal Authority

Before a pesticide product may be lawfully sold or distributed in either intrastate or interstate commerce, the product must be registered by EPA, pursuant to FIFRA sections 3(a) and 12(a)(1).

A registration is a license allowing a pesticide product to be sold and distributed for specified uses in accordance with specified use instructions, precautions, and other terms and conditions. A pesticide product may be registered or remain registered only if it meets the statutory standard for registration. Among other things, a pesticide must perform its intended pesticidal function without causing "unreasonable adverse effects on the environment" (FIFRA section 3(c)(5)). "Unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of [the] pesticide" (FIFRA section 2(bb)).

The burden of demonstrating that a pesticide product satisfies the statutory criteria for registration is at all times on the proponents of initial or continued registration. Under FIFRA section 6, the Agency may issue a notice of intent to cancel the registration of a pesticide product whenever it appears to the Administrator that the product no longer satisfies the statutory criteria for registration. If appropriate, the Agency may require modifications to the terms and conditions of registration, such as deletion of particular uses or revisions

to labeling, as an alternative to cancellation. If the Notice requires such changes, cancellation may be avoided by making the changes specified in the Notice, if possible. Adversely affected persons may also request a hearing on the cancellation of a specified registration. If they do so in a legally effective manner, the registration will be continued pending a decision at the conclusion of an administrative hearing.

II. Background

A. Uses of WipeOut

WipeOut has been registered in the U.S. since 1989. The registrant is Health Care Products, Inc., of Mississauga, Ontario, Canada. Meditox, Inc., of Deerfield Beach, Florida, is the U.S. agent for the registrant. The composition of the activated WipeOut product is claimed to include 1.0 percent phenol and 0.3 percent glutaraldehyde as active ingredients. The product label instructs the user to activate the product by combining a premeasured amount of activator, which contains glutaraldehyde, with a premeasured amount of buffer solution that contains phenol and inert ingredients (Ref. 17). WipeOut is a chemical germicide registered for use as a sterilant, tuberculocide, bactericide, and virucide. It is recommended for use in hospitals, dental clinics, laboratories, and nursing homes to sterilize or disinfect surgical instruments. It is also registered for use as a disinfectant on nonporous food preparation equipment or any hard nonporous surface suspected of contamination, and as a sanitizing agent for use on any hard nonporous surface that is not a food-contact surface. The label states that unused activated product is 100 percent efficacious as a sterilant for 45 days after activation.

The WipeOut label directs that, in order to be used as a sterilant, the product must be used undiluted for a contact time of 10 hours. In order to be used as a disinfectant, the label indicates that the product may be diluted 1:1 and must be used for a contact time of at least 10 minutes.

WipeOut has been used primarily on medical or dental equipment that is too delicate to be sterilized by means of ethylene oxide gas, steam, or dry heat. Such equipment includes endoscopes, certain surgical implements, and certain types of dental equipment. The registrant has not submitted production data as required by section 7 of FIFRA, so EPA has no data on which to base an estimate of total annual usage of this product.

B. Hazards to the Public from Pest Microorganisms that Pose a Threat to Human Health

The achievement of infection control was a prerequisite for development of modern dental, medical, and surgical procedures. Prior to the promotion of antiseptic surgery in the late 19th century, hospital infection rates were on the order of 90 percent (Ref. 5). Because of the high risk of infection, surgery was associated with a high rate of mortality. Once infection control practices were established, hospital infection rates dropped dramatically and surgery could be performed more safely.

C. Control of Pest Microorganisms that Pose a Threat to Human Health

1. *Levels of disinfection.* According to Favero and Bond (Ref. 11), infection control experts recognize three levels of efficacy for disinfection processes or chemical antimicrobial agents used on inanimate objects:

a. Sterilization is defined as the destruction of all microbial life, including bacterial spores.

b. Disinfection is defined as the elimination of nearly all recognized pathogenic microorganisms, but not necessarily all microbial forms (e.g., bacterial spores). Disinfection does not ensure overkill and lacks the margin of safety achieved by sterilization. Among chemical disinfecting agents, there is a broad range of activity extending from sterility at one extreme to a minimal reduction in the number of microbial contaminants on the other. The extent of activity depends on factors such as potency of the formulation and the length of contact time. Within this category, there are three sublevels—high, intermediate, and low, as follows:

i. High-level disinfection is a process that is lethal to all but the most resistant forms of microbial life; i.e, some bacterial spores may survive this process. To qualify as a high-level disinfectant, an antimicrobial agent must be shown to be capable of killing spores. The capability of killing bacterial spores is an assurance of the relative power and activity spectrum of the antimicrobial agent. Contact time is the single important variable between sterilization and high-level disinfection. If the contact time is long enough, an antimicrobial agent having sporicidal capability can be used to sterilize an item. According to Favero and Bond, if a sterilizing agent is diluted beyond its ability to kill all spores, it no longer qualifies as a high-level disinfectant.

ii. Intermediate and low-level disinfection is the elimination of less resistant forms of microbial life. Bacterial spores and certain viruses are resistant to intermediate disinfection agents; bacterial spores, tuberculosis bacilli, and certain viruses or fungi may be resistant to low-level disinfection agents.

c. Decontamination reduces microbial contamination so that the treated item is safe to handle, but not necessarily safe to use on a patient.

2. *Level of disinfection required for items used in dental, medical, or surgical diagnosis or treatment.* In 1972, E. H. Spaulding devised a classification scheme for choosing the appropriate level of disinfection for various patient care items or equipment (Ref. 30). The U.S. Department of Health and Human Services Centers for Disease Control and Prevention uses this system in its guidelines (Ref. 13). In Spaulding's classification scheme, instruments and items for patient care are divided into three categories on the basis of the risk of infection involved in the use of these items, as follows:

a. Critical items present a high risk of infection if the item is contaminated with any microorganism, including bacterial spores. Items that enter the vascular system or sterile tissue, such as surgical instruments, dental surgical instruments, implants, cardiac or urinary catheters, and hypodermic needles, are critical items. To avoid the risk of infection, these items must be sterilized.

b. Semi-critical items are objects that contact intact mucous membranes (e.g., the mouth, nose, or rectum) but will not ordinarily penetrate the blood barrier or enter other ordinarily sterile areas of the body. Examples of semi-critical items are dental mirrors and aspirators, respiratory therapy and anaesthesia equipment, endoscopes, and diaphragm-fitting rings. Intact mucous membranes are generally resistant to infection by common bacterial spores, but are susceptible to infection by other organisms such as tuberculosis bacilli and viruses. Accordingly, semi-critical items must be free of all microorganisms, except for bacterial spores. Although sterilization of semi-critical items is desirable, it is not absolutely essential. If sterilization of a semi-critical item is not possible or practical, it is reasonable to use a high-level disinfection process.

c. Non-critical items contact intact skin and include stethoscopes, blood pressure cuffs, bed pans, and linens. Intact skin is an effective barrier to most microorganisms. Accordingly, intermediate or low-level disinfection of non-critical items is sufficient.

3. *Alternatives for achieving appropriate level of disinfection for*

critical and semi-critical items. Standards of practice for infection control have been established by experts in the transmission of infectious disease and accepted by the medical/dental community. Examples include the Center for Disease Control and Prevention Guideline for Hospital Environmental Control, 1981 and revised in 1985 (Ref. 13); Association for Practitioners in Infection Control Guideline for Selection and Use of Disinfectants, 1990 (Ref. 29); and Infection Control in the Dental Environment, issued jointly by the Departments of Veterans Affairs and Health and Human Services and the American Dental Association in 1990 (Ref. 15).

All guidelines recommend that instruments or other items used for patient care be thoroughly cleaned before they are sterilized or disinfected. Thorough cleansing can remove contaminating microorganisms and organic matter. Residual organic matter (such as blood, saliva, or feces) not only adds to the microbial load, but interferes with the disinfection process by preventing the antimicrobial agent from reaching the surface of the instrument and by directly reacting with the antimicrobial agent.

Currently accepted standards of practice for infection control recommend use of steam sterilization for critical or semi-critical items wherever practicable. Steam sterilization is inexpensive, reliable, and easy to monitor.

Critical or semi-critical items that are too fragile to withstand steam or dry heat sterilization may be sterilized with ethylene oxide gas. However, ethylene oxide gas requires long processing times and repeated treatment may also damage certain items. If none of these methods is feasible, the items are sterilized with chemical sterilizing agents such as the product discussed in this Notice. According to Favero and Bond, critical or semi-critical items that cannot withstand repeated prolonged immersion in a chemical sterilizing agent, but cannot be sterilized by other methods for the reasons discussed above, may be high-level disinfected (Ref. 11). As explained above, high-level disinfection is accomplished by using a chemical sterilizing agent, at the dilution rate required for achieving sterilization, to treat the item for a shorter period rather than the extended period of time usually required to achieve sterilization.

III. Regulation of Pesticides Claiming to Control Microorganisms that Pose a Threat to Human Health

A. Efficacy Standards for Pesticides Used to Control Pest Microorganisms that Pose a Threat to Human Health

1. *Efficacy measurements for various methods of sterilization.* The efficacy of heat sterilization (including steam autoclave or dry heat treatments) or ethylene oxide gas systems may be monitored with biological monitoring systems to see whether sterilization has occurred. The standards of practice for infection control recommend monitoring to verify the adequacy of sterilization cycles. A biological monitoring system consists of bacterial spores that are impregnated in paper strips or sealed in glass ampules. These are placed in the sterilization chamber and subjected to sterilization treatment along with the instruments being treated. Following the sterilization treatment cycle, the treated spores are cultured, using procedures specified for the particular biological monitoring system used. If the treated spores do not give rise to viable bacteria, the sterilization treatment is judged to have been effective.

Liquid chemical sterilizing or disinfecting agents cannot be biologically monitored, because no monitoring system suitable for use in a liquid medium exists. Consequently, it is not possible to verify whether sterilization or disinfection actually occurred after treatment with such agents. Systems are available for assessing the concentration of the active ingredient in the chemical sterilizing or disinfecting agent; however, this does not give complete assurance that the product will kill or has killed microorganisms on or in the instruments. Because users cannot use biological monitoring systems to verify the efficacy of the chemical sterilant after a particular use, they must rely on the EPA-approved label and use directions for assurance that the product has worked.

2. *EPA requirements for registering chemical sterilizing or disinfecting products.*—a. *Chemical composition.* Registrants must submit analytical data on five batches (i.e., lots or production runs) to demonstrate that the product can be reliably formulated and that the formulation remains stable from the time the product is formulated until it is used. The data must show that the concentration of each ingredient does not vary beyond the ranges specified by EPA in 40 CFR 158.175 (b)(2) or the certified limits specified in the Confidential Statement of Formula for the pesticide.

b. *Product efficacy.* Registrants who claim that their product kills bacterial spores or claim that the product can be used to sterilize items which are classified as critical or semi-critical items must provide data to demonstrate sporicidal activity in accordance with 40 CFR 158.640 and Agency guidelines. In 1982, EPA issued Product Performance Guidelines, Subdivision G (Ref. 7), which specifies use of the Sporicidal Activity Test developed by the Association of Official Analytical Chemists (AOAC) (Ref. 31) and the Agency's performance requirements for products tested with the AOAC Activity Test. In 1985, EPA issued a guideline (DIS/TSS–9) (Ref. 8) to further clarify product testing requirements, including the need to conduct confirmatory testing of sterilant products by a second independent laboratory. The AOAC Sporicidal Activity Test demonstrates the ability of the pesticide product to kill bacterial spores on contaminated surfaces. EPA specifies that each of three batches of product must be tested against 240 "carriers." The carriers represent two types of surfaces, porcelain penicylinders and silk suture loops, and are contaminated with spores of one of two spore-forming microorganisms: *Bacillus subtilis* ATCC 19659 and *Clostridium sporogenes* ATCC 3584 (i.e., 60 replicates of each carrier/microorganism combination).

c. *Performance requirements.* EPA requires that products for which the ability to sterilize or to kill spores is claimed must kill all spores on all of the 720 carriers in the AOAC Sporicidal Activity Test. No failures are permitted for products claiming the ability to sterilize or kill spores. The results of the AOAC Sporicidal Activity Test must be verified by a separate confirmatory test conducted by a laboratory different from the one performing the testing on the first three batches. The confirmatory test follows the protocol for the AOAC Sporicidal Activity Test, except only 1 batch of product is tested and 30 replicate carriers per surface type and microorganism are used. Although the AOAC Sporicidal Activity Test distinguishes between a "sterilant" and a "sporicide" (the AOAC's performance standard for a "sporicide" is less stringent than for a "sterilant"), EPA does not recognize this distinction. Accordingly, any product for which a sporicidal claim is made must show no failures in the 720-carrier AOAC Sporicidal Activity Test and in the 120-carrier confirmatory test; i.e., it must meet the same performance standard as EPA prescribes for a sterilant. It is EPA's

position that the only products suitable for use as sporicides (and therefore recognized by infection control experts as useful in high-level disinfection procedures) are products which meet the EPA performance standards for sterilants.

3. *AOAC Sporicidal Activity Test Protocol.* The AOAC Sporicidal Activity Test protocol is generally accepted in the scientific community. It was first accepted in 1966 and has been modified several times. The test protocol is designed to simulate in-use conditions. First, it requires that the spores of two microorganisms—*Bacillus subtilis* and *Clostridium sporogenes*—be cultured. The rationale for using these particular spores is discussed below. The spores are then put into a medium for transfer to two types of objects: glazed porcelain cylinders and silk surgical suture loops, collectively referred to as "carriers." The process of placing spores on carriers is called "inoculation." After inoculation, the carriers are dried. Some carriers of each type are tested to see whether the inoculation was successful (i.e., whether the spores on the carrier are capable of growth and have resistance to treatment with hydrochloric acid as specified in the protocol). Other carriers are immersed in the product being tested, where they remain for the contact time specified for the product. Then, they are placed into a solution that neutralizes or halts the product's antimicrobial action. The carriers are then transferred to a medium that permits spore growth and observed for a period of 21 days. Each carrier is placed in a separate vessel containing the growth medium, and each carrier is checked for growth (i.e., a positive reading). Any carrier that does not exhibit growth after 21 days is heat shocked. Heat shock is a process whereby an inoculated carrier in a growth medium is heated to 80 degrees Celsius in a final effort to determine whether any living spores remain. Heat shocked carriers are rechecked for growth after 72 hours. Lack of growth after this stage of testing indicates that the spores on the subject carrier have been killed by the product being tested.

4. *Rationale for selection of test microorganisms.* The two spores used in the AOAC test method are representative of the hardiest and most common sporulating forms of bacteria. Spores are the dormant state of microorganisms, typically bacteria, which exhibit a lack of biosynthetic activity, reduced respiratory activity, and resistance to heat, radiation, and various chemical agents. Spores are the most resistant forms of life. Accordingly, spores are used to determine the efficacy of sterilants; any agent that is capable of killing spores is judged to be capable of killing any other form of microbial life. If microorganisms are not killed, they may contaminate medical or dental environments and instruments. If microorganisms on instruments are not killed and remain viable, they may cause serious infection upon contact with a patient.

a. *Bacillus subtilis* is a representative aerobic spore. Aerobic spores require oxygen to germinate and grow. Aerobic spores that cause disease may be present and may pose risks in the medical/dental environment. Among the most serious infections that can be caused by aerobic spores in humans is anthrax. Additionally, new evidence suggests that otherwise harmless aerobic spores, if allowed to enter the bloodstream (e.g., through the use of improperly sterilized arteriogram equipment or other medical instruments) can trigger infection that may damage the patient's heart valves.

b. The other test spore, *Clostridium sporogenes*, is a representative anaerobic spore. Anaerobic spores germinate and grow only in the absence of oxygen. Anaerobic spores that cause disease may be present and may pose risks in the medical/dental environment. Among the most serious infections that can be caused by anaerobic spores are tetanus and gas gangrene. Recent data have implicated improperly disinfected endoscopes as the source of a case of infection by the anaerobic spore-forming bacterium *Clostridium difficile*. The microorganism was found on a gastrointestinal endoscope that had been treated with a glutaraldehyde-based product (Ref. 12). The hazards posed by these and similar infections are well known.

B. Agency's Old Verification Program

Until 1982, EPA conducted its own efficacy tests on antimicrobial products. This testing program included pretesting to confirm data submitted by potential registrants and some post-registration testing to check whether antimicrobial products continued to meet sterilant or tuberculocidal claims. In 1982, this program was phased out because of budget cuts. However, in response to a General Accounting Office (GAO) report of August 1990 criticizing this action (Ref. 14), EPA reinstituted a pre- and post-testing program on antimicrobial products.

C. Agency's New Program

EPA is conducting a comprehensive program to test all currently registered antimicrobial products to assure that all such products are efficacious. Under the program, EPA is first testing those products with claims having a potentially higher impact on public health. Under an interagency agreement, the Food and Drug Administration (FDA) is providing the laboratory facilities and personnel for testing samples of sterilant products obtained by the EPA. The sterilant claim is the strongest that can be made for an antimicrobial product, and sterilants are registered for use in situations where complete elimination of microbial life is crucial for health reasons. Therefore, the Agency's testing strategy provides for products with such claims to be tested first.

Under EPA's testing strategy, at the time that the tests described below were conducted, an initial screening test (initial test) consisting of testing 1 lot or batch was performed on the product in accordance with the AOAC Sporicidal Activity Test using 30 of each carrier/spore combination (for a total of 120 carriers). If the product failed the initial test, the more extensive EPA enforcement test (validation test), using 60 of each carrier/spore combination, was done to confirm those results. If the product failed the validation test, it was considered inefficacious.

FDA's Sterility Analysis Research Center in Minneapolis, Minnesota, performed the tests on the product in accordance with the AOAC Sporicidal Activity Test published in the 1990 Edition of the AOAC Official Methods of Analysis. EPA approved one minor deviation from this protocol for the tests conducted in 1991 and 1992. At that time, FDA employed a procedure for extracting wax from the suture loops that had been permitted in previous editions of the AOAC. After 1992, FDA used the wax extraction procedures specified in the 1990 edition of the AOAC Methods of Analysis.

IV. Findings on WipeOut

A. Chemical Analysis

The composition of the activated WipeOut product is claimed to include 1.0 percent phenol and 0.3 percent glutaraldehyde as active ingredients.

A sample of WipeOut obtained on January 2, 1991, from Biotrol, Inc., in Wood Cross, Utah, was identified as WipeOut Batch # 20772 and assigned EPA sample number 8–96382 and was sent to EPA's National Enforcement Investigation Center in Denver, Colorado, for analysis. EPA's analysis showed that product tested on the day of activation contained 0.97 percent phenol and 0.26 percent glutaraldehyde. When the activated product was reanalyzed 45 days after activation, the

glutaraldehyde concentration was found to be unchanged. EPA found that the composition of the product was within acceptable limits (Ref. 25).

A product sample obtained on September 5, 1991, from Meditox, Inc., in Deerfield Beach, Florida, was identified as WipeOut Lot # 1E26/Activator 1 E27. The product was assigned EPA sample number "09059115880302B Fazal Haq," sent to EPA's Analytical Chemistry Laboratory in Beltsville, Maryland, and analyzed on the day it was activated. The glutaraldehyde and phenol levels in the product were found to be within acceptable limits (Ref. 28).

Samples of two lots (WipeOut lot numbers 2009SBR5743 and 2009SBR5747) were obtained on February 11, 1992, from Meditox, Inc., in Deerfield Beach, Florida, and identified as EPA sample numbers 021192–2823–0101 NDR 2–11–92 and 021192–2823–0102 NDR 211–92. EPA analysis of these samples showed that the levels of glutaraldehyde in the product samples, 0.35 percent, were higher than specified in the Confidential Statement of Formula for the product (0.30 percent). The composition of these two lots of marketed product does not comply with the requirements of 40 CFR 158.175 (Refs. 10, 26, and 27).

B. Efficacy Testing

The product label for WipeOut claims that undiluted, unused product will have 100 percent efficacy for 45 days after activation. WipeOut was tested for EPA by FDA in accordance with the testing strategy described above.

A WipeOut product sample obtained on January 2, 1991, from Biotrol, Inc., in Wood Cross, Utah, was identified as WipeOut Batch # 20772 and assigned EPA sample number 8–96381 and was sent to FDA's Sterility Analysis Research Center in Minneapolis, Minnesota. Undiluted product was tested 45 days after activation for 10 hours at 20 °C. The data were delivered to EPA and reviewed by EPA microbiologists. The results are shown in Table 1 below (Refs. 4 and 32).

Table 1.—WipeOut Batch No. 20772 (EPA Sample # 8–9631)

Organism	Carrier	Number of Carriers Showing Growth
C. sporogenes	penicylinders	30/30
	suture loops	28/30

Table 1.—WipeOut Batch No. 20772 (EPA Sample # 8–9631)—Continued

Organism	Carrier	Number of Carriers Showing Growth
B. subtilis	penicylinders	22/30
	suture loops	22/30

A sample of WipeOut obtained on September 5, 1991, from Biotrol International of Louisville, Colorado, was identified as WipeOut Lot # 1E26/Activator 1E27. FDA performed the test on undiluted product on the day it was activated for 10 hours at 20 °C. The data were delivered to EPA and reviewed by EPA microbiologists. The results are shown in Table 2 below (Refs. 1, 3, and 24).

Table 2.—WipeOut Lot No. 1E26/Activator 1E27

Organism	Carrier	Number of Carriers Showing Growth
C. sporogenes	penicylinders	15/60
	suture loops	14/60
B. subtilis	penicylinders	22/60
	suture loops	39/60

Samples of WipeOut were obtained on February 11, 1992, from Meditox, Inc., of Deerfield Beach, Florida, and identified as WipeOut lot numbers 2009SBR5743 and 2009SBR5747. FDA performed the testing on undiluted product on the day that the product was activated for 10 hours at 20 °C. Results are in Table 3 below (Refs. 1 and 2).

Table 3.—WipeOut Lot Numbers 2009SBR5743 and 2009SBR5747

Organism	Carrier	Number of Carriers Showing Growth
WipeOut Lot No. 2009SBR5743		
C. sporogenes	penicylinders	47/60
	suture loops	51/60
B. subtilis	penicylinders	53/60
	suture loops	60/60
WipeOut Lot No. 2009SBR5747		
C. sporogenes	penicylinders	53/60
	suture loops	60/60
B. subtilis	penicylinders	60/60
	suture loops	59/60

C. Summary

The label for WipeOut claims that the unused undiluted product can achieve sterilization with 10 hours of contact time for 45 days after activation. EPA has examined the data, including all documentation regarding the handling of the WipeOut product samples, the test procedures used, and the raw data generated during the studies. The Agency finds that the tests were conducted in conformance with the AOAC Sporicidal Activity Test Method, and that the tests demonstrate that WipeOut does not kill all spores when the product is used as directed. EPA concludes that WipeOut does not possess the sterilizing properties claimed on the product label.

D. Risk Assessment

The data given above in this unit indicate that WipeOut does not work as a sterilant. Because of its inefficacy, WipeOut poses considerable risk to human health by virtue of its registration and the possibility of its continued sale, distribution, and use.

1. *Data demonstrate that WipeOut does not kill all test microorganisms.* Based on testing results discussed above in this unit, the Agency has found that WipeOut does not work as a sterilant as claimed on its label. Under test conditions, the product failed to eliminate all spores when tested at its label-specified concentration and contact time. As such, there is no level of assurance that WipeOut accomplishes its intended purposes as a sterilant under actual use conditions. Therefore, the product is considered inefficacious.

2. *EPA requires sterilant products to kill all test microorganisms, due to the critical role of such products in reducing the risk of infection.* WipeOut is recommended for use at the following sites: hospitals, dental clinics, nursing homes, and laboratories. The need for reliable and successful sterilization at these sites is beyond dispute, since the use of improperly sterilized dental, medical, or surgical instruments and supplies poses risk of infection to the patient and user. Infection control is so essential a medical function that hospitals generally include on their staffs personnel specifically trained in sterilization and infection control. Moreover, considerable attention and resources are spent in the dental field educating and equipping dentists and other dental personnel to assure effective infection control and sterilization. Accordingly, EPA has designed requirements for testing these substances that reflect their critical use and nature.

As discussed earlier, chemical sterilants (such as WipeOut) are registered for sterilization of certain medical/dental instruments, including those which are used in a manner in which microorganisms can be introduced easily into a patient's body. Therefore, a chemical sterilant's ability to kill all forms of microbial life, including all spores, is critical. A chemical sterilant must work as claimed. Otherwise, considerable risk of infection exists from improperly treated instruments.

3. *Very serious consequences can arise from use of an ineffective sporicide or sterilant.* Patient-to-patient cross-contamination may occur when germs are introduced into the medical/dental environment or onto or into instruments following their use in certain medical or dental procedures. Numerous forms of microorganisms present this potential. Depending upon the particular microorganism and the susceptibility of a subsequent patient exposed to the microorganism, the consequences of cross-contamination from patient-to-patient may be deadly.

The risk of any infection, including procedure-related, cross-contamination-caused infection, is higher for patients with impaired immune systems (such as AIDS or cancer patients). For example, even if, in testing or actual use, a chemical sterilant or disinfectant successfully killed the extremely fragile HIV or AIDS virus, it might not be able to kill other more durable microorganisms (including spores). If incomplete microorganism kill occurs, there is a high possibility that an immuno-suppressed patient exposed to an improperly sterilized instrument may contract an opportunistic infection, which may be fatal.

4. *Doctors, dentists, and other users must rely on sterilants being effective; there is no margin of error.* Infection control practitioners must be able to rely on product sterilization claims; this is crucial in all applications regardless of the method of sterilization used. There is no room for any margin of error in sterilization for any reason, including use of improper procedures or use of an ineffective product. When sterilization is necessary, it is not subject to compromise.

With chemical sterilants, the only assurance of proper product performance that the user has is that the product was properly manufactured, properly labeled, and used according to instructions. Infection control practitioners rarely conduct their own tests of a chemical sterilant product to see if it works and never test a product to see if it was properly formulated. Unlike other methods of sterilization, there are no practical means of verifying whether a liquid chemical sterilant has achieved complete kill. Infection control practitioners rarely, if ever, employ multiple means of sterilization as backup.

Because microorganisms are invisible to the naked eye, infection control practitioners cannot tell by visual inspection whether a chemical sterilant has failed to sterilize a medical instrument. Residues of patient matter such as blood, mucus, or feces would not be evident if the instrument had been properly cleaned prior to the sterilization process. However, if contaminants are present on an instrument, they may be invisible to the naked eye.

In the ordinary course of medical practice, ineffective sterilization cannot be detected for the reasons described above, and could result in the use of a contaminated medical instrument by a medical professional. The use of a contaminated instrument poses a risk of infection that would not exist if a properly sterilized instrument were used instead.

5. *Additional implications of sterilant failures.* As discussed above in this unit, it is reported that some users of sterilant products may also employ products such as WipeOut as high-level disinfectants. Those who recognize products as high-level disinfectants do so only after the products demonstrate efficacy as sterilants as evidenced by the presence of such a claim on the product label.

Therefore, if a product fails to perform as a sterilant in accordance with its label claims, users may no longer rely on the product to be a high-level disinfectant, either. Any assurance that existed that the product will work as a high-level disinfectant no longer is present. Consequently, any use of WipeOut as a high-level disinfectant gives rise to a risk of unreasonable adverse effects.

6. *The use of WipeOut poses considerable risk.* In reaching the conclusion that WipeOut poses considerable risk to human health, the Agency has examined the following factors: (1) The data showing lack of efficacy of WipeOut when used as a sterilant in accordance with its label claims and directions; (2) the importance of infection control; (3) the risks of improper sterilization; (4) the recognized need of users to rely on label claims to achieve sterilization; and (5) the implications of the failing data for those users who rely on sterilant label claims to achieve high-level disinfection. Based on these factors, the Agency concludes that registration and possible continued sale, distribution, and use of WipeOut poses considerable risk to human health.

V. Benefits Assessment

Under FIFRA, the Agency must examine a product's benefits as well as its risks before registering it or initiating a cancellation action. The Agency has concluded that WipeOut has no benefits.

A. WipeOut is an Inefficacious Product and Has No Benefits

The sole purpose of a sterilant is to kill all forms of microbial life, including all spores, with which it comes into contact. If a sterilant fails to kill spores, the hardiest form of microbial life, it has failed to perform properly. A chemical sterilant product that does not perform properly when used according to its label directions is inefficacious.

As previously discussed, WipeOut is inefficacious in performing its claimed sterilization function. Other implications of that failure affect the reported use of this product as a high-level disinfectant. If a product does not serve its intended purpose, it does not provide any benefits from its use. In these cases, since the product is inefficacious, there is no reason supporting its continued sale, distribution, and use.

B. There Are Available and Efficacious Substitutes for WipeOut

Other chemical sterilants are currently registered for the same uses as WipeOut and are available to users. The Agency has data indicating that several products recently passed the same types of efficacy tests that WipeOut failed. The costs of these alternative products or methods are comparable to the amounts formerly paid for WipeOut.

Even if the cost of these alternatives were higher, a responsible health care professional would not risk using an ineffective sterilant. Use of an ineffective sterilant would pose considerable health risks to both patients and users, as well as the risk of malpractice liability on account of improper sterilization or high-level disinfection and resulting infection. A responsible health care professional would likely avoid such unnecessary risks by using an effective sterilant.

Users of WipeOut have, in fact, switched to alternative sterilant products or alternative sterilization or high-level disinfection procedures. On May 18, 1993, EPA issued a Stop Sale, Use and Removal Order (SSURO) against the WipeOut product registration. Because WipeOut was

removed from the market, users immediately had to use alternative products or procedures to perform the functions for which WipeOut could no longer be used. The former users of this product continue to use alternative products or procedures today. However, the SSURO is not a permanent resolution of the status of WipeOut. Only cancellation can permanently remove WipeOut from the market.

VI. Risk/Benefit Assessment

Under FIFRA, to cancel a pesticide due to unreasonable adverse effects, the Administrator must determine that there is an "unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits" of the pesticide's use. Before taking a regulatory action, the Administrator must also consider measures short of cancellation. For the reasons described in this Notice, the Administrator has determined that WipeOut no longer meets the standard for registration and must be canceled.

As discussed in this document, the risks to human health from continued registration and use of WipeOut are great, given its lack of efficacy and the risk of infection arising from its use. Because the product does not work as a sterilant, it has no benefits. Therefore, the risks of continued registration and use of WipeOut exceed the benefits. The SSURO discussed above is not a permanent resolution of the status of WipeOut. If for any reason, the SSURO should be lifted before the product registration is canceled, the risks from further use of WipeOut would recur. Accordingly, cancellation provides the only permanent mechanism by which the unreasonable adverse effects posed by the use of WipeOut can be permanently addressed.

In making its determination to propose cancellation, the Agency has examined whether any measures exist short of cancellation and has concluded that none exist. Making WipeOut a restricted use pesticide would not address the product's lack of efficacy. The Agency cannot prescribe a new contact time for WipeOut, as it is aware of no data which demonstrate that any contact is adequate to ensure efficacy. Likewise, the Agency lacks adequate data on which to base a recommendation that the ingredients for this product be altered to achieve efficacy.

The Agency has determined that amending the registration and label to delete all sporicidal and sterilant claims will not be sufficient. As discussed in Unit VII below, EPA has additional evidence that WipeOut does not meet the standard for registration. Deletion of the sporicidal and sterilant claim will not address these problems.

VII. Additional Bases for Cancellation of WipeOut

A. Failure to Submit Materials as Required by FIFRA

1. Data and other information reportable under section 6(a)(2) of FIFRA were not submitted as required (Refs. 6, 18, 19, and 21). A recall of product due to efficacy failures or improper manufacture or formulation is evidence of unreasonable adverse effects and is reportable under FIFRA section 6(a)(2).

a. The registrant failed to notify the Agency of the recall of WipeOut batch 20772. The registrant has not provided test data or other information on WipeOut batch 20772 showing a problem with the affected batch.

b. The registrant failed to notify the Agency of the recall of WipeOut Lot No. 2648–2. The registrant has not provided test data or other information showing a problem with the affected batch.

2. FIFRA section 6(b) provides for cancellation of a product if "material required to be submitted does not comply with the provisions of [the Act]." Materials submitted to support the registration of WipeOut do not comply with the Act, because submitted studies are not supported by raw data. Maintenance of raw data is required in 40 CFR 169.2(k). However, the registrant was unable to produce raw data for the studies listed below (Ref. 6). In particular, the registrant was unable to produce raw data to show the identity, composition, and sample history of the test material for the studies identified below. The following studies were submitted to support the sterilization claims:

Study Title: WipeOut - Sterilization Claim (Lot C)
EPA MRID No.: 411351–10
Study Submission Date: June 29, 1989

Study Title: Sterilization Claim *Clostridium sporogenes* ATCC 3584 (Lot B)
EPA MRID No.: 411351–09
Study Submission Date: June 29, 1989

Study Title: WipeOut - Sterilization Against *Bacillus subtilis* ATCC 19659
EPA MRID No.: 411351–24
Study Submission Date: June 29, 1989

Study Title: WipeOut - Sterilization Against *Clostrium* (sic) *Sporogen* (sic) ATCC 3584
EPA MRID No.: 411351–25
Study Submission Date: June 29, 1989

3. Materials submitted do not comply with the Act because of the failure to submit production data as required in FIFRA section 7 (Ref. 6)

B. Labeling of WipeOut Does Not Comply With the Provisions of FIFRA

1. There are numerous instances where the registrant failed to make label changes specified by the Agency to comply with FIFRA. EPA's approval on June 19, 1990, of a proposed WipeOut label was contingent upon removal or alteration of certain statements or claims. Labels of products found in the channels of trade contained the following deviations from the approved label (Ref. 16):

a. The phrase "May be reused as a high level disinfecting solution and will maintain 100 percent efficacy for 45 days" was to be deleted. It was not.

b. The term "Non-irritating" was to be deleted. It was not.

c. The term "Safe for Scopes" was to be deleted. It was not.

d. Under directions for use, the registrant was to change the claim for the "cidal" effect on *M. bovis* "in 15 minutes at 68 degrees" to "20 minutes at 20 degrees." The label says, "Disinfection was achieved in 15 minutes at 68 degrees against *M. tuberculosis* and *M. bovis.*"

e. Under disinfection use directions, the phrase "WipeOut activated solution may be diluted 1:1 with water" was to be deleted. It was not.

f. Under directions of use, the word "unused" was to be inserted as shown in the following sentence, "After activation, the unused WipeOut solution will maintain 100 percent efficacy for 45 days." The word "unused" was not inserted as required.

g. Under the sanitization section, the word "all" was to be deleted from the statement "For use on all hard non-porous surfaces . . . ." The word "all" was not deleted.

2. The labeling of WipeOut does not comply with the Act because of failure to display the EPA Registration Number or EPA Establishment Number (Ref. 6), 40 CFR 156.10(a)(iv) and (v).

3. The labeling of WipeOut does not comply with the Act because of false and misleading claims constituting "misbranding" under FIFRA section 12(a)(1)(E), regarding the product's ability to sterilize or kill spores (Ref. 6), as follows:

a. "Cold Sterilizing Solution"

b. "Sporicidal"

c. "After activation, unused, the WipeOut solution will maintain 100 percent efficacy for 45 days"

d. "Using test organisms, cidal effect was achieved in 10 minutes against . . . *Bacillus subtilis* . . . *Cl. sporogenes* . . ."

e. "Sterilization: . . . . Immerse completely for a minimum of 10 hours to destroy resistant pathogenic spores including *Cl. sporogenes* and *B. subtilis.*"

VIII. Role of the Scientific Advisory Panel and the Secretary of Agriculture

Sections 6(b) and 25(d) of FIFRA provide certain opportunities for the Secretary of the Department of Agriculture (USDA) and the FIFRA Science Advisory Panel (SAP) to review and comment upon a draft Notice on Intent to Cancel, and in the case of USDA, an analysis of the impact of the proposed action on the agricultural economy. These reviews may be waived, and when they are, the Notice may be published without delay.

On May 18, 1993, EPA asked the SAP and the Secretary of USDA to waive their rights to review and comment on this Notice (Refs. 9 and 23). On May 20, 1993, the SAP notified EPA that it waived its review of this action (Ref. 22). On May 24, 1993, R. D. Plowman, Acting Assistant Secretary, Science and Education of USDA, notified EPA that the Secretary would waive review of this action (Ref. 20). Because the USDA and SAP have waived their review of this action, the Agency is not delaying issuance of this Notice.

IX. Agency Determination That Cancellation of WipeOut Is Necessary

EPA has determined that WipeOut fails to meet the standards for registration under FIFRA for the reasons listed below and that the registration of this product must be canceled.

1. WipeOut is not effective as a sterilant. EPA has concluded that use of this product to sterilize items classified as critical or semi-critical items poses an unreasonable risk to the public. EPA has also concluded that use of this product in a high-level disinfection process also poses an unreasonable risk.

2. The WipeOut registrant failed to submit data and information as required under section 6(a)(2) of FIFRA. Failure to submit these data as required under section 6(a)(2) of FIFRA is a failure to comply with the provisions of FIFRA.

3. The registrant failed to maintain raw data for studies that support the sterilant claims made for WipeOut. This failure to maintain raw data is a failure to comply with the provisions of FIFRA.

4. WipeOut is misbranded in that the label bears false and misleading claims, claims and use directions which the Agency specifically disallowed, and the label fails to display the EPA Registration Number or EPA Establishment Number as required under FIFRA. The failure to label the product in accordance with the terms of registration of the product under FIFRA is a failure to comply with the provisions of FIFRA.

5. The registrant failed to file production data as required under section 7 of FIFRA. The failure to submit this information is a failure to comply with the provisions of FIFRA.

X. Disposition of Existing Stocks

For purposes of this Notice, existing stocks are defined as those stocks of WipeOut which were in the United States and were packaged and labeled for shipment prior to the effective date of the cancellation of the registration of the product. The Agency has determined that no further sale, distribution, or use of existing stocks of WipeOut will be permitted after the effective date of cancellation of the registration of the product, except for distribution for the purposes of disposal. Owners of existing stocks of WipeOut may at any time dispose of the product in accordance with applicable local, State, and Federal regulations. The determination is based on the finding that WipeOut is not efficacious as a sterilant and that use of the product as a sterilant or in high-level disinfection procedures poses an unacceptable risk to the public. As explained in Unit V, a SSURO was issued against the WipeOut registration on May 18, 1993. The order remains in effect until it is vacated or lifted by the Agency. The Agency will amend the SSURO to permit the distribution or sale of canceled product if such distribution or sale is for the purpose of disposal only.

XI. Procedural Matters

This Notice announces EPA's intent to cancel the registration of WipeOut Cold Sterilizing Disinfecting Solution (EPA Reg. No. 58994–1) and any product with this registration number that is supplementally distributed. This action is taken pursuant to authority in section 6(b) of FIFRA. Under FIFRA section 6(b)(1), registrants and other adversely affected parties may request a hearing on the cancellation actions that this Notice initiates. Any hearing concerning cancellation of registration for any affected pesticide product will be held in accordance with FIFRA section 6(d). Unless a hearing is properly requested in accordance with the provisions of this Notice, the registration will be canceled. This unit of the Notice explains how such persons may request a hearing in accordance with the procedures specified in this Notice, and the consequences of requesting or failing to request a hearing.

A. Procedures for Requesting a Hearing

To contest the regulatory action initiated by this Notice, registrants or other adversely affected persons must request a hearing within 30 days of the registrant's receipt of this Notice, or within 30 days from the date of publication of this Notice in the Federal Register, whichever occurs later. All registrants and other adversely affected persons who request a hearing must file the request in accordance with the procedures established by FIFRA and EPA's Rules of Practice Governing Hearings (40 CFR part 164). These procedures require that all requests must identify the specific registration by Registration Number and state the basis for objecting to the cancellation of the product for which a hearing is requested, and must be received by the Hearing Clerk within the applicable 30–day period. Failure to comply with these requirements will result in denial of the request for a hearing. Requests for a hearing should also be accompanied by objections that are specific to each basis of cancellation of the pesticide product for which a hearing is requested.

Requests for a hearing must be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

1. *Consequences of filing a timely and effective hearing request.* If a hearing on any action initiated by this Notice is requested in a timely and effective manner, the hearing will be governed by EPA's Rules of Practice Governing Hearings under FIFRA section 6 (40 CFR part 164). All hearings will be held in Washington, DC.

2. *Consequences of failure to file in a timely and effective manner.* If a hearing concerning the cancellation of a specific product subject to this Notice is not requested in a timely and effective manner by the end of the applicable 30–day period, registration of that product will be canceled automatically.

B. Separation of Functions

EPA's rules of practice forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of his/her representatives (40 CFR 164.7).

Accordingly, the following EPA offices, and the staffs thereof, are

designated as the judicial staff of EPA in any administrative hearing on this Notice of Intent to Cancel: the Office of Administrative Law Judge, the Environmental Appeals Board, the Deputy Administrator and the members of the staff in the immediate office of the Deputy Administrator, and the Administrator and the members of staff in the immediate office of the Administrator. The following offices are designated as the trial staff in any proceeding which may arise under this Notice: the Office of General Counsel, the Assistant Administrator for the Office of Prevention, Pesticides, and Toxic Substances and his/her immediate staff, the Office of Pesticide Programs, and the Office of Compliance Monitoring. None of the persons designated as the judicial staff may have any *ex parte* communications with the trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in these proceedings, without fully complying with the applicable regulations.

XII. References

1. Analyst worksheet on FDA sample # 92–382–557 (EPA # 0211922823-0101 2-11-92 Neil D. Richmond), signed by Carrie Hoffman and Judy Heisick and checked by A. Duran on May 3, 1993.

2. Analyst worksheet on FDA sample # 92–382–558 (EPA # 0211922823-0102 2-11-92 Neil D. Richmond), signed by Carrie Hoffman and Judy Heisick and checked by A. Duran on May 3, 1993.

3. Analyst worksheet for sample identified as "09059115880302A Fazal Haq" and assigned FDA sample number 91–696–908, signed by James Cholensky, Jr. on April 2, 1992, and by A. Duran on April 20, 1992.

4. Biological Report of Analysis on EPA sample # 8–96381, signed by James Danielson on December 6, 1991.

5. Block, S. "Historical Review" in: Disinfection, Sterilization and Preservation, 4th ed., S. Block, ed. Lea and Febiger, Philadelphia, 1991, pp. 3-17.

6. Complaint and Notice of Opportunity for a Hearing - Docket no. FIFRA-93–H–02F dated May 18, 1993, (In the matter of Health Care Products, Inc., Through Its Agent, Meditox, Inc.).

7. EPA, Product Performance Guidelines, Subdivision G, 1982.

8. EPA Guideline DIS/TSS–9, Efficacy Data Requirements for Sterilizers, July 11, 1985.

9. EPA Memorandum dated May 18, 1993, from Douglas D. Campt to Bruce Jaeger, Science Advisory Panel Coordinator.

10. Establishment Inspection report signed by Neil D. Richmond on February 11, 1992, describing collection of 021192–2823–0101 NDR 2–11–92 and 021192–2823–0102 NDR 2–11–92 and Investigation Summaries signed by Neil D. Richmond on February 11, 1992, describing the collection of each sample.

11. Favero , M. S. and W. W. Bond, "Chemical Disinfection of Medical and Surgical Materials." *Disinfection, Sterilization, and Preservation*, 4th ed., Seymour Block, ed., Lea Febiger, Philadelphia, PA, 1991, pp. 617–641.

12. G. J. Gorse and A. L. Messner, "Infection Control Practices in Gastrointestinal Endoscopy in the United States: A National Survey." *Infection Control and Hospital Epidemiology*, 12: 289296, 1991.

13. Garner, J. S. and M. S. Favero. Guidelines for handwashing and hospital environmental control. Atlanta, Centers for Disease Control and Prevention, *HHS Publication No. 99–1117*, 1985.

14. General Accounting Office, *Disinfectants: Does EPA Know They Work?*, August 6, 1990.

15. Infection Control in the Dental Environment issued jointly by the Departments of Veterans Affairs and Health and Human Services and the American Dental Association, 1990.

16. Inspection report describing collection of WipeOut Lot 1-E26 on September 5, 1991, signed by Fazal Haq on January 6, 1992.

17. Label for WipeOut Cold Sterilizing Disinfecting Solution, accepted by EPA on November 27, 1990.

18. Letter from Health Care Products to Michael Wood, EPA, dated February 10, 1992.

19. Letter from Health Care Products to Michael Wood, dated March 16, 1993.

20. Letter dated May 24, 1993, from R. D. Plowman, Acting Assistant Secretary for Science and Education, USDA, to Douglas D. Campt.

21. Letter from Daniel Barolo, EPA to Health Care Products, dated April 23, 1993.

22. Letter dated May 20, 1993, from E. McConnell, Chairman of the SAP, to Douglas D. Campt.

23. Letter dated May 18, 1993, from Douglas D. Campt to Nancy Ragsdale, NAPIAP, USDA.

24. Report of biological analysis of FDA sample 91–656–908, signed by Anthony Duran and dated May 15, 1992.

25. Report of Analysis dated December 30, 1991 signed by Dean Hill on WipeOut batch 20772, EPA sample # 8-96382.

26. Report of Analysis of 021192–2823–0101 conducted by J. Negrun and signed by Harvey Hundley on August 14, 1992.

27. Report of Analysis of 021192–2823–0102 conducted by J. Negrun and signed by Harvey Hundley on August 14, 1992.

28. Report of Analysis, sample number "09059115880302B Fazal Haq," signed by Michael Wood and dated January 2, 1992.

29. Rutala, W. A., "Association for Practitioners in Infection Control Guideline for Selection and Use of Disinfectants," *Am. J. Infection Control*, 18: 99–117, 1990.

30. Spaulding, E. H., "Chemicals disinfection and antisepsis in the hospital." *J. Hospital Research* 9: 5-31, 1972.

31. "Sporicidal Activity of Disinfectants," in: Association of Official Analytical Chemists, *AOAC Official Methods of Analysis*, 15th Ed., 1990, pp. 141–142.

32. Standard Data Summary Form on EPA sample # 8–96381, assigned FDA sample # 91–543–090; signed by James Danielson on April 12, 1991.

XIII. Public Docket

The public docket containing the above references is located at 1921 Jefferson Davis Highway, Room 1128, Arlington, Virginia. The references can be viewed from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: July 29, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

[FR Doc. 93–18720 Filed 8–4–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 28, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased form the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, Room 3235

NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0003.

Title: Application Form 610 For Amateur Operator/Primary Station License.

Form Number: FCC Form 610.

Action: Revision of a currently approved collection.

Respondents: Individuals or households.

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 93,000 responses; .166 hours average burden per response; 15,438 hours total annual burden.

Needs and Uses: FCC rules require that applicants file FCC Form 610 to apply for a new, renewal or modified licenses. This form is required by the Communications Act of 1934, as amended. International Treaties and FCC rules—47 CFR 97.17, 97.19, 97.511 and 97.519. The form was revised to allow for changes mandated by PR Docket No. 92.154. Commission personnel will use the data to determine eligibility for radio station authorization and to issue a radio station/operator license. Data is also used by Compliance personnel in conjunction with Field Engineers for enforcement and interference resolution purposes.

Federal Communications Commission.

William F. Caton,

Acting Secretary

[FR Doc. 93–18677 Filed 8–4–93; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

July 29, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0435.

Title: Section 80.361, Frequencies for narrow-band direct-printing (NB–DP) and data transmission.

Action: Extension of a currently approved collection.

Respondents: Individuals or households, state or local governments, nonprofit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 2 responses; 2 hours average burden per response; 4 hours total annual burden.

Needs and Uses: The reporting requirement contained in Section 80.361 is necessary to require applicants to submit a showing of need to obtain new or additional narrow-band direct-printing (NB–DP) frequencies. Applicants for new or additional NB–DP frequencies are required to show the schedule of service of each currently licensed or proposed series of NB–DP frequencies and to show a need for additional frequencies based on at least a 40% usage of existing NB–DP frequencies. The information is used by FCC staff to determine whether an application for a NB–DP frequency should be granted. If the collection of this information was not conducted, the FCC would have no information available regarding the use of NB–DP frequencies by public coast stations, and, therefore would be handicapped in determining whether the frequencies were being hoarded and not put into use by public coast stations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–18678 Filed 8–4–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1000–DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: July 30, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

The townships of Tecumseh, Soldier, Menoken, Silver Lake, Rossville, and Dover located in Shawnee County for Individual Assistance.

The counties of Lincoln and Marshall for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–18685 Filed 8–4–93; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1000–DR]

Kansas: Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas, (FEMA–1000–DR), dated July 22, 1993, and related determinations.

EFFECTIVE DATE: July 29, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Kansas dated July 22, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1993:

The counties of Osborne and Wabaunsee for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 93–18684 Filed 8–4–93; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

[Docket No. 93–16]

Deppe Linie GMBH & Co. v. Arrigo Mining & Milling Corp. and T.A. Smith & Assoc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Deppe Linie GmbH & Co. ("Complainant") against Arrigo Mining & Milling Corporation and T.A. Smith & Associates ("Respondents") was served July 30, 1993. Complainant alleges that Respondents engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay freight and other lawful tariff charges, after shipping misdescribed, environmentally dangerous cargo from Houston to Rotterdam on a freight collect basis to a consignee and notify party (both of whom refused to take delivery of the cargo or pay freight charges on the grounds that they never ordered the shipment), and abandoning the cargo, thereby causing considerable expense to Complainant, including the expense of having the cargo destroyed in accordance with European environmental regulations.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the Presiding Officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by August 1, 1994, and the final decision of the Commission shall be issued by November 29, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 93–18675 Filed 8–4–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

[Dkt. C–3446]

Griffin Bacal, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New York advertising agency from misrepresenting any performance characteristic of any toy it promotes. In addition, in any demonstrations or tests used in the advertising for the toys, the respondent is prohibited from knowingly misrepresenting that the demonstration or test proves or confirms any material feature of the toy.

DATES: Complaint and Order issued July 2, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Rosemary Rosso or Toby Levin, FTC/S–4002, 6th St. & Pa. Ave. NW., Washington, DC 20580. (202) 326–2174 or 326–3156.

SUPPLEMENTARY INFORMATION: On Thursday, April 29, 1993, there was published in the **Federal Register**, 58 FR 25989, a proposed consent agreement with analysis In the Matter of Griffin Bacal, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 93–18744 Filed 8–4–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. C–3447]

Hasbro, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a Rhode Island-based toy corporation from misrepresenting any performance characteristic of any toy it manufactures or promotes. In addition, in any demonstrations or tests used in the packaging or advertising for the toys, the respondent is prohibited from falsely representing that the demonstration or test proves or confirms any material feature of the toy.

DATES: Complaint and Order issued July 2, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Rosemary Rosso or Toby Levin, FTC/S–4002, 6th St. & PA. Ave., NW., Washington DC 20580. (202) 326–2174 or 326–3156.

SUPPLEMENTARY INFORMATION: On Thursday, April 29, 1993, there was published in the **Federal Register**, 58 FR 25992, a proposed consent agreement with analysis In the Matter of Hasbro, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 93–18741 Filed 8–4–93; 8:45 am]

BILLING CODE 6750–01–M

[Dkt C–3444]

The Right Start, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a California-based mail-order company, and its president, from making false and unsubstantiated advertising claims regarding the "Air Purifier," a small electric air filter, and the "Travel Tray," a foam board tray that is used to hold children's snacks and toys when they are riding in an automobile. The respondents are prohibited from representing that the use of any air filtering device can reduce the risk, alleviate, prevent, or cure respiratory problems, unless the representations are substantiated by competent and reliable scientific evidence. In addition, the company is prohibited from representing that any product it sells has been approved or endorsed, unless the endorsement is supported by an objective test conducted by qualified persons.

DATES: Complaint and Order issued June 30, 1993.[1]

FOR FURTHER INFORMATION CONTACT:

C. Steven Baker, Chicago Regional Office, Federal Trade Commission, 55 East Monroe Street, suite 1437, Chicago, IL. 60603. (312) 353–8156.

SUPPLEMENTARY INFORMATION: On Tuesday, April 20, 1993, there was published in the **Federal Register**, 58 FR 21305, a proposed consent agreement with analysis In the Matter of The Right Start, Inc., et. al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 93–18742 Filed 8–4–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washingt n, DC 20580.

[Dkt. C–3448]

United Weight Control Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New York-based marketer of very-low-calorie diet programs (rapid weight loss, modified fasting diets of 800 or fewer calories per day) from making false or unsubstantiated claims about health risks, tests, effectiveness compared to any other diet program, weight loss, or weight loss maintenance; and requires certain disclosures in conjunction with safety and weight loss maintenance claims.

DATES: Complaint and Order issued July 2, 1993.[1]

FOR FURTHER INFORMATION CONTACT:

Michael J. Bloom, New York Regional Office, Federal Trade Commission, 150 William Street, suite 1300, New York, New York 10038, (212) 264–1207.

SUPPLEMENTARY INFORMATION: On Friday, April 9, 1993, there was published in the **Federal Register**, 58 FR 18406, a proposed consent agreement with analysis In the Matter of United Weight Control Corp., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Donald S. Clark,

Secretary.

[FR Doc. 93–18743 Filed 8–4–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and statements by Commissioners Azcuenaga and Owen are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

[Dkt. C–3445]

YKK (U.S.A.) Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New Jersey-based manufacturer and seller of zippers from requesting, suggesting, or advocating that any competitor: Raise, fix or stabilize prices or price levels; cease providing free equipment or other discounts; cease providing any services or products or engage in any other pricing action. In addition, the respondent is prohibited from entering into, attempting to enter into, adhering to, or maintaining any combination, conspiracy, agreement, plan or program with any competitor to fix, raise, establish, maintain or stabilize prices or service levels.

DATES: Complaint and Order issued July 1, 1993.[1]

FOR FURTHER INFORMATION CONTACT:

Richard Dagen, FTC/S–2627, Washington, DC 20580. (202) 326–2662.

SUPPLEMENTARY INFORMATION: On Wednesday, April 14, 1993, there was published in the **Federal Register**, 58 FR 19454, a proposed consent agreement with analysis In the Matter of YKK (U.S.A.) Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,

Secretary.

[FR Doc. 93–18740 Filed 8–4–93; 8:45 am]

BILLING CODE 6750–01–M

[1] Copies of the Complaint, the Decision and Order, and statements by Commissioners Azcuenaga, Owen, Starek, and Yao are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

GENERAL SERVICES ADMINISTRATION

Proposed Border Station, Imperial County, CA; Final Environmental Impact Statement

The United States General Services Administration (GSA) hereby gives notice that a Final Environmental Impact Statement (FEIS) has been prepared in accordance with the National Environmental Policy Act (NEPA) and the Regulations issued by the Council on Environmental Quality, November 29, 1978, for a proposed new Port of Entry (POE) located in Imperial County, California, approximately six miles east of the city of Calexico.

The purpose of this action is to provide a throughly modern and highly efficient border crossing facility in the Calexico/Imperial area, in order to accommodate growth in transboundary traffic and better meet the needs of the Federal Inspection Service agencies, the commercial transporters, and the traveling public between the United States and Mexico. The action is taken to relieve major congestion at the existing downtown Calexico facility, which will continue to serve as an automobile and pedestrian port of entry, and to significantly expand the capacity for processing commercial traffic.

Written comments on the alternatives, impacts and mitigation measures should be sent no later than Tuesday, August 31 to the GSA EIS contractor, Environmental Science Associates, Inc. at 4221 Wilshire Boulevard, suite 480, Los Angeles, California 90010–3512.

For further information, or if you would like to request a copy of the Final EIS, please contact Mr. Alan Campbell, U.S. General Services Administration, Public Buildings Service, Planning Staff (9PL), 525 Market Street, San Francisco, CA 94105. Telephone number (415) 744–5252.

Dated: July 29, 1993.

Donald R. Jayne,

Acting Regional Administrator (9A).

[FR Doc. 93–18688 Filed 8–4–93; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 355]

Cooperative Agreement for Conducting Fatality Surveillance and Field Investigations at the State Level Using the NIOSH Fatality Assessment and Control Evaluation Model Availability of Funds for Fiscal Year 1993

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1993 funds for cooperative agreements to build state capacity for conducting traumatic occupational fatality surveillance, investigation, and intervention activities through the National Institute for Occupational Safety and Health's (NIOSH) Fatality Assessment and Control Evaluation (FACE) model. The cooperative agreements will significantly strengthen the occupational public health infrastructure by integrating resources for occupational safety and health research and public health prevention programs at the state and local levels. The goal of the project is for each state to measurably reduce traumatic occupational fatalities.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority areas of Occupational Safety and Health and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION**).

Authority

This program is authorized under section 20(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669(a)) and sections 301 (42 U.S.C. 241) and 317 (42 U.S.C. 247(b)) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are state Departments of Health, Departments of Labor, Departments of Industry, and similar organizations located within any state or territory of the United States, or consortia of smaller states arranged in a logical or regional cluster. Ineligible applicants include those agencies that conduct occupational fatality investigations and, in doing so, are legally responsible for the determination of compliance with occupational safety and health standards. Awards will be limited to those organizations which can exercise public health authority for intervention into occupational safety and health problems. Only one application per state will be accepted under this cooperative agreement. Stronger consideration will be given to those states or territories submitting applications demonstrating prevention coordination among other relevant state agencies. Those states currently participating in the project are ineligible for consideration.

Availability of Funds

Approximately $180,000 will be available in FY 1993 to fund up to three awards. It is expected that the average award will be $60,000 ranging from $45,000 to $65,000. It is expected that the awards will begin on or about September 30, 1993, and will be made for a 12-month budget period within a project period from 3 to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

In selected cases, when consistent with recipient needs and in the best interest of a particular project, CDC/NIOSH may assign Federal staff to provide technical assistance to the recipient which requests such an assignment. Payment of salary would be the responsibility of CDC/NIOSH and would not be subtracted from the award.

Purpose

The purpose of this cooperative agreement is to expand the FACE project into more states so that capabilities for the prevention of traumatic occupational fatalities can be more widely developed across the nation. A three-year pilot study with three states demonstrated that occupational fatality surveillance and investigative capability can be successfully implemented at the state level. By stimulating phased development and growth at the state level, this program will permit the states following the FACE model to structure their surveillance, investigation, and intervention activities to more efficiently capture input from other investigating state agencies and departments.

Additionally, states will be encouraged to target on-site investigations of specific occupational fatalities based on specific state priority

areas to further enhance research and intervention efforts. The specific objectives for this cooperative agreement are as follows:

1. Identify and report basic epidemiologic data on all traumatic occupational fatalities occurring within the state.
2. Conduct on-site investigations of selected traumatic occupational fatalities using the NIOSH FACE investigative model.
3. Identify potential risk factors for selected types of traumatic occupational fatalities which will be useful for targeting intervention strategies and prioritizing research efforts.
4. Develop and disseminate preventive recommendations to reduce the risk of fatal occupational injuries within the state.
5. Develop and implement intervention strategies and projects for reducing state incidence of traumatic occupational injuries and fatalities.
6. Develop and implement the statistical capability to show that the state's intervention strategies have measurably reduced traumatic occupational fatalities.

Program Requirements

The cooperative agreement recipient shall be responsible for conducting the activities under A., below, and CDC/NIOSH shall be responsible for conducting the activities under B., below.

A. Recipient Activities

1. Develop a comprehensive, multiple-source, state-level surveillance system for prompt identification and electronic reporting of epidemiologic data on all traumatic occupational fatalities occurring in the state.

2. Conduct in-depth, on-site investigations of occupational fatalities using the following selected injury categories: (a) Fall-related injuries, (b) electrocutions, (c) exposure to confined spaces, (d) machine-related injuries, and (e) injuries in which workers have been struck by machines, equipment, etc. States may also request to add or substitute on-site investigations of fatal events that are of a type which are a higher state priority.

3. Develop and submit to CDC/NIOSH a summary report of each on-site fatality investigation which describes the fatal incident and includes recommendations for prevention using a report format provided by CDC/NIOSH. The final report should be submitted to CDC/NIOSH in the specified format and (state-provided) word processing software.

4. Conduct epidemiologic analysis of fatal incident circumstances to assist in developing recommendations for intervention and prevention.

5. Disseminate the results of FACE investigations, epidemiologic analysis and other information collected under this program to employers, workers, and other appropriate constituents within the state.

6. Encourage the implementation of interventions to reduce traumatic occupational fatalities and utilize a variety of accepted methods to evaluate the effectiveness of interventions.

7. Attend and participate in selected training activities and the annual FACE Scientific Conference, all to be held in Morgantown, West Virginia.

8. Prepare an annual summary report which describes the activities and progress made by the state toward meeting the CDC/NIOSH objectives for the state FACE program.

B. CDC/NIOSH Activities

1. Provide technical assistance in establishing the state-level surveillance system.

2. Provide training for conducting on-site investigations and provide on-site technical assistance to state personnel conducting fatality investigations, as appropriate.

3. Provide funds to purchase one IBM compatible, personal computer (minimum 386-level), printer, telecommunications equipment, and surveillance (EPI INFO) software.

4. Provide the methods for, and technical assistance in, identifying and evaluating effective intervention strategies.

5. Convene an annual FACE Scientific Conference in Morgantown, West Virginia.

6. Prepare and disseminate an annual report which summarizes the state FACE program to all participating states.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Relevance of the proposal to the scope and objectives outlined in the program announcement. (10%)
2. Overall quality of the state proposal for identifying, recording, and investigating traumatic occupational fatalities within the state using the NIOSH FACE model. (25%)
3. Completeness of the state's plan for implementing and evaluating interventions to reduce traumatic occupational fatalities. (The estimated number of fatality investigations and the proportion these fatalities represent of the total fatalities expected, and the intervention methods planned must be specified for the budget period.) (25%)
4. Qualifications and time commitment of the proposed staff, type and quality of facilities and equipment, and administrative support available for the state FACE program. (15%)
5. Demonstration of the need for developing and implementing state-level occupational surveillance, field investigation and intervention programs based on identification of high risk industries and occupations within the state. (15%)
6. Demonstration of collaborative relationships among various relevant state or territorial agencies in addressing the problem of traumatic occupational fatality surveillance, investigation and intervention. (10%)
7. The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds. (Not Scored)

Executive Order 12372 Review

Applications are subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for state and local government review of proposed Federal assistance applications. Applicants (other than federally-recognized Indian tribal governments) should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected state. A current list of SPOCs is included in the application kit. If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, no later than 30 days after the application deadline date. (A waiver for the 60 day requirement has been requested.) The granting agency does not guarantee to "accommodate or explain" state process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance (CFDA) for this program is 93.283.

Other Requirements

Paperwork Reduction Act

Projects funded through a cooperative agreement that involve the collection of information from 10 or more individuals will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The program announcement and application kit were sent to all eligible applicants in June 1993. The application submission deadline for this announcement is August 18, 1993.

Where To Obtain Additional Information

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 355. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), Mailstop E–13, room 300, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305, telephone (404) 842–6630. Programmatic technical assistance may be obtained from Louis D. Smith, State FACE Project Officer, Trauma Investigations Section, Surveillance and Field Investigations Branch, NIOSH/Division of Safety Research, Mailstop 180P, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505–2888, telephone (304) 284–5849, or Timothy J. Pizatella, Chief, Surveillance and Field Investigations Branch, NIOSH/Division of Safety. Please refer to Announcement Number 355 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) referenced in the Introduction through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: July 29, 1993.

Richard A. Lemen,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 93–18730 Filed 8–4–93; 8:45 am]

BILLING CODE 4160–19–P

Food and Drug Administration

Request for Nominations for Members on Public Advisory Committees; National Mammography Quality Assurance Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for not fewer than 13, or more than 19 members to serve on the National Mammography Quality Assurance Advisory Committee in FDA's Center for Devices and Radiological Health. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule announcing the establishment of this committee.

FDA has special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or physically handicapped candidates.

DATES: Nominations should be received on or before September 7, 1993.

ADDRESSES: All nominations for membership, except for the consumer-nominated member, should be sent to Melvyn Greberman (address below).

All nominations for the consumer-nominated member should be sent to Phyllis Weller (address below).

FOR FURTHER INFORMATION CONTACT: Regarding all nominations except for the consumer-nominated member: Melvyn Greberman, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1901 Chapman Ave., Rockville, MD 20857, 301–443–2436.

Regarding all nominations for the consumer-nominated member: Phyllis Weller, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for not fewer than 13, or more than 19 members to serve on the committee.

Functions

The function of the committee is to advise the Food and Drug Administration on: (1) Developing appropriate quality standards and regulations for mammography facilities; (2) developing appropriate standards and regulations for bodies accrediting mammography facilities under this program; (3) developing regulations with respect to sanctions; (4) developing procedures for monitoring compliance with standards; (5) establishing a mechanism to investigate consumer complaints; and (6) reporting new developments concerning breast imaging which should be considered in the oversight of mammography facilities.

The committee will also determine whether there exists a shortage of mammography facilities in rural and health professional shortage areas and the effects of personnel or other requirements on access to the services of such facilities in such areas, whether there will exist a sufficient number of medical physicists after October 1, 1999, and the costs and benefits of compliance with these requirements.

Criteria for Members

Persons nominated for membership should be physicians, practitioners, and other health professionals, whose clinical practice, research specialization, or professional expertise include a significant focus on mammography. At least four of the individuals nominated for membership should be from among national breast cancer or consumer health organizations with expertise in mammography and at least two must be practicing physicians who provide mammography services. The Committee may include one technically qualified member, selected by the Commissioner or his designee, who is identified with consumer interests. Prior experience on Federal public advisory committees in the same or similar subject areas will also be considered relevant professional expertise.

The Senate Committee Report on the Mammography Quality Standards Act dated October 1, 1992, (S. R. 102–448) contains specific recommendations for organizations that should be considered for representation on the committee. The Senate Committee has urged the nomination of members from among the following groups to the advisory committee: the Breast Cancer Coalition, Susan G. Komen Foundation, American Cancer Society, American College of Radiology, Association of State and Territorial Health Officials, Conference

of Radiation Control Program Directors, American Society of Radiologic Technologists, Public Citizen, American Public Health Association, and the American College of Obstetricians and Gynecologists.

Members shall be invited to serve for overlapping 4-year terms except for the first members appointed: of the first 19 members appointed, 6 shall serve for a term of 2 years, 6 for a term of 3 years, and 7 for a term of 4 years, as designated at the time of appointment. If fewer than 19 members are initially appointed, fewer members may be appointed for terms of these lengths, pro rata. Terms of more than 2 years are contingent upon the renewal of the Committee by appropriate congressional action prior to the Committee's expiration. A member may serve after the expiration of the member's term until a successor has taken office.

Nomination Procedures

Interested persons may nominate one or more qualified persons for membership on the advisory committee. Nominations shall state that the nominee is willing to serve as a member of the advisory committee and appears to have no conflict of interest that would preclude committee membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

Selection of members representing consumer interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for screening, interviewing, and recommending candidates for the agency's selection. Consumer candidates, like all other candidates for membership on the committee, should possess appropriate qualifications to understand and contribute to the committee's work.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: July 28, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–18631 Filed 8–4–93; 8:45 am]

BILLING CODE 4160–01–F

Office of Inspector General

Program Exclusions; March 1993 through June 1993

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the period March through June 1993, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party.

Subject city, state	Effective date
Program-Related Convictions	
A & A LIVERY, INC., METHUEN, MA	04/06/93
ABBAS, MAHMOUD F., ELLICOTT CITY, MD	05/27/93
ADVANCED HOME HEALTH CARE, PITTSTON, PA	05/27/93
AKHTAR, SALEEM, OZONE PARK, NY	05/09/93
ANDREWS, LAURICE BARTON, DEFUNIAK SPRNGS, FL	04/12/93
ARCHIBEQUE, MAX E., DENVER, CO	05/16/93
ARNOLD, JOAN, YONKERS, NY	07/11/93
ARNOLD, NOEL EMORY, TEXARKANA, TX	06/02/93
ASTIAZARAN, HERMAN JR., SAN DIEGO, CA	04/12/93
ATKINS, GEORGE M., III, W SPRINGFIELD, MA	04/06/93
AZIZ, SAYEED, WILMINGTON, DE	04/12/93
BAHADUE, LORI STAMPLER, MIAMI, FL	06/01/93
BAHADUE, GEORGE P., MIAMI, FL	06/01/93
BAUER, THOMAS G., LINCOLN, NE	05/16/93
BERGMANN, RONDA, BAYSIDE, NY	07/11/93
BERNSTEIN, BRUCE, OYSTER BAY COVE, NY	07/11/93
BLOOR, ELIZABETH G., RACINE, WI	07/08/93
BUKHARI, AHMED, BROOKLYN, NY	05/09/93
C E SMITH DRUG STORE, W SPRINGFIELD, MA	04/06/93
CALVO, CARLOS ALBERTO, HERMOSA BEACH, CA	07/01/93
CARTER, L. J., LITTLE ROCK, AR	04/12/93
CARTER, MAYLENE, LITTLE ROCK, AR	04/12/93
CLARK, BILLIE JEAN, TULSA, OK	05/13/93
COFFMAN, ROBERT BEN, NEW ORLEANS, LA	05/13/93
COHEN, JACK J., BROOKLYN, NY	05/27/93
COOPER, FREDDY JOHN, LUBBOCK, TX	07/05/93
COUKOS, LUKE J., MIDLOTHIAN, VA	05/11/93
CREATIVE CARE, INC., OYSTER BAY COVE, NY	07/11/93
DANIEL WALLACH, M.D., P.A., OWINGS MILLS, MD	05/11/93
DELGRIPPO, GERALD A., LOCK HAVEN, PA	04/12/93
DONOVAN, VERONICA, HUGHESTOWN, PA	05/27/93
DUNLAP, MICHAEL J., VISTA, CA	06/02/93
EDWARDS, QUINTON, DECATUR, GA	07/04/93

Subject city, state	Effective date
EDWARDS, ARTHUR J., ASHTON, MD	05/27/93
FAROOQUI, MOHAMMED, JAMAICA, NY	05/27/93
FIEDLER, KURT R., GLEN BURNIE, MD	05/11/93
FLEMING, JAMES M., HOUSTON, TX	06/02/93
FORMAN, ROBERT, WOODBURY, NY	07/11/93
FORSYTHE, MARY ELIZABETH, DALLAS, TX	04/12/93
FREEDENBERG, GERALD, OWINGS MILLS, MD	05/27/93
GEMME, HOLLY, STATEN ISLAND, NY	07/11/93
GILL, JAMES N., SIGNAL MTN, TN	07/04/93
GLADSTONE, SCOTT V., LAS VEGAS, NV	04/12/93
GREENBERG, PAULA, BROOKLYN, NY	05/09/93
GREER, JOHN JR., LEBANON, TN	04/12/93
GREGORY, TERI L., ROCKWELL CITY, IA	05/30/93
GUICE, JACQUELINE L., EL CERRITO, CA	07/01/93
HENDERSON, JOSEPH M., WASHINGTON, DC	07/14/93
HENRY, JAMES, MURFREESBORO, TN	07/04/93
HENRY, TOM, LEBANON, TN	07/04/93
HERRERA, ANIBAL P., MIDDLETOWN, NY	07/11/93
HILL, WANDA JOY, SPARTA, GA	05/11/93
HINES, STEPHEN, ELLENWOOD, GA	04/12/93
HOGANSON, DAVID L., VERMILLION, SD	07/14/93
HOLLAND, WILLIS, ATLANTA, GA	05/11/93
HUGGAN, GERALD F., METHUEN, MA	04/06/93
HUNT, MICHAEL D., GAITHERSBURG, MD	07/08/93
HUNTER, JANE M., WATERFORD, NY	07/11/93
INMAN, BRADLEY D., NEW GALILEE, PA	05/11/93
INMAN MEDICAL REHAB SUPPLY INC., NEW CASTLE, PA	05/27/93
J'S HOMECARE MEDICAL SERVICES, LITTLE ROCK, AR	04/12/93
JAME, DAMION, FEDERAL WAY, WA	05/16/93
JASKIEWICZ, RICHARD F., TUCSON, AZ	04/12/93
JAVID, MOHAMMED A., JERSEY CITY, NJ	07/11/93
KENNEDY, DONALD R., GRAND BLANC, MI	04/12/93
KILLINGSWORTH, CLAUDIA CAROL, CORINTH, TX	04/12/93
KIMBALL, ELEANOR A., ARLINGTON, VA	07/14/93
KLEIN, PAUL G., WAYNE, NY	04/06/93
KOLBOVSKY, FELIX, DULUTH, MN	05/16/93
MARK S. COLBURN, D.D.S., P.C., WATERLOO, IA	07/08/93
MARTIN, RODNEY, LEVITTOWN, PA	05/27/93
MARTIN, DONNA, LEVITTOWN, PA	05/27/93
MARTINEZ, RENE, MIAMI, FL	05/11/93
MCCOLLUM, LINDA A., RONKONKOMA, NY	07/11/93
MCINTOSH RUTMAN, SUSAN ELAINE, SAN DIEGO, CA	04/12/93
MELTZER, HAROLD S., PITTSFORD, NY	05/27/93
METWALLI, MOHAMED, PITTSBURGH, PA	04/12/93
MIDDLETON, WILLIAM F., GAITHERSBURG, MD	05/27/93
MILLER, DAN, SPARTA, TN	07/04/93
MILLS, RONALD J., GAITHERSBURG, MD	07/14/93
MOSS, BRIAN, GAITHERSBURG, MD	07/14/93
MURTUZA, ATIYA, WEST BLOOMFIELD, MI	04/12/93
NELSON, MARK J., YONKERS, NY	07/11/93
PERVEZ, MUJAHID, BROOKVILLE, NY	04/06/93
PINANO, WILFREDO, CHULA VISTA, CA	05/16/93
PLYMALE, BILLIE J., FORT SMITH, AR	06/02/93
POIRIER, JACQUELINE, AUBURN, ME	07/14/93
PRIOLO, VINCENT, WELLINGTON, FL	05/09/93
RABIE, FOUAD M., EL DORADO, AR	05/13/93
REED, DAVID E., MARRERO, LA	05/13/93
REYES DRUGS, LTD., BAYSIDE, NY	07/11/93
ROBERTSON, WILLIAM C., FENTON, MI	07/08/93
RPH CONSULTING, INC., DALLAS, TX	04/12/93
RUBIN, WARREN A., CAMDEN, NJ	05/27/93
RUBIO, GASTON, MIAMI, FL	07/04/93
RUPERT, SANDRA, OSWEGO, NY	05/27/93
SCHERL, ROBERT, BAYSIDE, NY	07/11/93
SEIGEL, SHELDON G., BROOKLYN, NY	04/06/93
SEIGEL, OTTO J., BROOKLYN, NY	04/06/93
SIEGEL, BERTON, YUMA, AZ	04/12/93
SILBERSPITZ, ARTHUR, NORTH WOODMERE, NY	05/09/93
SILVERMAN, IRVING, BRIDGETON, NJ	05/27/93
SINGER, JEFFREY, LONG BEACH, NY	05/27/93
SOKOL, ABRAHAM, SCARSDALE, NY	07/11/93
SPARKS, JOHN E., GREELEY, CO	06/02/93
SPIERER, FREDRIK ROBERT, HENDERSON, NV	04/12/93
STACHER, ERIC D., WAYNESBURG, PA	04/12/93

Subject city, state	Effective date
STEWART, JOHN R., HOLLADAY, UT	04/12/93
STONER, ALFRED W. JR., GAITHERSBURG, MD	07/14/93
TAGULAO, CORAZON, SAN DIEGO, CA	07/01/93
THATCHER, REMEDIOS, SAN DIEGO, CA	07/01/93
THAUNG, PHONE BA, DARNESTOWN, MD	05/27/93
TRAUTMANN, FLOYD D., SPARTA, WI	05/30/93
TUTOR, JESSE BORRELL, MERIDIAN, MS	05/11/93
VIZCAY, SARA, TAMPA, FL	04/12/93
WARDEN, LARRY D., SHAKOPEE, MN	07/08/93
WASCHKO, GEORGE M., HAZELTON, PA	07/08/93
WAX, SETH MARTIN, MERRICK, NY	05/09/93
WHITNEY, ROBERT C., FT LAUDERDALE, FL	06/02/93
WOODLEY, JOHN H., SHERIDAN, OR	06/02/93
YAKSCOE, JAMES, LANCASTER, PA	07/08/93
YOUNG, WILLIE E., PHILADELPHIA, PA	07/14/93
PATIENT ABUSE/NEGLECT CONVICTIONS	
ADAMS, TOMMIE DELL, ALEXANDRIA, LA	07/05/93
BEST, MARIE, OSSINING, NY	04/06/93
BURTON, JERROD M., TALLAHASSEE, FL	04/12/93
CAIN, RICO, BROOKHAVEN, MS	04/12/93
CAIN, CYNTHIA, NEW ROADS, LA	05/13/93
CARTER, PAMELA, DETROIT, MI	05/13/93
CHAVEZ, YOLANDA MEDINA, DAYTONA BEACH, FL	07/04/93
CUSHIONBERRY, VERONICA, NEW ROADS, LA	05/13/93
DESISSO, RALPH, BRONX, NY	05/27/93
DURMAN, CATHY ANN, MANTECA, CA	04/12/93
FLORES, PEDRO LEON, WHEAT RIDGE, CO	07/14/93
FLOWERS, ESSIE, DETROIT, MI	05/30/93
FORERO, HUMBERTO J., WHITE PLAINS, NY	07/11/93
GRIFFIN, SHEILA, SENECA FALLS, NY	05/09/93
HESS, MILTON W., SUN VALLEY, CA	04/12/93
HILLIARD, SILAS, BALTIMORE, MD	05/27/93
HUBBARD, JAMES L., BATON ROUGE, LA	07/05/93
JANOSIK, JOHN J., PORT ORCHARD, WA	06/02/93
JOHNSON, ETHEYN, DETROIT, MI	07/08/93
JOHNSON, SHERMAN B., OGDEN, UT	04/12/93
KORTE, THERESE ANN, PALMER, IA	05/30/93
MABON, GAYLA S., DENVER, CO	07/14/93
MACK, DOLORES E., LITTLETON, CO	04/12/93
MARTIN, DANIEL, DETROIT, MI	07/08/93
NEAL, VEORIA J., NATCHITOCHES, LA	07/05/93
OGUTU, MILLICENT A., CLAYMONT, DE	07/08/93
PARIGROS, JOHN, WAUSEON, OH	07/08/93
POWELL, EMMA, FLINT, MI	04/12/93
PRUITT, ALBERT LEE, TENNESSEE COLONY, TX	07/05/93
RAHMATI, BEHNAM, LAGUNA HILLS, CA	04/12/93
RASHAD, KHALEL J., BUFFALO, NY	05/27/93
RUSSELL, ELAINE, MIDDLETON, DE	07/08/93
SADLER, KATHERINE, CONWAY, AR	07/05/93
SCHOSSOW, JODI L., POCAHONTAS, IA	05/30/93
SINGLETARY, MITCHELL SETH, BALTIMORE, MD	05/27/93
STEELE, FREDERICK, STARKE, FL	04/12/93
STEWART, ERIC, VACHERIE, LA	07/05/93
STUCKY, BETTY, JACKSON, MS	04/12/93
SUTTON, MARION, SANFORD, MI	07/08/93
VALLE, ERNEST, ROUND ROCK, TX	07/05/93
VAUGHN, MICHAEL, WESSON, MS	04/12/93
VEASEY, FRANKLIN T., BEAR, DE	05/27/93
WALTERMANN, HUGH E., PHOENIX, AZ	04/12/93
WILLIAMS, ANN, ROCHESTER, NY	05/27/93
WILSON, JAMES J., MT PLEASANT, IA	07/08/93
CONVICTION FOR HEALTH CARE FRAUD	
COLE, ROSEMARY A., CHINA, ME	04/06/93
HOWELLS, ROBERT C., LOCKPORT, NY	05/09/93
JACKSON, NELCY B., TUCSON, AZ	04/12/93
LAROUE, DAWN M., WEST WARWICK, RI	06/02/93
LONG, IDA I., HILLIARD, FL	07/04/93
MICHAUD, DEBORAH L., JAY, ME	05/16/93
MORIN, SHARON, BANGOR, ME	04/06/93

Subject city, state	Effective date
PACK, CARL DAVID, ASHLAND, KY	07/08/93
RENICK, JOHN T., PANAMA CITY, FL	06/01/93
RENICK, JANE LEE WILLS, PANAMA CITY, FL	06/01/93
CONTROLLED SUBSTANCE CONVICTIONS	
CLARK, FRANK, BUCHANAN, MI	07/08/93
DIAS, P KITSHEN KALYAN, ROSLYN, NY	07/11/93
DICKSON, DANIEL CLARK, NASHVILLE, TN	06/02/93
EMERSON, WILLIAM KENNETH, KINGSPORT, TN	04/12/93
ESPER, ROGER A., ERIE, PA	05/11/93
FOSTER, WARREN JEROME, MOBILE, AL	04/12/93
GOLLE, RAYMOND M., PITTSBURGH, PA	04/12/93
HEBEKA, GEORGE, BALTIMORE, MD	07/08/93
JOHNSON, CECIL W. JR., PHILADELPHIA, PA	05/27/93
LANGFORD, EDWARD A., LORETTO, PA	05/27/93
LIPTON, JAMES SPENCER, TYNDALL, FL	06/01/93
MARLOW, ROGER A., DU QUOIN, IL	04/12/93
NOONEY, JAY CHRISTOPHER, YANKTON, SD	06/02/93
RAD, BEN, FRESNO, CA	04/12/93
SARMIENTO, REMEDIOS MORALES R., COLUMBIA, SC	05/11/93
STEIN, DANIEL, PHILADELPHIA, PA	05/27/93
LICENSE REVOCATION/SUSPENSION	
BOWEN, JAMES D., PORTLAND, OR	06/30/93
BRADBARD, STEVEN L., POTOMAC, MD	07/14/93
DAVENPORT, ANTHONY J. JR., STAMFORD, CT	04/06/93
FALK, WILLY, PROVIDENCE, RI	06/02/93
LARSON, LINDA, GLADSTONE, MI	05/13/93
LOCICERO, JOHN MICHAEL, SALAMANCA, NY	07/11/93
MILLER, RICHARD F., WILLIAMSVILLE, NY	04/06/93
MORTON, CHARLES F. JR., BALTIMORE, MD	04/12/93
OLOWOSUKO, EDMUNDS, BROOKLYN, NY	05/27/93
POGLINCO, JOHN, PELHAM MANOR, NY	07/11/93
POPESCU, PATRICK W., PUTNAM, CT	06/02/93
RAMASESHU, MADHUGIRI, WEST ROXBURY, MA	05/16/93
ROWAN, EILEEN F., GILBERTSVILLE, PA	07/08/93
SAFRAN, PERRY, ENFIELD, CT	07/14/93
SMITH, JOSEPH H., BETHESDA, MD	05/16/93
WHITE, SANDRA E., BALTIMORE, MD	04/12/93
WIESMAN, ALBERT, ROCKVILLE, MD	04/12/93
ENTITIES OWNED/CONTROLLED BY CONVICTED	
ALAMO CHIROPRACTIC CENTER, LINCOLN, NE	07/14/93
ARGUS MEDICAL SUPPLIES, LEBANON, TN	07/04/93
EL DORADO WOMEN'S CLINIC, P. A., EL DORADO, AR	05/13/93
EXTENDED CARE LTD., TUCSON, AZ	05/06/93
GERIATRICS LTD., TUCSON, AZ	05/06/93
HIS MAJESTY'S CARE, OTTER LAKE, MI	04/12/93
LONG BEACH AUDIOLOGICAL, LONG BEACH, NY	05/27/93
DEFAULT ON HEAL LOAN	
ABLE, ANTOINNE, SOUTHFIELD, MI	05/23/93
ANDERS, JEFF P., TIERRA VERDE, FL	07/14/93
ANDERSON, DENISE, DETROIT, MI	05/23/93
ANDERSON, GWENDOLYN, PHILADELPHIA, PA	07/18/93
ARISHIN, MICHAEL W., LOS GATOS, CA	06/12/93
ASHDOWN, THOMAS P., WARREN, OH	06/09/93
AZAPIRA, MOHAMMAD H., CHICAGO, IL	05/23/93
BAMMER, PHILLIP L., LOUISVILLE, CO	05/26/93
BATES, LEO C., WILBERFORCE, OH	06/09/93
BECKER, DONNA R., GLENDALE CA	06/12/93
BENNETT, ELIZABETH C., TEANECK, NJ	07/21/93
BENSON, FRED JR., SILVER SPRING, MD	06/06/93
BERK, RICHARD I., ANN ARBOR, MI	05/23/93
BETHEA-OWENS, CARROLL R., IRVING, TX	06/12/93
BLAKEMAN, D. NIKIMA L., WALTHAM, MA	07/24/93
BRADFORD, JOYCE D., SOUTHFIELD, MI	07/18/93
BROADUS, REGINALD, FORT WORTH, TX	05/23/93
BROOKS, MICHENA, JERSEY CITY, NJ	05/19/93

Subject city, state	Effective date
BROWN, DARREN W., DORAVILLE, GA	07/14/93
BROWN, HARRY E., KANSAS CITY, MO	07/18/93
BROWN, LORIN J., ALAHO, OR	07/11/93
BRUNSON, GREGORY H., DEL MAR, CA	07/11/93
BUNDRICK, DOYLE D., EDMOND, OK	05/23/93
BURGESS, DEBORAH, SALISBURY, MD	06/06/93
CAMPANALE, PAUL R., JACKSONVILLE, FL	06/11/93
CARLSON, JAMES E., ROCKLIN, CA	06/12/93
CATHCART, RICHARD A., BARNEGAT, NJ	05/19/93
CHESTANG, LEO A., CLEVELAND, OH	06/09/93
CHRISTIANSON, ROBBIN K., CHERRY VALLEY, CA	06/12/93
CHRISTOPOULOS, STEVE, ST PETERSBURG, FL	06/11/93
COLBY, SUSAN E., FRISCO, CO	05/26/93
COLEMAN, LARRY K., LOS ANGELES, CA	06/12/93
COLLINS, WILLIAM S., ATLANTA, GA D05/21/93.	
COMER, JULIA R., DECATUR, GA	05/21/93
CONERLY, REX A., GREENBELT, MD	06/06/93
CUMMINS, DAVID F., GAITHERSBURG, MD	07/18/93
DANCZAK, MICHAEL E., POTTSTOWN, PA	05/21/93
DARNELL, JOHN E., MONROE, GA	07/14/93
DAVIS, HELEN N., NASHVILLE, TN	06/12/93
DAY, DONALD, LOUISVILLE, CO	06/09/93
DIEHL, JAMES D., CLEARWATER, FL	07/15/93
DISANTO, VINSON M., PHILADELPHIA, PA	05/21/93
DONAVON, GREGORY, PORTLAND, OR	05/26/93
DREWECK, DANIEL NORMAN, BOWLING GREEN, KY	05/21/93
DUCK, EVANDER, ST PETERSBURG, FL	06/11/93
DUGGER, LISA, KANSAS CITY, MO	06/09/93
DURRANT, ANN M., NEWBERG, OR	05/26/93
ECHOFF, JUNE C., HOUSTON, TX	06/12/93
ESSEY, ROBERT, LOS ANGELES, CA	05/26/93
FALOWSKI, FRANCES, FT LAUDERDALE, FL	06/11/93
FINKE, JANICE L., SAN LEANDRO, CA	05/26/93
FISCHRE, ROBERT L., III, EAST LANSING, MI	07/18/93
FRAZIER, KATHALYN G., PITTSBURGH, PA	07/18/93
FUNDERBURK, WILLIAM, SOMERVILLE, SC	05/21/93
FURGASON, MARGARET ANN, POWAY, CA	05/26/93
GLOWASKY, ALBERT V., DARIEN, CT	06/12/93
GOFORTH, JAMES, JACKSONVILLE, FL	06/11/93
GREEN, SYNTHIA E., OAKLAND, CA	06/12/93
GRELLA, CAMILLE, NAPERVILLE, IL	05/23/93
GUERIN, GERARD G., HAMMOND, LA	05/23/93
HADACHEK-COBURN, SARAH L., WELCHES, OR	05/26/93
HALL, PAMELA A., FT LAUDERDALE, FL	06/06/93
HALLEY, JAMES E. JR., PORT RICHEY, FL	06/11/93
HAMPTON, RODNEY, GIBBSTOWN, NJ	05/19/93
HANSEN, KENNETH A., ABILENE, KS	05/26/93
HARRIS, MICHAEL, UPPER MARLBORO, MD	06/06/93
HARRIS, ARTHUR WOODLAND HILLS, CA	05/26/93
HAYGOOD, REGINA J., BROOKLYN, NY	07/21/93
HEDGECORTH, JULIE ANNE, ALBION, MI	07/18/93
HEMINGWAY-MAFFEO, LINDA M., SAN RAFAEL, CA	06/12/93
HERRINGTON, TOMMY L., PASADENA, TX	05/23/93
HORNE, PATRICIA A., PHILADELPHIA, PA	05/21/93
HOSLER, JOHN R., HOLLISTER, CA	07/11/93
HOWARD, DANIEL L. JR., MILFORD, OH	06/09/93
HOWARD, WILLARD, DAYTON, OH	07/18/93
JACKSON, JOHN, DUFF JENKS, OK	06/12/93
JACOME, ROBERT A. JR., PLANO, TX	06/12/93
JANSSON, SUSANNE E., WESTHAMPTON BCH, NY	05/19/93
JOHANNING, JEANINE, KILEI, HI	06/12/93
JOHN, GORDON B., CAMBRIA HEIGHTS, NY	05/19/93
KING, WANDA, BOLIVAR, TN	06/12/93
KIZAIRE, DANIELLE C., CHICAGO, IL	05/23/93
KOLARIK, THOMAS, MARIETTA, GA	05/21/93
KURTS, TEDD R., IRVINE, CA	05/26/93
KWAN, EDMUND, HUNTINGTON, CT	06/12/93
LAMPMAN, CHUCK, SYLMAR, CA	06/12/93
LEWIS, KENNETH D., HOUSTON, TX	05/23/93
LIEGEL, JOYCE M., HOUSTON, TX	05/23/93
LINACRE, WILLIAM, WAPPINGERS FALL, NY	05/19/93
MACK, RONALD, SPRING HILL, FL	06/11/93
MAJEED, ISHAQ H., ATLANTA, GA	07/14/93
MANHART, MARK W., LAKE OSWEGO, OR	05/26/93

Subject city, state	Effective date
MASKELL, GARY L., WHITING, NJ	07/21/93
MATHEWS, DANIEL G., N. LITTLE ROCK, AR	06/12/93
MCGETTIGAN, BRIAN, PHILADELPHIA, PA	05/21/93
MCWILLIAMS, WILLIAM B., FREMONT, CA	05/26/93
MIKESKY, GREGORY R., SCHULENBURG, TX	06/12/93
MUMUNEY, GANIYU A., SALISBURY, MD	07/18/93
NORRIS, EDWARD B., NASHVILLE, TN	06/12/93
NOVETSKY, JERRY J., SOUTHFIELD, MI	05/23/93
PAYNE, DENISE Y., LOUISVILLE, KY	05/21/93
PERRY, AUDREY J., SMYRNA, GA	07/14/93
PETERSON, KIRBY K., CHICAGO, IL	05/23/93
PIERCE, JOHN P., KANSAS CITY, KS	05/26/93
PIPER, RICHARD A., ST LOUIS, MO	06/09/93
PODRY, ROBERT J., LA CANADA, CA	05/26/93
POWELL, CRAIG, DELMAR, NY	05/19/93
PRICE, DAVID G., VALPARAISO, IN	06/09/93
RAMIREZ, NYDIA, NEW MILFORD RD, NJ	05/19/93
RILEY, ROCK., HOLLY, MI	05/23/93
RITCHEY, ROBERT E., DENVER, CO	05/26/93
RODGERS, LARRY A., CLEVELAND, OH	06/09/93
RONAN, PATRICK, BLOOMFIELD, NJ	05/19/93
RUNCO, TIMOTHY, PITTSBURGH, PA	05/21/93
RUTKOWSKI, MORRIS E., MARIETTA, GA	07/14/93
SAJNA, LYNNE, CHICAGO, IL	07/18/93
SANTIAGO, JOSE A., NEW YORK, NY	07/21/93
SHEPPERD, GORDON L., CERES, CA	07/11/93
SOGARD, ANNA VODICKA, PHOENIX, AZ	07/11/93
SECTION 1128Aa	
BRADY, ARTHUR M. SR., KANSAS CITY, MO	05/19/93
WHITE, VANCE R., RANCHO SANTE FE, CA	02/22/93
PEER REVIEW ORGANIZATION CASES	
VALIN, LAWRENCE, DES MOINES, IA	06/23/93

Dated: July 21, 1993.

James F. Patton,

Director, Health Care Administrative Sanctions, Office of Investigations.

[FR Doc. 93–18694 Filed 8–4–93; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–050–4930–10–4503]

Emergency Closure of Public Lands; California

AGENCY: Bureau of Land Management, United States Department of Interior.

ACTION: Emergency closure of certain public lands to motorized vehicle use in Trinity County and Shasta County, California.

SUMMARY: In accordance with title 43, Code of Federal Regulations, § § 8364.1 and 8341.2, notice is hereby given that all the below listed lands and roads therein, except for Trinity/Shasta County Line Road North and South, administered by the Bureau of Land Management, have been closed to all motorized vehicle use; except for emergency vehicles, fire suppression and rescue vehicles, BLM operation and maintenance vehicles, law enforcement vehicles and other motorized vehicles specifically approved by an authorized officer of the Bureau of Land Management.

This closure affects all of the public lands and roads located within the following lands of Grass Valley Creek Granitic Shelter Area of Trinity County, California (with the exception of County Line Road North and South) and Shasta County, California:

T. 31 N., R. 7 W., M.D.M.,
Sec. 6
T. 31 N., R. 8 W., M.D.M.,
Sec. 4
T. 32 N., R. 7 W., M.D.M.,
Sec. 31
T. 32 N., R. 8 W., M.D.M.,
Sec. 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15, 16, 17, 20, 21, 23, 24, 25, 26, 27, 28, 34, 35, 36
T. 33 N., R. 8 W., M.D.M.,
Sec. 26, 27, 28, 29, 30, 31, 32, 33, 34, 35

A total of approximately 18,000 acres.

DATES: This emergency closure action goes into effect August 5, 1993 and will remain in effect until the Authorized Officer determines it is no longer needed.

SUPPLEMENTARY INFORMATION: This emergency closure is required to mitigate the impacts of unregulated vehicle use on highly erosive decomposed granite soils on the subject land.

The road/trail system is underlain by decomposed granite (DG) parent material that weathers into highly erosive forest soils. Historical logging activities and activities related to access and recreation have caused considerable adverse impacts to the public land and resource including the following: Excessive soil erosion and loss, vegetation damage, fisheries degradation, and decreased water quality in Grass Valley Creek, and the Trinity River.

The authority for this closure and rule making is 43 CFR 8341.2 and 43 CFR 8364.1. Any person who fails to comply with a closure order or rule-making is subject to arrest and fines of up to $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Mark T. Morse, Area Manager, Bureau of Land Management, Redding Resource

Area, 355 Hemsted Drive, Redding California 96002, (916) 224–2100.

Dated: July 20, 1993.

Mark T. Morse,

Area Manager.

[FR Doc. 93–18621 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–40–M

[OR–054–4333–12: GP3–330]

Emergency Closure of Public Lands; Oregon

AGENCY: Bureau of Land Management, Interior, Prineville District.

ACTION: Notice is hereby given that effective immediately all public lands as legally described below are closed to all vehicle access and travel with the exception of designated roads.

In Grant County, Oregon:

Township 14 South, Range 32 East, Willamette Meridian

All public lands in Sections 6 and 7.

The purpose of this closure is to protect steep, highly erosive watersheds, native vegetation, wildlife and cultural resources. The only exception would be for special authorized administrative use and emergency needs. The authority for this closure is 43 CFR 8341.2.

This closure will remain in effect until an ORV designation plan is completed for this area.

Dated: July 27, 1993.

Donald L. Smith,

Acting District Manager, Prineville District.

[FR Doc. 93–18612 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–33–M

[OR–014–4333–04; GP3–327]

Emergency Road Closure and Restrictions; Wood River Ranch, OR

AGENCY: Bureau of Land Management, Lakeview District, Klamath Falls Resource Area.

ACTION: Public notice.

SUMMARY: The south half of the Wood River Ranch, 1,540.51 acres, acquired by BLM in Klamath County is closed to motorized vehicular travel from the time of acquisition until completion of the Management Plan. The area will be open for day use only. Day use is defined as the hours of 4 a.m. to 10 p.m. Overnight camping is prohibited. No fires of any kind are permitted. No personal property such as hunting decoys, tents, etc., can remain on the Wood River Ranch during the overnight hours of 10:01 p.m. and 3:59 a.m. Pit hunting blinds may not be dug on the property.

These restrictions are necessary to prevent resource damage to soil, roads, vegetation, including spread of noxious weeds and possible damage to cultural resources. Limitations are also necessary to reduce the development of trails/roads due to unregulated cross country travel. Vehicles used for administrative, emergency, law enforcement, and adjacent landowners, their agency and employees, with a right-of-way for access will be exempt from the motor vehicle restrictions. Motorized boats are not considered motorized vehicles but their use is restricted to the permanently flooded marsh.

SUPPLEMENTARY INFORMATION: Any person who fails to comply with this closure/restriction order is subject to the penalties provided in 8360.0–7. Violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR MORE INFORMATION CONTACT: Lakeview District, Klamath Falls Resource Area Manager, A. Barron Bail, 2795 Anderson Avenue, Building 25, Klamath Falls, OR 97603; 503–883–6916.

Dated: July 20, 1993

A. Barron Bail,

Klamath Falls Resource Area Manager.

[FR Doc. 93–18705 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–33–M

[CA–940–03–4111–15; CACA 25955]

California; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 25955 for lands in Kern County, California, was timely filed and was accompanied by all required rentals and royalties accruing from March 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre and 16⅔ percent, respectively. Payment of a $500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective March 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Dated: July 26, 1993.

Fred O'Ferrall,

Chief, Leasable Minerals Section.

[FR Doc. 93–18704 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–40–M

[WY–980–4340–04]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 44 N., R. 72 W., accepted July 29, 1993
T. 45 N., R. 72 W., accepted July 29, 1993
T. 46 N., R. 72 W., accepted July 29, 1993
T. 44 N., R. 71 W., accepted July 29, 1993
T. 45 N., R. 71 W., accepted July 29, 1993
T. 42 N., R. 113 W., accepted July 29, 1993

Wind River Meridian, Wyoming

T. 1 S., R. 1 E., accepted July 29, 1993
T. 2 S., R. 1 E., accepted July 29, 1993
T. 2 N., R. 2 E., accepted July 29, 1993
T. 1 S., R. 3 E., accepted July 29, 1993
T. 7 N., R. 6 E., accepted July 29, 1993

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 2515 Warren Ave., Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections and metes and bounds surveys.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P O. Box

1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: July 29, 1993.

John P. Lee,

Chief, Branch of Cadastral Survey.

[FR Doc. 93–18695 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–22–M

[OR–943–4210–06; GP3–321; OR–49218]

Proposed Withdrawal and Opportunity for Public Meeting; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 758.46 acres of non-Federal lands, which will be acquired by exchange, for protection of limestone caves and the Crooks Creek fisheries near Grants Pass, Oregon. Upon acquisition, the lands would be closed for up to 2 years from surface entry and mining, and the lands would be opened to mineral leasing.

DATES: Comments and requests for a public meeting must be received by November 3, 1993.

ADDRESSES: Comments and meeting requests should be sent to the Oregon/Washington State Director, BLM, P.O. Box 2965, Portland, Oregon 97208–2965.

FOR FURTHER INFORMATION CONTACT: Donna Kauffman, BLM, Oregon State Office, 503–280–7162.

SUPPLEMENTARY INFORMATION: On July 16, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described lands, which will be acquired by exchange, from settlement, sale, location, or entry under the public land laws, including the United States mining laws (30 U.S.C. ch. 2 (1988)), but not the mineral leasing laws, subject to valid existing rights:

Willamette Meridian

Non-Federal Lands

T. 37 S., R. 6 W.,
Sec. 31, lots 1 and 2.
T. 37 S., R. 7 W.,
Sec. 36, lots 1 to 7, inclusive, W½NE¼, NW¼, N½SW¼, and NW¼SE¼.
T. 39 S., R. 8 W.,
Sec. 11, SE¼SE¼.

The areas described aggregate 758.46 acres in Josephine County.

The purpose of the proposed withdrawal is to protect the significant recreational and wildlife habitat values in four limestone caves and the Crooks Creek fisheries.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Temporary land uses that may be permitted by the authorized officer during the period of temporary segregation include sale of vegetative materials, issuance of recreational use permits, and all public use activities considered casual use.

Dated: July 20, 1993.

Betty M. McCarthy,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–18614 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Availability of the Agency Draft Recovery Plan for Roan Mountain Bluet 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 an agency draft recovery plan for Roan Mountain bluet. Roan Mountain bluet (*Hedyotis purpurea* var. *montana*) is a rare cespitose perennial herb endemic to a few scattered mountaintops north of the Asheville Basin in North Carolina and, formerly, Tennessee. The Service solicits review and comments from the public on this draft plan.

DATES: Comments on the agency draft recovery plan must be received on or before October 4, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (Telephone 704/665–1195). Written comments and materials regarding the plan 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: Mr. J. Allen Ratzlaff at the address and telephone number shown above (Ext. 229).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals or plants to the point where they are again secure, self-sustaining members of their ecosystems 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 recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (Act), 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 a 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.

Based upon available information concerning the range, biology, and threats to its continued survival, it is not yet possible to determine if or when full recovery of the Roan Mountain bluet is

possible. Accordingly, this draft recovery plan outlines a mechanism that provides for the protection and maintenance of all known populations, with emphasis on determining autecological factors necessary to manage the species. The Roan Mountain bluet was officially listed as an endangered species on April 5, 1990, primarily because of habitat destruction from commercial, recreational, or residential development at privately owned sites, trampling of populations at accessible cliff- or trail-side locations on national forest lands, erosional loss of cliff-side habitat created by uprooting and wind-throw of high-altitude trees killed by air pollution or exotic pests, successional encroachment by native and exotic plants, and demographic problems. Comments and information provided during this review will be used in preparing the final recovery plan.

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 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: 7/29/93.

Brian P. Cole,

Field Supervisor.

[FR Doc. 93–18703 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–55–M

Availability of a Draft Recovery Plan for the Kona Dryland Forest Plants Caesalpinia Kavaiensis and Kokia Drynarioides for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the Kona Dryland Forest Plans *Caesalpinia kavaiensis* and *Kokia drynarioides*. *Caesalpinia kavaiensis* occurs in the mountains of Oahu, Kauai, and Lanai islands and on the Kona coast of the island of Hawaii, Hawaii, and *Kokia drynarioides* occurs only on the Kona coast of the island of Hawaii, Hawaii.

DATES: Comments on the draft recovery plan must be received on or before October 4, 1993 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, P.O. Box 50167, Honolulu, Hawaii 96850 (phone 808–541–2749). Copies of the draft recovery plan will also be available for inspection at: Kailua–Kona Public Library, 75–138 Hualalai Rd., Kailua–Kona, Hawaii 96740; Kauai Public Library, 4344 Hardy Street, Lihue, Kauai 96766; and Lanai Public and School Library, P.O. Box A–149, Lanai City, Lanai 96763. Written comments and materials regarding the plan should be addressed to Robert P. Smith, Field Supervisor of the Pacific Islands Office at the above Honolulu address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours, at the above Honolulu address.

FOR FURTHER INFORMATION CONTACT: Ms. Karen W. Rosa, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems 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, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.) (Act), 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 a 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. Substantive technical comments will result in changes to the plans. Substantive comments regrading recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The species being considered in this recovery plan are *Caesalpinia kavaiensis* and *Kokia drynarioides*. The areas of emphasis for recovery actions for these species are: West and northwest slopes of Hualalai Mountain, Kona District, Hawaii Island; three gulches in the Waianae Mountains, Oahu Island; Puhielelu Ridge, Lanai Island; and Koaie Valley and the Poomau Branch of Waimea Canyon, Kauai Island. Recovery efforts will focus on securing habitat, managing it to remove threats by ungulates, fire, alien plants, insect infestations, seed predators and illegal harvest, augmenting current populations and establishing new populations.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified will be considered prior to approval of the plan.

Authority: The authority of this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 29, 1993.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 93–18663 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–55–M

Public Meetings on the Management of Crystal River National Wildlife Refuge, Crystal River, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Fish and Wildlife Service is modifying its public recreational use management program on the Crystal River National Wildlife Refuge near Crystal River, Florida. Certain recreational uses on the refuge need to be modified in order to ensure that such uses are compatible with the purposes of the refuge. Comments on the Service's proposed actions, along with additional ideas and suggestions, will be accepted at a public scoping meeting. This meeting will be followed by a public informational meeting to solicit additional comments and review the final actions selected by the Service.

DATES: The public scoping meeting will be held from 9 a.m. to 9 p.m. on Tuesday, August 17, 1993, in Crystal River, Florida. The public informational meeting will be held from 7 p.m. to 10

p.m. on Wednesday, September 1, 1993, also in Crystal River.

ADDRESSES: Both meetings will be held at the Crystal River National Guard Armory, 8551 West Seven Rivers Drive, Crystal River, Florida. Written comments and suggestions are invited and should be directed to Mr. Cameron Shaw, Refuge Manager, Crystal River National Wildlife Refuge, 1502 Southeast Kings Bay Drive, Crystal River, Florida 34429. For further information, contact Mr. Shaw at the above address (telephone 904/563–2088, fax 904/795–7961).

SUPPLEMENTARY INFORMATION: Increasing public use is contributing to conflicts between refuge users and wildlife populations, particularly the endangered West Indian manatee. Modifications to current public use activities are needed to ensure that such activities are compatible with the purposes of the refuge.

Persons wishing to present statements at either meeting are encouraged to bring written copies in order to provide a complete record. Oral statements at the September 1 informational meeting may be limited in length if the number of parties attending necessitates such a limit.

Author: The primary author of this notice is Mr. David E. Hefferman, District Manager, U.S. Fish and Wildlife Service, 75 Spring St. SW., room 1240, Atlanta, Georgia 30303 (404/331–0830 or fax 404/730–2023).

Dated: July 30, 1993.

John R. Eadie,

Acting Regional Director.

[FR Doc. 93–18664 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–55–M

Privacy Act of 1974—Establishment of Notice of System of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior proposes to establish a new notice describing a system of records maintained by the U.S. Fish and Wildlife Service. The notice, entitled "Marine Mammals Management Marking, Tagging and Reporting Program—Interior, FWS–30," describes a system of records containing information pertaining to mandatory tagging requirements established by the U.S. Fish and Wildlife Service to monitor the harvest of polar bear, sea otter and walrus by Indian Aleut, and Eskimo hunters; to collect biological information needed for the management of marine mammal populations; and to help control illegal activities in take, trade, and transport of marine mammal parts. The notice is published in its entirety below.

As required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), the Office of Management and Budget, the Senate Committee on Governmental Affairs, and the House Committee on Government Operations have been notified of this action.

5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires a 60-day period in which to review such proposals. Written comments on this proposal can be addressed to the Departmental Privacy Act Officer, Office of the Secretary, Office of Administrative Services, 1849 "C" Street NW, Mail Stop 5412 MIB, Washington, DC 20240, telephone (202) 208–6045. Comments received within 60 days of publication in the **Federal Register** (October 4, 1993) will be considered. The notice shall be effective as proposed at the end of the comment period, unless comments are received which would require a contrary determination.

Dated: July 28, 1993.

Albert C. Camacho,

Director, Office of Administrative Services.

INTERIOR/FWS–30

SYSTEM NAME:

Marine Mammals Management, Marking, Tagging and Reporting Program—Interior, FWS–30.

SYSTEM LOCATION:

U.S. Fish and Wildlife Service, Marine Mammals Management, 4230 University Drive, suite 310, Anchorage, Alaska 99508.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Alaska Native hunters of polar bear, sea otter, and walrus.

CATEGORIES OF RECORDS IN THE SYSTEM:

For polar bear certificate: Name and signature of hunter, signature of tagger, date, species hide tag number, species skull tag number, species skull measurement, tagging location, species age class, species sex, species sex identifiers, statistics on other bears present, specimens collected, transportation used, days/hours hunted, date of kill, location of kill.

For sea otter certificate: Name and signature of hunter, signature of tagger, date, species hide tag number, species skull tag number, species skull statistics, tagging location, species age class, species sex, species sex identifiers, specimens collected, days/hours hunted, date of kill, location of kill.

For walrus certificate: Name and signature of hunter, signature of tagger, tagging location, date, species tag number, species take type, date killed or found, location killed or found, species age, species sex, species tusk circumference, species tusk length, location killed or found.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1379). (2) 50 CFR part 18, section 109.

PURPOSE:

The primary purpose of the records is to monitor the harvest by Alaska Natives of polar bear, sea otter, and walrus; to collect biological information; and to help control illegal activities in take, trade, and transport of marine mammal parts.

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

The records are used by wildlife biologists in the U.S. Fish and Wildlife Service's Alaska Marine Mammals Management Office and by U.S. Fish and Wildlife Service law enforcement agents. The primary uses of the records are (1) to determine accountability of individual hunters and their actions (i.e. number of animals taken) while harvesting marine mammals; (2) to identify hunters that are not presenting harvested specified parts for tagging, and (3) to promote non-wasteful take. U.S. Fish and Wildlife Service law enforcement agents will use the information to identify individuals involved in wasteful and illegal commercialization of marine mammal products.

Disclosures outside the Department of the Interior may be made: (1) To the U.S. Department of Justice, or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) Of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, tribal,

territorial, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license; (3) To a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

DISCLOSURE PURSUANT TO 5 U.S.C. 552a(b)(12).

Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual and computer database form.

RETRIEVABILITY:

Indexed by name and harvest certificate.

SAFEGUARDS:

In accordance with 43 CFR 2.51, records are maintained in a secured computer database which can be accessed only by those with knowledge of the code numbers. Manual forms are maintained in a locked file.

RETENTION AND DISPOSAL:

Retention and disposal of subject records is in accordance with the U.S. Fish and Wildlife Service's Records Disposition Schedule and standards for electronic records as outlined in 36 CFR part 1228.

SYSTEM MANAGER(S) AND ADDRESS:

Supervisor, Marine Mammals Management, U.S. Fish and Wildlife Service, Marine Mammals Management, 4230 University Drive, suite 310, Anchorage, Alaska 99508.

NOTIFICATION PROCEDURE:

A request for notification of the existence of records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access to records shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A request for amendment of a record shall be addressed to the System Manager. The request shall be in writing, signed by the requester, and comply with the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

(1) Subject individuals on whom the record is maintained, and (2) contractual employees who serve as village taggers.

[FR Doc. 93–18618 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collections of information and related forms may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau Clearance Officer and the Office of Management and Budget; Paperwork Reduction Project (1010–0018); Washington, DC 20503, telephone (202) 395–7340, with copies to Chief, Engineering and Standards Branch; Engineering and Technology Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817.

Title: Request for Reservoir Maximum Efficient Rate (MER), Form MMS–127.

OMB approval number: 1010–0018.

Abstract: Respondents submit Form MMS–127 to the Minerals Management Service's (MMS) Regional Supervisors so they can determine whether a lessee has correctly classified an oil or gas reservoir and whether the reservoir MER requested by the lessee is valid.

Bureau form number: Form MMS–127.

Frequency: On occasion.

Description of respondents: Federal OCS oil and gas lessees.

Estimated completion time: 1 hour.

Annual responses: 910.

Annual burden hours: 910.

Bureau Clearance Officer: Arthur Quintana, (703) 787–1239.

Dated: August 14, 1993.

Henry G. Bartholomew,

Deputy Associate Director for Operations and Safety Management.

[FR Doc. 93–18615 Filed 8–4–93; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–654–657 (Preliminary)]

Certain Cordage Products From Costa Rica, Korea, Mexico, and Portugal

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–654–657 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Costa Rica, the Republic of Korea (Korea), Mexico, and Portugal of cordage of man-made fiber including twine and ropes and cables, provided for in subheadings 5607.41.10, 5607.41.30, 5607.49.10, 5607.49.15, 5607.49.25, 5607.49.30, 5607.50.20, 5607.50.40, and 5607.90.20 of the Harmonized Tariff Schedule of the United States (HTS); and of articles of the foregoing goods, provided for in HTS subheading 5609.00.30; and by reason of imports from Korea, Mexico, and Portugal of fish netting constructed of man-made fiber provided for in HTS subheadings 5608.19.10 and 5608.90.10, and of knitted or crocheted fish netting, provided for in HTS subheading 6002.43.00, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by September 13, 1993.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: July 28, 1993.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade

Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on July 28, 1993 by counsel on behalf of the Cordage Institute, Hingham, MA.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on August 18, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Debra Baker (202–205–3180) not later than August 13, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 23, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: August 1, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–18800 Filed 8–4–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–346]

Certain Magnetic Switches for Coaxial Transmission Lines and Products Containing the Same; Commission Determination not to Review an Initial Determination Designating the Investigation "More Complicated"

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) designating the above-captioned investigation "more complicated." Although the statutory deadline for completion of the investigation is extended by six months, i.e., from January 21, 1994, to July 21, 1994, the Commission has set an administrative deadline for completion of the investigation of March 21, 1994.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Rose, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3113.

SUPPLEMENTARY INFORMATION: On June 15, 1993, complainants Sector Microwave Industries, Inc. and Victor Nelson filed a motion to designate the subject investigation "more complicated." Respondent Com Dev Ltd. of Canada opposed the motion, and the Commission investigative attorney supported it.

On June 24, 1993, the presiding ALJ issued an ID granting the motion to designate this investigation "more complicated" due to complainants' difficulties in obtaining crucial information, the unavailability of respondent's Canadian expert witness for deposition, and other significant factors. No petitions for review or government agency comments were received.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and § 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h)).

Issued: July 30, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–18646 Filed 8–4–93; 8:45 am]

BILLING CODE 7020–02–P–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates

environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Johnnie Davis or Ms. Tawanna Glover-Sanders, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–5750 or (202) 927–6212.

Comments on the following assessment are due 15 days after the date of availability:

AB–101 (Sub-No. 10), Duluth, Missabe and Iron Range Railway Company—Summary Abandonment Application—St. Louis County, Minnesota. EA available 7/29/93

Comments on the following assessment are due 30 days after the date of availability:

AB–88 (Sub-No. 6), Bessemer and Lake Erie Railroad Company—Abandonment and Discontinuance—in Erie County, PA. EA available 7/27/93

AB–33 (Sub-No. 78), Union Pacific Railroad Company—Abandonment—in Saline, Ottawa, Lincoln, Russell, Osborne and Rocks Counties, Kansas. EA available 7/30/93

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–18727 Filed 8–4–93; 8:45 am]

BILLING CODE 7035–01–M

[No. 40853]

Yellow Freight System, Inc. of Indiana—Petition for Declaratory Order—Weighing Shipments

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding; extension of comment due date.

SUMMARY: By decision served July 1, 1993 (58 FR 35977, July 2, 1993), the Commission instituted a proceeding to determine whether (1) the Commission has exclusive jurisdiction over the reasonableness of Yellow Freight System Inc. of Indiana's (Yellow's) practice of verifying shipment weights using forklift scales; and (2) more stringent State requirements for scale accuracy are preempted. Written comments were sought by August 1, 1993.

On July 26, 1993, a petition was filed seeking conversion of the proceeding to a rulemaking, and an extension of the comment due date.

DATES: Comments must be filed by September 1, 1993.

ADDRESSES: Send an original and 15 copies of comments, referring to Docket No. 40853 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy to each of the following representatives of Yellow: Lawrence W. Bierlein, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037; and Jerry C. Bowlin, 10777 Barkley, Overland Park, KS 66211.

FOR FURTHER INFORMATION CONTACT: Joseph C. Levin, (202) 927–6287. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: July 30, 1993.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–18726 Filed 8–4–93; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–337 (Sub-No. 2X)]

Dakota, Minnesota, & Eastern Railroad Corporation—Abandonment Exemption—In Brown County, SD

Dakota, Minnesota & Eastern Railroad Corporation (DM&E) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 33.8-mile line of railroad between milepost 38.1, near Aberdeen, and milepost 116.9, near Hecla, in Brown County, SD.

DM&E 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) the requirements at 49 CFR 1105.7(b) (service of environmental report on agencies), 49 CFR 1105.8(c) (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11, 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to government agencies) has 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 September 4, 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 requests under 49 CFR 1152.29[3] must be filed by August 16, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by August 25, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Byron D. Olsen, 1935 Piper Jaffray Tower, 222 S. Ninth St., Minneapolis, MN 55402.

If the notice of exemption contains false or misleading information, the 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 environmental assessment (EA) by August 10, 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

---

[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 before 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.

[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 request as long as it retains jurisdiction to do so.

be filed within 15 days after the EA is 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: July 30, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–18728 Filed 8–4–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of Stipulation of Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; In re: Bond Corporation North America, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Stipulation of Settlement in *In re: Bond Corporation North America, et al.*, Case No. 91 B 10326 (FGC) was lodged on July 26, 1993, with the United States Bankruptcy Court for the Southern District of New York. The United States' amended proof of claim asserts a claim against G. Heileman Brewing Company, Inc. pursuant to section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9607, and seeks recovery of response costs incurred by the United States in connection with the Newport Dump Site, Wilder, Kentucky (the "Site"). The Site is situated approximately four miles south of the City of Newport, Kentucky, and occupies approximately 41.9 acres. The site began operation in the 1950's and was used as a municipal landfill. The Newport Dump had no restrictions as to type or quantity of waste material that could be disposed.

In the early 1980's, EPA conducted investigations at the Site which detected numerous organic and inorganic contaminants in the surface soils of the landfill area, and the leachate discharge to the Licking River. The Newport Dump is situated adjacent to the Licking River, a source of drinking water for neighboring counties. Leachate flowed directly from the Site into the Licking River and also into an unnamed stream south of the landfill which drained into the Licking River. The main raw water intake for the Kenton County water treatment plant is located approximately 250 feet downstream of the Newport Dump. As a result of these investigations, the Site was placed on the National Priorities List in 1983.

Pursuant to the stipulation of settlement, the United States' amended claim shall be allowed as a Class 8 unsecured claim in accordance with the terms of the Debtors' First Amended Joint Plan of Reorganization in the amount of $800,000. 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* v. *City of Newport, et al.*, D.O.J. Ref. 90–11–3–452A.

The proposed stipulation may be examined at the Office of the United States Attorney, Southern District of New York, 100 Church Street, New York, New York 10001; Office of the U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, 202–624–0892. A copy of the proposed stipulation may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–18697 Filed 8–4–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; United States v. Charles George Trucking Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on July 27, 1993, a proposed Consent Decree in *United States* v. *Charles George Trucking Co., Inc.*, Civil Action Nos. 85–2463–WD and 85–2714–WD, was lodged with the United States District Court for the District of Massachusetts. The proposed Consent Decree resolves claims of the United States and the Commonwealth of Massachusetts against James George, Charles George, Jr., and C&J Trucking Co., Inc. ("the settling defendants") under section 107(a) of the Comprehensive Environmental Compensation, Recovery Act, 42 U.S.C. 9607(a), to recover response costs incurred in cleaning up the Charles George Reclamation Trust Landfill, located in Tyngsboro, Massachusetts. The Consent Decree will result in a payment of $3,100,000 over four years by the settling defendants for cost recovery and natural resource damages.

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 Acting Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Charles George Trucking Co. et. al.*, D.J. Ref. 90–11–3–91.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of Massachusetts, McCormick Federal Building, Post Office Square, Boston Massachusetts 02109, and at the Region I Office of the Environmental Protection Agency, Office of Regional Counsel, 10th Floor, 1 Congress Street, Boston, Massachusetts 02203. The proposed consent decree may also be examined at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $16.00 (25 cents per page reproduction cost), payable to Consent Decree Library.

John C. Cruden,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–18696 Filed 8–4–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Settlement Agreement and Stipulated Order Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; United States v. Jerald Gershon, et al.

In accordance with Departmental policy, notice is hereby given that on July 19, 1993, a proposed Settlement Agreement and Stipulated Order ("Settlement Agreement"), settling *United States* v. *Jerald Gershon*, Adversary No. 92–7088 (Bkrtcy. D. Kan.), *Jerald Gershon* v. *United States*, Adversary No. 91–7427 (Bkrtcy. D. Kan.), and the United States' objection to exemptions *In re Jerald Gershon*, Case

No. 91–41830–7 (Bkrtcy. D. Kan.), and settling in part *United States* v. *Chemical Commodities, Inc. and Jerald Gershon*, Civ. No. 91–2379 (D. Kan.), was lodged with the United States Bankruptcy Court for the District of Kansas—Topeka Division.

In 1991, the United States filed a Complaint in district court against Jerald Gershon ("Gershon") and Chemical Commodities, Inc. ("CCI") under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9607, in connection with defendants' ownership or operation of a facility in Olathe, Kansas at which there was a release or threat of release of hazardous substances causing the United States to incur costs in responding to the release or threat of release. In 1992, the United States filed an objection to the discharge of Gershon in bankruptcy and an objection to certain exemptions from creditors' claims asserted by Gershon.

The proposed Settlement Agreement entered into by the United States and Gershon provides for two payments by Gershon to his bankruptcy estate totalling $200,000, the first payment of $150,000 to be made within sixty days of entry of the Settlement Agreement in bankruptcy court, and the second payment of $50,000 to be made within one year of the date of entry. The proposed settlement agreement also provides for allowance of claims of the United States in the Gershon bankruptcy in the amount of $9,452,258.

The Department of Justice will receive, for thirty (30) days from the date of publication of this notice, written comments relating to the proposed Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Chemical Commodities, Inc. and Jerald Gershon*, DOJ Ref. No. 90–11–3–529.

The proposed Settlement Agreement may be examined at the office of the United States Attorney, District of Kansas, 385 Federal Building, 444 SE. Quincy, Topeka, Kansas 66683; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed Settlement Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC. 20005. In requesting a copy, please enclose a check in the amount of five dollars (25 cents per page reproduction charge) payable to the Consent Decree Library.

Myles E. Flint,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–18698 Filed 8–4–93; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Corrections

Announcement of Grants, Services, and Training

The National Institute of Corrections (NIC), U.S. Department of Justice, has published its Annual Program Plan for Fiscal Year 1994. The document describes the grants, programs, and services to be made available to the corrections field during the next fiscal year, which begins October 1, 1993 and ends September 30, 1994.

A separate document, the NIC Academy Schedule of Training and Services for Fiscal Year 1994, describes the training programs and services to be provided by the NIC Academy for state and local corrections practitioners.

Both documents contain relevant application forms and may be obtained by contacting the National Institute of Corrections, 320 First Street, NW., Washington, DC 20534 (telephone number: 202–307–3106×156; fax: 202–307–3361); or the NIC Longmont, Colorado, offices (1960 Industrial Circle, Suite A, Longmont, Colorado 80501) (telephone: 303–682–0382; fax: 303–682–0469); TDD 202–307–3156.

Larry E. Solomon,

Deputy Director.

[FR Doc. 93–18699 Filed 8–4–93; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), will meet on August 24–25, 1993, at the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–4215A and B, Washington, DC. The meeting is open to the public and will begin at 9 a.m. on each day.

The agenda for this meeting includes OSHA status reports regarding lead in construction; inspection targeting; the permit required confined space standard; VPP construction activities; Hazwoper training and certification; the process safety management standard; the publication "Fatal Facts"; the multi-employer worksite policy for professional engineers; the welding and cutting standard; the scaffold standard; the permissible exposure limits for air contaminants; asbestos; the OSHA training centers; the Office of Construction and Engineering; and the Eastern Research Group report. The Advisory Committee will also receive work group reports and reports concerning the California construction permit system, the development of the Technical Manual, NIOSH cooperative agreements for model statewide programs and NIOSH safe workplace training activity. In addition, the Committee will discuss the glycol ethers rulemaking, the choice between performance and prescriptive standards for construction and the use of joint labor-management committees to address safety and health issues.

Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs, at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation. Persons who request the opportunity to address the Advisory Committee may be allowed to speak, as time permits, at the discretion of the Chairman of the Advisory Committee.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone 202–219–8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 2nd day of August, 1993.

David C. Zeigler,

Acting Assistant Secretary of Labor.

[FR Doc. 93–18724 Filed 8–4–93; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143; License SNM–124]

Nuclear Fuel Services, Inc.; Amendment of Special Nuclear Material, Finding of No Significant Impact and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License SNM–124 to authorize possession and use of 200 gm of plutonium (Pu) and 250 gm of ^{233}U for research and development (R&D) projects at the Nuclear Fuel Services, Inc. (NFS) facility located in Erwin, TN.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action would authorize NFS to possess and use 250 gm of ^{233}U and 200 gm of Pu for R&D projects. The R&D Laboratory would conduct research, development, and analyses on any chemical or physical forms of uranium=235, uranium=233, plutonium, byproduct or source material. This is an expansion of their current authorization for R&D work with uranium=235. The State of Tennessee issued License R–86008–D97 on April 20, 1992, authorizing NFS to possess and use source and byproduct material for analysis or developmental studies.

The Need for the Proposed Action

The activities proposed by NFS are analysis of samples collected as part of mandatory environmental monitoring programs and R&D concerning environmental remediation and waste reclamation. Other facilities which presently perform these tasks are backlogged. Authorizing NFS to perform these services will relieve this backlog and allow for more timely and effective responses to environmental concerns.

Environmental Impacts of the Proposed Action

The R&D Laboratory will utilize buildings currently on site and will have negligible impact on NFS water usage. Solid waste production will also remain largely unchanged as material receive from clients will be returned after it is processed, and materials sent to the R&D Laboratory from other NFS Erwin departments would be covered under their current license. Therefore, the greatest potential for environmental impact would be the release of airborne and liquid effluents.

Release pathways are designed to confine as much material as practicable. Ventilation stacks are fitted, as a minimum, with high efficiency particulate air filters designed to capture 99.97 percent of all particles down to 0.3 microns. Liquid effluent is sent through a waste water treatment facility designed to remove both soluble and insoluble contaminants from water prior to release. Furthermore, airborne releases are required to meet the requirements of 10 CFR part 20, while liquid releases must meet applicable 10 CFR part 20 limits along with the requirements of the Tennessee Department of Conservation contained in their National Pollution Discharge Elimination System (NPDES) permit.

Doses were calculated for both liquid and airborne pathways using the requested possession limits combined with maximum credible releases. For the individual dose, the maximally exposed individual is located in the southwest sector 250 meters from the site's stack. The major exposure pathway is inhalation of Pu–239 particles. The total effective dose equivalent (TEDE) would be approximately 0.41 mrem/yr. This value is far below the 25 mrem/yr TEDE to which the licensee is limited and is a small percentage of the TEDE calculated for current operations (2.3 mrem/yr), as stated in the "Environmental Assessment for Renewal of Special Nuclear Material License No. SNM–124."

Conclusion

The activities which the licensee proposes are analysis of environmental samples, and R&D directed towards remediation and resource recovery. These are necessary activities which would be conducted elsewhere if not by this licensee. The possible benefits to be gained by these activities would be more rapid response to environmental releases; more thorough, cost-effective remediation techniques; and waste minimization through the separation of wastes and the recovery of reusable resources.

The impacts of these proposed activities to the environment appear mixed. Although there would be a negligible increase in quantities and types of radiological effluents, non-radiological effluents, land usage, and water usage would remain unchanged. Furthermore, there may be a possible social benefit through the creation of new jobs, if enough new contracts are awarded. In total, the staff concludes that there will be no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The only alternative to the proposed action would be denial of the amendment request. Denial would mean that NFS would not be allowed to conduct R&D or laboratory analyses on materials containing U–233 or plutonium. Any contracts including these materials would be lost, and due to their essential nature, the activities involved would be conducted elsewhere. The NRC would choose this course if it could be proven that the activities to be conducted by the R&D Laboratory Project would lead to significant environmental effects or problems with human health and safety. However, since denial of this amendment request would result in the blocking of essential activities with positive environmental impact, in order to prevent a negligible increase in existing effluents, this course should be avoided.

Agencies and Persons Consulted

Staff utilized the amendment application dated May 20, 1992, and supplemental information dated January 29, 1993 and June 1, 1993.

Findings of No Significant Impact

The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License SNM–124. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

Opportunity For a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; to be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Nuclear Fuel Services, Inc., 205 Banner Hill Road, Erwin, TN 37650), and must comply

with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L. "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestors's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 28th day of July 1993.

For The Nuclear Regulatory Commission

Robert Pierson,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 93–18709 Filed 8–4–93; 8:45 am]

BILLING CODE 7590–01–M

U.S. NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143; License No. SNM–124]

Nuclear Fuel Services, Inc.; Erwin, Tennessee

Nuclear Fuel Services Inc., Amendment of Special Nuclear Material; Finding of No Significant Impact and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Material License No. SNM–124 for authorization to process highly enriched uranium (HEU) from material containing HEU and thorium carbide at the Nuclear Fuel Services, Inc. (NFS) facility in Erwin, TN.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is to remove highly enriched uranium from unirradiated fuel elements and then separate this uranium from other constituents. In fuel in the elements is enriched to approximately 93 weight percent in the uranium isotope ^{235}U which is mixed with ^{232}Th. Additional material and components from the fuel element production process, and also containing uranium and thorium, may be processed to recover the relatively valuable highly enriched uranium.

The Need for the Proposed Action

The proposed action is needed by the licensee to recover the money spent to purchase the material, to free production space, to reduce security requirements and storage costs for the site, and to avoid a layoff of site personnel. Additionally, by separating the uranium and thorium and then shipping the thorium to a low-level burial site, radiation levels in the area where the fuel has been stored will be reduced.

Environmental Impacts of the Proposed Action

The environmental impact from operations with licensed material at the NFS facility has been evaluated numerous times in the past for various licensing actions. The date of the latest Environmental Assessment (EA) was August 1991 and was completed for the recent renewal of NFS's operating license. This EA was based on environmental and effluent data for the years 1979 through 1989 and concluded that the environmental impacts associated with continued operations would be insignificant.

Based on the information submitted by NFS, the impact to the environment from activities associated with the proposed action is expected to be minimal. NFS is authorized to perform the various steps involved with separating the uranium from the other constituents in the fuel, and the environmental impacts from these steps have been evaluated in previous environmental reviews. The impact to the environment from processing the uranium has also been reviewed and evaluated in prior assessments. The impact to the environment from the thorium in the fuel has not been evaluated in this assessment because thorium is regulated by the State of Tennessee, not the NRC.

The amount of uranium in the gaseous effluents released to the environment is not expected to change due to the proposed action because other major processing activities will no longer be performed. Based on information supplied for a previous license amendment, the total amount of uranium measured in stack effluents is estimated to be 3.7E–12 μCi/ml. This value is well below the values specified in 10 CFR part 20, appendix B, table II, column 1 for airborne radioactivity in unrestricted areas.

The licensee expects no increase in the volume of liquid effluents as a result of the proposed action. Liquid effluents are sampled and analyzed prior to discharge. Sample values must be less than NFS' internal action guide limits and the limits specified in 10 CFR part 20, appendix B, table II, column 2. Additionally, all liquid discharges are made in accordance with the National Pollution Discharge Elimination System (NPDES) permit issued by the State of Tennessee.

The licensee has an environmental monitoring program in place to determine if plant operations are having an impact upon the environment. Environmental media sampled and analyzed for radiation levels are air, surface water, ground water, soil, vegetation, and ambient radiation. Surface water is also sampled and analyzed for pH, ammonia, nitrate, fluoride, mercury, flow, and temperature in accordance with the NPDES permit. Air samples are also analyzed for fluoride levels. The environmental monitoring program currently in place will be adequate to detect any adverse environmental impact from the proposed action.

In the August 1991 EA, the dose to the maximally exposed individual was calculated using the highest annual gaseous release rate value from the review period. The value used was from 1984 and was 7.7E–12 μCi/ml which is more than twice the estimated gaseous release rate for all current operations.

The maximally exposed individual for the NFS facility is the nearest resident who lives 250 meters south of the plant. Based on the 1991 EA, the estimated annual dose received by this individual was 10 millirem (mrem) to the lung, 0.2 mrem to the kidney, 1.2 mrem to the bone, and 2.2 mrem to the total body. Using the estimated release rate of 3.7E–12 μCi/ml, the maximally exposed individual would receive annual doses of 4.8 mrem to the lung, 0.1 mrem to the kidney, 0.7 mrem to the bone, and 1.1 mrem to the total body. The dose to the maximally exposed individual is well below the specified limits in 40 CFR 61.102 and 10 CFR part 20.

Conclusion

Based on the information supplied by the licensee, the staff concludes the impact to the environment from the proposed action will be minimal. There will be no significant change in the types of NRC-regulated effluents released from the site. There will be no significant change in the amount of gaseous or liquid effluents discharged to the environment. All discharges will be through established, monitored pathways. The activities associated with the proposed action will be conducted in an existing building so there will be no significant impact due to construction. The dose to the maximally exposed individual from site activities will be less than the limits specified in the regulation.

Alternatives to the Proposed Action

The alternatives to the proposed action are for the licensee to sell the material in its current form or continue to store it. The alternative of selling the material in its current form is not a viable option since no buyers can be found.

The alternative of continuing to store the fuel elements places an economic burden upon NFS in that money that can be used for other purposes will remain tied up in the fuel.

Agencies and Persons Consulted

NRC Region II personnel were contacted during the completion of this EA. Staff utilized the amendment application dated August 14, 1992 and supplemental information dated April 8, 1993 and June 1, 1993 in preparing the EA.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM–124. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street N.W., Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this amendment may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, MD 20852); on the licensee (Nuclear Fuel Services, Inc., P.O. Box 337, Erwin, Tennessee, 37650), and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 27th day of July 1993.

For the Nuclear Regulatory Commission.

Robert Pierson,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, NMS.

[FR Doc. 93–18710 Filed 8–4–93; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District, Fort Calhoun Station, Unit No. 1; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–40, issued to the Omaha Public Power District (the licensee), for the operation of Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The amendment would consist of changes to the Technical Specifications (TS) that would authorize an increase of the storage capacity of the spent fuel pool from 729 to 1083 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated December 7, 1992, as supplemented by letters dated March 19, April 28, and May 14, 1993. The Commission's staff has prepared an Environmental Assessment of the Proposed Action dated July , 1993.

Need for Proposed Action

If the amendment were not approved, the licensee would be unable to continue operations beyond 1995, when the storage capacity of the current spent fuel pool would be reached.

Environmental Impacts of the Proposed Action

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), Volumes 1–3, concluded that the environmental impact of the interim storage of spent fuel was negligible and that the cost of the various alternatives shows the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For Fort Calhoun, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts.

The additional whole body dose that might be received by an individual at the site boundary and the estimated dose to the population within an 80-kilometer radius is believed to be too small to have any significance when compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than one percent of the total annual occupational radiation exposure for this facility.

The only non-radiological impact affected by the spent fuel pool

expansion is the waste heat rejected. The total increase in heat load rejected to the environment will be small compared to the amount of total heat currently being released. There is no significant environmental impact attributed to the waste heat from the plant due to this very small increase.

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment.

With regard to potential non-radiological impacts, the proposed change to the TS involves a change in the installation or use of a facility component located within the restricted area as defined by 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement (FES) for the Fort Calhoun Station, Unit No. 1, dated August 1972.

Agencies and Persons Consulted

The staff consulted with the State of Nebraska regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment to the Technical Specifications dated December 7, 1992, as supplemented by letters dated March 19, April 28, and May 14, 1993, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for Fort Calhoun, dated August 1972, and (4) the Environmental Assessment dated July , 1993.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland this 29th day of July 1993.

For the Nuclear Regulatory Commission.

Harry Rood,

Acting Director, Project Directorate IV–1, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–18711 Filed 8–4–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–333]

Power Authority of the State of New York, James A. Fitzpatrick Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the requirements of appendix J of 10 CFR part 50 to the Power Authority of the State of New York (PASNY, the licensee), for the James A. FitzPatrick Nuclear Plant located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the requirements of section IV.A. of appendix J, to 10 CFR part 50, to the extent that a Type A, B, or C leak rate test would not have to be performed following the replacement of certain piping and welds in the Core Spray system minimum flow lines during the fall 1993 maintenance outage, currently scheduled for September 1993. The replacement piping and welds would be subject to a Type A primary containment integrated leak rate test prior to startup from the next refueling outage, currently scheduled to start in January 1995.

The Need for the Proposed Action

In accordance with section IV.A. of appendix J to 10 CFR part 50, a Type A, B, or C test (as applicable) is required to be performed following any major modification or replacement of a component which is part of the primary containment boundary. Augmented erosion/corrosion inspections conducted during the 1992 refueling outage revealed the presence of pipe wall thinning in Core Spray system minimum flow lines (3"–W23–152–7A, B), which the licensee believes to be cavitation induced pitting due to the location of the restricting orifice in each of these lines. PASNY intends to replace approximately 5 feet of piping in each of these lines during the fall 1993 maintenance outage. The sections of piping scheduled to be replaced include the restricting orifices (14RO–27A, B) and the Core Spray minimum flow valves (14MOV–5A/5B). The planned repair constitutes a replacement of a component that is part of the primary containment boundary and would be performed in accordance with the requirements of ASME Section XI and ANSI B–31.1–1967 (the construction code for the FitzPatrick plant). The licensee has determined that the requirement to conduct a Type A, B, or C test following repairs is applicable. However, the licensee has determined that, because of the locations of the sections of minimum flow line piping to be repaired, isolatable volumes cannot be practicably obtained. Therefore, pressure testing can only be accomplished by performing a Type A primary containment integrated leak rate test. Further, the licensee has determined that performance of a Type A test would not be feasible during the 3-week maintenance outage, since it would lengthen the outage by a minimum of 3 to 4 weeks. Therefore, the licensee has requested an exemption from section IV.A. of appendix J to 10 CFR part 50.

In lieu of a Type A, B, or C test, the licensee has proposed an alternate inspection program, including 100% radiography of the new welds, surface examination on new welds that form a portion of the primary containment boundary, and a system leakage test (in accordance with ASME Section XI, 1980 Edition through Winter 1981 Addenda, paragraph IWA–5213) to ensure structural integrity and leak tightness. These nondestructive examinations will ensure that the intent of section IV.A. of appendix J to 10 CFR part 50 is met, which is to assure that modifications to the containment pressure boundary are leak-tight.

Environmental Impact of the Proposed Action

The proposed alternate inspection program would ensure that excessive leakage from the primary containment from the repaired areas of the Core Spray minimum flow lines does not exist and would provide a level of safety at least equivalent to that attained by compliance with section IV.A. of appendix J to 10 CFR part 50. On this basis, the Commission concludes that there are no significant radiological impacts associated with this proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar. This alternative would also result in an unwarranted extension of the fall 1993 maintenance outage beyond the planned 3 weeks.

Alternative Use of Resources

The actions associated with the granting of the proposed exemption as detailed above do not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to Operation of the James A. FitzPatrick Nuclear Power Plant," dated March 1973.

Agencies and Persons Contacted

The Commission consulted with the State of New York regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based on the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee's application for exemption dated June 28, 1993. This document is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York.

Dated at Rockville, Maryland, this 29th day of July, 1993.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–1, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–18712 Filed 8–4–93; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Withdrawal

The Nuclear Regulatory Commission is withdrawing Regulatory Guide 1.108, "Periodic Testing of Diesel Generator Units Used as Onsite Electric Power Systems at Nuclear Power Plants." The guide was issued in August 1976 (Revision 1, August 1977) to provide guidance on methods acceptable to the NRC staff for periodic testing of diesel generator units to ensure the units could meet availability requirements.

The guidance in Regulatory Guide 1.108 has been updated and incorporated into Revision 3 of Regulatory Guide 1.9, "Selection, Design, Qualification, and Testing of Emergency Diesel Generator Units Used as Class IE Onsite Electric Power Systems at Nuclear Power Plants," which was issued recently. Since there is no longer a need for Regulatory Guide 1.108, it has been withdrawn. However, the withdrawal of Regulatory Guide 1.108 does not alter any prior or existing licensing commitments based on its use.

Regulatory guides may also be withdrawn when they are superseded by the Commission's regulations, when equivalent recommendations have been incorporated in applicable approved codes and standards, or when changes in methods and techniques or in the need for specific guidance have made them obsolete.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 19th day of July, 1993.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 93–18707 Filed 8–4–93; 8:45 am]

BILLING CODE 7590–01–M

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 to Regulatory Guide 8.9, "Acceptable Models, Equations, and Assumptions for a Bioassay Program," describes practical and consistent methods acceptable to the NRC staff for estimating intake of radionuclides using bioassay measurements.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory Guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 512–2249 or (202) 512–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 8th day of July, 1993.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 93–18708 Filed 8–4–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 161 to Facility Operating License No. DPR–61 issued to Connecticut Yankee Atomic Power Company (the licensee), which revised the Technical Specifications for operation of the Haddam Neck Plant located in Middlesex County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified the Technical Specifications to upgrade the feedwater control system from an analog to a digital system.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on March 8, 1993, (58 FR 12976). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (58 FR 31760).

For further details with respect to the action see (1) the application for amendment dated January 29, 1993, and supplemented April 30, 1993, (2) Amendment No. 161 to License No. DPR–61, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment dated May 27, 1993. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland this 14th day of July 1993.

For the Nuclear Regulatory Commission.

James W. Andersen,

Acting Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–18713 Filed 8–4–93; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Repayment of Loans From the Railroad Unemployment Insurance Account to the Railroad Retirement Account

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Under section 10(d) of the Railroad Unemployment Insurance Act (45 U.S.C. 360(d)) the Railroad Retirement Board is required to order repayment of outstanding loans from the Railroad Retirement Account to the Railroad Unemployment Insurance Account when it has determined that the balance in the Railroad Unemployment Insurance Account is sufficient to repay the outstanding balance of the loans due the Railroad Retirement Account. Section 10(d) further requires the Board, having made such a determination, to direct the Secretary of the Treasury to make the necessary transfers to repay the loan. The Board hereby gives notice of its action under section 10(d) of the Railroad Unemployment Insurance Act to repay the outstanding balance of the loan due the Railroad Retirement Account.

FOR FURTHER INFORMATION CONTACT: Peter A. Larson, Chief Financial Officer, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611 [312] 751–4590.

SUPPLEMENTARY INFORMATION: On June 28, 1993, the Railroad Retirement Board determined that the balance to the credit of the Railroad Unemployment Insurance Account was sufficient to fully repay the outstanding balance of the loan due the Railroad Retirement Act. Accordingly, the Board directed the Secretary of the Treasury to transfer $180,241,803.96 from the unemployment account to the retirement account and this transfer was made on June 29, 1993. The transfer to the retirement account has completely liquidated the debt due from the unemployment account to the retirement account attributable to loans made prior to October 1, 1985.

By Authority of the Board.

Dated: July 28, 1993.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 93–18610 Filed 8–4–93; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–32694; File No. SR–CBOE–93–16]

July 29, 1993.

Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Changes by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading of Flexible Exchange Options ("FLEX Options") Based on the Russell 2000 Index

I. Introduction

On March 9, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal to list and trade large-size, customized index options, referred to as Flexible Exchange Options ("FLEX Options") based on the Russell 2000 Index ("Russell 2000" or "Index").[3]

Notice of the proposed rule change was published for comment and appeared in the **Federal Register** on April 29, 1993.[4] No comments were received on the proposal.[5] The CBOE amended the proposal on June 29, 1993.[6] This order approves the proposal as amended.

---

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] The Russell 2000 is a capitalization-weighted index developed by Frank Russell and composed of the bottom 2000 of the 3000 largest U.S. equity securities in terms of domestic market capitalization. The Index is designed to track the performance of the domestic small to midsized market. Unlike the S&P Indexes, the Russell 2000 is adjusted for cross-ownership.

[4] See Securities Exchange Act Release No. 32199 (April 23, 1993), 58 FR 26014.

[5] See note 15, *infra*.

[6] On June 29, 1993, the CBOE filed Amendment No. 1 reducing the position and exercise limits applicable to the proposed Russell 2000 FLEX Options from 400,000 to 200,000 contracts. See letter from William J. Barclay, Vice President, Strategic Planning and International Development,

II. Description of the Proposal

The CBOE in this proposal is seeking to expand the FLEX Options program to include FLEX Options on the Russell 2000.[7] The purpose of the CBOE's FLEX Option program is to provide a framework for the Exchange to list and trade index options that give investors the ability, within specified limits, to designate certain of the terms of the options. Consistent with the original FLEX Options Approval Order, the present proposal to trade FLEX Options based on the Russell 2000 will similarly permit market participants to designate certain terms of the options contract, such as the strike prices, exercise types, expiration date, and form of settlement.[8] Currently, the CBOE lists and trades FLEX Options based on the OEX and SPX Indexes, which consist of 100 and 500 high-capitalization stocks, respectively. The component stocks of the Russell 2000 however consist of 2,000 small-capitalization companies.[9] The Exchange believes that there is a growing market for customized FLEX Options based on a small-capitalization stock index such as the Russell 2000.

Presently, CBOE Rule 24A.7 provides that FLEX Options are subject to maximum position and exercise limits of 200,000 contracts on the same side of the market on a given index, without aggregation for other contracts on the same index with one exception. This exception requires that at the close of business two days prior to the last day of trading of the calendar quarter, members must aggregate positions in P.M.-settled [10] FLEX Options and comparable quarterly expiration index options ("QIXs") with such positions not exceeding the QIX limits specified in Rule 24.4. The applicable hedge exemptions under Rule 24.4 may however be applied to aggregate positions.[11]

The CBOE proposes the FLEX Options on the Russell 2000 be subject to position limits of 200,000 contracts on the same side of the market, which is identical to existing limits for OEX and SPX FLEX Options.[12] In addition, the special aggregation provision in Rule 24A.7 for P.M.-settled FLEX Options and QIX options is intended by the CBOE to apply to FLEX Options on the Russell 2000 and QIX options on the Russell 2000 with the same last trading day prior to expiration ("comparable QIX options").[13] Accordingly, position limits for P.M.-settled FLEX Options and comparable QIX options would be subject to a maximum limit of 50,000 contracts on the same side of the market (without a telescoping requirement for the series with the nearest expiration date) which is consistent with the position limits for Russell 2000 QIX options and existing CBOE Rule 24.4.[14]

III. Discussion

The Commission believes 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, the requirements of section 6(b)(5) and 11A.[15] In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored or customized product for a broad-based index consisting of small-capitalization stocks that may be more suitable to their investment needs than the other outstanding FLEX index options. Moreover, consistent with section 11A, the proposal should encourage fair competition among brokers and dealers and exchange markets, by allowing the CBOE to compete with the growing OTC market in customized index options.

In addition, the Commission believes that the CBOE proposal will help to promote the maintenance of a fair and orderly market, consistent with section 6(b)(5) and 11A, because the purpose of the proposal is to extend the benefits of a listed, exchange market in Russell 2000 options that have certain terms varied by the particular investor. The attributes of the Exchange's options market versus an over-the-counter ("OTC") market include, but are not limited to, a centralized market center, an auction market with posted transparent market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of OCC for all contracts traded on the Exchange.[16]

In general, transactions in FLEX Options based on the Russell 2000 will be subject to many of the same rules that apply in index options traded on the CBOE. In order to provide investors with the flexibility to designate certain terms of the options and accommodate the special trading of FLEX Options, however, several new rules will apply solely to FLEX Options.[17]

Due to the customized nature of these options, Russell 2000 FLEX Options, unlike regular Russell 2000 options and Russell 2000 QIXs, will not have trading

---

CBOE, to Richard Zack, Branch Chief, Division of Market Regulation, SEC, dated June 29, 1993.

[7] The Commission approved the CBOE's FLEX Options framework on February 24, 1993 permitting the Exchange to list and trade FLEX Options based on the Standard & Poor's ("S&P") 100 ("OEX") and 500 ("SPEX") Indexes. See Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 ("FLEX Options Approval Order").

[8] The Commission in its original FLEX Options approval designated FLEX Options as standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act. See Securities Exchange Act Release No. 31919 (February 23, 1993), 58 FR 12056 ("9b–1 Order"). As described in note 25 *infra*, and for the same reasons stated in the 9b–1 Order, Russell 2000 Flex Options are deemed "standardized options" for purposes of the Rule 9b–1 options disclosure framework.

[9] The Commission approved the listing and trading of options based on the Russell 2000 on the CBOE on October 30, 1992. See Securities Exchange Act Release No. 31382 (October 30, 1992), 57 FR 52802. In approving Russell 2000 options the Commission believed that the Index would provide investors with an important trading and hedging mechanism that accurately reflected the overall movement of stocks in the small- to middle-capitalization range of U.S. equity securities. In addition, the Commission determined that the Russell 2000 was a broad-based index not readily susceptible to manipulation.

[10] The settlement value of a P.M.-settled stock index options contract is based on the closing prices of the component securities.

[11] Under the proposal, the CBOE's position limits would be established as a three-year pilot, during or following which adjustments may be required. See letter from William J. Barclay, Vice President, Strategic Planning and International Development, CBOE, to Jeffrey Burns, Attorney, Branch of Options Regulation, SEC, dated July 28, 1993. In addition, the CBOE has stated that it will monitor the effect of the position limits at the end of the first year of trading and provide the Commission with a report concerning the adequacy of the limits and its effects on the underlying cash market. See, *infra*, discussion section on one-year monitoring report.

[12] See, *supra* note 6.

[13] The Commission today is concurrently approving the CBOE's proposal to list the trade QIX options based on the Russell 2000. See Securities Exchange Act Release No. 32693 (July 29, 1993).

[14] The hedge exemption provision found in Policy .01 to Rule 24.4 would continue to be applicable to P.M.-settled FLEX Options and comparable QIX options on the Russell 2000.

[15] 15 U.S.C. 78f(b)(5) and 78k–1 (1982). The discussion in the FLEX Options Approval Order, *supra* note 7, is incorporated herein.

[16] The Commission received a comment letter from the New York Stock Exchange, Inc. ("NYSE") on February 26, 1993 which articulated concerns about potential adverse effects FLEX Options could have on securities markets trading securities that are components of stock index options. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan Katz, Secretary, SEC, date February 26, 1993. Approximately 25 percent of the Russell 2000 is comprised of securities listed on the NYSE.

As discussed in the FLEX Options Approval Order and in the following text, while the Commission shares these concerns, the Commission is satisfied that the CBOE has established appropriate measures to address and monitor potential adverse effects. Moreover, there have been no indications of adverse market consequences through July 19, 1993, in the 46,715 FLEX Options contracts that have expired since trading in FLEX Options on the S&P 100 and 500 commenced. As discussed below, although the Commission shares many of the NYSE's concerns regarding market impact, we believe that structures are in place to monitor the FLEX market and that the CBOE and NYSE will consider appropriate changes if necessary.

[17] See FLEX Options Approval Order *supra* note 7.

rotations at either the opening or closing of trading. In addition, the individually-tailored auction process outlined in the FLEX Options Approval Order,[18] sets forth in detail the procedure of customized negotiation for those investors seeking particular flexibility in options terms. Accordingly, the CBOE FLEX Options framework for trading stock index options, such as the Russell 2000, varies from the traditional exchange procedure for trading non-FLEX stock index options, due to the special FLEX procedures allowing for limited individual negotiation of certain of the terms of the contract between the parties.

The Commission believes that the FLEX auction process appears reasonably designed to provide the benefits of a competitive Exchange auction environment for Russell 2000 options while allowing market participants the flexibility to negotiate certain terms. Accordingly, the CBOE has established procedures for quotes upon requests which must then be firm for a designated period and which will be disseminated through the Options Price Reporting Authority ("OPRA").

The Commission further notes that FLEX Options based on the Russell 2000 can be constructed with expiration exercise settlement based on the closing values of the component securities which can result in adverse effects for the markets in those securities.[19] Although the Commission continues to believe that basing the settlement of index products on opening as opposed to closing prices on Expiration Fridays helps alleviate stock market volatility,[20] these concerns are reduced in the case of FLEX Options based on the Russell 2000, since expiration of these stock index options will not correspond to the normal expiration of stock index options, stock index futures, and options on stock index futures. In particular, Russell 2000 FLEX Options will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September, and December, thereby diminishing the impact that these FLEX Options could have on the underlying cash market.

Also, as noted above, the proposal would limit the effect on securities markets by addressing the relationship between FLEX and QIX Options. As proposed by the CBOE, amended Rule 24A.7 requires P.M.-settled Russell 2000 FLEX Options to be aggregated with QIX options based on the Russell 2000 and having the same last trading day prior to expiration. Consistent with these requirements, Russell 2000 FLEX Options would be aggregated with comparable QIX options two days prior to expiration subject to the Russell 2000 QIX position limits of 50,000 contracts on the same side of the market.[21] The Commission believes that these rules should help prevent an investor from using Russell 2000 FLEX Options for the purpose of avoiding the position limits applicable to comparable QIXs.

The CBOE pursuant to the existing FLEX Options position limit framework has proposed to establish position limits of 200,000 contracts on the same side of the market for the Russell 2000 FLEX Options . The commission finds that these proposed position limits are consistent with the FLEX Options position limit framework as set forth in the FLEX Options Approval Order.[22]

Nevertheless, because the position limits for Russell 2000 FLEX Options are much higher than those currently existing for outstanding exchange-traded Russell 2000 options and open interest in one or more FLEX series could grow to significant exposure levels, the Commission cannot rule out the potential for adverse effects on the securities markets for the component securities underlying the Russell 2000 FLEX Option. The CBOE has taken several steps to address this concern, including establishing the FLEX position limits framework as a three-year pilot program and undertaking to monitor open interest, position limit compliance and potential adverse market effects carefully and to report to the Commission after one year's experience trading Russell 2000 FLEX Options.[23] The reporting of the CBOE's experience in connection with the trading of Russell 2000 FLEX Options will be consistent with the original FLEX Options Approval Order, and include, among other things:

- The type of strategies used by Russell 2000 FLEX Options market participants and whether Russell 2000 FLEX Options are being used, in lieu of existing standardized stock index options on the Russell 2000.
- The type of market participants using Russell 2000 FLEX Options.
- The terms which are predominantly being "flexed" by market participants, *i.e.*, strike prices, settlement value (*A.M.* v. *P.M.*), term of duration, *European* v. *American style*.
- The size of the Russell 2000 FLEX position on average, the size of the largest Russell 2000 FLEX positions on any given day and the size of the largest Russell 2000 FLEX position held by any single customer/member.
- The relationship between strike prices and current index value.
- Whether there is significant interest in long-term expirations greater than nine months.
- Any effect Russell 2000 FLEX positions have had on the underlying cash market, including an analysis of Russell 2000 FLEX positions and their market impact on days NYSE's Rule 80A is invoked.

In addition, the Commission expects and the CBOE has agreed to monitor the actual effect of Russell 2000 FLEX Options once trading commences and take prompt action (including timely communication with marketplace self-regulatory organizations responsible for oversight of trading in component stocks) should any unanticipated adverse market effects develop.

Lastly, based on representations from the CBOE, the Commission believes that the CBOE and OPRA will have adequate systems processing capacity to accommodate the additional options listed in connection with Russell 2000 FLEX Options. Specifically, the Exchange represents that "CBOE and OPRA have the necessary systems capacity to support the new series which could result from introduction of Russell FLEX * * * options."[24]

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because such amendment will help to benefit the Russell 2000 FLEX Options market and market participants employing these options while at the same time reducing the possible exposure to the market from these larger positions.[25] In addition, the higher limits were published for comment and no comments were received rendering acceleration of the amendment reasonable. The Commission accordingly believes that granting accelerated approval of the amendment to reduce position limits is appropriate and consistent with Section 6 of the Act.

---

[18] *Id.*

[19] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 ("A.M.-settled SPX Approval Order").

[20] *Id.*

[21] See, *supra* note 13.

[22] See FLEX Options Approval Order *supra* note 7.

[23] *Id.*

[24] See Letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Jeffrey Burns, Attorney, Branch of Options Regulation, Division of Market Regulation, SEC, dated June 28, 1993, incorporating a memorandum from Joseph P. Corrigan, Executive Director, OPRA, to Bill Barclay, CBOE, dated June 28, 1993.

[25] In the original Russell 2000 FLEX Option rule filing, the CBOE proposed position and exercise limits of 400,000 contracts. The Commission believes that a position limit requirement of 200,000 contracts on the same side of the market for FLEX Options on the Russell 2000 is consistent with the FLEX Options Approval Order.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File NO. SR–CBOE–93–16 and should be submitted by August 26, 1993.

V. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and sections 6 and 11A of the Act, in particular. In addition, the Commission also finds pursuant to Rule 9b–1 under the Act, that FLEX Options based on the Russell 2000 are standardized options for purposes of the options disclosure framework established under Rule 9b–1 of the Act.[26]

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[27] that the proposed rule change (SR–CBOE–93–16), including Amendment No. 1 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

[FR Doc. 93–18656 Filed 8–4–93; 8:45 am]

BILLING CODE 8010–01–M

[26] As part of the original approval process of the FLEX Options framework, the Commission delegated to the Director of the Division of Market Regulation the authority to authorize the issuance of orders designating securities as standardized options pursuant to Rule 9b–1(a)(4) under the Act. See Securities Exchange Act Release No. 31911 (February 23, 1993), 58 FR 11792. On May 4, 1993, Chairman Breeden pursuant to Public Law 87–592, 76 Stat. 394 (15 U.S.C. 78d–1, 78d–2), and Article 30–3 of the Commission's Statement of Organization; Conduct and Ethics; and Information and Requests (17 CFR 200.30–3), designated that persons serving in the position of Deputy Director, Associate Director, and Assistant Director, in the Division of Market Regulation, be authorized to issue orders designating securities as "standardized options" pursuant to Rule 9b–1(a)(4). Accordingly, this subdelegation provides the necessary authority for Russell 2000 FLEX Options to be designated as "standardized options" by the Division of Market Regulation. See Designation of Personnel to Perform Delegated Functions in the Division of Market Regulation, dated May 4, 1993.

[27] 15 U.S.C. 78s(b)(2) (1982).

[28] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–32693; File No. SR–CBOE–93–15]

Self-Regulatory Organizations; Chicago Board Options Exchange Inc.; Order Approving Proposed Rule Change Relating to the Listing and Trading of Quarterly Index Expiration Options Based on the Russell 2000 Stock Index

July 29, 1993.

On March 9, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of options on the Russell 2000 Stock Index ("Russell 2000" or "Index") that will expire on the first business day of the month following the end of each calendar quarter ("Quarterly Index Expirations" or "QIXs").[3] Currently, Russell 2000 options traded on the Exchange expire on the Saturday immediately following the third Friday of the expiration month.[4] The CBOE intends to trade Russell 2000 QIXs in addition to the existing Russell 2000 options expiring at the middle of the month.

Notice of the proposed rule change appeared in the **Federal Register** on April 29, 1993.[5] No comments were received on the proposed rule change. This order approves the proposal.

The Exchange proposes to include the Russell 2000 in CBOE Rule 24.9 in order to provide for the listing of up to eight near-term quarterly expirations for trading on Russell 2000 options. The CBOE would be permitted at any one time to have up to eight Russell 2000 option open for trading with expiration dates on the first business day of the month following the end of a calendar quarter.[6] Accordingly, Russell 2000 QIXs will have expirations approximately two weeks apart from existing Russell 2000 option expirations in the quarterly month expiration.

The proposed QIX options will trade simultaneously with, not independent of, currently listed and traded Russell 2000 options. The proposed QIX options will be subject to the same rules that presently govern the trading of existing Russell 2000 options contracts, including sales practice rules, margin requirements, and floor trading procedures. Contract terms for the QIX options will be similar to the corresponding Russell 2000 options that presently trade on the Exchange with one exception. For example, Russell 2000 QIXs will have European-style exercise,[7] with the daily exercise settlement value based on the index value derived from the closing prices of component stocks.[8] In addition, the multiplier for Russell 2000 QIXs may be set at 500 rather than the customary 100.[9]

[1] 15 U.S.C. 78s(b)(1) (1992).

[2] 17 CFR 240.19b–4 (1993).

[3] The Russell 2000 is a broad-based, capitalization-weighted index of domestic equity securities traded on the New York Stock Exchange, Inc. ("NYSE"), American Stock Exchange, Inc. ("Amex"), and the National Association of Securities Dealer's ("NASD") Automated Quotation System ("NASDAQ"). The Index was developed by Frank Russell and is composed of the bottom 2,000 of the 3,000 largest U.S. equity securities in terms of domestic market capitalization, and is designed to track the performance of the domestic small to mid-sized capitalization market.

[4] The Commission today is concurrently approving the CBOE's proposal to list and trade Flexible Exchange Options ("FLEX Options") based on the Russell 2000. See Securities Exchange Act Release No. 32694 (July 29, 1993) ("Russell 2000 FLEX Options Approval Order") FLEX Options allow market participants the ability to name certain terms of the option contract including the expiration date and valuation method at settlement.

[5] See Securities Exchange Act Release No. 32198 (April 23, 1993), 58 FR 26013.

[6] Presently, regular (non-FLEX and non-QIX) options traded at the CBOE expire on the Saturday following the third Friday of the expiration month. The CBOE trades index options with expirations of up to one year in length that expire at three month intervals. The Exchange allows for up to six expiration months with none farther out than twelve months. In addition, the CBOE also trades long-term index options that may expire three years from listing named "LEAPS." The CBOE is not now proposing to list or trade QIX options with more than twelve months to expiration. Any such proposal would be filed with the Commission for review under section 19(b) of the Act.

[7] A European-style option is one that may be exercised only during a specified period prior to the expiration of the option.

[8] Regular options on the Russell 2000 are settled based on the opening prices of the component securities.

[9] The Exchange believes that increased contract size may be justified due to the larger portfolios now being managed by institutional investors. The CBOE's rules provide that position limits will be accordingly adjusted if the multiplier is 500 rather than 100. Initially, the Exchange intends to use only the 100 multiplier. The CBOE has stated that the Commission will be notified, and appropriate procedures or rule amendments filed and approved prior to trading options based on a 500 multiplier. Accordingly, the Commission must specifically approve the use of a multiplier other than 100. See letter from Joanne Moffic-Silver, Associate General Counsel & Chief Enforcement Attorney, CBOE, to

Continued

With regard to position and exercise limits,[10] the CBOE is proposing to amend Rule 24.4 to provide that Russell 2000 QIXs will be subject to the 50,000 contract limit currently specified for Russell 2000 index options, but without the 30,000 contract limit or "telescoping requirement" for the series with the nearest expiration date applicable for regular Russell 2000 options. For the purpose of this test, regular Russell 2000 options would be aggregated with the Russell 2000 QIXs, however, in the case of regular Russell 2000 options, the 30,000 contract telescoping requirement continues to apply. In addition, the number of contracts in any QIX position having a multiplier of 500[11] must be treated as equal to five times the actual number of contracts in the position for the purposes of position and exercise limits.

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, the requirements of section 6(b)(5).[12] In particular, the Commission believes that the proposed rule change is designed to provide investors with a tailored quarterly portfolio hedge that may be more suitable to their investment needs. Specifically, by providing investors with the ability to use Russell 2000 QIX options that settle based on the value of component stocks on the last business day of the calendar quarter, the CBOE proposal will allow investors increased flexibility to tailor their portfolio positions to satisfy their investment objectives. For instance, according to the CBOE, the performance of portfolio managers and institutional investors is judged on a quarterly basis.[13] Therefore in the past, these investors have been forced to pursue "quarterly hedges" in the over-the-counter ("OTC") market employing forwards, options, and/or swaps. Accordingly, the Commission believes the CBOE proposal is a reasonable response by the Exchange to meet the demands of sophisticated portfolio managers and other institutional investors who are increasingly using the OTC market in order to satisfy their hedging needs, and will thereby promote competition among these markets.

In addition, the Commission believes that the CBOE proposal will help promote the maintenance of a fair and orderly market because the purpose of the proposal is to extend the benefits of a listed, exchange market in Russell 2000 options to quarterly calendar expirations. The attributes of the Exchange's Russell 2000 options market versus an OTC market include, but are not limited to, a centralized market center, an auction market with posted market quotations and transaction reporting, standardized contract specifications, parameters and procedures for clearance and settlement, and the guarantee of the Options Clearing Corporation ("OCC") for all contracts traded on the Exchange.[14]

The Commission also notes that the Exchange's existing rules applicable to stock index options, including among others, strike price interval, bid/ask differential, price continuity, and sales practice rules and position and exercise limits will apply to QIX options. In particular, Russell 2000 QIXs will be subject to a 50,000 contract limit under Rule 24.4(d) without a telescoping provision, and will be aggregated with regular Russell 2000 contracts.[15] Accordingly, all non-FLEX Russell 2000 options contract positions are limited in total to a 50,000 position limit.[16]

The Commission notes that Russell 2000 QIXs will be treated like regular Russell 2000 options except for expiration settlement which will be based on the closing values of the component securities.[17] Although the Commission continues to believe that basing the settlement of index products on opening, as opposed to closing prices on Expiration Fridays helps alleviate stock market volatility,[18] these concerns are reduced in the case of Russell 2000 QIXs, since expiration of these stock index options will not correspond with the normal expiration of stock index options, stock index futures, and options on stock index futures. In particular, Russell 2000 QIXs will never expire on an "Expiration Friday" or any other "Expiration Fridays" in March, June, September, and December, thereby diminishing the impact that Russell 2000 QIXs could have on the market. Accordingly, the Commission believes that Russell 2000 QIXs options will not compromise the protection of investors or have an adverse market effect.[19] Of course, the Commission expects the CBOE to monitor the actual effect of Russell 2000 QIXs once trading commences and take prompt action (including timely communication with marketplace self-regulatory organizations responsible for oversight of trading in component stocks) should any unanticipated adverse market effects develop.

Lastly, based on representations from the CBOE, the Commission believes that the CBOE and the Options Price Reporting Authority ("OPRA") will have adequate systems processing capacity to accommodate the additional options listed in connection with QIX options. Specifically, the Exchange represents that "CBOE and OPRA have the necessary systems capacity to support the new series which could result from introduction of Russell * * * QIX options."[20]

Sharon Lawson, Assistant Director, Division of Market, Regulation, SEC, dated July 22, 1993.

[10] Position limits are the maximum number of option contracts permitted on the same side of the market with respect to a single underlying interest that may be held or written by a single investor or group of investors acting in concert. Exercise limits are the maximum number of option contracts on the same underlying interest that a single investor or group of investors acting in concert may exercise during any five consecutive business days.

[11] See note 9, *supra*, discussing Commission approval prior to implementation of a multiplier higher than 100.

[12] 15 U.S.C. 78f(b)(5) (1982).

[13] In addition, many investment strategies employed by these portfolio managers converge at the calendar quarter. Hence, traditional exchange-type expirations provide a less than perfect hedge for many institutions.

[14] See Securities Exchange Act Release No. 31898 (February 22, 1993), 58 FR 11878.

[15] Regular Russell 2000 options will continue to be subject to limits of 50,000 contracts with a telescoping requirement in the near term series. In the aggregate, all Russell 2000 contracts, excluding FLEX Options, are limited to the position limits of 50,000 contracts established for this particular contract.

[16] See note 19, *infra*, discussing aggregation requirements for FLEX Options and QIXs on the Russell 2000 expiring on the same trading day. Russell 2000 QIXs will also be entitled to the hedge exemption from position limits under Interpretation .01 of CBOE Rule 24.4. This hedge exemption allows public customers to apply for a "hedge exemption" from established position limits for broad-based index options if those customers hold preapproved portfolios of long positions in common stocks. In addition, this hedge exemption is also available to public customers with accounts having short stock positions who seek to offset economic risk by buying calls or selling puts on a broad-based stock index. The maximum size of an exempted position, however, cannot exceed the unhedged value of the qualified stock portfolio, and no exempted positions can exceed 75,000 contracts, regardless of the size of the stock portfolio.

[17] The Commission in October 1992 approved the CBOE's proposal to trade regular Russell 2000 options with expiration settlement based on the opening prices of the component securities. See Securities Exchange Act Release No. 31382 (October 30, 1992), 57 FR 52802.

[18] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376.

[19] As described in note 4, *supra*, concurrent with approval of Russell 2000 QIXs, the Commission is approving a CBOE proposal to trade FLEX Options on the Russell 2000 Index. As described in more detail in the Russell 2000 FLEX Options Approval Order, positions in FLEX Options and comparable QIX options must be aggregated at the close of business two days prior to the last trading day of the calendar quarter subject to the lower Russell 2000 QIX position limits. The potential market impact of this should minimize the larger position limits applicable to FLEX Options.

[20] See Letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Jeffrey Burns, Attorney, Branch of Options Regulation, Division of Market Regulation, SEC dated June 28, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change (SR–CBOE–93–15) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–18657 Filed 8–4–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32696; File No. SR–NYSE–93–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the New York Stock Exchange, Inc.; Relating to Global Telecommunications Market Index Target-Term Securities

July 29, 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 July 19, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. 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 list for trading Market Index Target-Term Securities ("MITTS"),[1] the return of which is based upon a global portfolio of securities of telecommunications companies ("Global Telecommunications Portfolio"). Initially, the Global Telecommunications Portfolio will contain the securities of 22 telecommunications companies, representing 14 countries from around the world (Attached in Appendix A is a list of the portfolio securities, the issuing companies, and the countries in which they are organized).

The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

incorporating a memorandum from Joseph P. Corrigan, Executive Director, OPRA, to Bill Barclay, CBOE, dated June 28, 1993.

[21] 15 U.S.C. 78s(b)(2) (1982).

[22] 17 CFR 200.30–3(a)(12) (1993).

[1] Market Index Target-Term Security or MITTS is a registered service mark of Merrill Lynch & Co., Inc.

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 NYSE 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 NYSE 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 the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Pursuant to the listing criteria set forth in Section 703.19 of the NYSE's Listed Company Manual, the Exchange intends to list and trade MITTS. MITTS are securities that entitle the holder to receive at maturity from the issuer a minimum portion of the principal amount plus an amount based upon the change in the market value of a stock index or portfolio. The Exchange is submitting the proposed rule change specifically to enable the NYSE to list for trading MITTS on the Global Telecommunications Portfolio ("Global Telecommunications MITTS") issued by Merrill Lynch & Co., Inc. ("Merrill Lynch").

Global Telecommunications MITTS will allow investors to combine protection of a portion of the principal amount of the MITTS with additional payments based upon the performance of a portfolio of securities representing the global telecommunications industry. The first issue of Global Telecommunications MITTS will provide 90 percent principal protection.

(a) *The Security.* Global Telecommunications MITTS will be denominated in U.S. dollars and will entitle the owner at maturity[2] to receive an amount based upon the percentage change in the value of the Global Telecommunications Portfolio from the Date of issuance to the "final calculation period," subject to a minimum repayment amount. The "final calculation period" is a specified number of days prior to the maturity date.[3] The average value of the Global Telecommunications Portfolio during the final calculation period will be used in calculating the amount holder will receive upon maturity.[4]

If the market value of the Portfolio has declined, the holder will receive not less than a specified percentage of the principal amount of the security. For example, if the market value of the portfolio used to calculate the amount payable at maturity has declined more than ten percent, the holders of the first issue of Global Telecommunications MITTS will receive 90 percent of the principal amount of the securities. The payment in addition to the minimum principal amount at maturity is based on changes in the value of the portfolio, but does not reflect the payment of dividends on the securities that comprise the portfolio.

Like other MITTS listed on the NYSE, Global Telecommunications MITTS may not be redeemed prior to maturity and are not callable by the issuer. Holders of MITTS will be able to cash-out of their investment by selling the security on the Exchange. The Exchange anticipates that the trading value of the security in this secondary trading market will depend in large part on the value of the Global Securities Telecommunications Portfolio and also on such other factors as the level of interest rates, the volatility of the value of the Global Telecommunications Portfolio, the time remaining to maturity, dividend rates, and the credit worthiness of the issuer.

The Exchange will only list for trading Global Telecommunications MITTS issues that have at least one million outstanding securities, at least 400 shareholders, a minimum life of one year, at least a $4 million market value, and that otherwise comply with the NYSE's initial listing criteria. In addition, the Exchange will monitor each issue to verify that it complies with the exchange's continued listing criteria.[5]

Merrill Lynch will deposit registered global securities representing Global Telecommunications MITTS with its depository, The Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

[2] The maturity date for Global Telecommunications MITTS is five years from issuance.

[3] In particular, the final calculation period for Global Telecommunications MITTS will consist of the 60 business days prior to maturity of the security. Within this time period, Merrill Lynch will use for calculation purposes, the first 30 business days that occur without a market disruption event.

[4] The closing value for the Global Telecommunications Portfolio will be determined by an affiliate of Merrill Lynch, and will equal the sum of the products of the average market price and the applicable multiplier for each portfolio security over the final calculation period.

[5] See NYSE Listed Company Manual Section 703.19.

(b) *The Portfolio.* The Global Telecommunications Portfolio consists of securities of 22 telecommunications companies that have significantly different levels of market capitalization (from a high of $82 billion to a low of $1.8 billion). The securities include the Exchange-listed common stock of seven U.S. telecommunications companies, the common stock of three foreign issuers (which stock is listed or trading on, or traded over the facilities of, U.S. securities markets), and the American and/or global depositary receipts of 12 additional foreign issuers.

At the outset, each of the securities in the Global Telecommunications Portfolio shall have equal representation. That is, each security included in the portfolio shall be assigned a multiplier on the date of issuance such that the security represents an equal percentage of the value of the entire portfolio on the date of issuance. The multiplier indicates the number of shares (or fraction of one share) of a security included in the calculation of the portfolio. Thus, each of the 22 companies shall represent 4.545 percent of the total portfolio at the time of issuance. If a security is subject to a stock split, stock divided or similar adjustment, the multiplier assigned to the security will be adjusted accordingly.

If a security is no longer outstanding prior to the maturity of the Global Telecommunications MITTS, whether for reason of a merger, acquisition or similar type of corporate control transaction, Merrill Lynch shall assign to that security a value equal to the security's final value for the purpose of calculating portfolio values. For example, if a company included in the portfolio is acquired by another company, Merrill Lynch shall thereafter assign a value to the shares of the acquired company's securities equal to the value per share at which the acquisition takes place. In the case of a security that no longer exists due to bankruptcy, Merrill Lynch will assign a value of zero for the purposes of calculating portfolio values.

A Merrill Lynch affiliate will at a minimum calculate the value of the Global Telecommunications Portfolio on a daily basis and make those values available to investors. For any security that is not listed on a U.S. securities exchange, the calculation would not include quotations made by or through Merrill Lynch or its affiliates.[6]

The Issuer. The Exchange has determined that the issuer of the Global Telecommunications MITTS, Merrill Lynch, meets the listing criteria set forth in section 703.19 of the Exchange's Listed Company Manual. It is a member of the Exchange in good standing with sufficient assets to justify the issuance of MITTS offerings of the size contemplated by the proposed rule change.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principle 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 NYSE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The NYSE has not solicited, and does not intend to solicit, comments on the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approved such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to the file number in the caption above and should be submitted by August 26, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

Appendix A

[6] As of July 6, 1993, Telecommunicoes Braseleiras S.A. and Telefonica de Argentina were the only two securities not listed on a U.S. securities exchange of quoted through the National Association of Securities Dealers, Inc. ("NASD") Automated Quotation ("NASDAQ") system. Telecomunicoes Braseleiras S.A. is an American Depository Receipt ("ADR") traded over-the-counter ("OTC") through the NASD's bulletin board, while Telefonica de Argentina is traded both OTC and on the London Stock Exchange ("LSE"). Accordingly, Merrill Lynch, for purposed of calculating the Global Telecommunications Portfolio, would disregard quotations for these securities made by or through Merrill Lynch or any of its affiliates.

[7] 17 CFR 200.30–3(a)(12)(1992).

GLOBAL TELECOMMUNICATION PORTFOLIO

Issuer	Type of security	Country
Alcatel Alshthom Compagnie Generale d'Electricite	ADR*	France.
American Telephone & Telegraph Company	Common Stock	United States.
Bell Atlantic Corporation	Common Stock	United States.
BellSouth Corporation	Common Stock	United States.
British Telecommunications plc	ADR	United Kingdom.
Compania de Telefonos de Chile, S.A	ADR	Chile.
GTE Corporation	Common Stock	United States.
Hong Kong Telecommunications, Ltd	ADR	Hong Kong.
L.M. Ericsson Telephone Copany	ADR	Sweden.
Newbridge Network Corporation	Common Stock	Canada.
NYNEX Corporation	Common Stock	United States.
Pacific Telesis Group	Common Stock	United States.
Philippine Long Distance Telephone Company	Common Stock	Philippines.
Rogers Cantel Mobile Communications	Common Stock	Canada.
Southwestern Bell Corporation	Common Stock	United States.
Tadiran Ltd	Common Stock	Israel.
Telecom Corporation of New Zealand Limited	ADR	New Zealand.
Telecommunicoes Braseleiras S.A	ADR	Brazil.
Telefonica de Argentina	GDR**	Argentina.
Telefonica de Espania	ADR	Spain.
Telefonos de Mexico, S.A. de C.V	ADR	Mexico.
Vodaphone Group plc	ADR	United Kingdom.

[FR Doc. 93–18655 Filed 8–4–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–32695; File No. SR–PHLX–91–21]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to the Responsibilities for the Executions of Missed Orders

July 29, 1993.

On May 6, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to consolidate and modify the Exchange's procedures for the notification of and responsibility for missed orders on the Exchange's equity and foreign currency options floors.

The proposed rule change was published for comment in Securities Exchange Act Release No. 29247 (May 29, 1991), 56 FR 26177. No comments were received on the proposed rule change.

The Exchange proposes to adopt Options Floor Procedure Advice ("OFPA") D–1, which pertains to procedures for the notification of and responsibility for missed orders on the Exchange's equity options and foreign currency options trading floors.[3] A missed order, as defined in part (c) of OFPA D–1, is one that "becomes due an execution" but was not duly executed. OFPA D–1 would require notification of missed orders to the responsible floor agent[4] by 9:30 a.m. on the business day following the day the order was missed in order for the responsible floor agent to be held responsible for satisfying the missed order or for any associated monetary losses.[5]

If timely notification is given, the floor agent will be held responsible for the remedies in part (b) of the proposed Advance. In particular, if the missed order is discovered during the trading day, the missed order will be entitled to an immediate execution at either the order's limit price or at the available market price, whichever is better. The missed order shall be afforded such execution up to the amount of contracts which traded-through the order or for a minimum of ten contracts with respect to a quote-through. If notification is provided to the specialist at any time between the previous session's close

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] On May 28, 1991, the PHLX submitted an amendment to its filing that provided for the deletion of existing OFPAs A–6 (Missed Orders on the Book), B–10 (Responsibility for Mismatched or "Out" Trades) and C–6 (Responsibility for Missed Orders) since proposed OFPA D–1 would unify and codify these existing Advice. The Exchange also proposed to amend corresponding PHLX Rule 1037, regarding floor reports of Exchange options transactions by specialists. Specifically, Rule 1037, as amended, will require members or member organizations to give notice to specialists of instances where the specialist has failed to send a transaction report with respect to an options order which the specialist executed or should have executed by 9:30 A.M. on the business day following the day a transaction report was due. If timely notice is given, the specialist shall be responsible for any loss sustained until such time as the specialist answers the request. Previously, notice was required to be given by 12:00 noon on the following business day. *See* letter from William W. Uchimoto, General Counsel, PHLX, to Thomas Gira, Branch Chief, Division of Market Regulation, dated May 17, 1991. The PHLX submitted a conforming amendment to Rule 1037 on December 10, 1992. This amendment conforms the language of Rule 1037 to the language of proposed OFPA D–1 concerning instances where two floor officials can require that a specialist be held responsible for a missed order despite the fact that the specialist was notified of the missed order after 9:30. *See* letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated December 10, 1992.

The Exchange further amended its proposal by deciding not to delete OFPA B–10 upon the adoption of OFPA D–1. In this amendment, the PHLX also added the definition of a "floor agent" as the "person or unit in possession of the order at the time the order [became] due an execution" and specified how transaction reports for missed orders should be made. *See* letter from Gerald D. O'Connell, Vice President, Market Surveillance, PHLX, to Thomas Gira, Branch Chief, Division of Market Regulation, SEC, dated April 21, 1992 ("O'Connell Letter"). Finally, on February 25, 1993, the Phlx in a clarifying amendment corrected language to reflect the amount of contracts due a missed order and the appropriate reporting designations to be used. *See* letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Jeffrey Burns, Branch of Options Regulation, Division of Market Regulation, SEC, dated February 25, 1993.

Because these amendments are technical in nature they have not been separately noticed for comment.

[4] Responsible floor agent is that person or unit in possession of the order at the time the order becomes due an execution.

[5] In certain limited circumstances, OFPA D–1 also provides that the responsible floor agent is liable for a missed order even if timely notification is not made. Specifically, a floor agent may still be held responsible for a missed order if two floor officials determine that it is in the interest of maintaining just and equitable principles of trade to do so.

and 9:30 a.m. on the following business day, the missed order will be entitled to an immediate execution at its limit price or at previous day's closing quote, whichever is better, and shall be afforded such execution, up to the amount of contracts which traded-through the order or for a minimum of ten contracts with respect to a quote-through.[6] Pursuant to OFPA D–1, transactions effected under the remedial provisions of Section (b) must be promptly reported for tape dissemination on an out-of-sequence basis of the missed order is discovered on the trading day in question or on a "as of" basis if discovered on a subsequent trading day.[7]

The proposed rule change is a consolidation of existing OFPAS regarding missed orders. Existing OFPAs A–8 and C–6 correctly set forth the responsibilities of floor brokers and specialists for missed orders. The Exchange is proposing to delete OFPAs A–8 and C–6 and replace with OFPA D–1 in order to unify these floor rules regarding missed orders into one Floor Advice for floor brokers and specialists.[8]

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, the requirements of Section 6 and the rules and regulations thereunder.[9] The Commission believes that the Floor Advice proposed by the PHLX will protect the public interest and remove impediments to and perfect the mechanism of a free and open market by unifying the rules for floor brokers and specialists relating to the responsibilities for missed orders. In addition, the Commission does not believe that shortening the time deadline for the notification of missed orders from 12 noon to 9:30 a.m. will jeopardize the protection of investors. Given the technological advancements in market information systems, that allow brokers and investors to have greater and more timely access to market information, the Commission believes it is not unreasonable for the Exchange to insist that a floor agent must be notified of his errors in handing an order by the opening of trading on the day following the day in which the error was made in order for the floor agent to be held responsible for the missed order.

In addition, the Commission believes that guaranteeing the execution of a missed order at the limit price or better is a reasonable and appropriate remedy for the floor agent to incur as a result of the missed order. In particular, the remedy imposes a "cost" on the floor agent if the market moves in a direction favorable to the customer, irrespective of the limit price of the missed order. The Commission believes this is reasonable because it promotes just and equitable principles of trade on the Exchange floor and ensures investors are not disadvantaged, and may possibly receive a benefit, from an error of the floor agent in handling the order. The Commission also notes that, despite late notification of an error, the OFPA provides that a missed order can still be executed at the correct price if two floor official find that it is in the interest of maintaining just and equitable principles of trade to do so.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PHLX–91–21) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–18654 Filed 8–4–93; 8:45 am]

BILLING CODE 8010–01–M

[6] See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Jeffrey Burns, Attorney, Division of Market Regulation, Branch of Options Regulation, SEC, dated February 25, 1993.

[7] *Id.*

[8] OFPA B–10 will be retained by the Exchange for the purpose of governing the responsibility of registered options traders ("ROTs") for mismatched or "out" trades. The Exchange decided to retain this OFPA because the responsibility of ROTs for mismatched or "out" trades is significantly different than a floor agent's obligation in the context of a missed order.

[9] 15 U.S.C. 78f (1982).

[10] 15 U.S.C 78s(b)(2) (1982).

[11] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 35–25861]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 30, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by August 23, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc., et al. (70–7886)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its nonutility subsidiary company, AEP Investments, Inc. ("AEP Investments"), have filed a post-effective amendment under sections 9(a), 10 and 12(b) of the Act to their application-declaration previously filed under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By orders dated December 11, 1991 and November 2, 1992 (HCAR Nos. 25424 and 25667), AEP Investments, whose primary purpose is investing and participating in the development of demand-side management projects, was authorized to purchase up to $11.5 million of the securities of InterSource Technologies, Inc. ("InterSource"), which is developing electronic light bulb technology ("E-Lamp Technology") and new lighting products that AEP believes may result in significant reductions in lighting loads. AEP Investments presently holds 800,000 shares of InterSource Common Stock (approximately 9.9% of its issued and outstanding shares) and as of August 31, 1993 will hold 90,000 shares of its Preferred Stock, $100 par value. As of August 31, 1993 the entire $11.5 million funding of InterSource by AEP Investments will have been expended on its research and development efforts.

AEP Investments now proposes to provide InterSource with interim bridge financing in the form of a short-term secured loan evidenced by a Loan and Security Agreement. The loan will mature on December 31, 1993 and bear interest at a rate of 8% per annum in an amount of up to $1 million ("AEP Loan"). The interest on the AEP Loan will be payable upon the earlier of the

maturity of the loan or its prepayment. The security will consist of an assignment of the E-Lamp Technology license agreements presently controlled by InterSource and a perfected security interest in substantially all of InterSource's unencumbered personal property.

The purpose of the AEP Loan is to provide InterSource with continued funding for the development of the E-Lamp Technology while it completes a permanent financing with nonaffiliated investors presently anticipated to close by the end of October 1993. The AEP Loan will be repaid out of the proceeds of InterSource's permanent financing and in any event will mature on December 31, 1993.

AEP requests authority to provide capital contributions to AEP Investments in an aggregate amount of up to $1 million to enable AEP Investments to make the AEP Loan.

AEP Investments will divest itself of all of its interests in InterSource no later than January 1, 2002, by which time the development and commercialization of E-Lamp Technology will be complete and AEP's demand-side management goals largely achieved. AEP proposes to purchase products featuring the E-Lamp Technology for use in its demand-side management programs either directly through InterSource or its distributors. AEP does not propose to become a licensee, a distributor or marketing agent of any electronic light bulb products.

Central Power and Light Company (70–8053)

Central Power and Light Company ("CPL") 539 N. Carancahua Street, Corpus Christi, Texas 78401–2431, an electric public-utility subsidiary company of Central and South West Corporation ("CSW"), a registered holding company, has filed a post-effective amendment, under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42(a), 50 and 50(a)(5) thereunder, to its application-declaration filed under sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42(a), 50 and 50(a)(5) thereunder.

By order dated September 22, 1992 (HCAR No. 25638) ("1992 Order"), CPL was authorized to issue and sell, through December 31, 1994, up to $800 million of new first mortgage bonds ("New Bonds"). As of July 30, 1993, CPL had issued $765 million aggregate principal amount of New Bonds pursuant to the 1992 Order.

CPL now requests authorization to issue and sell up to $360 million of additional first mortgage bonds ("Additional Bonds"), in one or more series, through December 31, 1995. Except as provided below, the Additional Bonds will have the same terms and conditions and be sold in the same manner contemplated by the 1992 Order.

The Additional Bonds will have maturities of not less than three nor more than thirty-five years. CPL estimates that the Additional Bonds will be issued at an interest rate of between 5½% and 8½% depending on market conditions and states that in no event will the interest rate on the Additional Bonds exceed 11%.

CPL proposes to sell the Additional Bonds either pursuant to competitive bidding or in negotiated transactions with underwriters or agents. It, therefore, requests an exception from the competitive bidding requirements of Rule 50 under subsection (a)(5) thereunder. CPL also requests authority to enter into negotiations with potential underwriters with respect to the interest rate, redemption provisions and other terms and conditions applicable to the Additional Bonds, and to set the terms of the Additional Bonds, subject to the receipt of the order of this Commission, requested hereby, authorizing their issuance and sale. It may do so.

In additional, CPL seeks authorization to issue the Additional Bonds with terms that deviate from the standards contained in the Commission's Statement of Policy Regarding First Mortgage Bonds, as amended, (HCAR Nos. 13105 and 16369). The Additional Bonds may include terms which (i) limit CPL's ability to redeem or refund the New Bonds for a period of up to fifteen years, (ii) do not include a sinking fund or retirement fund requirement, and/or (iii) do not restrict CPL's ability to pay dividends on its common stock.

The proceeds from the sale of the Additional Bonds will be used principally to refund all or a portion of $143 million of 9⅜% Series Z bonds due December 1, 2019 ("Series Z Bonds"). The Series Z Bonds will become redeemable on December 1, 1994, at a general redemption price of $106.98, plus accrued and unpaid interest to the redemption date. If CPL decides to acquire the Series Z Bonds prior to December 1, 1994, it proposes to do so by means of a tender offer to holders of the Series Z Bonds. The proceeds may also be used to redeem all or a portion of $28 million of 6⅝% Series J Bonds due January 1, 1998 ("Series J Bonds") and $36 million of 7% Series L Bonds due February 1, 2002 ("Series L Bonds"). (Hereafter, the Series Z, Series J and Series L Bonds are collectively referred to as the "Old Bonds".) In addition, CPL proposes that the proceeds may be used to redeem all or a portion of CPL's outstanding 500,000 shares of 8.72% Preferred Stock, par value $100 per share ("Preferred Stock"), at the the current applicable redemption price, currently $102.91 per share, together with all unpaid dividends thereon. Any net proceeds not used for the redemption or repurchase of the Old Bonds and Preferred Stock will be used to repay outstanding short-term borrowings incurred or expected to be incurred primarily to finance construction expenditures, to pay for increased fuel and other costs, to provide working capital and for other general corporate purposes. In the event that the proceeds from the sale of the Additional Bonds are less than the amount required to redeem or repurchase all of the Old Bonds or Preferred Stock, CPL will pay a portion of the redemption or tender price from internally generated funds or available short-term borrowings pursuant to an order of this Commission dated March 31, 1993 (HCAR No. 25777).

CPL states that it will not redeem or repurchase the Old Bonds or Preferred Stock unless the estimated present value savings derived from the net difference between interest or dividend payments on a new issue of comparable securities and those securities refunded is, on an after-tax basis, greater than the present value of all redemption, tendering and issuing costs, assuming an appropriate discount rate determined on the basis of the then after-tax cost of capital of CSW and its subsidiaries, consolidated.

Hope Gas, Inc. (70–8091)

Hope Gas, Inc. ("Hope Gas"), 600 Union National Center West, Clarksburg, West Virginia 26302, a wholly owned gas public-utility subsidiary company of Consolidated Natural Gas Company, a registered holding company, has filed a post-effective amendment to its application under section 9(c)(3) of the Act.

By order dated January 26, 1993 (HCAR No. 25739), the Commission authorized Hope Gas to acquire through December 31, 1993 a limited partnership interest in Vandalia Capital Limited Partnership ("Vandalia Partnership") for an aggregate purchase price of $1 million. In connection with such acquisition, Hope Gas was to receive the Vandalia Partnership state tax credits granted by the State of West Virginia. West Virginia, however, limits the available amount of tax credits given each year, and because the tax credits for the fiscal year 1992–93 have already been granted to other qualified West Virginia Capital Companies, Hope Gas

represents that the Vandalia Partnership will not be formed.

Hope Gas now proposes to acquire before December 31, 1994, a limited partnership interest in the Shenandoah Venture Capital Limited Partnership ("Partnership"), a West Virginia limited partnership, by acquiring 1 Class B Unit of the Partnership for an aggregate purchase price of $1,650,000. The Partnership, which will have a term until May 12, 2013, will be qualified as a West Virginia Capital Company under the West Virginia Capital Company Act, part of a program to encourage private venture capital investments in West Virginia businesses by providing qualified West Virginia Capital Companies with certain state tax credits equal to 50% of their venture capital investment. The Partnership also intends to qualify as a Small Business Investment Corporation.

Hope Gas will be the sole owner of the Class B Unit, holding 49.5% of the equity of the Partnership. The Class B Unit entitles Hope Gas to certain tax credits, which it estimates will result in net tax savings of $743,000, and net investment by Hope Gas of $907,000.

The general partner of the Partnership will have the exclusive power and authority to manage the operations, affairs and business investments of the Partnership. No limited partner is to take part in the control, management or investment decisions of the Partnership. Only the Class A Limited Partner may remove and elect a successor General Partner.

The Columbia Gas System, Inc., et al. (70–8219)

The Columbia Gas Systems, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company; Columbia's public utility subsidiary companies, Columbia Gas of Pennsylvania, Inc. ("Pennsylvania"), Columbia Gas of Ohio, Inc. ("Ohio"), Columbia Gas of Maryland, Inc. ("Maryland"), Columbia Gas of Kentucky, Inc. ("Kentucky"), and Commonwealth Gas Services, Inc. ("Commonwealth Services"), each located at 200 Civic Center Drive, Columbus, Ohio 43215; and Columbia's nonutility subsidiary companies, Columbia Gas System Service Corporation ("Columbia Service"), Columbia LNG Corporation ("Columbia LNG"), Columbia Atlantic Trading Corporation ("Columbia Atlantic"), TriStar Ventures Corporation ("TriStar Ventures"), TriStar Capital Corporation ("TriStar Capital"), each located at 20 Montchanin Road, Wilmington, Delaware 19807; Columbia Natural Resources, Inc. ("Columbia Natural"), Columbia Coal Gasification Corporation ("Coal Gasification"), both located at 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Energy Services Corporation ("Energy Services"), 2581 Washington Road, Upper Saint Clair, Pennsylvania 15241; Columbia Gulf Transmission Company ("Gulf Transmission"), 1700 MacCorkle Avenue, S.E., Charleston, West Virginia 25314; Columbia Gas Development Corporation ("Development"), 5847 San Felipe, Houston, Texas 77057; Commonwealth Propane Inc. ("Commonwealth Propane"), and Columbia Propane Corporation ("Columbia Propane"), both located at 800 Moorefield Park Drive, Richmond, Virginia 23236 (collectively, "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b), and 12(f) of the Act and Rules 43 and 45 thereunder.

Applicants request authority to engage in intrasystem financing from September 30, 1993 through December 31, 1994 of up to $673.9 million. Specifically, certain subsidiaries propose to engage in long-term financing of up to $265.1 million to finance part of their capital expenditure programs. These subsidiaries propose to sell for cash, and Columbia proposes to acquire unsecured installment promissory notes ("Installment Notes"), up to the amounts indicated below.

	Installement notes $MM
Kentucky	19.5
Maryland	4.8
Ohio	73.1
Pennsylvania	15.9
Commonwealth Services	41.2
Columbia Natural	25.0
Development	50.0
Columbia Propane	4.0
Columbia Gulf	25.0
Columbia Service	1.6
Coal Gasification	5.0
Total	265.1

The Installment Notes issued during a given quarter will bear interest at a rate based upon the previous quarter's average yield on newly issued "A" rated 25–30 year utility bonds as published in Salomon Brother's weekly Bond Market Roundup, rounded to the nearest ⅛% per annum. The principal amount of the Installment Notes will be repaid over a term, not exceeding 30 years. A default rate equal to 2% per annum in excess of the stated rate on the unpaid principal or interest amounts will be assessed if any interest or principal payment becomes past due.

To meet their short-term financing requirements, certain subsidiaries propose to borrow directly from Columbia and/or from each other through the Columbia's intrasystem money pool ("Money Pool"). These advances will be limited to a maximum amount outstanding through April 30, 1995 as listed below.

	Short Term Debt $MM
Kentucky	20.0
Maryland	3.0
Ohio	162.0
Pennsylvania	85.0
Commonwealth Services	30.0
Columbia Gulf	19.0
Columbia Natural	30.0
Development	15.0
Energy Services	12.7
Columbia Propane	3.0
Commonwealth Propane	4.0
Columbia Service	8.0
Coal Gasification	10.0
Total	401.7

Funds would be advanced, repaid, and reborrowed as required through December 31, 1994, with all such advances to be fully repaid by April 30, 1995. All short-term borrowings from Columbia and/or the Money Pool will be evidenced by a promissory note ("Short-Term Note" and "Money Pool Note", respectively). A default rate of 2% per annum above the pre-default rate on unpaid principal or interest amounts will be assessed if any interest or principal payment becomes past due.

The interest rate charged on all Short-Term Notes and Money Pool Notes, and the investment rate earned on moneys invested in the Money Pool, will be the interest rate per annum equal to the composite weighted average effective rate on short-term transactions of Columbia and/or the Money Pool short-term investment rate. During any month, this composite rate may be based on one or any combination of: (1) The cost of Columbia's borrowings under its bank facility; (2) the interest rate earned by Columbia on invested excess cash; and/or (3) the interest rate earned by subsidiaries on investments of excess Money Pool funds.

By order dated December 23, 1991 (HCAR No. 25438), the Commission authorized the continuation of the Money Pool through September 30, 1993. Applicants propose that authorization for the Money Pool be extended through April 30, 1995. Columbia Service will administer the Money Pool. Columbia, Columbia LNG, TriStar Ventures, TriStar Capital, and Columbia Atlantic will not borrow from the Money Pool.

The Money Pool provides a vehicle by which Columbia and its subsidiary companies loan their excess cash to their associate companies. Loans to subsidiaries are evidenced by Money Pool Notes which are payable upon demand, but not later than April 30, 1995. Applicants request that investments in the Money Pool be authorized to the extent of the aggregate temporary excess cash from time to time, and that borrowings be authorized to the extent for cash available in the Money Pool, provided that no subsidiary may borrow through the Money Pool, or from Columbia directly, any more than short-term borrowing amounts last approved by the Commission.

In addition to the foregoing, Columbia requests authority to make a $1.1 million capital contribution in TriStar Capital. TriStar Capital is committed to invest indirectly, through its subsidiary company, in new gas related technologies. The requested capital contribution will permit TriStar Capital to fulfill its remaining $1.0 million of a $2.0 million commitment, and to pay up to $100,000 of operating expenses such as accounting and taxes.

General Public Utilities Corp., et al. (70–8223)

General Public Utilities Corporation ("GPU"). A registered holding company, and its service subsidiary company, GPU Service Corporation ("Service Company"), have filed a declaration under sections 6(a), 7 and 12(b) of the Act and Rule 45 thereunder.

By order dated September 19, 1990 (HCAR No. 25154) ("Order"), the Commission, among other things, authorized Service Company to enter into a Term Loan Agreement, dated September 24, 1990 ("Existing Loan Agreement"), with The Bank of New York ("BNY") and to issue to BNY its unsecured promissory note maturing on September 30, 1993 ("Existing Note") representing a borrowing in the amount of $12.4 million. The proceeds of the borrowing were used to repay Service Company's then outstanding indebtedness to BNY under a prior Credit Agreement, dated October 1, 1987 ("Prior Credit Agreement"), with BNY. The proceeds of the borrowings under the Prior Credit Agreement had been used to repay Service Company's then outstanding indebtedness used to finance the construction and equipping of its Parsippany, New Jersey headquarters office building. The Order further authorized GPU to unconditionally guarantee payment of principal of and interest on the Existing Note and Service Company's other obligations to BNY under the Existing Loan Agreement. The presently outstanding principal amount of the Existing Note is $11.5 million.

Service Company now proposes to enter into a new loan agreement ("New Loan Agreement") with First Fidelity Bank, N.A., New Jersey ("FFB"). The New Loan Agreement would consist of a new term loan ("New Term Loan") and a revolving credit loan ("New Revolving Credit Loan").

Under the New Term Loan, Service Company would issue to FFB one or more unsecured promissory notes ("New Term Loan Notes") in the principal amount of $11.5 million. New Term Loan Notes would mature not later than five years from the New Term Loan closing date, which will occur on, or before, September 30, 1998.

The New Term Loan Notes will bear interest, at Service Company's election, at either: (1) A Fixed Rate, defined below; or (2) the LIBOR rate, defined below, plus ⅜% per annum, subject to conversion, at Service Company's election, to a fixed rate pursuant to a specified rate conversion schedule.

At Service Company's election, the New Term Loan Notes, would be repaid: (1) In equal annual installments of principal ("Amortized Loan"); (2) in a lump sum on the maturity date ("Bullet Loan"); or (3) at the end of each interest rate period ("LIBOR Rate Loan"). During the period of LIBOR Rate Loan is elected, the interest rate would be fixed, at Service Company's election, for periods of 30, 60, 90 or 120 days.

The Fixed Rate option for the New Term Loan Notes would be set not earlier than 30 days before closing at spreads of between 55 and 70 basis points for Amortized Loans and 60 and 80 basis points for Bullet Loans over comparable U.S. Treasury securities, depending upon the maturity and form of the New Term Loan. The LIBOR Rate will be the London Interbank Offered Rate as in effect from time-to-time. If the LIBOR Rate option is initially elected by Service Company for the New Term Loan Notes, Service Company may elect to convert the interest rate to a fixed rate at spreads of between 65 and 75 basis points for Amortized Loans and 70 and 85 basis points for Bullet Loans over comparable U.S. Treasury securities, and depending upon the remaining maturity and form of the New Term Loan.

The New Revolving Credit Loan would provide for revolving credit borrowings by Service Company from time-to-time until not later than two years from the New Term Loan closing date, which will occur on, or before, September 30, 1995, up to a maximum principal amount of $13.5 million outstanding at any one time. On, or any time prior to, the second anniversary of the New Term Loan closing date, however, Service Company would have the option, subject to the satisfaction of certain conditions in the New Loan Agreement, to convert all or a portion of such loan into a three-year term loan payable in equal annual installments of principal. Upon such election, any remaining borrowing capacity under the New Revolving Credit Loan would no longer be available and the revolving credit facility would terminate.

If and to the extent that Service Company does not elect to convert all of its then outstanding borrowings under the New Revolving Credit Loan to a term loan, such borrowings would be repaid on the second anniversary of the New Term Loan closing date in a lump sum. The New Revolving Credit Loan, and any term loan into which it may be converted, would also be represented by one or more unsecured promissory notes issued by Service Company to FFB ("New Revolving Credit Notes") or "New RC Term Loan Notes", respectively, together with the New Term Loan Notes, the "New Notes").

New Revolving Credit Notes will bear interest, at Service Company's election, at either: (1) The LIBOR Rate, above, plus 3/8% per annum; (2) the Base Rate, defined below; or (3) the Money Market Bid Rate, defined below. New Revolving Credit Notes would mature: (1) In 30, 60, 90 or 120 days from their dates of issue if the LIBOR Rate is selected; (2) not more than 30 days from their dates of issue if the Base Rate is selected; and (3) from overnight to 180 days from their dates of issue if the Money Market Bid Rate is selected. Service Company proposes to pay FFB an annual 1/8 of 1% commitment fee, payable quarterly, on the unused portion of the New Revolving Credit Loan. New RC Term Loan Notes will bear interest at the same spreads over comparable U.S. Treasury securities at the time of conversion as provided, above, for the conversion of the interest rate on New Term Loan Notes from the LIBOR Rate to a fixed rate.

The Base Rate for New Revolving Credit Notes will be the rate established by FFB as its reference rate in making loans, but does not reflect the rate of interest charged to any particular class of borrowers. The Money Market Bid Rate will a daily, uncommitted, advised rate which FFM may, in its discretion, provide from time-to-time.

The New Notes may be prepaid, in whole or in part, prior to maturity and without penalty, to the extent permitted by the New Loan Agreement. GPU

proposes unconditionally to guarantee payment of principal of and interest on the New Notes in addition to Service Company's other obligations to FFB under the New Loan Agreement.

Service will apply the proceeds from the New Term Loan to repayment of the Existing Note and will use the proceeds of the New Revolving Credit Loan for working capital purposes and/or for capital expenditures, including purchases of equipment.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-18691 Filed 8-4-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19605; 812-8006]

Quest for Value Fund, Inc., et al.; Notice of Application

July 30, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Quest for Value Fund, Inc., Quest for Value Family of Funds, Quest for Value Global Equity Fund, Inc., Quest for Value Global Funds, Inc., on behalf of themselves and any other open-end investment company which is or may become a member of Quest for Value Advisor's "group of investment companies" as that phrase is defined in rule 11a-3 under the Act and which issues three or more classes of shares that have different voting rights and expense allocations as described in the application and/or impose a contingent deferred sales charge ("CDSC") on redemptions of shares (the "Funds");[1] Quest for Value Advisors (the "Adviser"); and Quest for Value Distributors (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order to permit the Funds to issue three or more classes of shares representing interests in the same portfolios of securities, assess a CDSC on certain redemptions, and waive the CDSC in certain instances.

FILING DATE: The application was filed on July 29, 1992, and amended on November 18, 1992, March 12, 1993, May 5, 1993, June 16, 1993, and July 19, 1993. Counsel, on behalf of the applicants, has 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 August 24, 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 the date 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 World Financial Center, New York, NY 10281.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (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 is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are open-end diversified management investment companies. Quest for Value Family of Funds is a Massachusetts business trust organized as a series company which has the following portfolios: U.S. Government Income Fund; Investment Quality Income Fund; Opportunity Fund; Small Capitalization Fund; Growth and Income Fund; National Tax-Exempt Fund; California Tax-Exempt Fund; and New York Tax-Exempt Fund. The other Funds are organized as Maryland corporations. Quest for Value Fund is a series fund having one portfolio, Global Income Fund. The Adviser provides investment advisory and other services to the Funds. The Distributor serves as principal underwriter for the Funds.

2. The Funds currently offer a single class of shares at net asset value with the imposition of a front-end sales load. Investors may qualify for a reduced sales load based on the aggregate amount of current and prior investments in the Funds. Pursuant to an order of the SEC, the Funds (except the Global Income Fund, National Tax-Exempt Fund, California Tax-Exempt Fund, and New York Tax-Exempt Fund series) impose a CDSC on certain redemptions of shares sold pursuant to a complete front-end sales load waiver applicable to purchases totaling $1,000,000 or more.[2] Pursuant to rule 12b-1 distribution plans, shares of the Funds are subject to a distribution fee of up to 0.50% of their average annual net assets. Applicants now seek an exemption to permit them to issue three or more classes of shares, to impose a CDSC on certain redemptions of shares of the new classes, and to waive the CDSC in certain instances.

3. Under applicants proposal, the existing class of shares will be designated as "Class A shares," and initially two additional classes of shares will be created and designated "Class B shares" and "Class C shares."[3] At the time the existing shares are categorized as Class A shares, the existing rule 12b-1 distribution fee will be modified so that the Class A shares are subject to a maximum service fee of 0.25%, and a distribution fee of up to 0.25% of their average annual net assets. The Funds may in the future create an unlimited number of additional classes of shares, the terms of which may differ from the Class A, Class B, and Class C shares only in accordance with the characteristics described in this application.

4. Class B shares will be offered for purchases of $250,000 or less. Class B shares will be sold at net asset value, subject to a CDSC (the "Class B CDSC"). The Class B CDSC will range from 1% to 5% on shares redeemed during the first year after purchase and will be reduced at a rate of 1% per year over a six year period so that redemptions of shares held after that period will not be subject to a CDSC. A shareholder will be credited with any CDSC paid in connection with a redemption of any Class B shares followed by a reinvestment in such shares or Class B

[1] Existing funds that intend to rely on the requested order have been named as applicants. Other funds that are members of the same "group of investment companies" do not presently intend to rely on the requested order but may do so in the future if they subsequently decide to offer multiple classes of shares and/or impose a CDSC.

[2] Investment Company Act Release Nos. 18475 (Jan. 8, 1992) (notice) and 18520 (Feb. 4, 1992) (order).

[3] Class B and Class C shares will not be created for National Tax-Exempt Fund, California Tax-Exempt Fund, and New York Tax-Exempt Fund series.

shares of another Fund within 90 days after such redemption. The credit will be paid by the Distributor. Class B shares will be subject to a distribution fee of 0.75% and a service fee of 0.25% of their average net asset value.

5. Class C shares will be offered exclusively to qualified retirement plans. Class C shares will be sold at net asset value, subject to a CDSC of 1% on shares redeemed during the first year after purchase (the "Class C CDSC"). A shareholder will be credited with any CDSC paid in connection with a redemption of any Class C shares followed by a reinvestment in such shares or Class C shares of another Fund within 90 days after such redemption. The credit will be paid by the Distributor. Class C shares will be subject to a distribution fee of 0.75% and a service fee of 0.25% of their average net asset value.

6. The Class B and Class C CDSCs will be imposed on the lesser of the aggregate net asset value of the shares being redeemed either at the time of purchase or redemption. No Class B or Class C CDSC will be imposed on shares acquired through reinvestment of income dividends or capital gains distributions, or shares acquired by exchange where the exchanged shares would not have been assessed a CDSC upon redemption. In determining the rate of any applicable CDSC, it will be assumed that a redemption is made of shares of a Fund held by the investor for the longest period of time within the CDSC period. The CDSC schedules for both Class B and Class C shares may be modified in the future, and other schedules with different percentages and periods may apply to different classes created in the future. Any variations in CDSC schedules will be set forth in the applicable prospectus.

7. Applicants will waive the Class B and Class C CDSCs in the following instances: (a) Redemptions in connection with (i) retirement distributions to participants or beneficiaries of plans qualified under Internal Revenue Code ("IRC") section 401(a), custodial accounts under IRC section 403(b)(7), individual retirement accounts under IRC section 408(a), deferred compensation plans under IRC section 457 and other employee benefit plans (the "Plans"), and (ii) returns of excess contributions made to the Plans; (b) redemptions effected pursuant to the Funds' right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the then effective minimum account size; and (c) redemptions pursuant to an automatic withdrawal plan limited to annual withdrawals of no more than 10% of the original value of the account. If any of the waiver categories are discontinued, appropriate disclosure will be made in the applicable prospectus and investors who purchased their shares prior to such change will continue to be entitled to such CDSC waivers.

8. Class A shares will be exchangeable for Class A shares of any other Fund, but not for Class B or Class C shares. Class B shares will be exchangeable for Class B shares of any other Fund, but not for Class A shares or Class C shares. Class C shares will be exchangeable for Class C shares of any other Fund, but not for Class A shares or Class B shares. The exchange privilege for the Class B and Class C shares may be expanded to allow holders of Class B or Class C shares of a Fund to exchange their shares for shares of Quest Cash Reserves, Inc. ("QCR"), a money market fund managed by the Adviser. If the exchange privilege is so expanded, Class B or Class C shares of any Fund that have been exchanged for shares of QCR also may be exchanged back into the class from which they were exchanged. Applicants will comply with rule 11a–3 as to any exchanges.

9. All Class B shares of the Funds, other than those purchased through the reinvestment of dividends and distributions, will automatically convert to Class A shares on the basis of the relative net values of the two classes eight years after the end of the calendar month in which the shareholder's order to purchase was accepted. For purposes of calculating the holding period, Class B shares will be deemed to have been issued on the sooner of the date on which the issuance of Class B shares occurred, or for Class B shares obtained through an exchange or series of exchanges, the date on which the issuance of the original Class B shares occurred. Shares purchased through the reinvestment of dividends and other distributions in respect of Class B shares will be treated as Class B shares, except that each time any Class B shares in the shareholders account (other than those purchased through the reinvestment of dividends and other distributions) convert to Class A, an equal *pro rata* portion of the Class B shares purchased through the reinvestment of dividends and other distributions also will 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. Of the initial classes of shares, only Class B will have a conversion feature (additional classes created in the future also may have a conversion feature).

10. Class A, Class B, Class C, and additional classes of shares created in the future will each represent interests in the same portfolio of investments, and will be identical in all respects except: (a) The compensation and other arrangements permitted by different distributions plans for each class; (b) voting rights with respect to any matter specifically affecting that class, including the distribution plan for that class and expenses related to the cost of holding shareholder meetings necessitated by the exclusive voting rights with respect to each class' distribution plan; (c) the impact of any expenses directly attributable to that class ("Class Expenses"), as described in the following paragraph; (d) any differences in distributions and/or net asset value per share resulting from differences in Class Expenses; (e) any differences in features for purchasing, redeeming, exchanging, or converting shares of each class and/or in distribution arrangements for the offer and sale of such shares; (f) the designation of classes; and (g) the impact of Blue Sky expense limitations.

11. If required by state securities (Blue Sky) laws, applicants will apply Blue Sky expense limitations on a class, rather than a Fund, basis. To comply with applicable Blue Sky expense limitations, the Distributor will waive or reimburse a portion of its fees in the event that the aggregate annual expenses of a class would otherwise exceed such limits. The Blue Sky expense limitations may have a different impact on the classes because of differences among the aggregate annual expenses of the classes and also because California Blue Sky regulations allow certain distribution expenses to be excluded from the computation of aggregate annual expenses.

12. Class Expenses may include the following: (a) Distribution plan fees (including service fees); (b) transfer and shareholder servicing agent fees relating solely to a particular class; (c) professional fees relating solely to a particular class; (d) printing and postage expenses for materials distributed to shareholders of a particular class; (e) Blue Sky registration fees relating solely to a particular class; and (f) shareholder meeting expenses for meetings of a particular class. Expenses that are attributable to a particular Fund, but not to a particular class ("Fund Expenses"), include advisory fees, accounting fees, custody fees, auditing fees, directors/trustees fees, interest expense, deferred organization expenses, legal fees, state and federal registration fees, and

typesetting expenses for prospectuses and shareholder reports. Fund Expenses will be allocated based on the net assets of each class.

Applicants' Legal Analysis

1. Applicants request an order exempting them from the provisions of sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of various classes of shares representing interests in the same Fund might be deemed:

(a) To result in a "senior security" within the meaning of section 18(g), the issuance and sale of which would be prohibited by section 18(f)(1); and

(b) To violate the equal voting provisions of section 18(i).

2. Applicants believe that the proposed multi-class arrangement will better enable the Funds to meet the competitive demands of today's financial services industry. Under the multi-class arrangement, an investor will be able to choose the method of purchasing shares that is most beneficial given the amount of his or her purchase, the length of time the investor expects to hold his or her shares, and other relevant circumstances. The proposed arrangement would permit the Funds to facilitate both the distribution of their securities and provide investors with a broader choice as to the method of purchasing shares without assuming excessive accounting and bookkeeping costs or unnecessary investment risks.

3. The proposed allocation of expenses and voting rights relating to the rule 12b–1 plans in the manner described is equitable and would not discriminate against any group of shareholders. In addition, such arrangements should not give rise to any conflicts of interest because the rights and privileges of each class of shares are substantially identical.

4. Applicants believe that the proposed multi-class arrangement does not present the concerns that section 18 of the Act was designed to address. The multi-class arrangement will not increase the speculative character of the shares of the Fund. The multi-class arrangement does not involve borrowing, nor will it affect the Funds' existing assets or reserves, and does not involve a complex capital structure. Nothing in the multi-class arrangement suggests that it will facilitate control by holders of any class of shares.

5. Applicants submit that the requested exemption to permit the funds to implement the proposed Class B and Class C CDSCs is appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. The proposed CDSC arrangements will provide shareholders the option of having their full payment invested for them at the time of their purchase of shares of the Funds with no deduction of a sales charge.

Applicants' Conditions

Applicants agree that any order 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 the Fund, and be identical in all respects, except as set forth below. The only differences among the classes of shares of the Fund will relate solely to: (a) The impact of the disproportionate payments made under the distribution plans; (b) the method of allocating certain Class Expenses which are limited to (i) transfer and shareholder servicing agent fees and shareholder servicing costs, (ii) professional fees relating solely to one class, (iii) printing and postage expenses for materials distributed to current shareholders, (iv) Blue Sky registration fees, (v) shareholder meeting expenses, and (vi) any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the SEC pursuant to an amended order; (c) the fact that the class will vote separately with respect to the Funds' rule 12b–1 distribution plan; (d) the different exchange privileges of the classes of shares; (e) designation of each class of shares of the Fund; (f) the impact of Blue Sky expense limitations; and (g) certain classes that impose a 12b–1 fee may be able to convert to a class with a lower 12b–1 fee.

2. The directors/trustees of the Funds, including a majority of the independent directors/trustees, will approve the system of the offering of the various classes of shares. The minutes of the meetings of the directors/trustees regarding deliberations of the directors/trustees with respect to the approvals necessary to implement the multi-class arrangement for any Fund will reflect in detail the reasons for the directors/trustees' determinations that the system is in the best interests of that Fund and its shareholders.

3. On an ongoing basis, the directors/trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Funds for the existence of any material conflicts between the interests of the classes of outstanding shares. The directors/trustees, including a majority of the independent directors/trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor of the Funds will be responsible for reporting any potential or existing conflicts to the directors/trustees. If a conflict arises, the Adviser and the Distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

4. The directors/trustees of the Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (B)(3)(ii) of rule 12b–1, as it may be amended from time to time. In such statements, only expenditures properly attributable to the sale 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 of a particular class will not be presented to the directors/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 directors/trustees in the exercise of their fiduciary duties.

5. Dividends paid 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 distribution plan fees and Class Expenses (listed in condition 1) applicable to a class will be borne exclusively by that class.

6. 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, a copy of which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. The Expert, or an appropriate substitute Expert, will monitor, on an ongoing basis, the manner in which the calculations and allocations are being made and based on that review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to provide), will be available for inspection by the SEC staff upon the written request to the Fund for such work papers by a senior member

of the SEC's Division of Investment Management, 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 report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, as it may be amended from time to time, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the 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.

7. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares. This representation has been concurred with by the Expert in the initial report referred to in condition 6 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 6 above. Applicants will take immediate corrective measures if this representation is not concurred in by the Expert, or appropriate substitute Expert.

8. The prospectus of the Fund will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another.

9. The Funds will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, 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 Funds will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholders reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Funds 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 such Fund. To the extent any advertisement or sales literatures describes the expenses or performance data applicable to any class of shares, it will also 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 Funds' net asset value and public offering price will present each class of shares separately.

10. 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.

11. 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 multi-class arrangement will be set forth in guidelines which will be furnished to the directors/trustees as part of the materials setting forth the duties and responsibilities of the directors/trustees.

12. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that may be made pursuant to the rule 12b–1 distribution plans or otherwise in reliance on the exemptive order.

13. 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 Fund including a majority of the independent directors/trustees. 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 directors/trustees, and the directors/trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

14. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of 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. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

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 Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class shares unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The directors shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the directors to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class shares will convert into New Target Class shares. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the Directors reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the Adviser of the affected Fund and the Distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

16. Applicants will comply with the provisions of proposed Rule 6c–10 under the Act, Investment Company Act Release No. 16169 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–18690 Filed 8–4–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 19606; 811-6631]

Texas Employees Tax Exempt Money Market Mutual Fund; Application for Deregistration

July 30, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Texas Employees Tax Exempt Money Market Mutual Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on July 7, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 200 E. 10th Street, Austin, Texas 78701.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272-3018, or Barry D. Miller, Senior Special Counsel, at (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.

Applicant's Representations

1. Applicant is an open-end non-diversified management investment company. The Texas State Treasury filed a registration statement under the Investment Company Act of 1940 and the Securities Act of 1933 on behalf of the applicant on April 10, 1992. At that time, Section 404.103 of the Texas Government Code authorized the State Treasurer to establish within the Texas Safekeeping Trust Company a state employees tax exempt money market mutual fund pursuant to a governmental plan, to be administered by the State Treasurer, that would permit state employees, statewide elected officials, and duly elected members of the Texas Legislature to pool their funds for the purpose of making investments in high-grade tax exempt securities. Section 404.103 of the Texas Government Code was repealed in May 1993 by the Texas legislature. As a result, effective August 30, 1993, the State Treasurer no longer has legal or statutory authority to create the Fund.

2. Applicant never engaged in business operations and never offered shares to investors, or possessed any assets.

3. Applicant has no securityholders.

4. Applicant is not a party to any litigation or administrative proceeding.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-18692 Filed 8-4-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 19604; 812-8458]

WNC Housing Tax Credit Fund IV, L.P. and WNC Tax Credit Partners, IV, L.P.

July 30, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: WNC Housing Tax Credit Fund IV, L.P., a California limited partnership (the "Partnership") and its general partner, WNC Tax Credit Partners IV, L.P., a California limited partnership (the "General Partner").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) of the Act from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would exempt the Partnership from all provisions of the Act to permit the Partnership to invest in limited partnerships that engage in the ownership and operation of apartment complexes for low and moderate income persons.

FILING DATE: The application was filed on June 17, 1993.

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 for the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 24, 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 5th Street, NW., Washington, DC 20549. Applicants, c/o WNC Tax Credit Partners IV, L.P., 3158 Redhill Avenue, suite 120, Costa Mesa, California 92626-3416.

FOR FURTHER INFORMATION CONTACT: Fran Pollack-Matz, Senior Attorney, at (202) 504-2801, or Robert A. Robertson, Branch Chief, at (202) 272-3030 (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 Partnership was formed on May 4, 1993. The Partnership will operate as a "two-tier" partnership, *i.e.*, the Partnership, as a limited partner, will invest in other limited partnerships ("Local Limited Partnerships") that in turn will engage in the ownership and operation of apartment complexes. Applicants believe that this two-tier structure is consistent with the purposes and criteria set forth in the SEC's release concerning two-tier real estate partnerships. Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456"). The apartment complexes are expected to qualify for low income housing tax credits under the Internal Revenue Code of 1986.

2. The Partnership's investment objectives are (a) to provide current tax benefits in the form of tax credits which qualified investors, as defined in the Partnership's prospectus (the "Prospectus"), may use to offset their Federal income tax liabilities, (b) to preserve and protect the Partnership's capital, and (c) to provide cash distribution from sale or refinancing transactions.

3. On June 16, 1993, the Partnership filed a registration statement under the Securities Act of 1933, pursuant to which the Partnership intends to offer publicly, in one or more series of

offerings, 30,0000 units of limited partnership interest ("Units") at $1,000 per Unit. The minimum investment will be five Units. Purchasers of Units will become limited partners ("Limited Partners") of the Partnership.

4. The Partnership will not accept any subscriptions for Units until the requested exemptive order is granted or the Partnership receives an opinion of counsel that it is exempt from registration under the Act. Any subscriptions for Units must be approved by the General Partner, which approval will be conditioned upon representations as to suitability of the investment for each subscriber. The suitability standards provide, among other things, that investment in that Partnership is suitable only for an investor who either (a) has a net worth (exclusive of home, furnishings and automobiles) of at least $35,000 and an annual gross income of at least $35,000, or (b) irrespective of annual income, has a net worth (exclusive of home, furnishings and automobiles) of at least $75,000. Units will be sold only to investors who meet these suitability standards, or more restrictive suitability standards as may be established by certain states for purchasers of Units within their respective jurisdictions. In addition, transfers of Units will be permitted only if the transferee meets the same suitability standards as had been imposed upon the transferor Limited Partner.

5. Although the Partnership's direct control over the management of each apartment complex will be limited, the Partnership's ownership of interests in Local Limited Partnerships shall, in an economic sense, be tantamount to direct ownership of the apartment complexes themselves. The Partnership normally will acquire at least a 90% interest in the profits, losses and tax credits of the Local Limited Partnerships. However, in certain cases, the partnership may acquire a lesser interest. In these cases, the Partnership normally will acquire at least a 50% interest in the profits, losses, and tax credits of the Local Limited Partnership. From 95% to 100% of the proceeds from a sale or refinancing of an apartment complex will normally be paid to the Partnership until it has received a full return of that portion of the net proceeds invested in the Local Limited Partnership (which may be reduced by any cash flow distributions previously received). The Partnership also will receive a share of any remaining sale or refinancing proceeds, which share may range from 10% to 90%.

6. The Partnership will have certain voting rights with respect to each Local Limited Partnership. The voting rights will include the right to dismiss and replace the local general partner on the basis of performance, to approve or disapprove a sale or refinancing of the apartment complex owned by such Local Limited Partnership, to approve or disapprove the dissolution of the Local Limited Partnership, and to approve or disapprove amendments to the local Limited Partnership agreement materially and adversely affecting the Partnership's investment.

7. The Partnership will be controlled by the General Partner, pursuant to the Partnership's partnership agreement (the "Partnership Agreement"). The Limited Partners, consistent with their limited liability status, will not be entitled to participate in the control of the business of the Partnership. However, a majority-in-interest of the Limited Partners will have the right to amend the Partnership Agreement (subject to certain limitations), to remove any General Partner and elect a replacement therefor, and to dissolve the Partnership. In addition, under the Partnership Agreement, each Limited Partner is entitled to review all books and records of the Partnership.

8. The Partnership Agreement and Prospectus contain numerous provisions designed to insure fair dealing by the General Partner with the Limited Partners. All compensation to be paid to the General Partner and its affiliates is specified in the Partnership Agreement and Prospectus. While the fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been negotiated at arm's length, applicants believe that the compensation is fair and on terms no less favorable to the Partnership than would be the case if such arrangements had been made with independent third parties.

9. During the offering and organizational phase, the General Partner and its affiliates will receive a nonaccountable expense reimbursement equal to 2% of capital contributions. The General Partner also will be reimbursed by the Partnership for the actual amount of expenses incurred in connection with organizing the Partnership and conducting the offering. However, the General Partner has agreed to pay any organizational and offering expenses of the Partnership in excess of 15% of capital contributions.

10. During the acquisition phase, the Partnership will pay the General Partner or its affiliates a selection fee for analyzing and evaluating potential investments in Local Limited Partnerships. The selection fee will not exceed 8% of capital contributions. The General Partner and its affiliates will be reimbursed by the Partnership for the actual amount of any partnership acquisition expenses advanced by them, provided that acquisition expenses shall not exceed 1.2% of capital contributions. During the operating phase, the General Partner will receive 1% of any cash available for distribution, and the Partnership may pay certain fees and reimbursements to the General Partner or its affiliates. In addition to the foregoing fees and interests, the General Partner and its affiliates will be allocated generally 1% of profits and losses of the Partnership for tax purposes and tax credits.

11. All proceeds from any series of the public offering of Units initially will be placed in an escrow account with National Bank of Southern California ("Escrow Agent"). Pending release of offering proceeds to the Partnership, the Escrow Agent will deposit escrowed funds in short-term United States Government securities, securities issued or guaranteed by the United States Government, and certificates of deposit or time or demand deposits in commercial banks. Upon receipt of a prescribed minimum amount of capital contributions for a series, funds in escrow will be released to the Partnership and held by it pending investment in Local Limited Partnerships.

Applicants' Legal Analysis

1. Applicants believe that the Partnership is not an "investment company" under section 3(a)(1) or section 3(a)(3) of the Act. If the Partnership is deemed an investment company, however, applicants request an exemption under section 6(c) from all provisions of the Act.

2. Section 3(a)(1) of the Act provides that an issuer is an "investment company" if it is or holds itself out as being engaged primarily, or proposes to engage primarily, in the business of investing, reinvesting, or trading in securities. Applicants, however, believe that the Partnership will not be an investment company under section 3(a)(1) because the Partnership will be in the business of investing in and being beneficial owner of apartment complexes, not securities.

3. Section 3(a)(3) of the Act provides that an issuer is an "investment company" if it is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire "investment securities" having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items).

Applicants, however, believe that the Local Limited Partnership interests should not be considered "investment securities" because those interests are not readily marketable, have no value apart from the value of the apartment complexes owned by the Local Limited Partnerships, and cannot be sold without severe adverse tax consequences.

4. Release No. 8456 states that investment companies that are two-tier real estate partnerships that invest in limited partnerships engaged in the development and operation of housing for low and moderate income persons may qualify for exemption from the Act pursuant to section 6(c). Section 6(c) provides that the SEC may exempt any person from any provision of the Act and any rule thereunder, if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants believe that the Partnership will operate in accordance with the purposes and criteria set forth in Release No. 8456. The release lists two conditions, designed for the protection of investors, which must be satisfied to qualify for an exemption under section 6(c). First, interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable. Second, requirements for fair dealing by the general partner of the issuer with the limited partners of the issuer should be included in the basic organizational documents of the company.

6. Applicants assert, among other things, that the exemption requested is both necessary and appropriate in the public interest because investment in low and moderate income housing in accordance with the national policy expressed in Title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form.

7. Applicants also assert that the suitability standards set forth in the application, the requirements for fair dealing provided by the Partnership Agreement, and pertinent governmental regulations imposed on each Local Limited Partnership by various Federal, state, and local agencies provide protection to investors in Units comparable to and in some respects greater than that provided by the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–18693 Filed 8–4–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Asotin County, WA

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 Asotin County, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn Porter, Area Engineer, Federal Highway Administration, 711 S. Capitol Way, Evergreen Plaza Building, suite 501, Olympia, Washington 98501–1284, Telephone: (206) 753–9411.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation and the Asotin County Public Works Department, will prepare an environmental impact statement (EIS) on a proposal to construct a new 1.1 mile Fleshman Way roadway in Asotin County, Washington. The proposed improvement would also involve the reconstruction of the existing 15th Street between 16th Avenue and Bridge Street (U.S. Highway 12) for a distance of about 1.5 miles.

Improvements to the corridor are considered necessary to provide for the existing and projected traffic demands. Also included in this proposal are a new interchange or intersection in the vicinity of 13th Street and 16th Avenue on Fleshman Way.

Alternatives under consideration for Fleshman Way include (1) taking no action; (2) widening existing 16th Avenue from two lanes to four lanes; (3) constructing a new four lane roadway on a route north of 16th Avenue; and (4) constructing a new four lane roadway on a route south of 16th Avenue. Incorporated into and studied with the various build alternatives will be design variations of grade, alignment, and intersections.

Alternatives under consideration for the 15th Street portion of the proposed action include (1) taking no action; and (2) widening the existing two lane roadway to three lanes (two travel lanes and a continuous left turn lane).

Letters describing the proposed action and soliciting comments, have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings have already been held in Asotin County between February and April, 1993. Additional scoping and informational meetings will be held as this process continues, and in addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. No additional formal scoping meetings are currently planned.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12373 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: July 26, 1993.

Lynn A. Porter,

Area Engineer, Olympia, Washington.

[FR Doc. 93–18622 Filed 8–4–93; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

Fiscal Year 1993 Railroad User Fee Calculations

AGENCY: Federal Railroad Administration; Department of Transportation.

ACTION: Notice.

SUMMARY: The Federal Railroad Administration is today publishing its fiscal year 1993 assessment rates supporting the collection of railroad user fees.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, Railroad User Fee Officer, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 366–6569.

SUPPLEMENTARY INFORMATION: In its regulations implementing the Railroad User Fee provisions of the Federal Railroad Safety Act of 1970 (see 49 CFR

part 245.301(a)), the Federal Railroad Administration (FRA) indicated that it would publish a notice each year in the **Federal Register** identifying FRA's calculations of the total railroad user fee to be collected for the fiscal year, the assessment rate per train mile, the assessment rate per employee hour, and the assessment rate per road mile (as adjusted by the sliding scale).

For fiscal year 1993, user fee assessments totalling $34,583,143 are based on 595,260,083 total industry train miles; 152,414 total industry road miles; and 517,286,132 total industry employee hours.

The base assessment rate per road mile is $79.23, with applicable adjustments for the sliding scale as follows:

Train mile/road mile ratio	SF*	RM rate**
1201 and Above	1.00	$94.24
1001 to 1200	0.75	59.42
751 to 1,000	0.50	39.61
501 to 750	0.25	19.81
Up to 500	0.00	0.00

*SF refers to scaling factor.
**RM RATE refers to Road Mile Rate.

The assessment rate per train mile is $.031877. The assessment rate per employee hour is $.006669.

Issued in Washington, DC on July 15, 1993.

S. Mark Lindsey,

Acting Federal Railroad Administrator.

[FR Doc. 93–18725 Filed 8–4–93; 8:45 am]

BILLING CODE 4910–06–P

Maritime Administration

[Docket S–901]

First American Bulk Carrier Corp. (FABC); Application Under Section 605(c) of the Merchant Marine Act, 1936, as Amended, to Conform FABC's Service Description to Lykes Bros. Steamship Co., Inc.'s Trade Route 1 Description in Docket S–890

Notice is hereby given that First American Bulk Carrier Corporation (FABC) by letter application of July 20, 1993, as amended July 28, 1993, has requested amendment of its subsidized service description to conform the trade route service description in FABC's ODSA MA/MSB–451(a) to the description which is proposed to be incorporated in Lykes Bros. Steamship Co., Inc. (Lykes) ODSA MA/MSB–451 by the Show Cause Order dated June 24, 1993, in Docket No. S–890 (the "Order").

First, the request contemplates that the service description for authority to serve the Mediterranean will include the 48 sailing maximum as set out at page 29 of the Show Cause Order.

Second, FABC requests that the service description incorporate the limitations on the privilege authority for Trade Route 18 set out in letters of May 22, 1992, and July 27, 1993, submitted in Docket S–890, by Lykes which would, if adopted, allow "a maximum of 16 inbound and outbound sailings between U.S. Atlantic and Gulf ports and Southwest Asia from Suez to Burma, inclusive and Africa on the Red Sea and Gulf of Aden."

FABC notes that as recognized in the Maritime Administrator/Maritime Subsidy Board's (MA/MSB) action of August 29, 1990, the twenty sailings included in FABC's ODSA MA/MSB–451(a) are subject to an option in favor of Lykes to repurchase those sailings at the end of the time charterers between Lykes and FABC. FABC states that the time charters also provide that FABC shall request that its subsidy contract be conformed to the description of Lykes' subsidy contract if Lykes seeks to conform its old trade route descriptions to the new trade route redesignations.

Consistent with these obligations, FABC has filed the application to conform the trade route service description in MA/MSB–451(a) to the TR–1 description for MA/MSB–451 set forth in the Order as well as the prospective limitations on TR–18.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application and desiring to submit comments concerning the application on issues pertinent to section 605(c) of the Merchant Marine Act, 1936, as amended, must file written comments in triplicate with the Secretary, Maritime Administration, room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on August 18, 1993. The Maritime Subsidy Board will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies)

Dated: July 30, 1993.

By Order of the Maritime Subsidy Board.

James E. Saari,

Secretary.

[FR Doc. 93–18632 Filed 8–4–93; 8:45 am]

BILLING CODE 4910–81–M

National Highway Traffic Safety Administration

Announcing the Third Meeting of the Crash Data Analysis Subcommittee of the Motor Vehicle Safety Research Advisory Committee

July 28, 1993.

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

ACTION: Meeting announcement.

SUMMARY: This notice announces the third meeting of the Crash Data Analysis Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The MVSRAC established this subcommittee at the February 1988 meeting to examine research questions concerning the types of crash data that should be collected, how existing crash data collection programs can be improved and approaches to analyze crash data.

DATE AND TIME: The meeting is scheduled for October 6, 1993, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in room 9230 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research.

The MVSRAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

This meeting of the Crash Data Analysis Subcommittee will focus on the Quality Control of the National Center for Statistics and Analysis's crash data systems. The development of a Quality Control Program begins with understanding the data system, data collection and coding procedures, and finally the building and maintenance of the analysis file. The quality of data is an important issue since it directly impacts on the reliability of the analyses performed using the data. The discussions will cover the following items:

(1) Overview of the types of quality control processes currently in place (this includes edit checks, case review, and monitoring researchers' or coders' performance),

(2) Plans for revisions to the existing quality control approaches, and

(3) Input from the subcommittee on areas needing improvement and on recommended approaches to quality control.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman, Mr. William H. Walsh, Director of the National Center for Statistics and Analysis of the National Highway Traffic Safety Administration.

A public reference file (Number 88–01–Crash Data Analysis) has been established to contain the products of the Subcommittee and will be open to the public during the hours of 9:30 a.m. to 4 p.m., at the National Highway Traffic Safety Administration's Technical Reference Division in room 5110 at 400 Seventh Street, S.W., Washington, DC 20590, telephone: (202) 366–5927.

George L. Parker,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 93–18633 Filed 8–4–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. T84–01; Notice 30]

Theft Data; Motor Vehicle Theft Prevention Standard

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

ACTION: Publication of theft data; request for comments.

SUMMARY: This document publishes, for review and comment, data on passenger motor vehicle thefts that occurred in calendar years 1990–1991. NHTSA obtained these data from the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI). As required by the "Anti Car Theft Act of 1992," these data will be used to determine the theft rates for existing passenger motor vehicle lines manufactured in model years 1990 and 1991 and for determining the median theft rate for all those lines. Vehicle lines with a theft rate that exceeds the median rate would be subject to selection for coverage under the Theft Prevention Standard.

DATES: Comments must be received on or before September 20, 1993.

ADDRESSES: All comments should refer to the docket number and notice number cited in the heading of this document and be submitted, preferably in ten copies to: Docket section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket-hours are from 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION:

Original Base Median Theft Rate

(1983–1984 Median Theft Rate)

The Motor Vehicle Theft Law Enforcement Act of 1984 (Public Law 98–547) (Theft Act), added title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Pursuant to Title VI, NHTSA promulgated 49 CFR part 541, titled "Federal Motor Vehicle Theft Prevention Standard." Part 541 establishes performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high theft lines of passenger motor vehicles.

Section 603 of the Cost Savings Act, as originally enacted, specified three categories of car lines that were high theft lines within the meaning of title VI. These three types were:

Existing lines that had a theft rate exceeding the median theft rate for calendar years (CYs) 1983–1984 (section 603(a)(1)(A));

New lines that were likely to have a theft rate exceeding that median theft rate (section 603(a)(1)(B));

Lines with theft rates below the median theft rate, but which had a majority of major parts interchangeable with lines whose theft rate exceeded or was likely to exceed the median theft rate (section 603(a)(1)(C)).

Section 603(b) of the Cost Savings Act provided that the median theft rate was the combined rate determined for CYs 1983–1984. Section 603(b)(1) set forth the equation NHTSA must use to determine the theft rates for each of the vehicle lines. The theft rate for each line was determined by a fraction, the numerator of which was the number of thefts of model years (MYs) 1983 and 1984 vehicles of that line during CYs 1983–1984, and the denominator of which was the sum of the production volumes for that line in MYs 1983 and 1984, as reported to the EPA under Title V of the Cost Savings Act.

After applying this formula to each existing line, NHTSA was directed by section 603(b)(2) to rank the lines by theft rates to calculate the median theft rate. When there was an even number of theft rates, section 603(b) directed that the median theft rate is the arithmetic average of the two adjoining theft rates midway between the highest and the lowest of such theft rates.

Section 603(b)(3) directed NHTSA to obtain from the most reliable source or sources accurate and timely theft and recovery data and publish such data for review and comment. To the greatest extent possible, [NHTSA] shall utilize theft data reported by Federal, State, or local police. After such publication and opportunity for comment, [NHTSA] shall utilize the theft data to determine the median theft rate under this subsection.

In a Federal Register document of November 12, 1985 (50 FR 46666), NHTSA published the final theft data reflecting passenger motor vehicle thefts in CYs 1983–1984. In that notice, NHTSA also explained how it decided on the data source to be used and how it calculated the final theft rates. NHTSA determined that information from the National Crime Information Center (NCIC) of the Federal Bureau of Investigation (FBI), would be the most accurate and timely data. The NCIC is a government system that receives vehicle theft information from nearly 23,000 police agencies and other law enforcement authorities throughout the United States. The NCIC data also includes reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

In the November 1985 notice, the agency also explained how it decided to apply the term "line" for purposes of calculating vehicle theft rates. "Line" is defined in section 601(2) of the Cost Savings Act as:

* * * a name which a manufacturer applies to a group of motor vehicle models of the same make which have the same body or chassis, or otherwise are similar in construction or design.

Section 603(b)(1) of the Cost Savings Act further directs the agency to use production volumes of the lines, as reported to the Environmental Protection Agency (EPA) under Title V of the Cost Savings Act, to calculate the theft rates. Hence, the agency applied the term "line" in a manner as similar as possible to that used by the EPA, so that NHTSA could use the EPA information. NHTSA also explained how it would apply the term "line" in the final rule establishing 49 CFR part 542, Procedures for Selecting Lines to be Covered by the Theft Prevention Standard. See 50 FR 34831, at 34833; August 28, 1985.

Based on its calculations, NHTSA determined in the November 1985 notice that the median theft rate for CYs 1983 and 1984 was 3.2712 thefts per thousand vehicles. That number was the arithmetic average of the rates for the

lines that ranked 65th and 66th, out of a total of 130 vehicle lines.

New Base Median Theft Rate

(1990–1991 Median Theft Rate)

The "Anti Car Theft Act of 1992" (ACTA), which became law on October 25, 1992, amended Title VI, "Theft Prevention," of the Cost Savings Act. Section 603(a)(1)(A) was revised to specify that high theft lines are:

> Passenger motor vehicles of any line which is determined * * * to have had a new passenger motor vehicle theft rate in the 2 calendar years immediately preceding the year in which the Anti Car Theft Act of 1992 is enacted which exceeds the median theft rate for all new passenger motor vehicle thefts in such 2-year period.

The effect of this amendment was to require the agency to calculate theft rates for passenger motor vehicle lines for the CY 1990–1991 period and then to establish a new median theft rate, based on that same period.

Title VI was also amended to redefine "passenger motor vehicle" to include "any multipurpose passenger vehicle and light-duty truck that is rated at 6,000 pounds gross vehicle weight or less." See section 601(1) of title VI. Before Title VI was amended, "passenger motor vehicle" was defined for Title VI purposes to include passenger cars only. Given the new definition of "passenger motor vehicle," NHTSA must calculate the CYs 1990 and 1991 theft rates not only for passenger cars, but also for multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines that are rated at 6,000 pounds gross vehicle weight rating or less. Depending on their theft rates, certain MPV and LDT lines may be determined to be likely high theft lines, and thus may be subject to the parts marking requirements of the Theft Prevention Standard.

Calculation of 1990–1991 Median Theft Rate

In calculating the CY 1990–1991 theft rates, NHTSA followed the same procedures it used in calculating the 1983–1984 theft rates, with minor exceptions. For the 1990–1991 data, NHTSA relied on information from the NCIC and applied the definition of "line." To initially identify the affected MY 1990 and 1991 passenger motor vehicle lines, NHTSA referred to the RPA's Fuel Economy Estimates Guide. For production data on each vehicle line, NHTSA reviewed data collected from mid model year production reports provided to the EPA by the manufacturers. In order to double check this data, NHTSA sent letters to each manufacturer of the relevant vehicle lines, requesting each manufacturer to provide its final MY 1990 and 1991 production volume data for these lines, including MPVs and LDTs rated at 6,000 pounds gross vehicle weight or less. NHTSA received complete responses from all manufacturers that it contacted, with he exception of Mercedes-Benz, which declined to provide production information for individual models within Mercedes-Benz lines. The Mercedes-Benz theft rates are provided by vehicle line, rather than by individual models. Information about Mercedes-Benz models instead of Mercedes-Benz vehicle lines is important because the models are more commonly known than the names of the lines. For example, it is generally known what a Mercedes-Benz 300SEL model looks like, while very few outside of the Mercedes-Benz company are aware that the 300SEL is part of the 126 vehicle line. In order to give the public some idea of the theft rates for each model in appendix A of this notice, NHTSA lists the models in each Mercedes-Benz line for MYs 1990 and 1991. The public can get an idea of the 1990 or 1991 theft rate of a particular Mercedes-Benz model in Appendix A, seeing what vehicle line that model is classified under, and then referring to the listing of the theft rates for the relevant Mercedes-Benz vehicle line.

Before calculating the CY 1990–1991 theft rates, NHTSA reviewed the theft data from NCIC by examining the vehicle identification numbers (VINs) of all the vehicles reported stolen. The VIN is a seventeen character series of arabic numbers and/or roman letters which is assigned to a motor vehicle for identification purposes. Each motor vehicle is assigned a unique VIN number by its manufacturer. By regulation, NHTSA specifies the information about the attributes of the vehicle that must be provided in the VIN. (See 49 CFR part 565 Vehicle Identification Number—Content Requirements.) VIN attributes include type of vehicle (i.e., passenger car, MPV, or truck, and the vehicle's make, line, and model), model year of the vehicle, and gross vehicle weight rating of the vehicle. Thus, through information provided in the VIN, NHTSA can identify the vehicle line and gross vehicle weight rating of each stolen vehicle.

Using the VINs, the agency "cleaned" the data by removing from consideration the VINs of motor vehicles other than passenger motor vehicles (such as VINs of buses, trailers, and motorcycles), and VINs of light-duty trucks and multipurpose passenger vehicles over 6,000 pounds gross vehicle weight rating. The agency also removed VINs of incomplete vehicles, since NHTSA had no means of determining the vehicle type of the incomplete vehicle when completed, or even whether the stolen vehicle was completed. As was done in the calculation of the 1983–1984 theft rates, NHTSA also removed duplicative reports of vehicles with identical VINs reported to have been stolen within a seven day period.

The cleansing process resulted in significant adjustments to the NCIC data. The NCIC reported a total of 61,665 MY 1990 motor vehicles stolen in 1990. After the adjustments for MY 1990, there were 54,752 VINs for stolen passenger cars, and for stolen light-duty trucks and multipurpose passenger vehicles under 6,000 pounds gross vehicle weight. After using the same procedure for the MY 1991 data, the agency found that there were 54,018 VINs for stolen passenger cars, and for light-trucks and multipurpose passenger vehicles under 6,000 pounds gross vehicle weight.

Using the cleansed data, the agency then calculated the theft rates for each vehicle line by dividing the reported thefts of each vehicle line for MYs 1990–1991 over the production volumes for that line (in thousands of vehicles) as reported to the EPA and double checked in letters to NHTSA. After this calculation was made for each vehicle line, NHTSA ranked the lines by theft rate (from high theft to low theft) to calculate the median theft rate.

Preliminary Median Theft Rate for 1990–1991

Based on the above, out of a total of 226 vehicle lines, NHTSA has preliminarily determined that the median theft rate for CYs 1990–1991 is 3.6436 thefts per thousand vehicles produced. 3.6436 is the average between number 113 (3.6449 thefts per thousand) and 114 (3.6424 thefts per thousand). Of those vehicle lines with a theft rate higher than 3.6436, 90 are passenger car lines, 17 are MPV lines, and 6 are LDT lines.

In Table I provided below, NHTSA has tentatively ranked each of the vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, especially production volumes of individual vehicle lines. Public comment is also sought on the methodology used by NHTSA in determining the ranking of the existing passenger motor vehicle lines.

Selection of High Theft Lines Based on Preliminary 1990–1991 Theft Data

After NHTSA reviews the public comments in response to this request for comment on the preliminary theft data, it will make appropriate adjustments to the data, and publish the final theft data in the **Federal Register**. NHTSA will then follow the procedures it established in 49 CFR part 542 Procedures for Selecting Lines to be Covered by the Theft Prevention Standard in determining high theft lines. For each of those vehicle lines ranked among those with the highest 113 (one-half of the 226 lines) theft rates, and that are not already listed in appendix A of 49 CFR part 541 Federal Motor Vehicle Theft Prevention Standard as high theft lines, NHTSA intends to send a letter to the manufacturer of that vehicle line. The letter would inform the manufacturer of NHTSA's preliminary determination of that line as a high theft line, based on the CY 1990–1991 rates.

As provided in part 542, each manufacturer will have an opportunity to request a reconsideration of NHTSA's preliminary determination, and to provide the facts and arguments underlying its objections to the preliminary determination. NHTSA will then review each request for reconsideration, and make a final determination whether the vehicle line is high theft. The effect of a final high theft determination for a line is that vehicles in that line and their major replacement parts will have to be marked as specified in the Theft Prevention Standard.

For those vehicle lines determined to be high theft based on the CY 1990–1991 theft data, NHTSA intends to require parts marking beginning with MY 1995. In view of the following time considerations, NHTSA does not believe the newly designated high theft lines can be made subject to part 541 any sooner. NHTSA intends to issue the final theft data early in MY 1994, which begins in the fall of CY 1993. NHTSA will make its high theft determinations after it issues the final data. Section 604(a)(4) states that a manufacturer shall not be required to comply with parts marking requirements "* * * for a model year beginning earlier than 6 months after the date of selection." Therefore, the first model year that will begin after the date of selection (which must be some date after the final theft data are issued) is MY 1995.

It is proposed that newly designated high theft passenger cars begin to comply with parts marking requirements in MY 1995. Compliance for high theft MPVs and LDTs may be delayed to a later model year since determination of "major parts" for these vehicles has not yet been made. An advance notice of proposed rulemaking was published July 7, 1993 (58 FR 36376) soliciting comments on what parts of MPVs and LDTs should be considered "major parts." Comments are sought on this implementation schedule.

In addition, those vehicle lines that are presently listed in appendix A, regardless whether they are one of the top 113 high theft vehicle lines, will continue to be listed in appendix A. This is because section 603(d) provides that except for exemptions from parts marking due to NHTSA approved antitheft devices, NHTSA may not "render the standard inapplicable to any line which at any time has been subject to the standard."

Authority: 19 U.S.C. 2021; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: July 30, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

APPENDIX A—MERCEDES-BENZ LINES FOR MODEL YEARS 1990 AND 1991

Model year 1990		Model year 1991	
Line	Model	Line	Model
201	190E 2.6	201	190E 2.3.
			190E 2.6.
124	300D 2.5 Turbo	124	300D 2.5 Turbo.
	300D 2.6		300E 2.6.
	300E		300E.
	300E 4Matic		300E 4Matic.
	300TE		300TE.
	300TE 4Matic		300TE 4Matic.
	300CE		300CE.
126	300SE	126	300SE.
	300SEL		300SEL.
			300SD.
	350SDL		300SDL.
	420SEL		420SEL.
	560SEL		560SEL.
	560SEC		560SEC.
129	300SL	129	300SL.
	500SL		500SL.

TABLE I.—MY'S 1990/91 THEFT DATA NOTICE FOR THE THEFT PREVENTION STANDARD

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 cars produced)
1. Ford Motor Co	Ford Mustang	1,545	2,085	115,821	91,479	17.5109
2. General Motors	S–15 GMC Jimmy	276	1,048	18,257	61,794	16.5395
3. Honda	Prelude	379	555	29,708	29,785	15.6993
4. General Motors	S–10 Chevrolet Blazer	946	2,825	56,080	192,680	15.1592
5. Nissan	Pathfinder	357	579	29,525	38,215	13.8175
6. Hyundai	Sonata	336	281	25,021	24,542	12.4488
7. Toyota	Supra	65	61	6,287	4,055	12.1833
8. General Motors	Oldsmobile Bravada	0	134	0	11,139	12.0298
9. Nissan	300ZX	449	229	38,882	18,502	11.8151
10. Volkswagen	Cabriolet	116	35	8,673	4,138	11.7867
11. Chrysler Corp	Jeep Cherokee	1,837	924	135,416	105,463	11.4622
12. Mazda	RX–7	107	77	10,560	7,800	10.0218
13. Alfa Romeo	164	0	19	0	1,947	9.7586
14. General Motors	Cadillac Brougham	295	257	32,052	25,731	9.5530
15. Mitsubishi	Mirage	448	364	60,150	30,019	9.0053
16. Chrysler Corp	Dodge Monaco	23	153	7,154	12,433	8.9856
17. Volkswagen	Golf/GTI	76	186	13,696	15,965	8.8331
18. General Motors	Cadillac Seville	305	206	32,346	25,916	8.7707
19. Chrysler Corp	Jeep Wrangler	397	392	46,874	44,891	8.5980
20. Porsche	911	31	48	4,609	4,818	8.3802
21. General Motors	Pontiac Grand AM	1,596	1,381	189,150	171,582	8.2527

TABLE I.—MY'S 1990/91 THEFT DATA NOTICE FOR THE THEFT PREVENTION STANDARD—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 cars produced)
22. General Motors	Chevrolet Camaro	288	759	33,200	97,290	8.0236
23. Mitsubishi	Montero	144	108	16,403	15,959	7.7869
24. Ford Motor Co	Ford Probe	755	654	110,201	73,522	7.6692
25. Chrysler Corp	Town & Country MPV	32	10	3,238	2,244	7.6614
26. General Motors	Chevrolet Corvette	168	139	22,034	18,510	7.5720
27. Toyota	4-Runner	521	340	72,138	46,263	7.2719
28. Volkswagen	Jetta	337	329	47,731	45,136	7.1715
29. General Motors	Pontiac Bonneville	494	345	75,655	42,919	7.0758
30. Chrysler Corp	Chrysler Lebaron	614	394	86,141	57,490	7.0180
31. Volvo	780	7	2	945	363	6.8807
32. Suzuki	Sidekick	59	80	17,162	13,052	6.8764
33. General Motors	Pontiac Firebird	154	288	19,157	45,234	6.8643
34. Chrysler Corp	Dodge Shadow	537	500	71,088	81,211	6.8090
35. Mitsubishi	Pickup Truck	194	132	24,976	23,928	6.6661
36. Ford Motor Co	Lincoln Continental	396	368	62,657	52,103	6.6574
37. Suzuki	Samurai	42	31	5,782	5,417	6.5184
38. General Motors	Pontiac 6000	293	223	52,352	27,940	6.4265
39. General Motors	Geo Tracker	232	195	34,948	31,498	6.4263
40. Porsche	928	4	1	414	369	6.3857
41. Ford Motor Co	Lincoln Mark VII	120	71	21,658	8,898	6.2508
42. General Motors	Buick Skylark	509	482	83,666	75,811	6.2141
43. Chrysler Corp	Dodge Dynasty	500	768	94,510	112,320	6.1306
44. General Motors	Chevrolet C–1500	1,639	1,015	267,411	168,497	6.0884
45. Mitsubishi	Galant/Sigma	301	212	45,397	39,562	6.0382
46. Toyota	MR2	0	129	0	22,080	5.8424
47. BMW	3	143	138	21,556	26,839	5.8064
48. Chrysler Corp.	Plymouth Acclaim	538	671	95,142	114,510	5.7667
49. General Motors	Buick Reatta	55	2	8,431	1,491	5.7448
50. Chrysler Corp.	Dodge Spirit	415	584	79,054	94,895	5.7431
51. General Motors	GMC Sierra C–1500	531	273	89,021	52,079	5.6981
52. Chrysler Corp.	Plymouth Sundance	432	236	60,517	56,820	5.6930
53. General Motors	Geo Prizm	1,021	489	170,272	95,000	5.6923
54. General Motors	Oldsmobile Cutlass Calais	494	417	88,229	74,045	5.6140
55. General Motors	Pontiac Sunbird	519	731	106,960	115,721	5.6134
56. Ford Motor Co.	Ford Thunderbird	593	427	104,847	78,133	5.5744
57. BMW	5	126	101	23,871	17,016	5.5519
58. Chrysler Corp.	Chrysler Imperial	32	100	13,885	10,146	5.4929
59. Chrysler Corp.	Chrysler New Yorker	429	305	79,653	55,229	5.4418
60. General Motors	Geo Metro	250	337	28,029	82,206	5.3250
61. Chrysler Corp.	Plymouth Laser	257	141	45,141	30,720	5.2464
62. Nissan	240SX	301	190	60,582	34,534	5.1621
63. Mitsubishi	3000GT	0	51	0	9,903	5.1500
64. General Motors	Oldsmobile Cutlass Ciera	584	604	126,321	107,028	5.0911
65. Isuzu	Amigo	61	28	11,622	6,030	5.0419
66. General Motors	Pontiac Lemans	148	172	34,351	29,500	5.0117
67. Mazda	626/MX–6	530	448	96,966	100,436	4.9544
68. Nissan	Maxima	528	482	110,685	94,646	4.9189
69. General Motors	Buick Estate Wagon	37	0	7,524	0	4.9176
70. General Motors	Buick Century	497	649	123,893	110,767	4.8837
71. Chrysler Corp.	Eagle Premier	55	71	14,277	11,630	4.8636
72. Ford Motor Co.	Lincoln Town Car	602	666	142,648	119,046	4.8454
73. Alfa Romeo	Spider	2	8	915	1,154	4.8333
74. Chrysler Corp.	Dodge Stealth	0	96	0	19,907	4.8224
75. Hyundai	Scoupe	0	165	0	34,305	4.8098
76. Mitsubishi	Eclipse	383	211	67,658	56,058	4.8013
77. Honda	Accord	1,833	2,151	410,915	425,360	4.7640
78. Ford Motor Co.	Ford Escort	1,030	1,545	188,146	355,642	4.7353
79. General Motors	Chevrolet Cavalier	1,482	1,127	263,204	293,995	4.6823
80. Volkswagen	Corrado	49	12	11,041	2,072	4.6519
81. Nissan	Sentra	885	547	163,355	144,748	4.6478
82. Chrysler Corp.	Dodge Daytona	186	69	37,884	17,286	4.6221
83. Honda/Acura	Legend	336	282	66,611	68,274	4.5817
84. Mercedes-Benz	129	19	50	5,413	9,797	4.5365
85. BMW	7	43	33	10,717	6,056	4.5311
86. Ford Motor Co.	Mercury Cougar	335	280	76,580	60,669	4.4809
87. Hyundai	Excel	403	346	92,106	78,529	4.3895
88. General Motors	Geo Storm	370	343	73,376	89,996	4.3643
89. Mazda	B Series Pickup	323	269	70,866	65,585	4.3386
90. Toyota	Corolla/Corolla Sport	1,073	781	219,738	208,743	4.3269

TABLE I.—MY'S 1990/91 THEFT DATA NOTICE FOR THE THEFT PREVENTION STANDARD—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 cars produced)
91. Chrysler Corp	Jeep Wagoneer	53	10	10,928	3,702	4.3062
92. General Motors	Oldsmobile Delta 88 Royale	451	214	105,508	50,451	4.2639
93. Isuzu	Rodeo	0	123	0	28,953	4.2483
94. Ford Motor Co	Ford Tempo	999	734	218,976	189,747	2.2400
95. Chrysler Corp	Dodge Omni	69	0	16,481	0	4.1866
96. General Motors	Chevrolet Beretta	384	261	90,981	64,022	4.1612
97. General Motors	Buick LeSabre	593	387	152,967	83,677	4.1412
98. Nissan	Stanza	305	296	79,356	67,583	4.0901
99. Audi	Coupe Quattro	6	1	1,348	377	4.0580
100. Subaru	XT	0	7	12	1,725	4.0299
101. Chrysler Corp	Eagle Talon	117	125	28,064	32,096	4.0226
102. General Motors	Chevrolet Corsica	605	754	168,855	169,460	4.0170
103. Isuzu	Trooper/Trooper II	167	120	37,448	34,502	3.9889
104. General Motors	Cadillac Fleetwood/Deville	656	573	170,517	140,992	3.9453
105. Honda/Acura	Integra	479	267	109,321	80,333	3.9335
106. Toyota	Tercel	406	382	88,482	112,032	3.9299
107. Chrysler Corp	Plymouth Horizon	60	0	15,884	0	3.7774
108. General Motors	Chevrolet S–10 Pickup	349	1,271	72,784	358,397	3.7571
109. Ford Motor Co	Mercury Tracer	0	260	0	70,172	3.7052
110. Toyota	Camry	1,052	909	270,029	259,414	3.7039
111. Ford Motor Co	E150 Van	37	28	10,102	7,516	3.6894
112. General Motors	GMC Sonoma	101	306	21,165	90,222	3.6539
113. General Motors	Chevrolet Caprice	361	413	55,528	156,822	3.6449
114. General Motors	Chevrolet Lumina APV	223	180	72,089	38,551	3.6424
115. Chrysler Corp	Jeep Comanche	45	19	10,681	7,063	3.6069
116. Ford Motor Co	Mercury Topaz	277	187	73,207	56,165	3.5866
117. General Motors	Oldsmobile 98/Touring	318	72	58,444	50,417	3.5826
118. Toyota	Celica	315	201	82,740	61,482	3.5778
119. Isuzu	Impulse	22	10	4,772	4,287	3.5324
120. Mitsubishi	Wagon	6	0	1,791	0	3.3501
121. Nissan	Pickup Truck	460	408	129,951	131,144	3.3245
122. BMW	8	0	8	0	2,411	3.3181
123. Rover Group	Range Rover MPV	14	11	4,862	2,681	3.3143
124. Mercedez-Benz	201	42	45	9,247	17,033	3.3105
125. Mazda	323/Protege	297	212	74,316	79,948	3.2995
126. Isuzu	Stylus	0	49	0	14,919	3.2844
127. General Motors	Cadillac Allante	11	7	3,076	2,485	3.2368
128. Rover Group	Sterling 827	6	5	1,200	2,216	3.2201
129. Mitsubishi	Van	3	0	934	0	3.2120
130. General Motors	Pontiac Grand Prix	363	277	110,549	91,646	3.1653
131. Mazda	Navajo	0	38	0	12,080	3.1457
132. General Motors	Chevrolet Astro	290	429	123,394	105,795	3.1371
133. Mercedes-Benz	124	81	59	21,870	22,771	3.1361
134. General Motors	Oldsmobile Cutlass Supre	361	267	109,288	91,770	3.1235
135. Daihatsu	Rocky MPV	24	5	7,514	1,883	3.0861
136. Ford Motor Co	Bronco II	166	0	54,988	0	3.0188
137. General Motors	Oldsmobile Toronado/Trofeo	38	29	14,480	7,831	3.0030
138. Chrysler Corp	Eagle Summit	40	41	9,595	17,626	2.9756
139. Ford Motor Co	Mercury Sable	278	264	93,126	89,349	2.9703
140. Suzuki	Swift	19	22	7,671	6.227	2.9501
141. Ferrari	Testaroosa	1	1	426	255	2.9369
142. Toyota	Cressida	33	36	12,456	11.039	2.9368
143. Chrysler Corp.	Dodge Caravan/Grand	709	506	234,609	182,675	2.9117
144. Jaguar	XJS	13	9	5,213	2,371	2.9008
145. General Motors	Pontiac Trans Sport APV	88	60	33,424	18,418	2.8548
146. Porsche	944	6	2	1,990	850	2.8169
147. General Motors	Oldsmobile Silhouette APV	57	68	28,103	16,322	2.8137
148. Mazda	MX–5 Miata	157	97	52,247	38,868	2.7877
149. General Motors	Oldsmobile Custom Cruiser	18	13	3,573	7,660	2.7597
150. Nissan	Infiniti M30	20	19	7,466	6,718	2.7496
151. Mercedes-Benz	126	64	60	21,030	24,128	2.7459
152. Honda	Civic	737	759	277,631	269,947	2.7320
153. Mazda	929	36	47	18,090	12,449	2.7178
154. Chrysler Corp.	Chrysler's TC	11	3	3,536	1,636	2.7069
155. General Motors	Chevrolet Celebrity	79	0	29,271	0	2.6989
156. Toyota	Pickup Truck	437	457	159,842	178,940	2.6389
157. Ford Motor Co	Ford Crown Victoria	148	133	57,680	49,213	2.6288
158. General Motors	Cadillac Eldorado	53	45	21,764	15,895	2.6023
159. Chrysler Corp.	Dodge Ramcharger	30	13	12,311	4,483	2.5604

TABLE I.—MY'S 1990/91 THEFT DATA NOTICE FOR THE THEFT PREVENTION STANDARD—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 cars produced)
160. Ford Motor Co	Ford Festiva	140	95	47,449	44,544	2.5545
161. Volvo	740	147	58	54,036	29,343	2.4587
162. Nissan	Axxess	44	0	17,994	182	2.4208
163. Ford Motor Co	Mercury Grand Marquis	160	193	70,633	75,861	2.4097
164. General Motors	Chevrolet Lumina	763	422	296,720	196,473	2.4027
165. General Motors	Chevrolet Sprint	1	0	233	187	2.3810
166. Chrysler Corp.	Plymouth Voyager/Grand	513	301	197,977	144,534	2.3766
167. Chrysler Corp.	Dodge Ram Wagon/Van B150	24	18	13,706	3,969	2.3762
168. Isuzu	Pickup	106	94	50,124	34,635	2.3571
169. General Motors	Buick Regal	148	274	53,561	126,701	2.3410
170. Chrysler Corp.	Plymouth Colt/Colt Vista	26	50	12,183	20,681	2.3126
171. Ford Motor Co	Ford Taurus	716	635	309,211	278,485	2.2988
172. Volkswagen	Passat	42	36	17,426	16,567	2.2946
173. General Motors	GMC Safari	88	99	43,263	38,453	2.2884
174. Ford Motor Co.	Ranger Pickup	566	599	271,160	243,697	2.2628
175. Ford Motor Co.	Explorer	0	711	0	323,551	2.1975
176. Chrysler Corp.	Dodge Colt/Colt Vista	23	58	13,743	23,813	2.1568
177. Nissan	Infiniti Q45	20	40	11,615	16,264	2.1522
178. General Motors	Buick Electra Park Avenue	184	131	46,360	100,702	2.1420
179. Volkswagen	Fox	58	15	24,714	10,425	2.0775
180. Volvo	240	80	45	35,580	25,561	2.0445
181. Volvo	940	0	29	0	14,249	2.0352
182. Ford Motor Co.	F150 Pickup Truck	298	215	138,657	114,669	2.0251
183. Audi	80/90	24	1	9,168	3,224	2.0174
184. Toyota	Lexus ES250	32	43	19,561	17,643	2.0159
185. Ford Motor Co.	Mercury Capri	0	70	0	35,407	1.9770
186. Jaguar	XJ6	24	23	15,172	8,995	1.9448
187. Chrysler Corp.	Dodge Dakota Pickup	154	112	66,459	71,490	1.9282
188. Subaru	Legacy	154	141	88,873	64,200	1.9272
189. Honda/Acura	NSX	0	6	0	3,139	1.9114
190. Toyota	Lexus LS400	77	82	42,227	41,559	1.8977
191. Saab	900	32	23	14,574	15,437	1.8327
192. Ford Motor Co.	Aerostar	303	279	169,574	150,579	1.8179
193. General Motors	Oldsmobile Cutlass Cruiser	16	13	8,891	7,163	1.8064
194. Volvo	760	17	0	9,515	0	1.7867
195. Mitsubishi	Precis	17	3	3,210	8,000	1.7841
196. Subaru	Loyale	68	36	32,994	25,904	1.7658
197. Nissan	Pulsar NX	2	0	1,168	0	1.7123
198. Daihatsu	Charade	23	4	12,447	3,732	1.6688
199. Toyota	Land Cruiser	3	0	1,921	0	1.5617
200. Nissan	Infiniti G20	0	25	0	16,132	1.5497
201. Toyota	Previa	0	126	0	81,426	1.5474
202. General Motors	Buick Riveria	29	25	21,982	12,956	1.5456
203. Mazda	MPV Wagon	57	82	47,852	47,107	1.4638
204. Audi	100/200	15	12	10,869	9,036	1.3564
205. Volkswagen	Vanagon	9	6	7,363	4,729	1.2405
206. General Motors	Saturn SL	0	49	0	39,867	1.2291
207. Peugeot	405	0	4	700	2,557	1.2281
208. Audi	V8 Quattro Sedan	4	0	2,911	542	1.1584
209. Subaru	Justy	10	10	9,552	8,999	1.0781
210. General Motors	Chevrolet Sportvan G–10	0	15	8,715	5,804	1.0331
211. General Motors	Buick Roadmaster	0	6	0	6,729	0.8917
212. Nissan	NX Coupe	0	7	0	8,705	0.8841
213. Chrysler Corp.	Dodge Ram Pickup	24	19	42,251	21,763	0.6717
214. General Motors	Saturn SC	0	6	0	10,298	0.5826
215. Saab	9000	10	13	20,675	24,195	0.5126
216. General Motors	GMC Rally Sportvan	0	2	3,092	1,620	.04244
217. Yugo	GV/GVL/GVX/GVS	1	1	1,323	8,250	0.2089
218. Ferrari	F40	0	0	90	60	0.0000
219. Ferrari	348	0	0	377	240	0.0000
220. Nissan	Van	0	0	292	0	0.0000
221. Peugeot	505	0	0	2	654	0.0000
222. Lotus	Elan	0	0	0	159	0.0000
223. Lamborghini	Diablo	0	0	0	110	0.0000
224. Lotus	Esprit	0	0	102	28	0.0000
225. Ferrari	Mondial	0	0	98	49	0.0000
226. Aston Martin	Saloon/Vantage/Volante	0	0	2	40	0.0000

TABLE III.—DESIGNATED HIGH THEFT CAR LINES WITH THEFT RATES BELOW THE MEDIAN THEFT RATE OF 3.6436

Manufacturer	Make/model
Volkswagen:	
Audi	100/200/S4, V8 Quattro.
BMW	8.
Chrysler	Chrysler's TC.
Ferrari	Mondial.
Ford:	
Mercury	Capri.
General Motors:	
Buick	Riviera, Electra Park Avenue, Regal.
Cadillac	Eldorado, Allante.
Chevrolet	Lumina.
Oldsmobile	Cutlass Supreme, 98/ Touring.
Pontiac	Grand Prix.
Honda:	
Acura	NSX.
Isuzu	Impulse, Stylus.
Jaguar	XJ6, XJS.
Mazda	MX–5 Miata, 323/Protege.
Mercedes-Benz	124, 126, 129, 201.
Nissan:	
Infiniti	M30,Q45.
Peugeot	405.
Rover Group	Sterling.
Saab	900, 9000.
Toyota	Cressida, Celica.
Lexus	ES250, LS400.

[FR Doc. 93–18658 Filed 8–4–93; 8:45 am]
BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

July 30, 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.

Comptroller of the Currency

OMB Number 1557–0102
Form Number CC 7610–01 and CC 7610–02
Type of Review: Extension
Title: Notice of and Report of International Activity
Description: The OCC needs to monitor, evaluate, and examine certain foreign activities of national banks. These forms are an information collection tool. The information is used to update our data base which enables us to monitor the overseas activities. It also triggers an evaluation of the activity for prudential and legal purposes. Affects national banks with overseas operations.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Recordkeepers: 75
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping Burden: 75 hours
Clearance Officer: John Ference, (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer
[FR Doc. 93–18716 Filed 8–4–93; 8:45 am]
BILLING CODE 4810–33–M

Public Information Collection Requirements Submitted to OMB for Review

July 30, 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: None
Type of Review: New collection
Title: Problem Resolution Program (PRP) Customer Expectations Focus Group Project
Description: Focus groups are necessary to determine customer expectations of the Problem Resolution Program. This information will be used to develop quality standards, improve customer satisfaction, and improve the design and analysis of a customer satisfaction survey. Focus group participants will be individual, small business, and corporate taxpayers.
Respondents: Individuals or households, Small businesses or organizations
Estimated Number of Respondents: 2,240
Estimated Burden Hours Per Respondent:
Screening Call—5 minutes
Focus Group Sessions—2 hours
Travel Time—1 hour
Frequency of Response: Other (One-time)
Estimated Total Reporting Burden: 402 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, Officer of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Department Reports, Management Officer.
[FR Doc. 93–18617 Filed 8–4–93; 8:45 am]
BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review.

July 30, 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: 1545–1204
Form Number: IRS Form 8823
Type of Review: Extension
Title: Low-Income Housing Credit Agencies Report of Noncompliance
Description: A housing credit agency is required to notify the IRS when it learns that any building, to which is has allocated any low-income housing credit, is not in compliance with the low-income tax credit provisions.

Respondents: State or local governments
Estimated Number of Respondents/ Recordkeepers: 400
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—3 hours, 7 minutes
Learning about the law or the form—12 minutes
Preparing and sending the form to the IRS—16 minutes
Frequency of Response: On occasion
Estimated Total Reporting/ Recordkeeping Burden: 1,424 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. 93–18714 Filed 8–4–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review.

July 30, 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.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0298
Form Numbers: ATF REC 5120/1
Type of Review: Extension
Title: Usual and Customary Business Records Relating to Wine
Description: Usual and customary business records relating to wine are routinely inspected by ATF officers to ensure the payment of alcohol taxes due to the Federal Government (wine excise taxes).
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Recordkeepers: 1,650
Estimated Burden Hours Per Respondent: 6 minutes
Frequency of Response: Other
Estimated Total Reporting Burden: 165 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.
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. 93–18715 Filed 8–4–93; 8:45 am]

BILLING CODE 4810–31–P

Fiscal Service

[Dept. Circ. 570, 1992—Rev., Supp. No. 27]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; EVANSTON INSURANCE COMPANY

Notice is hereby given that the Certificate of Authority issued by the Treasury to EVANSTON INSURANCE COMPANY, Evanston, Illinois, an Illinois corporation, under the United States Code, title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective June 15, 1993.

EVANSTON INSURANCE COMPANY was listed as an acceptable surety on Federal bonds at 57 FR 29369, July 1, 1992.

With respect to any bonds currently in force with EVANSTON INSURANCE COMPANY, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6765.

Dated: July 29, 1993.

Diane E. Clark,

Assistant Commissioner, Financial Information, Financial Management Service.

[FR Doc. 93–18625 Filed 8–4–93; 8:45 am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1992—Rev., Supp. No. 26]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Ranger Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Ranger Insurance Company, of Houston, TX, under the United States Code, title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 57 FR 29389, July 1, 1992.

With respect to any bonds currently in force with Ranger Insurance Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202/FTS) 874–6507.

Dated: July 26, 1993.

Diane E. Clark,

Assistant Commissioner, Financial Information, Financial Management Service.

[FR Doc. 93–18626 Filed 8–4–93; 8:45 am]

BILLING CODE 4810–35–M

Office of Thrift Supervision

[No. 93–141]

Capital and Accounting Standards

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to the reporting requirements of section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), we have submitted our annual report to the Chairman and ranking minority member of the Committee on Banking, Housing, and Urban Affairs of the Senate and the Chairman and ranking minority member of the Committee on Banking, Finance and Urban Affairs of the House of Representatives identifying the differences between the capital and accounting standards used by the Office of Thrift Supervision (OTS) and the capital and accounting standards used by the other Federal banking agencies.

Our report contains two attachments. Attachment I, "Summary of Differences in Capital Standards," identifies and

explains the reasons for differences in the capital standards applied by OTS and those capital standards applied by the other Federal banking agencies. Attachment II, "Summary of Differences in Accounting Practices," identifies and explains the reasons for the major differences between OTS and the other Federal banking agencies in supervisory reporting practices that affect their respective capital standards.

Despite the list of differences, the agencies' rules are essentially identical. Many of the differences are a result of either statutory requirements (e.g., goodwill) or historical differences between the banking and thrift industries (e.g., investment authorities, mutual form of organization). Moreover, the agencies continue to work together to minimize the differences.

The capital standards of OTS comply with the statutory requirement of FIRREA, which provides that OTS standards be no less stringent than the standards applied to national banks.

EFFECTIVE DATE: August 5, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Pomeranz, Senior Accountant, Accounting Policy (202) 906–5650; John F. Connolly, Program Manager for Capital Policy (202) 906–6465; Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC. 20552.

SUPPLEMENTARY INFORMATION:

Attachment I

Summary of Differences in Capital Standards

FDICIA requires a report to Congress on the differences in the bank and savings association capital standards. Below is a summary of the differences.

A. Major Differences

1. Core Capital

Core Capital Requirement: The bank regulatory agencies' leverage requirements are tied to Tier 1 capital. These requirements set the minimum leverage ratio rule requirement at 3 percent plus at least 100 to 200 basis points (depending on the CAMEL ratings). The Office of Thrift Supervision (OTS) has proposed to adopt a leverage ratio rule conforming with the leverage ratios of the other bank regulatory agencies.

During 1992, all four Federal banking agencies adopted uniform prompt corrective action regulations, as mandated by section 131 of FDICIA, which require the establishment of specific capital categories based on risk-based capital and leverage measures.

Goodwill: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) and the OTS capital rule allow "qualifying supervisory goodwill" to be included in core capital through December 31, 1994. The bank regulators, in general, do not allow goodwill to be included in calculating core capital.

Reason for OTS differences: FIRREA requires that the OTS capital rules include a limited amount of qualifying supervisory goodwill in core capital until December 31, 1994 (HOLA 5(t)(3)(A)).

2. Subsidiaries

Subsidiary (general): OTS defines a subsidiary as a 5 percent or greater ownership interest in an entity. The OTS requires consolidation of any subsidiary with the insured institution if the subsidiary is considered to be controlled by the insured institution under generally accepted accounting principles (GAAP) (except for those engaged in activities impermissible for national banks, as described below). If an association owns a 5 percent or greater interest, but does not have control under GAAP, OTS requires pro-rata consolidation, as discussed below. For the bank regulatory agencies, subsidiaries are generally consolidated if the parent institution holds more than 50 percent of the outstanding voting stock, or if the subsidiary is otherwise controlled or capable of being controlled by the parent institution (*see* exception for depository institutions).

Reason for OTS difference: Savings associations, particularly state-chartered institutions, have in the past been allowed to invest in a more expansive list of subsidiaries and equity investments than banks. OTS has adopted its more stringent policy of requiring pro-rata consolidation of ownership interests of 5 percent or greater, but not constituting GAAP control, because it better reflects the risk that may be posed by such subsidiaries.

Subsidiaries ("impermissible"): FIRREA and the OTS capital rule require the deduction from capital of investments in and loans to subsidiaries that engage in activities not permissible for a national bank. FIRREA originally provided for a five year phase-out of the investment if the investments or loans were made prior to April 13, 1989. In 1992, the Director of OTS was given discretionary authority to extend the phase-out period until mid-1996 for investments in certain real estate subsidiaries provided the conditions contained in the statute are satisfied. During the phase-out period, the percentage of assets corresponding with the nondeducted portion of the assets is consolidated. The bank regulators may require deduction on a case-by-case basis.

Reason for OTS difference: Although savings associations may own subsidiaries that engage in activities that are prohibited for national banks, HOLA requires the deduction of investments and loans to such subsidiaries, in accordance with a statutorily prescribed phase-out period. (HOLA 5(t)(5)).

Consolidation of the remaining assets of the impermissible subsidiaries is required to ensure that sufficient capital is held by savings associations during the phase-out period.

Subsidiaries ("permissible—minority ownership"): The OTS rule requires the pro-rata consolidation of subsidiaries where the association does not have control, as defined under GAAP, but owns a five percent or greater ownership interest in the subsidiary. The bank regulators generally require capital to be held only against the investments in such subsidiaries but may, on a case-by-case basis, deduct them from capital or consolidate them either fully or on a pro-rata basis.

Reason for OTS difference: OTS believes that its treatment is appropriate and that sufficient capital should be held against the risks of such investments. OTS believes associations are better protected from the economic risk presented by their subsidiaries by requiring capital to be held against the amount of the subsidiaries' assets, rather than the association's investment in the subsidiary, which is generally smaller. In most cases, the OTS consolidation rule will result in a higher capital requirement.

Subsidiaries (lower-tier depository institutions): Under OTS rules, a depository institution subsidiary is automatically consolidated with its parent association if the subsidiary was acquired prior to May 1, 1989. The parent association's investment in such subsidiaries is automatically excluded from the parent association's capital if the depository institution subsidiary was acquired May 1, 1989 or later (except if it engages only in activities permissible for a national bank, in which case it is consolidated). OTS policy is to require consolidation of lower-tier depository institutions, if consolidation results in a higher capital requirement than the exclusion requirement. For purposes of the risk-based capital regulations, such subsidiaries are generally consolidated by the banking agencies.

Reason for OTS difference: OTS's policy addresses its concerns about (i) "double-leveraging" of the parent association's capital and (ii) incentives to minimally capitalize lower-tier

depository institutions. It also ensures that OTS capital standards are no less stringent than those imposed on banks. (HOLA 5(t)(5)(A),(C),(E)).

3. Equity Investments:

OTS requires associations to deduct equity investments from their capital over a five year transition period. Bank regulators allow only a limited range of equity investments and place those investments in the 100 percent risk-weight category, rather than requiring deduction.

In September 1992, OTS issued a proposed rule that would provide parallel treatment of equity investments for thrifts and national banks. Equity investments of thrifts (primarily stock of the Federal Home Loan Mortgage Corporation, stock of the Federal National Mortgage Association, and certain loans with equity characteristics) that are permissible for national banks would be placed in the 100 percent risk weight category.

Reason for OTS difference: OTS will continue to require the deduction from capital of equity investments that are impermissible for national banks. This approach is designed to insulate the institution and the insurance fund from the risk from these investments. This policy is intended to result in such investments being either divested or "pushed down" into subsidiaries, where savings associations limit their liability and risk to the thrift itself. Upon adoption, the OTS proposal will deal with equity investments of thrifts permissible for national banks through the same capital and supervisory approach used by the other banking agencies.

4. 20 Percent Risk-Weight for High Quality MBS

OTS includes high-quality private-issue mortgage-related securities (Secondary Mortgage Market Enhancement Act or (SMMEA) securities) in the 20 percent risk-weight category. These are mortgage-backed securities (MBS) that are rated in the two highest investment grade rating categories by nationally recognized rating agencies. Generally, bank regulators place private-issue MBS in the 50 percent or 100 percent risk-weight category; the only exception would be for private-issue MBS collateralized by government agency (or government-sponsored agency) securities. These are placed in the 20 percent risk-weight category.

Reason for OTS difference: Policy decision to ensure appropriate capital against the credit risk of these securities, which OTS believes are not sufficiently different from Federal National Mortgage Association (FNMA) and Federal Home Loan Mortgage Corporation (FHLMC) MBS to warrant a different capital requirement. OTS has chosen to recognize the better credit quality of assets receiving one of the two highest investment ratings by a nationally recognized rating agency.

5. Qualifying Multifamily Mortgage Loans

OTS allows certain low-risk multifamily mortgage loans (buildings with 5–36 units, maximum 80 percent loan-to-value ratio (LTV), minimum 80 percent occupancy rate, etc.) to qualify for the 50 percent risk-weight category. Bank regulators currently place all multifamily mortgage loans in the 100 percent risk-weight category.

OTS and the other bank agencies have issued proposed rules to implement section 618(b) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTC Act), by reducing the risk weight of multifamily mortgage loans meeting statutory and regulatory criteria to the 50 percent risk weight.

The RTC Act requires OTS and the other banking agencies to place multifamily mortgage loans in the 50 percent risk weight category if they meet the following criteria: (1) The loan is secured by a first lien, (2) the ratio of the principal obligation to the appraised value of the property, that is, the loan-to-value ratio, does not exceed 80 percent (75 percent if the loan is based on a floating interest rate), (3) the annual net operating income generated by the property (before debt service) is not less than 120 percent of the annual debt service on the loan (115 percent if the loan is based on a floating interest rate), (4) the amortization of principal and interest occurs over a period of not more than 30 years and the minimum maturity for repayment of principal is not less than seven years, (5) all principal and interest payments have been made on time for a period of not less than one year, and (6) meets other prudential underwriting criteria imposed by the banking agencies. The OTS and the other banking agencies have reviewed comments received and are now working together to issue their final rules.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. OTS believes that multifamily mortgage loans that pose a lower risk to the institution and insurance fund should be subject to a lower capital requirement. OTS is working with the other agencies to implement the statutory mandate on a uniform interagency basis.

6. Purchased Mortgage Servicing Rights (PMSR)

All agencies currently subject intangible assets to a three part test and impose limits on the amount of PMSRs that may be included in capital. OTS and the Federal Deposit Insurance Corporation (FDIC) impose both a 90 percent of fair market value test and a 100 percent of tangible capital and 50 percent of core capital limit for both savings associations and state chartered non-member banks.

OCC currently imposes a 25 percent of core capital limit on all intangible assets that pass the three-part test. PMSR in excess of any of these limits must be deducted from capital and assets. The Federal Reserve Board (FRB) requires a case-by-case review and close scrutiny of intangible assets, imposing the requirements of the three-part test and occasionally allowing a limited amount above 25 percent.

To develop a uniform capital treatment for identifiable intangible assets, the agencies issued separate proposals, on a coordinated basis, for public comment. The OTS' proposal stated that institutions would be permitted to include PMSRs and purchased credit card relationships (PCCRs) in capital, provided that, in the aggregate, the amount included does not exceed 50 percent of an institution's core capital. PCCRs would be subject to a separate sublimit of 25 percent of core capital. Amounts of PMSRs and PCCRs in excess of these amounts, as well as all other identifiable intangible assets, including core deposit intangibles, would be deducted from core capital for purposes of calculating regulatory capital ratios.

The proposal also deals with the valuation of identifiable intangible assets included in capital in a manner that is consistent with section 475 of FDICIA. Section 475 authorizes the OTS, as well as the other banking agencies, to set its own limit for the amount of PMSRs that associations may count in capital, without regard to the FDIC limit as previously required by FIRREA.

OTS and the other agencies have received public comments on the proposal and are reviewing these comments in preparation for issuing their final rules.

Reason for OTS difference: FIRREA requires OTS to impose the 90 percent of fair market value limitation (HOLA 5(t)(4)) and OTS was required by FIRREA prior to enactment of section 475 of FDICIA to follow the FDIC rules

on the amount of PMSR that may be included in assets when calculating core capital. Section 475 also requires valuation at 90 percent of fair market value computed quarterly. As noted above, OTS is working with the other Federal banking agencies to adopt uniform final rules for the capital treatment of intangible assets.

7. Recourse Arrangements

Assets sold with recourse (non-mortgage): If a savings association sells non-mortgage assets with recourse (where the transaction is treated as a sale under GAAP), OTS (i) considers it a sale, and (ii) requires capital to be held against the total amount of the loans sold with recourse through the use of the 100 percent off-balance sheet conversion factor. If a bank sells a non-mortgage asset with recourse (even when the transaction is treated as a sale under GAAP), it is not considered a sale by the bank regulators.

Reason for OTS difference: OTS, in general, follows GAAP in determining whether a transaction is a sale. OTS policy is to follow GAAP while ensuring appropriate capital through the risk-based capital requirement against these assets. Regardless of "sale" treatment, OTS requires capital if savings associations are liable for losses.

Assets sold with recourse (mortgages—private transactions): If savings associations sell mortgage assets (with recourse) to private entities (where the transaction is treated as a sale under GAAP), OTS follows the same policy as it follows regarding sales of non-mortgage assets. Under this policy, OTS (i) considers it a sale and (ii) requires capital to be held under the risk based capital computations through the use of the 100 percent off-balance sheet conversion factor.

Banks that sell pools of residential mortgages with recourse to private entities are required to hold the full amount of capital against the mortgages regardless of the amount of recourse retained and the treatment of the transaction for regulatory reporting purposes. If "insignificant" recourse is retained (e.g., recourse is less than the expected loss), the transaction is considered a sale for reporting purposes, but capital will be required against 100 percent of the off-balance sheet contingent liability for risk-based capital purposes. (The FRB and Office of the Comptroller of the Currency (OCC) have proposed a rule under which no capital would be required against pools of residential mortgages sold to private entities with insignificant recourse for which a specific non-capital reserve or liability account is established and maintained for the maximum amount of possible loss under the recourse provision.) If "significant" recourse is retained, the transaction is not reported as a sale and the assets remain on the balance sheet. Capital is required to be held against the on-balance sheet amount of the assets.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. OTS, in general, follows GAAP in determining whether a transaction is a sale. Regardless of "sale" treatment, OTS requires capital if savings associations are liable for losses.

Assets sold with recourse (limited recourse): For risk-based capital purposes only, the OTS limits the capital required on assets sold with recourse (that are treated as sales under GAAP) to the lesser of (i) the amount of recourse or (ii) the "normal" capital charge. For both leverage and risk-based capital purposes, the bank regulators require the "normal" capital charge regardless of recourse amount. The FRB and OCC, however, have proposed an exception for pools of residential mortgages sold to private parties (as described above).

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets, which is limited in cases where recourse is limited.

Recourse servicing: Where savings associations are responsible for credit losses on loans they service, OTS requires capital against the amount of the underlying loans consistent with the recourse policy set forth above. Although savings associations do not "own" the underlying assets, they have a contingent liability and are subject to losses on those assets. While the bank regulators are not explicit on this point, the general principle of the bank regulators' capital rule is that capital generally will be required whenever there is credit risk.

8. Purchased Subordinated Securities

Savings associations are required to hold capital against the total underlying loans, regardless of whether originated by the institution or purchased from other parties. Banks are only required to treat subordinated securities created from loans originated by the bank as recourse.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. Whether institutions create subordinated securities or purchase subordinated securities, the risks are similar.

9. Repossessed Assets/Assets More Than 90 Days Past Due (Except Single Family Home Loans)/Equity Investments With Similar Characteristics

On December 31, 1992, OTS adopted a final rule placing these assets in the 100 percent risk-weight category. This is the same capital treatment imposed by the other banking agencies. Previously OTS placed these assets in a 200 percent risk-weight category.

Reason for OTS difference: OTS has decided to make its capital treatment of these assets conform with that of the banking agencies, particularly in light of its changed policy on valuation of repossessed assets. The OTS has also proposed a new policy for the valuation of troubled collateral-dependent loans that relies on the use of fair value. The OTS proposal would also revise the classification policy for repossessed assets and troubled collateral-dependent loans.

10. Consequences of Failure To Meet Capital Standards

The prompt corrective action provisions of FDICIA impose a stringent regulatory regimen on thrifts and banks failing their capital requirements. The prompt corrective action provisions of section 131 of FDICIA establish five regulatory categories, with the distinctions primarily based on capital. Section 131 then imposes various sanctions and restrictions on institutions in the lower three prompt corrective action categories, while other regulations (brokered deposits and the risk-based premium rules of the FDIC) provide preferential treatment to the well-capitalized institutions. The banking agencies, including the OTS, issued a joint preamble and parallel rules implementing prompt corrective action.

Savings associations are also subject to additional restrictions and requirements under the HOLA, as enacted in FIRREA. The OTS will continue to apply these provisions to savings associations, but is coordinating their implementation with the prompt corrective action provisions. The HOLA provisions do not apply to banks.

Reason for OTS difference: The OTS and the other banking agencies have adopted uniform rules implementing the prompt corrective action provisions of FDICIA. The HOLA, however, continues to impose additional restrictions on savings associations (HOLA 5(t)(6)).

11. Status of Institutions With Approved Capital Plans

Under FIRREA, savings associations that fail the minimum capital requirements must submit and adhere to approved capital plans. OTS issued a final rule in July 1992 that states that an association will be considered "in compliance" with its capital requirements if it is operating under an approved capital plan and the association is not "critically undercapitalized" under the prompt corrective action provisions of section 131 of FDICIA.

National banks that do not meet their minimum capital requirements but have an approved capital plan are regarded as "in compliance" with the capital standards by the OCC (though they are required to disclose to investors that they fail to meet minimum capital standards.) State non-member banks that fail to meet minimum capital requirements are deemed as not "in compliance" with the capital standards by the FDIC.

Reason for OTS difference: Revised OTS policy to parallel OCC policy except for "critically undercapitalized," which OTS believes is more consistent with FDICIA.

B. Minor Differences

1. 1.5 Percent Tangible Capital Requirement

OTS has an explicit 1.5 percent tangible capital requirement; the bank regulators do not.

Reason for OTS difference: FIRREA requires OTS to establish a tangible capital requirement of at least 1.5 percent (HOLA 5(t)(2)(B)).

2. Collateralized Mortgage Obligations (CMO) Tranches

OTS has issued guidance (Thrift Bulletin 38) identifying categories of high-risk CMO tranches that it places in the 100 percent risk-weight category (versus the 20 percent risk-weight category). OTS has also indicated a preference to deal with this issue through an explicit interest rate risk component in the risk-based capital rule.

The bank regulators vary in their approach: OCC has stated that any CMO tranche absorbing more than its pro-rata share of principal loss risk is risk-weighted at 100 percent (others generally at 20 percent); FRB has stated that any CMO tranche absorbing more than its pro-rata share of loss is risk weighted at 100 percent (others generally at 20 percent); FDIC undertakes a case-by-case review

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. Unlike most other risk issues addressed in the risk-based capital rules, the risk posed by these instruments is primarily interest rate risk, not credit risk. Certain CMO tranches are no more risky than straight mortgage-backed securities and some tranches may, in fact, impose less risk; others are more risky than MBS and are appropriately risk-weighted at a higher level.

3. Pledged Deposits/Nonwithdrawable Accounts

OTS includes these instruments as core capital for mutual associations if they meet the same requirements as non-cumulative perpetual preferred stock. If they do not meet the requirements for inclusion as core capital, OTS includes them as supplementary capital provided they meet the standards for preferred stock or subordinated debt. The bank regulators do not address this issue since these instruments do not exist in the banking industry.

Reason for OTS difference: Policy decision to treat items that offer equivalent protection to the insurance fund and the institution in the same way.

4. Qualifying Single Family Mortgage Loans

In order to be placed in the 50 percent risk-weight category, OTS requires that mortgages have no more than an 80 percent loan-to-value (LTV) ratio (unless they have private mortgage insurance (PMI) bringing the LTV ratio down to 80 percent). The bank regulators require "prudent, conservative" underwriting without specific LTV ratio requirements.

Reason for OTS difference: Policy decision to make explicit what OTS believes is generally "prudent and conservative"; the bank regulators have indicated to OTS that they may use the 80 percent LTV ratio in examiner guidance.

5. Loans To Individual Purchasers For The Construction Of Their Homes

OTS and OCC place these assets in the 50 percent risk-weight category. The FRB and FDIC may treat them as construction loans (100 percent) or as mortgage loans (50 percent) depending on their characteristics. The OTS and the OCC have implemented section 618(a) of the RTC Act, which requires the agencies to place certain pre-sold residential construction loans in the 50 percent risk-weight. The FRB and FDIC are in the process of implementing that provision.

OTS issued its final rule in April 1992 and the OCC has also issued its final rule. The FDIC is in the process of adopting a final rule, while the FRB is planning on issuing an interim final rule amending its risk-based capital guidelines.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. The OTS also implemented section 618(a) of the RTC Act.

6. Holding of First and Second Liens on Home Mortgages by the Same Institution

If there are no intervening liens and both the first and second liens are held by the same institution, OTS, the FRB, and the FDIC view holding both first and second liens as a single loan. This could result in assigning both loans to the 50 percent risk weight if they meet the applicable criteria for qualifying mortgage loans. The OCC places second liens in the 100 percent risk-weight category.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. Second mortgages (depending on their characteristics) should be placed in the 50 percent risk weight if both loans are held by the same institution, there are no intervening liens, and they meet the criteria for qualifying mortgage loans.

7. Core Deposit Intangibles (CDI)

While all agencies subject these assets to the three-part intangible asset test, and all agencies are silent in their regulations as to whether they pass the three-part test, OTS previously issued temporary guidance stating that CDI may be included in core capital if management documents that it passes the three-part test. OCC has issued an Advance Notice of Proposed Rulemaking requesting comment on whether core deposit intangibles meet the three-part test. OCC has not generally allowed CDI to be included in capital for purposes of calculating core capital. FDIC generally deducts all intangible assets (other than PMSR) except if institutions have received case specific approval. The FRB does not automatically deduct CDI or other intangible assets from Tier 1 capital, but determines the appropriateness of their inclusion in an institution's capital on a case-by-case basis.

OTS and the other Federal banking agencies have proposed to eliminate the inclusion of CDI in capital on a continuing basis as part of the agencies' adoption of parallel rules on intangible assets.

Reason for OTS difference: Policy decision to give examiners and institutions interim guidance pending inter-agency review of the issue. OTS has proposed to revise this policy as part of a joint initiative of the banking agencies to adopt uniform rules on the capital treatment of intangible assets.

8. Rules on Maturing Capital Instruments (MCI)

OTS and bank agencies use different rules to determine how much of MCI counts toward capital. OTS (i) grandfathers issuances of MCI issued on or before November 7, 1989 (which was the date of the rule change) and (ii) allows two options for issuances of MCI after November 7, 1989 (a) the bank rule (five year amortization) or (b) a limit of 20 percent of total capital maturing in any one year for instruments within seven years of maturity. Bank regulators use a five year amortization rule.

Reason for OTS difference: Policy decision to minimize unnecessary disincentives for issuance of subordinated debt and to avoid unduly penalizing pre-FIRREA issuances of MCI.

9. Limitation on Subordinated Debt

The bank regulatory agencies limit subordinated debt to 50 percent of core capital. OTS has no limit on the amount of subordinated debt that can count as supplementary capital.

Reason for OTS difference: Policy decision to encourage issuance of supplementary capital.

10. Non-residential Construction and Land Loans

OTS requires the amount of these loans above an 80 percent LTV ratio to be deducted from total capital (with a five year phase-in). The bank regulators place the whole loan amount in the 100 percent risk-weight category. Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. OTS experience indicates that high LTV ratio land loans and non-residential construction loans present particularly high levels of risk.

11. FSLIC/FDIC-covered Assets

OTS places these assets in 0 percent risk-weight category. The banking agencies generally place these assets in the 20 percent risk-weight category.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. OTS notes that these government guaranteed obligations are supported by a "backup" call on the United States Treasury.

12. Mutual Funds

In general, OTS establishes the risk weighting for mutual funds on the asset actually held by the mutual fund with the highest capital requirement. The bank regulators base it on the highest risk-weighted asset that is a permissible investment by the mutual fund. OTS allows, on a case-by-case basis, "pro-rata" risk-weighting of investments in mutual funds, based on the assets of the mutual fund (i.e., if 90 percent of a mutual fund's assets are 20 percent risk-weight assets and 10 percent are 100 percent risk-weight assets, we may allow 90 percent of the investment in 20 percent risk-weight category and 10 percent in the 100 percent risk-weight category). Bank regulators do not allow banks to prorate mutual fund investments between risk-weight categories.

Reason for OTS difference: Policy decision to ensure appropriate capital against risk of these assets. OTS believes that allowing institutions to prorate their investments and focusing on actual assets ensures that savings associations hold capital in an amount essentially equivalent to that required if they directly held the assets the mutual fund invested in.

13. Capital Requirement on Holding Companies

FRB applies the risk-based capital requirements to bank holding companies; OTS does not apply them to thrift holding companies.

Reason for OTS difference: OTS policy decision to not impose capital requirements on corporate entities that do not pose a risk to the deposit insurance fund.

14. Agricultural Loan Losses

The bank regulators, due to a statutory requirement, allow such losses to be deferred (and, effectively, allow these losses to be "included" in supplementary capital). OTS does not allow such losses to be deferred or included in assets or capital.

Reason for OTS difference: OTS has no statutory requirement to allow such deferred losses in assets or capital.

15. Income Capital Certificates (ICCs) And Mutual Capital Certificates (MCCs)

OTS allows in supplementary capital. Because these items do not exist in the banking industry, the bank regulators do not address them.

Reason for OTS difference: ICCs/MCCs allowed as supplementary capital due to their being functionally equivalent to net worth certificates (which are required, by statute, to be included in capital).

16. Restrictions on Hybrid Capital Instruments

The bank regulators state in the capital rule certain restrictions on hybrid capital instruments (priority of debt, etc.). OTS does not have these restrictions in its capital rule (rather, they are elsewhere in OTS regulations or policy statements).

Reason for OTS difference: Policy decision to retain flexibility to adapt to innovations in capital instruments. (There is no difference in practice.)

Attachment II

Summary of Differences in Accounting Practices

Differences by each agency in accounting or supervisory reporting practices may cause differences in the amount of regulatory capital maintained by depository institutions. These differences are the result of an evolutionary process that primarily reflects historical agency philosophy and industry trends. A summary of these differences is presented below.

1. Specific Valuation Allowances for and Charge-offs of Troubled Loans

Currently, the Office of Thrift Supervision (OTS) requires, at a minimum, net realizable value (NRV) to determine the level of specific valuation allowances or charge-offs for troubled, collateral-dependent loans.

Existing OTS policy requiring, at a minimum, the use of NRV may be more or less stringent than required by bank agencies, depending on how each of the agencies implement their policies in practice.

OTS has proposed a new policy for the classification and valuation of troubled collateral-dependent real estate loans that relies on the use of fair value rather than NRV of the collateral.

2. Futures and Forward Contracts

OTS practice is to follow generally accepted accounting principles (GAAP). In accordance with SFAS 80, when hedging criteria are satisfied, the accounting for the futures contract is to be related to the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in deferred losses in accordance with GAAP.

The banking agencies do not follow GAAP, but require that banks report changes in the market value of futures contracts even when used as hedges in the current period's income statement.

However, futures contracts used to hedge mortgage banking operations are reported in accordance with GAAP.

3. Excess Servicing Fees

OTS practice is to follow GAAP in valuing excess servicing fees. When loans are sold with servicing retained and the stated servicing fee rate differs materially from a normal servicing fee rate, the sales price should be adjusted in determining the gain or loss from the sale of the loans. This provides for the recognition of a normal fee in each subsequent year that servicing continues on the loans. The gain recorded at the date of sale cannot be larger than the gain assuming the loans were sold servicing released. The subsequent valuation of the excess servicing is adjusted based upon anticipated prepayment rates and interest rates.

The banking agencies follow GAAP for residential mortgage loan pools. For all other loans (including individual residential mortgage loans), the banking agencies do not follow GAAP. In those cases, they require that excess servicing fees retained on loans sold be reported as realized over the contractual life of the transferred asset.

4. In-Substance Defeasance of Debt

OTS practice is to follow GAAP. In accordance with SFAS 76, when a debtor irrevocably places risk-free monetary assets in a trust solely for satisfying the debt and the possibility that the debtor will be required to make further payments is remote, the debt is considered extinguished. The transfer can result in a gain or loss in the current period.

The banking agencies do not follow GAAP. The banking agencies continue to report the defeased debt as a liability and the securities contributed to the trust as assets with no recognition of any gain or loss on the transaction.

5. Sales of Assets With Recourse

OTS practice is to follow GAAP. A transfer of receivables with recourse is recognized as a sale if: (i) The transferor surrenders control of the future economic benefits, (ii) the transferor's obligation under the recourse provisions can be reasonably estimated, and (iii) the transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

However, in the calculation of OTS risk-based capital, certain off-balance sheet conversions are performed that result in capital being required for the risk retained. See further discussion of capital differences with respect to this item in Attachment I, Capital Differences.

The practice of the banking agencies is generally to report transfers of receivables with recourse as sales only when the transferring institution: (i) Retains no risk of loss from the assets transferred and (ii) has no obligation for the payment of principal or interest on the assets transferred. As a result, assets transferred with recourse are reported as financings, not sales.

However, this general rule does not apply to the transfer of mortgage loans under one of the government programs: Government National Mortgage Association, Federal National Mortgage Association, and Federal Home Loan Mortgage Corporation. Transfers of mortgages under one of these programs are automatically treated as sales. Furthermore, private transfers of mortgages are also reported as sales if the transferring institution does not retain a significant risk of loss on the assets transferred.

6. Negative Goodwill

OTS permits negative goodwill to offset goodwill reported as an asset.

The banking agencies require that negative goodwill be reported as a liability, not netted against goodwill assets.

7. Push-Down Accounting

OTS requires push-down accounting when there is at least a 90 percent change in ownership.

The banking agencies require push-down accounting when there is at least a 95 percent change in ownership.

8. Nonaccrual Assets

The OCC allows interest accrual on certain troubled loans that have been restructured by dividing the loan into two notes. Typically, one of the notes has been charged off, but the borrower's debt has not been forgiven.

This interpretation of GAAP is different than the practice required by the OTS. OTS does not permit accrual of interest in the above example but does allow recognition of interest income on a cash basis.

Dated: February 5, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 93–18732 Filed 8–4–93; 8:45 am]

BILLING CODE 6720–01–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 149
Thursday, August 5, 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 DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, August 10, 1993, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Reports of the Office of Inspector General.

Matters relating to the Corporation's corporate and supervisory activities.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured depository institutions or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda

Matters relating to the possible closing of certain insured depository institutions:

Names and locations of depository institutions authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5) U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202 898–6757.

Dated: August 3, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–18893 Filed 8–3–93; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Tuesday, August 10, 1993, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum re: 1993 Mid-Year Financial Management Report.

Memorandum and resolution re: Policy Statement of the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision concerning insured depository institutions' branch closing notices and internal policies.

Memorandum and resolution re: Proposed amendments to part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation," which would conform to the definition and treatment of branch relocations in the final interagency policy statement on branch closings.

Memorandum and resolution re: Delegation of authority to the Director of the Division of Liquidation to make finding of worthlessness of claims against receiverships.

Memorandum and resolution re: Payment of claims arising from severance pay or "golden parachute" agreements of failed banks where employment has been terminated after bank failure.

Memorandum and resolution re: Interim Rule on National Depositor Preference Statute: Clarification of Administrative Expenses of Receivership.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3111 (Voice); (202) 942–3132 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 3, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 93–18894 Filed 8–3–93; 3:31 pm]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 93–18197.

PREVIOUSLY ANNOUNCED DATE AND TIME: Thursday, August 5, 1993, 10:00 a.m., Meeting Open to the Public.

THE FOLLOWING ITEMS WERE ADDED TO THE AGENDA:

Advisory Opinion 1993–9: Eric E. Doster on behalf of the Michigan Republican State Committee. (Continued from meeting of July 29, 1993).

Draft Directive—Confidential and Public Financial Disclosure Reports. (Continued from meeting of July 29, 1993).

DATE AND TIME: Thursday, August 10, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 12, 1993 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1993–14: Mr. Guy DuFault on behalf of the Rhode Island Democratic State Committee.
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–18817 Filed 8–3–93; 2:25 pm]

BILLING CODE 6715–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., August 16, 1993.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the July 19, 1993, Board meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of investment policy.
4. Review of Arthur Andersen semiannual review.
5. Review of KPMG Peat Marwick audit reports:
   "Pension and Welfare Benefits Administration Review of U.S. Department of Treasury Operations Relating to the Thrift Savings Plan Investments in the Government Securities Fund."
   "Pension and Welfare Benefits Administration Review of Capacity Planning and Performance Management of the Thrift Savings Plan at the United States Department of Agriculture, Office of Finance and Management, National Finance Center."

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: August 2, 1993.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 93–18810 Filed 8–3–93; 10:01 am]

BILLING CODE 6760–01–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: Full Board 9:00 a.m., August 9, 1993.

PLACE: Armed Forces Radiobiology Research Institute, Bethesda, Maryland.

STATUS: (Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3).

MATTERS TO BE CONSIDERED:

9:00 a.m. Meeting—Board of Regents

(1) Approval of Minutes, 14 May 1993; (2) Award Presentation; (3) Presentation by Dean Gary, Admissions, Faculty Matters; (4) Presentation by Dr. Zimble, Middle States, Budget Report, CHE, Update of Major Projects; (5) New Business and Comments by the Board; (6) Tour of AFRRI

CONTACT PERSON FOR MORE INFORMATION: Goerge A. Drumbor, Executive Secretary of the Board of Regents, 301/295–3886.

Dated: August 3, 1993.

Linda Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–1883 Filed 8–3–93; 2:25 p.m.]

BILLING CODE 5000–04–M

federal register

Thursday
August 5, 1993

Part II

Small Business Administration

13 CFR Part 107
Small Business Investment Companies; Proposed Rules

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Leverage; Participating Securities; Conditions Affecting Good Standing of Licensees

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: Title IV of Public Law 102–366 (September 4, 1992), which is entitled "Small Business Equity Enhancement Act of 1992", made a number of changes to the Small Business Investment Act of 1958, as amended (Act). Several of these changes, which are set forth in a separate rule published elsewhere in this issue of the **Federal Register**, affect the eligibility and operations of Small Business Investment Companies (SBICs) that are licensed and regulated by the Small Business Administration (SBA). Title IV also made changes that affect financial assistance (Leverage) provided by SBA to such Licensees.

This proposed rule would implement the statutory provisions relating to Leverage provided to SBICs which would increase the maximum Leverage outstanding to any one or group of Licensees operating under common control from $35 million to $90 million, incrementally reduce the ratio of such Leverage from 400% of private capital to 200% of private capital at the maximum level of assistance, establish a new form of Leverage (Participating Securities) which will be available to Licensees that make Equity Capital Investments in growth oriented small concerns, permit Specialized SBICs that are organized as limited partnerships to obtain Leverage from SBA in the form of a Preferred Limited Partnership interest, and make other technical changes necessary to implement the legislation.

DATES: Written comments on this proposed rule must be received no later than October 4, 1993.

ADDRESSES: Written comments should be send to: Wayne S. Foren, Associate Administrator for Investment; Small Business Administration; suite 6300; 409 3rd Street SW.; Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Marvin D. Klapp, Acting Director, Office of Program Development; telephone no. (202) 205–6515.

SUPPLEMENTARY INFORMATION: This proposed rule would implement the provisions of Title IV of Public Law 102–366 (September 4, 1992) relating to Leverage provided to SBICs.

1. General Leverage Provisions

a. Introduction

Consideration of the substance of this proposed rule will be made easier if the reader bears in mind that the meaning of the term "Licensee", standing by itself, always includes SBICs licensed under the authority of section 301(c) of the Act and SBICs licensed under the authority of section 301(d) of the Act. A section 301(c) Licensee is sometimes referred to as a Regular SBIC because there is no restriction on the type of Small Concern that it may assist. A section 301(d) Licensee is sometimes referred to as a Specialized SBIC because it is only authorized to assist Small Business Concerns owned by persons who are socially or economically disadvantaged.

Section 107.201 of the present regulations is proposed to be renumbered § 107.210 and this section is significantly reorganized. Definitions previously contained in § 107.201(c) are moved to § 107.3 in order to consolidate the location of definitions within the regulations. Defined terms used throughout this preamble and proposed regulation are capitalized. Other requirements concerning issuance of Leverage and enforcement of rights previously contained in § 107.201 have been moved to new § 107.261.

b. Application Procedures

Proposed § 107.210 references the application procedures and sets forth the basic eligibility requirements for obtaining Leverage. In addition to being in regulatory compliance and eligible for the Leverage for which they are applying, Licensees must demonstrate that they have adequate capital and an ability to meet their obligations as they become due. This is a safety and soundness requirement set forth in section 406 of Public Law 102–366. Section 107.210(c) also requires that an applicant for Leverage demonstrate a need for funds. This means that a Licensee ordinarily would not be eligible for Leverage if it has significant available resources of its own. An exception to this general rule is that a Licensee applying for Participating Securities which has at least 50% of its existing portfolio in Equity Capital Investments may qualify for Leverage even it such Licensee has commitments from investors that have not yet been fully drawn down.

c. Fees

Proposed § 107.210(d) would increase the user fee charged in connection with obtaining SBA's guaranty from 1.185% to 2% of the face amount of Debentures issued by Licensees and would institute the same 2% fee for Participating Securities, in order to cover the increased costs of administering Leverage. This fee is authorized for Participating Securities by section 403 of Public Law 102–366. These proposed regulations would make no other changes in fees charged in conjunction with the program.

d. Subordination of Debentures

Section 107.201(e)(5) has been renumbered as § 107.210(f)(5) and has been revised to clarify that when SBA agrees to subordination with respect to Debentures it guarantees after July 1, 1991, the amount of indebtedness to which such subordination applies is fixed at the time SBA subordinates and is limited at that time and in the future to the lesser of 200% of the Licensee's Leverageable Capital [1] or $10 million. This means that any indebtedness of the Licensee in excess of that amount, which is in existence at the time SBA subordinates or is acquired subsequent thereto, will not benefit from SBA's subordination.

e. Restrictions on Third Party Debt

Under the present regulations and policies of the SBIC program, Licensees are permitted to apply for and obtain loans and lines of credit from third parties without obtaining SBA's prior approval or even notifying the Agency, except upon the filing of annual financial statements. Third party lenders have viewed SBA Leverage, which is unsecured and generally subordinate, as part of the capital base of the Licensee. Accordingly, Licensees have been able to borrow from third parties amounts which, when aggregated with the Licensee's Leverage, may exceed a prudent level of indebtedness. As a result, SBA has, on occasion, suffered large losses upon the distribution of a Licensee's assets in liquidation, receivership or bankruptcy proceedings. Concern over SBA's creditor position prompted the Agency to tighten its terms of subordination in July 1991. See 56 FR 31777. However, the subordination limits then adopted are irrelevant if the Licensee has incurred secured third party debt. Recognizing its obligation to further protect its exposure as the largest creditor of most debtor Licensees, SBA is hereby proposing that it have the right to approve all new third party debt of a Licensee.

[1] This term and the related term "Regulatory Capital" are proposed to be defined in a proposed rule published simultaneously herewith.

Proposed § 107.210(f)(6) would require that after September 30, 1993, Licensees obtain the written approval of SBA before incurring or refinancing any third party debt or obtaining any line of credit. In addition to conventional third party debt, this restriction would cover guarantees by Licensees as well as other contingent liabilities provided they are voluntarily assumed. Furthermore, unless otherwise agreed to by SBA in writing, Licensees with existing lines of credit would need to have such lines approved before increasing the amounts outstanding above the balance owed on September 30, 1993.

f. Maintenance of Unimpaired Capital

(i) General

Current § 107.203(d) requires Leveraged Licensees to maintain Regulatory Capital in an amount sufficient to avoid a condition of Capital Impairment. Under this current regulation, a section 301(c) Licensee is in a state of Capital Impairment and is in violation of § 107.203(d), if its Undistributed Net Realized Earnings deficit, together with any Unrealized Depreciation in excess of Unrealized Appreciation, exceeds 50 percent of Private Capital. For a section 301(d) Licensee, the applicable percentage is 75 percent.

Present § 107.203(d) is proposed to be renumbered as § 107.210(h), which would continue to permit a higher percentage of impairment for a section 301(d) Licensee than for a section 301(c) Licensee whose situation was otherwise identical. However, the proposed rule is significantly different from the existing rule in that it would, for the first time, allow varying degrees of impairment depending upon differences in the composition of the portfolios of Licensees. In addition, the proposed rule recognizes the delay in profitability that is expected to occur in venture investing.

SBA realizes that this proposed rule is a significant departure from the existing rule and SBA expects comments that are both positive and negative. It should be noted that capital impairment is a means of enforcing the financial safety and soundness of Licensees, and that SBA is attempting to provide flexibility while protecting the interests of the Government.

SBA believes that the impairment levels permitted under the current regulation may be too low for Licensees with a venture capital portfolio and too high for Licensees with a loan portfolio. In a venture portfolio, especially during the early years, there are likely to be considerable losses before profits are realized, and a Capital Impairment Percentage of 50% or more may exist even when the portfolio has genuine long-term value. However, for a Licensee which only provides debt financing, a Capital Impairment Percentage of 50% generally indicates a significant operating deficit that cannot be offset by appreciation in the portfolio. Thus, under the proposed regulation, the maximum permissible Capital Impairment Percentages reflect these differences in portfolio composition and are higher for equity investors than for lenders.

Under the current Capital Impairment concept, Licensees must treat net Unrealized Depreciation as if it represented realized losses, but receive no corresponding credit for net Unrealized Appreciation. The proposed definition seeks to acknowledge the existence of net Unrealized Appreciation in a Licensee's portfolio. At the same time, SBA wishes to avoid providing incentives for Licensees to inflate their portfolio values artificially. Thus, it is proposed to allow partial recognition of Unrealized Appreciation in the computations of Capital Impairment, to an extent which varies depending on whether or not the portfolio securities are Publicly Traded and Marketable. See proposed § 107.210(h)(3).

Pursuant to proposed § 107.261(d), violation of the Capital Impairment regulation would constitute an event of default with respect to Debentures and Preferred Securities, and pursuant to § 107.262(d), such a violation would also affect the good standing of a Licensee issuing Participating Securities. In all cases, a Licensee would be afforded an opportunity to cure a violation before SBA would impose any of the remedies available to it under the proposed regulations.

(ii) Computation of Capital Impairment Percentage

If both Undistributed Realized Earnings and Unrealized Gain (Loss) on Securities Held are zero or positive, no Capital Impairment exists and no further calculations are necessary. If either or both amounts are less than zero, the Licensee must make the calculations described in § 107.210(h)(3) and (4). Depending upon the results of interim calculations in these paragraphs, the Licensee may be required to compute a Capital Impairment Percentage.

(iii) Determination of Capital Impairment Violation

A Licensee would not be in violation of proposed § 107.210(h) simply by having a Capital Impairment Percentage greater than zero. Violations of proposed § 107.210(h) arise out of an excessive Capital Investment Percentage. What constitutes an excessive or acceptable percentage is set forth in two self-explanatory proposed tables, for section 301(c) Licensees and section 301(d) Licensees, respectively.

(iv) Special Rules for Licensees With Outstanding Participating Securities

(A) *General.* All Leveraged Licensees, including Licensees with outstanding Participating Securities, are required to compute their Capital Impairment Percentages in the same manner, but a Licensee with outstanding Participating Securities may, for as long as five years following its initial issuance of Participating Securities, have a Capital Impairment Percentage higher than the applicable table permits without thereby being in violation of § 107.210(h) if it meets the other requirements proposed in § 107.210(h)(7). In addition, a Licensee that meets the requirements proposed in § 107.210(h)(7)(i) of (ii) will be afforded an opportunity to cure on terms that may be more favorable than those available to other Licensees.

(B) *Curable Capital Impairment Percentage during first 48 months following initial issuance of Participating Securities.* During this period a Licensee with outstanding Participating Securities may have a Capital Impairment Percentage of up to, but not as much as, 85 percent if (1) at least two-thirds of its outstanding Leverage consists of Participating Securities; and (2) at least two-thirds of its Loans and Investments, valued at cost, are Equity Capital Investments.

(C) *Curable Capital Impairment Percentage during first 60 months following initial issuance of Participating Securities.* During this period a Licensee with outstanding Participating Securities may have a Capital Impairment Percentage of up to, but not as much as, 85 percent if (1) at least two-thirds of its outstanding Leverage consists of Participating Securities; and (2) at least two-thirds of its Loans and Investments, valued at cost, are Start-up Financings. For the purposes of this proposed regulation, a Start-up Financing is an Equity Capital Investment in a growth-oriental Small Concern that, at the time of the investment, has not been in existence, in any form, for more than three fiscal years, has not had positive cash flow or sales exceeding $5 million in any fiscal year, and is not formed for the purpose of acquiring any existing business.

(D) *Cure of Capital Impairment.* During the fifth year following its initial

issuance of Participating Securities, a Licensee that meets the requirements described in paragraph (B) above may cure its Capital Impairment by taking one or more of the following actions within thirty days after it determines that it has a condition of Capital Impairment. The Licensee may increase its Regulatory Capital [2] by depositing in an escrow account satisfactory to SBA a cash contribution equal to 15 percent of outstanding Leverage; or it may provide SBA with a guarantee satisfactory to SBA, for the benefit of SBA, equal to 15 percent of its outstanding Leverage. In addition to the normal credit considerations that would determine whether a guarantee is satisfactory to SBA, the terms of the guarantee must provide that any guarantee fee that would otherwise be due the guarantor from the Licensee, and any other sums that would be due the guarantor by virtue of the guarantor's right of subrogation, must be deferred and subordinated to all repayment of all outstanding Leverage plus any unpaid Earned Prioritized Payments (as defined in proposed § 107.3) and earned Adjustments.

During the sixth year following its initial issuance of Participating Securities a Licensee that meets the above-described requirements may cure its Capital Impairment by taking one of the actions described in the preceding paragraph, except that the amount of the cash deposit or guarantee shall be equal to 30 percent of outstanding Leverage. Any amount deposited previously may be used as a credit against the 30 percent requirement.

2. Leverage for 301(c) Licensees

Section 107.202 is proposed to be renumbered as § 107.220 and is amended to provide Leverage requirements for Section 301(c) Licensees to reflect amendments to the Act contained in section 402 of Public Law 102–366. it permits SBA to provide Leverage to section 301(c) Licensees through the purchase or guaranty of Debentures and/or Participating Securities. After March 31, 1993, the amount of Leverage outstanding at any time shall not exceed 300% of Leverageable Capital up to $15 million, 200% of Leverageable Capital of more than $15 million but not more than $30 million, and an amount not exceeding $15 million which is equal to 100% of Leveragable Capital over $30 million. In no event shall the aggregate amount of outstanding Leverage by any Licensee or group of two or more Licensees under Common Control [3] exceed $90 million. On a case-by-case basis, however, SBA may grant an exception to this ceiling to a group of Licensees under Common Control and permit a higher amount provided SBA imposes such terms and conditions as it considers appropriate to minimize risk of loss in the event of default. Notwithstanding the foregoing, the aggregate amount of Participating Securities outstanding from a Licensee shall not exceed 200% of Leverageable Capital.

A grandfather clause is provided for Licensees that, on March 31, 1993, have outstanding Debentures in excess of 300% of Leverageable Capital, so that such Licensees are not required to prepay such excess. Moreover, such Licensees may apply to issue additional Debentures or Participating Securities solely to pay the amount due on such excess maturing Debenture. The maturity of any new such Debenture or Participating Security may not be later than September 30, 2002.

3. Leverage for 301(d) Licensees

Proposed § 107.230 provides for Leverage for section 301(d) Licensees and substantially replaces existing § 107.205. SBA may provide Leverage to section 301(d) Licensees through the purchase or guarantee of Debentures and/or Participating Securities, and/or through the purchase of Preferred Securities. Proposed § 107.230(b) requires the Articles of section 301(d) Licensees to be conformed to the requirements discussed in paragraphs a. or b. below in order to issue Preferred Securities.

a. Preferred Stock

In the case of corporate Licensees, the preferred stock purchased by SBA prior to November 21, 1989, shall be non-voting stock with a 3% cumulative preferred dividend paid out of Retained Earnings Available for Distribution.[4] Preferred stock issued after November 21, 1989, shall provide for 4% preferred cumulative dividends payable out of Retained Earnings Available for Distribution. Preferred Stock purchased by SBA on or after November 21, 1989, shall be redeemed not later than fifteen years after issuance at a price not less than par value plus unpaid dividends accrued to the redemption date. SBA may guarantee Debentures offered for sale by such Licensee immediately prior to such redemption to permit simultaneous redemption of such Preferred Securities.

b. Preferred Limited Partnership Interest

Section 412 of Public Law 102–366 authorizes unincorporated section 301(d) Licensees to issue preferred limited partnership interests to SBA which would have the same terms and conditions as 4% preferred stock described immediately above, i.e., a preferred and cumulative return at an annual rate of 4%, accruing on a daily basis, which is payable from Retained Earnings Available for Distribution. Such preferred limited partnership interests shall be redeemed not later than fifteen years from the date of issuance at a price not less than SBA's contributed capital plus accumulated and unpaid distributions through the redemption date. SBA may guarantee Debentures issued by a Licensee immediately preceding such redemption in amounts as will permit simultaneous redemption of such preferred limited partnership interests.

c. Leverage Ceiling

Proposed § 107.230(c) would establish maximum Leverage eligibility for section 301(d) Licensees. All types of Leverage issued by such Licensees shall be aggregated for purposes of determining Leverage eligibility, including aggregation of Leverage issued by Licensees under Common Control. Section 301(d) Licensees are eligible for maximum subsidized Leverage, consisting of Preferred Securities and Debentures issued with a rate reduction, of 400% of Leverageable Capital or $35 million, whichever is less. However, section 301(d) Licensees are eligible for nonsubsidized Leverage in excess of $35 million in the amounts and subject to the conditions set forth for section 301(c) Licensees. In order to qualify for Leverage exceeding 300% of Leverageable Capital, at least 30% of the Licensee's Total Funds Available for Investment must be invested in or committed to Venture Capital Financing of disadvantaged concerns, and a Licensee must maintain 30% of its Total Funds Available for Investment in such investments while Leverage in excess of 300% of Leverageable Capital is outstanding. For the purpose of meeting the 30% test, such Venture Capital Financing shall be valued at cost. The present definition of Venture Capital Financing remains unchanged and is set forth in proposed § 107.230(c)(3)(iii).

[2] This increase in Regulatory Capital operates only to cure what would otherwise be a Capital Impairment. It does not increase the Licensee's eligibility for Leverage.

[3] This term is proposed to be defined in a proposed rule published simultaneously herewith.

[4] Preferred stock purchased by SBA prior to November 21, 1989 has no mandatory redemption provision, except as provided for in proposed § 107.261.

d. Second Tier of Preferred Securities

SBA is authorized to purchase Preferred Securities in amounts in excess of 100% of Leverageable Capital, but not in excess of 200% of Leverageable Capital, from section 301(d) Licensees with Leverageable Capital of $500,000 or more, or from any section 301(d) Licensee licensed on or before October 13, 1971, regardless of the amount of Leverageable Capital. In either case, a Licensee must have Qualified Investments (defined in current § 107.205(d)(2) and proposed § 107.230(c)(4)(iv)) or commitments at cost equal to the amount of Preferred Securities in excess of 100% of Leverageable Capital. It should be noted that this definition is similar but not identical to the definition of Venture Capital Financing as set forth in § 107.230(c)(3)(iii). The most important difference is that a secured debt instrument may qualify as a Venture Capital Financing but would not qualify as a Qualified Investment.

e. Participating Securities

Proposed § 107.230(c)(6) authorizes section 301(d) Licensees to issue Participating Securities (see section 4 of this preamble) in an amount not exceeding 200% of Leverageable Capital, less an amount equal to Licensee's outstanding Preferred Securities. Prioritized Payments and Profit Participation on Participating Securities issued by a section 301(d) Licensees shall not be subsidized.

f. Other Provisions

Proposed § 107.230(d) describes the types of Debentures which section 301(d) Licensees may issue and § 107.230(e) permits section 301(d) Licensees, in SBA's discretion, to retire Debentures by the issuance of Preferred or Participating Securities based on Leverageable Capital.

Proposed § 107.230(f) is a recodification of existing § 107.201(a)(2)(iii).

4. Participating Securities

Proposed §§ 107.240 through 107.247 describe special rules which apply to Licensees issuing Participating Securities.

The Small Business Equity Enhancement Act of 1992 (Title IV of Pub. L. 102–366) is a mandate for a new relationship between SBA and the venture capital community. The most salient feature of this new relationship is the creation of Participating Securities which are equity-type securities with the characteristics of preferred stock or a preferred limited partnership interest.

SBA recognizes that venture capital companies usually make equity capital investments, manage their portfolios making follow-on investments as necessary, and finally sell their investments as they mature, with the objective of realizing capital gains. As investments are sold, funds are customarily distributed to investors rather than reinvested. Recognition of this business cycle has been incorporated into the proposed rules governing the issuance of Participating Securities.

Under these rules, as a means of financing Licensees which issue Participating Securities, SBA will guarantee the payment of Prioritized Payments on, and the Redemption Price of, the Participating Securities to an authorized Trust or pool which purchases the Participating Securities. Prioritized Payments are the equivalent of the interest or dividend payments scheduled on the Participating Securities. As an inducement for its guaranty, SBA will be entitled to a share in the profits that are generated from investments made while the Participating Securities are outstanding (Profit Participation).

Pass-through Trust Certificates evidencing the rights of the Trust or pools in the guaranteed Participating Securities will be sold to investors. The rights and obligations evidenced in the Trust Certificates will also be guaranteed by SBA. The proceeds of the sale of the Trust Certificates will be used to fund the Participating Securities.

SBA anticipates that Prioritized Payments made by Licensees that issue Participating Securities will not be adequate to fund debt service obligations of the guaranteed Trust Certificates in the early years of Participating Securities' existence and that SBA's guaranty will be called upon to make such payments. However, over the time of the Participating Securities' life, SBA anticipates that it will be repaid most of such guaranty payments through a combination of Earned Prioritized Payments and Profit Participation.

Since Prioritized Payments on Participating Securities are payable only to the extent of earnings, SBA realizes that the success of the program and repayment of its guaranty payments depend upon the successful operation of Licensees as equity investors.

SBA understands that venture capital equity investments in small concerns are risky on an individual basis, and that in the venture capital industry, historical experience indicates that losses on equity investments frequently occur earlier than profits. Therefore, it is anticipated that Licensees issuing Participating Securities will incur losses in the early years of their investment cycle as investments in a limited number of portfolio concerns prove unprofitable and are written off.

Thus, SBA recognizes that it must be patient in expecting profitable operations from Licensees with Participating Securities. At the same time, however, SBA has the responsibility to assure that publicly-guaranteed funds are administered prudently by capable managers. Accordingly, SBA has sought to formulate an economic and regulatory structure which will enhance the likelihood that Licensees participating in the program will be successful.

In this way, SBA believes that is can fulfill the objectives of the Small Business Equity Enhancement Act of 1992 to foster a venture capital industry that is able to serve the needs of eligible Small Concerns, create or retain jobs, expand the tax base, and achieve other objectives such as commercialization of technology, supporting manufacturing firms, fostering urban and rural business development, and stimulating exports.

A primary objective of SBA is to assure that Licensees issuing Participating Securities are structured so that its managers and independent investors are motivated to assure success. Section 410 of Public Law 102–366 authorized inclusion in Private Capital of investments by public and private pension funds as well as limited investments by state and local governments.

In addition, the form of Participating Securities has been structured with the intention of avoiding the imposition of Unrelated Business Taxable Income (UBTI) on certain tax-exempt investors. SBA believes that in consequence, pension funds and other tax-exempt investors will find it advantageous to invest in SBICs using Participating Securities. SBA is aware that such institutional investors historically have provided investment capital to the private venture capital industry and have acquired expertise in selecting managers and monitoring investments. SBA anticipates that SBICs will benefit from this investor expertise. Therefore, SBA desires to benefit from the expertise of institutional investors to help assure the profitability of Licensees that issue Participating Securities.

SBA recognizes that its guarantee of Participating Securities will be an essential motivating factor in the decision of investors to fund Licensees, and that such investors will need to have confidence in SBA's long-term

investment philosophy. Thus, SBA intends that the investment community should regard Participating Securities as patient capital, similar to a partnership interest. At the same time, however, investors must recognize SBA's special responsibilities with respect to public funds and the need to assure compliance with program objectives and regulations.

a. General Provisions

Proposed § 107.241 sets forth general provisions for Licensees issuing Participating Securities. This section contains many of the regulations that embody SBA's effort to utilize marketplace dynamics to assure a successful program.

(i) Minimum Regulatory Capital

The minimum capital requirements set forth in proposed § 107.241(a) reflect SBA's belief that a venture equity-oriented Licensee will usually have higher fixed and marginal expenses than a lender Licensee. For example, considerably more time must be put into the due diligence process of investigating a potential investment than is necessary when a secured loan is made. For investments in early-stage companies, this is especially pronounced as there is usually no history of business success, no historical financials showing an ability to produce profits, and no balance sheet which would meet any normal criteria for soundness. Hence, the management of a venture SIBC must spend considerably more time and resources investigating the management and products of a company, and often must hire expensive skilled consultants to assist in such evaluations. Failure to make these kinds of outlays can result subsequently in considerable investment losses. In addition, the legal costs of tailoring the individual unique investment agreement required by venture investing are higher than similar costs associated with lending. Finally, SBIC management must expend considerable time, effort, and expense in watching over their investments.

All of these activities add up to significantly higher costs of doing business for equity-oriented Licensees. Yet, an SBIC must not exhaust its capital by incurring overhead expenses which are high relative to the capital base.

In order to ensure that Licensees issuing Participating Securities have adequate resources to develop and monitor a venture capital portfolio while still preserving an adequate capital base, SBA proposes in § 107.241(a) to require such Licensees, as a general rule, to have Regulatory Capital of at least $10 million. A Licensee with Regulatory Capital of less than $10 million will normally be incurring excessively high fixed and marginal costs relative to the amount of its capital. A secondary rationale for this requirement is that raising $10 million for venture capital investments constitutes a significant affirmation by the investment community of the management capabilities of a Licensee.

SBA will consider authorizing the issuance of Participating Securities by a Licensee with Regulatory Capital of no less than $5 million if it can be shown that, over the long term, the Licensee has a reasonable prospect of being profitable.

For example, SBA expects that a Licensee with Regulatory Capital of less than $10 million may qualify to issue Participating Securities if it is a subsidiary of a bank, bank holding company, or other large organization which undertakes to subsidize management expenses of the Licensee and to provide management personnel and operational support.

Licensees operating in rural areas or within specific geographic areas, such as urban areas which are reasonably compact and focused, may also be acceptable with Regulatory Capital of less than $10 million, as long as management has a track record of expertise in the types of investment activities proposed by the Licensee, and the business plan shows that the Licensee can be operated soundly and profitably over the long term without depleting its capital base through excessive overhead.

(ii) Equity Capital Investments

Section 107.241(b) requires Licensees issuing Participating Securities to invest an amount equal to the Original Issue Price of such securities solely in Equity Capital Investments. Equity Capital Investments shall be maintained at such level (on a cost basis) and reduced only by the amount of repayments of such Participating Securities. "Equity Capital Investments" means common or preferred stock, limited partnership interests, options, and warrants or similar equity instruments, including subordinated debt with equity features if such debt provides only for interest payments contingent upon and limited to the extent of earnings. Such Equity Capital Investments may not be amortized. This regulation is mandated by section 403 of Public Law 102/366 and it embodies an essential part of the Participating Securities program.

A deficiency in the existing SBIC program was the Act's intent that Licensees make equity investments, while Leverage for 301(c) Licensees consisted solely of Debentures requiring semi-annual interest payments. This mismatching of the source and use of funds was a principal reason for the creation of Participating Securities. It stands to reason, therefore, that proceeds of Participating Securities would be used to make Equity Capital Investments rather than debt and other income-oriented investments.

(iii) Management and Ownership Diversity

Proposed § 107.241(c) is designed to assure that Licensees issuing Participating Securities have investors who are independent of management and who have a substantial stake in a Licensees' financial performance. SBA believes that the presence of such investors will help to assure that Licensees are operated with the objective of maximizing returns and protecting the interests of all investors, including SBA. Paragraph (1) requires Licensees to have diversity between management and ownership, which SBA will consider satisfied if at least three unaffiliated shareholders or limited partners (only one is required in the case of Institutional Investors) own, in the aggregate, at least 30% of a Licensee or Licensee's ultimate parent entity. Such diversity will also be deemed to be accomplished if a Licensee or its ultimate parent entity is publicly traded under U.S. securities laws.

This requirement is important because it subjects proposed management teams to scrutiny and acceptance by significant unaffiliated investors who are willing to risk their own capital in a Licensee and consequently have a continuing stake in a Licensee's successful operation. The independence and ability of investors to exercise oversight is maintained by the prohibition against the delegation of voting rights contained in paragraph (2). An exception is made for routine proxies and the use of unaffiliated advisors so as not to interfere with routine operations of a Licensee.

(iv) Management Fees

As discussed above, the amount of management fees charged by Licensees issuing participating Securities is limited to 2.5% of Combined Capital (Regulatory Capital plus outstanding Leverage), plus $125,000 in the case of Licensees with Combined Capital of less than $20 million. SBA believes this makes adequate provision for overhead and is consistent with current venture capital industry practices. Under certain

circumstances, SBA may consent to higher amounts if there are clearly demonstrable needs. However, such an exception will not affect the computation of Profit Participation. In the case of larger funds, SBA may require lower amounts for all purposes, including the computation of Profit Participation. Compare §§ 107.241(d) and 107.242(d)(2).

(v) Third Party Debt

Proposed § 107.241(e) limits the type and amount of third party debt that a Licensee issuing Participating Securities may incur and requires that the Licensee obtain the written approval of SBA before incurring any such debt. SBA recognizes SBA recognizes that timing differences and the short-term needs of Licensees for operational liquidity as well as the need to be responsive in meeting funding requests of eligible portfolio concerns may, from time-to-time, make the use of Temporary Debt by Licensees a necessity. This section intends that such Temporary Debt truly be temporary and not a permanent part of a Licensee's operating plans. Therefore, this section would permit Licensees issuing Participating Securities to have only Temporary Debt in an amount not to exceed 50% of Leverageable Capital and it would prohibit the Licensee from having any Temporary Debt at all for at least 30 consecutive days during its fiscal year.

(vi) Liquidity Requirement

Proposed § 107.241(f) establishes a liquidity requirement for Licensees issuing Participating Securities. Because Equity Capital Investments are usually not marketable until they mature, it is essential that Licensees maintain a level of liquid assets sufficient to meet operating expenses, make necessary follow-on investments, and allow investments to be held until they mature and can be sold in the normal course of business. Thus, SBA is introducing a test of "Liquidity Impairment". In broad terms, a Licensee has a condition of Liquidity Impairment if the Liquidity Ratio obtained by dividing Total Current Funds Available[5] by Total Current Funds Required is less than 1.20. No Distributions shall be made that would cause a condition of Liquidity Impairment.

(vii) Mandatory Redemption

Proposed § 107.241(g) requires that Participating Securities be redeemed not later than 15 years after their issue date. Generally, the redemption date will be 10 years after the date of issue and will be the same as the maturity date of the Trust Certificates.

(viii) Priority in Liquidation

Section 107.241(h) provides that upon liquidation of a Licensee, the Redemption Price of any Participating Securities, plus any Prioritized Payments, Profit Participation and other amounts that may be due SBA, shall be senior in priority to all other equity interests of the Licensee. SBA recognizes that Prioritized Payments and Profit Participation are distributable only to the extent of profits on Earmarked Assets, notwithstanding the cumulative feature of Prioritized Payments. However, there shall be no Distributions to investors before amounts due SBA, its agent, or Trustee are paid when a Licensee is liquidated.

b. Computation of Earmarked Profits (Losses)

There are seven steps in the computation of Earmarked Profits (Losses) as set forth in proposed § 107.242. (Please note that SBA will provide the spreadsheet templates and/or other software necessary for making the ensuing calculations.)

(i) Step 1: Determination of Earmarked Assets

Briefly stated, Earmarked Assets are a Licensee's Loans and Investments[6] outstanding at the time a Licensee issues Participating Securities[7] or that are acquired while Participating Securities are outstanding, plus any non-cash assets given in consideration for the disposition or exchange of any such asset. Note that even after all Participating Securities have been redeemed, Earmarked Assets maintain such status. See proposed § 107.242(b).

(ii) Step 2: Calculating the Earmarked Asset Ratio

This step establishes the percentage of a portfolio that is earmarked. Because a Licensee may have non-Earmarked Assets deriving from assets acquired after all Participating Securities have been redeemed, or from the special rules governing SBICs licensed on or before March 31, 1993 (see proposed § 107.247), it is necessary that all Licensees calculate an Earmarked Asset Ratio (EAR) as delineated in proposed § 107.242(c). The ratio is calculated on a weighted average basis (that is, on a month-by-month basis, which is then averaged) for the year or fraction of the year in question. For companies licensed after March 31, 1993 that have not yet redeemed any Participating Securities, EAR will equal 100 percent. The formula is:

EAR=[(EA+UPPS)/(L&I+UPPS)]×100

where:

EA=Earmarked assets valued at cost

UPPS=Uninvested proceeds of Participating Securities

L&I=Total Loans and Investments (valued at cost).

The example that follows would apply only to companies licensed on or before March 31, 1993. Assume that such a Licensee issued $10 million of Participating Securities two months prior to the close of its fiscal year, and had elected to exclude its pre-existing portfolio from being Earmarked Assets (as permitted in proposed § 107.247). The following calculations would apply:

VALUES AT CLOSE OF MONTH 1

Earmarked assets	Uninvested proceeds	Loans and investments (acquired on or before 3/31/93)
Zero	$10,000,000	$15,000,000

If the Licensee invested $2 million from the proceeds of Participating Securities during the next month, and sold $1 million of assets for cash, the following would occur:

VALUES AT CLOSE OF MONTH 2

Earmarked assets	Uninvested proceeds	Loans and investments
$2,000,000	$8,000,000	$16,000,000

As of the close of Month 1, the Licensee's (interim) EAR was 40 percent [(0+10,000,000)/(15,000,000+10,000,000)].

As of the close of Month 2, for Month 2, (interim) EAR was 41.666 percent [(2,000,000+8,000,000)/(16,000,000+8,000,000)].

As of the close of the Licensee's fiscal year, the Licensee's EAR was 40.833 percent [(40+41.666)/2] or [(2,000,000+18,000,000)/(31,000,000+18,000,000)]. For the purposes of the calculations hereafter

[5] Proposed § 107.241(f)(2) includes a self-explanatory chart that shows how the respective values for Total Current Funds Available and Total Current Funds Required are to be determined.

[6] "Loans and Investments" is a term that is proposed to be defined in this proposed rule as "Portfolio Securities, Assets Acquired in Liquidation, Operating Concerns Acquired, and Other Securities Received as set forth in Statement of Financial Position (SBA Form 468)".

[7] A company licensed on or before March 31, 1993 may elect to exclude its entire portfolio as of that date, but not less than its entire portfolio, from the category of "Earmarked Assets" unless it is refinancing outstanding Debentures by the issuance of Participating Securities. Special rules for such Licensees are proposed in § 107.247.

discussed, this Licensee's EAR is 40.833 percent.

(iii) Step 3: Ascertaining Earmarked Investment Income

Earmarked Investment Income (EII) is defined in proposed § 107.242(d)(1) by the formula: EII=IDA+([IIF+OI]×EAR) where

IDA=All income directly attributable to Earmarked Assets
IIF=Interest on idle funds
OI=Other income not attributable to specific assets
EAR=Earmarked Asset Ratio

Thus, if IDA were $1,000,000 and other income not attributable to specific assets were $500,000, EII would be: ($1,000,000+($500,000×40.833%)) or $1.204,165.

(iv) Step 4: Calculating Earmarked Investment Expenses

As proposed to be defined in § 107.242(d)(2), Earmarked Investment Expenses has two components—Management Expenses and non-Management Expenses.

The first of these, Management Expenses, may be less than the actual cost of managing the Licensee.[8] For the purposes of the calculations proposed in § 107.242(d)(2), Management Expenses means the least of (1) actual Management Expenses; or (2) the product of expenses permitted by § 107.241(d) multiplied by EAR; or (3) 2.5 percent of the product of the Licensee's Combined Capital, multiplied by its EAR (plus, in the case of a Licensee whose Combined Capital is less than $20 million, an additional sum equal to the product of $125,000 and the Licensee's EAR). Expressed in formula terms, this would be:

Management Expense (ME)=0.025×(CC×EAR) for a Licensee with Combined Capital (CC) of $20 million or more.

ME=[(0.025 ×{CC ×EAR})+($125,000 ×EAR)] for a Licensee with Combined Capital of less than $20 million.

The second component of Earmarked Investment Expense is non-Management Expense. Some non-Management Expenses can be attributed directly to Earmarked Assets and, of course, are to be allocated to Earmarked Investment Expenses. In addition, Licensee shall allocate to Earmarked Investment Expense a sum equal to the product of non-Management Expense not attributable to specific assets (specifically including interest on SBA-guaranteed Debentures) times Licensee's Earmarked Asset Ratio. See proposed § 107.242(d)(2)(ii).

The sum of the above-described Management and non-Management Expenses constitutes Earmarked Investment Expenses.

(v) Step 5: Determining Earmarked Net Investment Income.

Subtract Earmarked Investment Expenses (step 4) from Earmarked Investment Income (step 3).

(vi) Step 6: Determining Earmarked Realized Gain (Loss) on Securities

Proposed § 107.242(e) sets forth rules for determining gain or loss on securities that constitute Earmarked Assets. For the purpose of determining whether a gain or loss has been realized [9] on the sale of an Earmarked Asset, the asset's cost basis and net sales price shall be used. The asset's cost basis shall not be increased, even by capitalization of unpaid interest, except that if the basis of an investment in an unincorporated Small Concern is appropriately determined by using the equity method of accounting, the Licensee's basis may be increased by the Licensee's share of the Small Concern's income. See proposed § 107.242(e)(3).

(vii) Step 7: Computing Earmarked Profits (Losses)

Earmarked Profits (Losses) must be computed no less frequently than annually as of the close of a Licensee's fiscal year, and at such other times as Licensee elects to make a Distribution. See proposed § 107.242(a). The computation is simple enough: Earmarked Profits (Losses) is the sum, positive or negative, of Earmarked Net Investment Income and Earmarked Realized Gain (Loss) on Securities. See proposed § 107.242(f).

c. Computation, Allocation, and Distribution of Prioritized Payments

(i) Introduction

Proposed § 107.243 provides for the computation, allocation, and payment of Prioritized Payments which are preferred and cumulative at the Trust Certificate Rate, as defined in § 107.3. This is the amount SBA guarantees to pay annually to the Trust Certificate holders. Prioritized Payments resemble dividends on preferred stock or equivalent distributions on preferred or senior limited partnership interests. Even when a Corporate Licensee issues Participating Securities that are in the form of debentures, Prioritized Payments resemble dividends on preferred stock rather than interest payments, in that they are payable only to the extent of earnings.

The calculation of Prioritized Payments is to be performed at least annually within 90 days after the Licensee's fiscal year end, and also at the end of any fiscal quarter for which a Distribution is contemplated. If the Licensee has cumulative Earmarked Profits, Prioritized Payments up to the amount of such profits are characterized as Earned Prioritized Payments and are to be automatically distributed within 90 days after the Licensee's fiscal year end, except to the extent that such Distribution would create a condition of Liquidity Impairment.

A Licensee with Participating Securities or Earmarked Asset in it portfolio is prohibited from making any Distributions that are considered to be a return on capital until all Prioritized Payments have been distributed. Before returns of capital can be made, all Earned Prioritized Payments must have been distributed. See § 107.245.

(ii) Establishment of Prioritized Payment Accounts

To assist in the process of determining whether, or when, a Licensee is responsible for making payments, two Prioritized Payment accounts must be established: a Prioritized Payment Accumulation Account (AA) which is a memorandum account, and a Prioritized Payment Distribution Account (DA) which is a liability account. For the sake of simplicity, the hypothetical examples set forth in paragraphs (iii) and (iv) below illustrate the computations at the fiscal year end following the first issuance of Participating Securities.

(iii) Initial allocations to Prioritized Payment Accumulation Account

This account initially reflects the "accrual" (as a memorandum entry only) of Prioritized Payments. Computations involving this account always begin with the entry of a sum equal to all Prioritized Payments for the fiscal period in question. For example, if a Licensee had issued $10 million of 8 percent Participating Securities at the beginning of its fiscal year, the initial amount to be added to the AA at the close of the fiscal year would be $800,000. See proposed § 107.243(b)(1).

[8] See the definition of Management Expenses that this rule proposed in § 107.3, and also proposed § 107.241(d), which would impose a ceiling on the Management Expenses of a Licensee that has outstanding Participating Securities or Earmarked Assets.

[9] Unrealized Appreciation or Unrealized Depreciation, as the case may be, on Earmarked Assets that are Distributed shall be recognized as if the appreciation or depreciation were realized at the time of the in-kind Distribution. See proposed § 107.242(e)(4), and see also proposed § 107.245(e)(3), which relates to in-kind Distributions.

As subsequently explained, other sums may also be added to this account.

(iv) Initial allocations to Prioritized Payment Distribution Account (DA)

The first step in determining what should be added to the DA is to ascertain cumulative Earmarked Profits (Losses). If, at the fiscal year end following the first issuance of Participating Securities, the Licensee has cumulative Earmarked Profits, that sum constitutes Distributable Earmarked Profits.

The second step is to compare Distributable Earmarked Profits with the balance in the AA. The lesser of the two is subtracted from the AA and is added to the DA. This amount now constitutes Earned Prioritized Payments. See proposed § 107.243(c).

For example, suppose that Earmarked Profits were $20,000. Because $20,000 is less than the $800,000 of Prioritized Payments, $20,000 is subtracted from the AA and is added to the DA. Thus, at this point there is $780,000 in the AA and $20,000 in the DA, a sum which represents Earned Prioritized Payments and is now the amount the Licensee will distribute to SBA or the Trust, unless such Distribution would cause a Liquidity Impairment. See proposed § 107.243(c).

(v) Subsequent Allocations to Prioritized Payment Accumulation Account and to Prioritized Payment Distribution Account

Subsequent allocations to these accounts are handled similarly to the initial allocations, except as hereafter set forth. Distributable Earmarked Profits for the second year are calculated by subtracting from cumulative Earmarked Profits all previous Earned Prioritized Payments and all earned Adjustments (which will be addressed hereafter) for all prior fiscal periods.

Continuing with the example, at the end of the second year following issuance of $10 million 8 percent Participating Securities, an additional $800,000 would be preliminary allocable to the AA, bringing that account (temporarily) up to $1,580,000. If we assume that Earmarked Profits for the second year were $40,000, it follows that cumulative Earmarked Profits is $60,000. Ignoring for the moment "earned Adjustments", Distributable Earmarked Profits for Year 2 are $40,000. Since $40,000 is less than $1,580,000, the sum of $40,000 is added to the DA and subtracted from the AA. Thus, at the close of Year 2, the balance in the AA is $1,540,000 (exclusive of any Adjustments) and, assuming no Distribution of Earned Prioritized Payments had been made to SBA, the balance in the DA is $60,000.

In this example, the Licensee had cumulative Earmarked Profits of $60,000 ($20,000 for the first year and $40,000 for the second year). What if the Licensee, during the second year, instead realized Earmarked Losses of $100,000? Such an event would have had no effect on the $20,000 "obligation" already reflected in the DA. See proposed § 107.243(d).

(vi) Distributions of Prioritized Payments

Except for the provision discussed in the next paragraph, a Licensee is required to remit the balance in its DA to SBA, its agent or Trustee within 90 days after the end of the Licensee's fiscal year, or before any Distribution is made to its own investors, as appropriate. The amount remitted to SBA shall be subtracted from the DA. If a Licensee has issued Participating Securities on more than one occasion, Prioritized Payments shall be made in order of maturity.

A Licensee is excused from remitting the balance in the DA to the extent that such remittance would cause the Licensee to violate the liquidity requirement set forth in proposed § 107.241(f). For example, if the Licensee needs to retain $1,000,000 in cash to attain the required liquidity ratio, the Earned Prioritized Payments are $1,400,000, and the Licensee's cash balance is $1,800,000, Licensee must remit $800,000 to SBA. See proposed § 107.243(c)(3)(iii). Failure to make Distributions because of insufficient liquidity does not trigger a regulatory violation.

(vii) Adjustments to Prioritized Payments

A Licensee's failure to make timely distributions of Earned Prioritized Payments in an amount equal to Prioritized Payments results in the accumulation of additional amounts which may become payable to SBA, subject to the existence of sufficient Earmarked Profits. If, at the end of any fiscal year, there is an unpaid balance in the AA, an amount equal to the average monthly balance in that account is to be multiplied by a rate equal to the average of the rates of new TCs sold to the public [10] during the Licensee's fiscal year, and the product is to be added to the balance in the AA as a supplement to Prioritized Payments. See proposed § 107.243(d)(1).

[10] SBA will publish a notice of the TC rate from time to time in the **Federal Register**.

Similarly, if there is an unpaid balance in the DA account at the end of the Licensee's fiscal year, an amount equal to the average monthly balance in that account is to be multiplied by a rate equal to the average of the rates on new TCs sold to the public during the Licensee's fiscal year, and the product is to be added to the balance in the AA, not to the balance in the DA. See § 107.243(d)(2), as proposed.

The additional amounts added to the AA as described in the preceding two paragraphs are referred to herein as Adjustments. Once added to the AA, the Adjustments are indistinguishable from Prioritized Payments; they are characterized as "earned" and transferred to the DA in the same manner as Prioritized Payments are characterized as "earned."

Another consequence of failure to remit Earned Prioritized Payments is that so long as unpaid Earned Prioritized Payments, including earned Adjustments, are outstanding, the Licensee shall make the calculations described in this paragraph c. as of the end of each subsequent fiscal quarter until such amounts are paid in full. See proposed § 107.243(c)(3).

d. Calculation and Allocation of Profit Participation

(i) Introduction

In consideration for its guarantee of a Licensee's Participating Securities, SBA [11] has a contractual right to Profit Participation consisting of a specified percentage of the Licensee's Earmarked Profits. The percentage is determined, in part, by the ratio of outstanding Participating Securities Leverage to Leverageable Capital. Profit Participation is the primary characteristic that distinguishes Participating Securities from preferred stock or preferred partnership interests.

Proposed § 107.244 mandates the establishment of a Profit Participation Account to reflect the allocation and distribution of the Profit Participation due SBA. The sum to be allocated is determined by multiplying the Base for Profit Participation, if positive, by the applicable Profit Participation Rate.

(ii) Computing the Profit Participation Base

This computation is to be made at the end of Licensee's fiscal year and at the end of any fiscal quarter for which a Distribution is contemplated. Briefly, the Base for Profit Participation (Base) is

[11] In this context, SBA means only SBA. Neither the holders of TCs, nor the Trust itself has any interest in the Profit Participation to which SBA may be entitled.

a number equal to year-to-date Earmarked Profits (Losses) minus year-to-date Prioritized Payments, minus any unused loss carryforward, as computed in the manner hereafter discussed.

(iii) Computation of Unused Loss Carryforward

A Licensee which has never had a positive Base shall compute its unused loss carryforward by substracting Prioritized Payments for all prior fiscal years from the cumulative sum of all Earmarked Profits (Losses) for all prior fiscal years. The result, if it is a negative number, is the Licensee's unused loss carryforward. If the Licensee's Base for any prior year was a positive amount, the unused loss carryforward is computed in the same way, but only for the period beginning with the fiscal year following the most recent year for which the Base was a positive amount. In other words, once Earmarked Profits are used as the basis for an allocation to the Profit Participation Account, they are disregarded in any subsequent allocation or computation. See proposed § 107.244(b)(2).

Some illustrations are present to help clarify this concept. Assume that a Licensee had issued $10 million of 8 percent Participating Securities on July 1, 1994, the first day of its fiscal year, and had Earmarked Profits of $20,000 as of the close of the fiscal year, June 30, 1995. The difference between Earmarked Profits of $20,000 and Prioritized Payments ($800,000) means that the Licensee has an unused loss carryforward of $780,000. Now assume that fiscal year 1995–96 was extremely successful and the Licensee's Earmarked Profits for that year were $2 million. If the Licensee previously had Earmarked Profits of $20,000, the Base would be $420,000: ([$2,000,000 current period Earmarked Profits—$800,000 current period Prioritized Payments]—$780,000 unusued loss carryforward).

As a second example, what if the Licensee had instead posted an Earmarked Loss of $20,000 during the first year that Participating Securities were outstanding? The unused loss carry forward would be $820,000. At the end of the second year, cumulative Earmarked Profits would be only $1,980,000, and the Base for Profit Participation would be only $380,000 ([$2,000,000—$800,000] −$820,0000).

(iv) Computing Profit Participation Rates

(a) *When computation is required; general rules.* Computation of a Profit Participation Rate for the relevant fiscal period must be made at least annually or prior to any Distribution. A Licensee should use one of the two formulas, as appropriate, which are set forth in paragraphs (B) and (C), below. Except as described in paragraph (E) below, the Profit Participation Rate that any particular Licensee must use depends on the ratio of the lowest dollar amount of its Leveragable Capital ever outstanding during the time that Participating Securities have been outstanding to the highest dollar amount of Participating Securities ever outstanding. This is the Participating Securities to Leverageable Capital (PLC) ratio.

(B) *Participating Securities not at any time in excess of Leverageable Capital.* Subject to the indexing described in paragraph (D) below, the Profit Participation Rate is equal to the PLC ratio multiplied by 9 percent. Thus, the Profit Participation Rate=PLC ratio × 0.09. For a Licensee that has a PLC ratio equal to exactly 100 percent of Leverageable Capital, the Profit Participation Rate is 9 percent; for every other Licensee described in this paragraph (B), the Profit Participation Rate is less than 9 percent.

(C) *Participating Securities in excess of Leverageable Capital at any time.* Subject to the indexing described in paragraph (D), the Profit Participation Rate is equal to 9 percent plus an additional percentage equal to the product of .03 multiplied by an amount obtained by substracting one (1) from the PLC ratio. In other words, Profit Participation Rate = .09+(.03×[PLC ratio-1]). If a Licensee has been $10 million in Leverageable Capital and $15 million in Participating Securities, the PLC ratio = 1.5 and Profit Participation Rate equals 10.5 percent, .09+(.03×[1.5-1]).

(D) *Indexing.* No indexing is required if, on the date the Participating Securities in question were issued, the yield-to-maturity on Treasury bonds with a remaining term of ten years was exactly 8 percent. Otherwise, the Profit Participation Rate calculated in accordance with proposed § 107.244(c)(2) or (3) shall be adjusted upward or downward by the same percentage, not by the same number of percentages points or basis points, by which such rate may be above or below 8 percent.

For example, if the above-discussed Treasury rate were 10 percent and the appropriate unindexed Profit Participation Rate were 9 percent, the appropriate index Rate would be 11.25 percent. 10 is 25 percent more than 8; 125 percent of 9 percent is 11.25 percent.

If a Licensee has issued Participating Securities or two or more occasions, any indexing of the Profit Participation Rate will be based on the average Treasury rate for all such issuances, weighted to reflect the dollar amount of each issue and the portion of the fiscal period during which each issue was outstanding. See proposed § 107.244(c)(4)(ii).

(E) *Approved increases in Leaverageable Capital.* Computation of the Profit Participation Rate is not to be affected by any subsequent increase in Leverage Capital, except to the extent that the increase in Leverageable Capital is either the result of the funding of unfunded commitments or the conversion to cash of assets previously recognized by SBA as a part of Private Capital, but not of Leverageable Capital, or such increase is provided for in a business plan previously approved by SBA. See proposed § 107.244(c)(5).

(v) *Computing Profit Participating.* As previously indicated the amount of SBA's Profit Participation for a fiscal year or fiscal year to date or computed by multiplying the Base for the period in question (fiscal year or year-to-year date) by the Profit Participation Rate for the period in question, and subtracting from that result any amounts of Profit Participation that were paid or reserved for payment to SBA, its designated agent or Trustee, for any prior interim periods during the same fiscal year.

Any computation of Profit Participation made as of the close of an interim fiscal quarter is subject to adjustment whenever any subsequent interim distributions are contemplated, and at the end of the fiscal year, in order to account for any increase in the Profit Participation Rate. If the Profit Participation Rate decreases as a result of an approved increase in Leverageable Capital, Profit Participations already computed for any interim periods shall not be adjusted. See proposed § 107.244(d)(3).

(vi) *Allocation of Profit Participation.* Prior to any Distributions, and in any event within 90 days following the end of the Licensee's fiscal year, the amount of any profit Participation calculated in accordance with proposed § 107.244(d) shall be allocated to a Profit Participation Account. Funds equal to the amount allocated to this account shall not be available for reinvestment in Small Business Concerns or for any other use by the Licensee; these funds shall be distributed only to SBA, its agent or Trustee.

(vii) *Distribution of Profit Participation.* Distribution of allocated Profit Participation shall be made at the same time that profits are distributed to the Licensee's investors, either as a tax distribution, or a return on capital.

e. Distributions

(i) General

Distributions other than Prioritized Payments shall be made pursuant to proposed § 107.245. All Prioritized Payments must be paid before any Distributions are made that are classified as a tax Distribution or a return on capital. Earned Prioritized Payments and earned Adjustments as recorded in the DA must be paid before any Distributions are made that are classified as returns of capital. Distributions pursuant to proposed § 107.245 may be made only to the extent that they do not cause a condition of Liquidity Impairment. See proposed § 107.241(f).

(ii) Tax Distributions

(A) *General.* A Licensee that is organized as a limited partnership, S Corporation, or similar pass-through entity, may elect to make an annual Distribution from Retained Earnings Available for Distribution (READ) to each of its investors (specifically including SBA) in amounts not greater than the "Maximum Tax Liability" (as computed in paragraph (B) below) for Federal and State income taxes on the income imputed to each investor. Since SBA is not a tax-paying entity, the amount of SBA's share of any such Distribution is determined by multiplying the total tax Distribution to all partners by SBA's "Profit Participation Rate", determined in accordance with proposed § 107.244. Anything that SBA receives as its share of a tax Distribution shall be credited first against Profit Participation as described below.

There are two important limitations on the right of a Licensee to make tax Distributions. First, there can be no unpaid Prioritized Payments. Second, the Distribution can not cause the Licensee to have a "Liquidity Impairment".

Although proposed § 107.245(b) refers to "tax Distributions", it is intended that the benefits of this section be available to all investors in pass-through entities, including those investors that are exempted from Federal or State taxation. Other than SBA, every investor in a Licensee that is a pass-through entity is conclusively presumed to be a resident, for tax purposes, of the State in which the Licensee's principal office is located; and to be liable to pay Federal and State income taxes at the highest marginal tax rates applicable to each category of income (such as ordinary income compared to capital gains), without regard to the actual situation of any specific investor. If individuals are taxed at a higher rate than corporations, every investor will be conclusively presumed to be an individual even if the investor in question is a corporation or a pension fund. See § 107.245(b).

(B) *Computation of tax Distribution to investors.* The amount distributable to an investor other than SBA is determined by multiplying the respective amounts of ordinary income and capital gains imputed to the investor by the highest combined marginal Federal and State tax rates applicable to each category, taking into account the deductibility of State taxes when computing Federal taxes. If the highest rate of Federal tax on ordinary income is 35 percent and the highest rate of State tax on ordinary income is 5 percent, the preceding sentence does not mean that the tax Distribution should be equal to 40 percent of the ordinary income imputed to the investor in question.

By way of illustration, assume that at the end of the Licensee's fiscal year, $1,000 in ordinary income had been imputed to investor A (which may even be a tax-exempt organization). Using the same hypothetical tax rates given in the previous paragraph, it is conclusively presumed that A will have to pay $50 in State income taxes on the $1,000 in the Licensee's hands. But since the $50 payable to the State is deductible from A's Federal taxable income, A's Federal income tax liability is based on only $950, and is therefore equal to $332.50. The total amount than may be distributed to A pursuant to proposed § 107.245(b) is $332.50 plus $50.00 or $382.50, not $400, which is 40 percent of $1,000.

(C) *Computation of tax Distributions to SMA.* The amount of tax Distributions that must be made to SBA is not computed in the same manner as the amount of such Distributions to other investors. Instead, the amount to be remitted to SBA, its agent or Trustee, is computed by multiplying the sum of the total tax Distribution to be made to other investors by the Profit Participation Rate computed in accordance with proposed § 107.244(c). The amount of such tax Distribution to SBA shall be subtracted from the Profit Participation Account referred to above.

(iii) Returns on Capital

(A) *General.* After all Prioritized Payments and tax Distributions, if any, have been made, a Licensee with READ shall, within 90 days following the close of its fiscal year, or at its discretion as of the end of a fiscal quarter, make a Distribution under proposed § 107.245(c) to its investors and SBA to the extent that such Distribution would not cause the Licensee to have a condition of Liquidity Impairment. All such Distributions to investors shall be made from READ; however, Distributions to SBA may or may not be from READ, as discussed hereafter.

While the dollar amount of Profit Participation is determined by formula according to the ratio of Participating Securities to Leverageable Capital, the amount to be distributed to SBA when there is a return on capital to private investors is a function of the ratio of total Leverage (Debentures), and Preferred Securities, and Participating Securities) to Leverageable Capital. See § 107.245(c).

If SBA determines that the value of the Licensee's assets are materially overstated and if SBA provides the Licensee with timely notice of such determination in advance of a proposed Distribution, SBA reserves the right to restrict Distributions.

Distributions paid to SBA under proposed § 107.245(c) are applied in the following sequence: (i) Profit Participation; (ii) dividends or equivalent distributions on Preferred Securities; (iii) redemption or prepayment of outstanding Participating Securities; (iv) redemption or prepayment of outstanding Preferred Securities; (v) repayment of principal of outstanding Debentures. If there are restrictions on prepayment of outstanding Debentures, that part of SBA's share of a Distribution that is to be applied toward such prepayment shall be deposited in an escrow account on terms and conditions as SBA may prescribe.

It is noted that Distributions to SBA will be made from READ only to the extent of Profit Participation and dividends or equivalent distributions, if any, on Preferred Securities. To the extent that a Distribution is applied as a repayment or redemption of Leverage, it shall not reduce READ.

(B) *Computation of SBA's share.* If outstanding Leverage is more than 200 percent of Leverageable Capital, SBA's share shall be in the ratio of Leverage to Leverageable Capital. In other words, if a Licensee has outstanding Leverage equal to 300 percent of Leverageable Capital, SBA's share shall be ¾th of any Distribution under proposed § 107.245(c) and SBA would be entitled to $3 for every $1 distributed to other investors. If outstanding Leverage were 250 percent of Leverageable Capital, SBA would be entitled to $2.50 for every $1 distributed to other investors.

If outstanding Leverage is more than 100 percent of Leverageable Capital, but not more than 200 percent, SBA's share

of any such Distribution shall be equal to the aggregate shares of all other investors. For every $1 distributed to other investors, SBA shall receive $1.

If outstanding Leverage is not more than 100 percent of Leverageable Capital, SBA's share of any such Distribution shall be a percentage equal to the Profit Participation Rate.

(iv) Returns of Capital

After paying all Earned Prioritized Payments including earned Adjustments in the DA, and all allocated Profit Participation, and provided Licensee does not have a condition of Capital Impairment, a Licensee that has either outstanding Participating Securities or Earmarked Assets in its portfolio may return capital to its investors, and SBA, pursuant to proposed § 107.245(d). This proposed provision allows an exception to present § 107.802, which prohibits Licensees from distributing capital in excess of 2 percent per year without the prior written approval of SBA, subject to certain restrictions. However, unless SBA decides otherwise on a case-by-case basis, any Distribution shall be subject to the liquidity requirement in proposed § 107.241(f).

Generally, Distributions, shall be made to private investors and SBA in the ratio of Leverageable Capital to Leverage as of the date of the proposed Distribution. For example, if Leverageable Capital is equal to one third of outstanding Leverage, the private investors' share will be $1 for every $3 distributed to SBA.

If, however, a Licensee has a Capital Impairment Percentage greater than zero, the relative shares of SBA and the private investors must be computed differently. In such a case, Leverageable Capital for the purposes of proposed § 107.245(d) is deemed to be Leverageable Capital multiplied by a percentage equal to the difference between 100 percent and the Licensee's Capital Impairment Percentage. Assuming a Licensee had $10,000,000 of Leverageable Capital and a Capital Impairment Percentage of 42 percent, the Licensee's Leverageable Capital for purposes of this computation will be deemed to be $5,800,000 ([100% − 42%]×[$10,000,000]).

The proceeds of SBA's share of any capital Distribution shall be credited in the manner prescribed for returns on capital under proposed § 107.245(c), as set forth in proposed § 107.245(c)(5).

(v) In-Kind Distributions

Distributions of READ or of capital need not be in cash, but may be in the form of portfolio securities, subject to certain restrictions specified in proposed § 107.245(e). The securities to be distributed must themselves be both Publicly Traded and Marketable as defined in § 107.3 at the time of Distribution.

At the time a corporate Licensee declares an In-kind Distribution, or an Unincorporated Licensee actually makes one, the Licensee must inpute a gain or loss to the securities in question, determined as of the date of the declaration or distribution, as the case may be. Such imputed gain or loss shall be used to calculate Earmarked Profits pursuant to § 107.242(e) as if it were a realized gain or loss.

All Distributions of securities that constitute part of an In-kind Distribution must be made on a pro-rata basis to each investor, including SBA, as if the securities had previously been converted to cash and the proceeds constituted the entire Distribution. A Licensee may not distribute a disproportionate percentage of the stock of company A to investor X and a disproportionate share of the stock of company B to investor Y, even if the value of the shares of A and B is equal.

SBA's share of an In-kind Distribution shall be deposited with the Central Registration Agent (CRA) unless SBA and the Licensee agree that the Licensee will dispose of SBA's share of such securities. If the Licensee disposes of SBA's share of securities, it shall promptly remit the proceeds to SBA or to SBA's designated agent or Trustee.

(vi) No Recharacterization of Prior Distributions

SBA understands that some limited partnerships recharacterize prior returns on capital as returns of capital where the earnings of the partnership on a cumulative basis would produce a lower return to investors than was actually distributed. This recharacterization generally is performed on an annual basis and/or at the end of the life of the partnership.

This proposed rule does not allow any recharacterization of prior Distributions to SBA, its agents or Trustee, including Prioritized Payments and Profit Participation. As described above, Distributions of Prioritized Payments, Profit Participation, and returns on capital (including tax Distributions) under the Participating Securities are each based on a cumulative measure of earnings (such as cumulative Earmarked Profits or READ). Thus, losses in early years are automatically offset against gains in later years for purposes of these Distributions. However, once computed, the amount of Prioritized Payments or Profit Participation are not recomputed to reflect a Licensee's lower cumulative earnings resulting from losses in subsequent years. In other words, such Distributions are not later "recharacterized" as returns of capital as a result of such later losses.

Section 403 of Public Law 102–366 adds section 303(h)(3) to the Act which states that "[a]fter distributions have been made, the Administration's share of such distributions shall not be recomputed or reduced." SBA interprets this provision to forbid the recharacterization of amounts already distributed and SBA believes that this prohibition should extend to amounts that have been reserved for distribution to SBA. Even if recharacterization were permissible, SBA's conclusion is that it would be extremely difficult to calculate.

f. Post-Redemption Obligations

A Licensee that has issued Participating Securities may find itself under certain "obligations" that survive the redemption of the Participating Securities, as set forth in proposed § 107.246.

If, after redemption of outstanding Participating Securities, a Licensee has both Earmarked Assets in its portfolio and an unpaid outstanding balance in the Prioritized Payment Accumulation Account (AA), the Licensee remains "obligated" to determine, at the end of each fiscal quarter, whether any Prioritized Payments have become Earned Prioritized Payments and to distribute such amounts to SBA in accordance with proposed § 107.243. See proposed § 107.246(a). After the last Earmarked Asset has been disposed of, and the resulting Earned Prioritized Payments paid to SBA, the Licensee is under no further obligation to pay the remaining balance, if any, in the AA. See proposed § 107.246(b).

SBA proposes, in § 107.246(c), to adopt a rule that would override the language of proposed § 107.245(e) in cases involving In-kind Distributions to be made after redemption of all Participating Securities if there are also unpaid Prioritized Payments. No In-kind Distributions of Earmarked Assets may be made unless SBA is paid a sum equal to the full amount of the unpaid Prioritized Payments or the full amount of Unrealized Appreciation on the Earmarked Assets in question, whichever is less. Subject to the foregoing rule, a Licensee that has fully redeemed its Participating Securities may distribute Earmarked Assets that are not Publicly Traded and Marketable if it has SBA's prior written consent to such Distribution and to the valuation assigned by the Licensee.

g. Special Rules for Companies Licensed on or Before March 31, 1993

(i) General

A company licensed on or before March 31, 1993 that thereafter applies for SBA's guaranty of its Participating Securities must meet certain procedural requirements not applicable to other Licensees, and such a company may have exemptions or options not available to companies licensed after that date. See proposed § 107.247.

(ii) Special Requirements

All companies licensed on or before March 31, 1993 must, when application is made for SBA's guaranty of a first issuance of Participating Securities, submit: (a) A valuation report for each portfolio asset as of the date of the financial statements that accompany the application and as of the end of each of the preceding three years, and (b) a copy of each portfolio concern's last annual report and/or fiscal year-end financial statements, and most recent interim financial statements. See proposed § 107.247(d). This information is required in addition to the financial information that all Licensees, including companies licensed after March 31, 1993, are required to submit in connection with an application for SBA's guaranty of their Participating Securities.

If the Licensee has negative Undistributed Realized Earnings and/or a net Unrealized Loss of Securities Held, SBA may make its approval of the Licensee's request for a guaranty of Participating Securities contingent upon a quasi-reorganization in accordance with generally accepted accounting principles. See proposed § 107.247(d)(2).

If the financial statements of the Licensee submitted with the application are interim financial statements, the Licensee shall have a limited scope audit performed by its SBA-approved independent accountants. That is, the accountants shall use whatever auditing procedures are necessary to enable them to express an opinion on the Licensee's Statement of Financial Position and the accompanying Schedule of Investments.

(iii) Refinancing of Debentures

Subject to two conditions set forth hereafter, a company licensed on or before March 31, 1993 may use part or all of the proceeds of Participating Securities to repay or prepay Debentures outstanding on that date. First, the Licensee must demonstrate to SBA that it has outstanding Equity Capital Investments, valued at cost, in an amount equal to the amount of Participating Securities that would be used to refinance the outstanding Debentures that are to be repaid or prepaid. Second, the Licensee may not elect to exclude any of its pre-existing portfolio from the category of Earmarked Assets.

A Licensee that pays or prepays an outstanding Debenture after it has issued Participating Securities is presumed to have used the proceeds of the Participating Securities for this purpose unless it can demonstrate the availability of other funds to pay the principal amount of the Debenture in question. See proposed § 107.247(a).

(iv) Exclusion of Pre-Existing Portfolio Assets

Unless a Licensee intends to use part or all of the proceeds from the issuance of Participating Securities to repay or prepay a Debenture outstanding on March 31, 1993, it may elect, when its first application for SBA's guaranty is submitted, to exclude all, but not less than all, portfolio assets outstanding on March 31, 1993 from the category of Earmarked Assets; but SBA is not obligated to extend its guaranty if it concludes that exclusion of the Licensee's March 31, 1993 portfolio would significantly decrease SBA's chances of obtaining a satisfactory return on its guaranty.

5. Financing by Use of SBA Guaranteed Trust Certificates

Proposed § 107.250 is a recodification of existing § 107.201(c), revised to include the new Participating Securities.

6. Conditions Affecting Good Standing of Leveraged Licensees

a. Introduction

Under the Act and the present regulations, SBA is authorized, among other things, to demand [12] immediate repayment or redemption of all outstanding Leverage by a Leveraged Licensee in the event of regulatory violations by such Licensee. In practice, SBA has always distinguished between serious regulatory violations and defaults and comparatively minor ones. One purpose of the rules proposed in §§ 107.260 through 107.263 is to codify and publicize the standards that SBA has generally applied in determining what action was appropriate in a particular case.

The proposed rules also distinguish between remedies available for violations by Licensees issuing Debentures and Preferred Securities and violations by those issuing Participating Securities. In consideration of both the special purpose the Participating Securities are intended to serve (i.e., a financing tool for true equity capital investors) and their status as equity-type securities, SBA is proposing to treat violations by issuers of such securities separately and differently from violations by issuers of other forms of Leverage. Defaults under Debentures and Preferred Securities are addressed in proposed § 107.261; similar conditions under Participating Securities are addressed in proposed § 107.262.

In order to maintain the separation between the two proposed sections, no cross-default between Debentures and Preferred Securities, on the one hand, and Participating Securities, on the other, has been written into the regulatory text, and SBA does not intend to administer the program as if it had been. Thus, for example, if a Licensee has both Debentures and Participating Securities, a default under the former will not automatically trigger a "default" under the latter, and vice versa. Furthermore, even if SBA could apply for the institution of a receivership due to the occurrence of a default under a Debenture as provided for in these proposed regulations, SBA might be more reluctant to do so if no "default" existed under the Licensee's Participating Securities.

b. General Conditions and Remedies

Some of the material in proposed §§ 107.260 through 107.263 is merely a recodification of present § 107.203. However, these proposed sections also contain some concepts that have not previously been used in the SBIC program.

For example, a Licensee issuing Leverage after a final rule is promulgated would be required to amend its articles of incorporation or partnership agreement to indicate that the Licensee has consented, in advance, to SBA's right to require the removal of officers, directors, or general partners and to the appointment of SBA or its designee as receiver of the Licensee for the purpose of continuing to operate the company. Such remedies would only take effect upon the occurrence of certain events of default under

[12] The Investment Division has no inherent power to compel repayment or redemption of outstanding Leverage; it can only decide whether judicial or administrative proceedings, as appropriate, should be instituted against a Licensee that it believes to have violated the Act or the regulations. In the case of a Leveraged Licensee, SBA must file suit in a United States District Court for an adjudication of violations and a money judgment; if the Licensee is not Leveraged, SBA must institute an administrative proceeding before its Office of Hearings and Appeals. In no case may SBA proceed unilaterally to the seizure of the Licensee's assets.

Debentures or Preferred Securities (§ 107.261(f)) or conditions under Participating Securities (§ 107.262 (b) and (c)).

The practical effect of the consent to a receivership would be that SBA would be entitled to the receivership as a matter of right. In effect, Licensee would be deemed to have waived any and all defenses to the receivership application. Except upon the occurrence of an automatic event of default under a Debenture or Preferred Security (see § 107.261(b)), Licensee's consent would not include consent to a receivership for the purpose of liquidating the company.

SBA has determined that the consent of all Leveraged Licensees to an operating receivership is warranted because of the magnitude of, and the importance of protecting, the government's investment in such companies and because the government's position has a fairly high degree of risk associated with it. At this time, SBA has close to $1 billion at risk in Debenture guarantees and Preferred Stock holdings. Another $180 million may be placed at risk by the end of fiscal year 1993. SBA's position is completely unsecured and, for the most part, subordinate.

Having the Licensee's consent to a receivership would mean that after SBA had followed its usual procedure of attempting to work out default situations directly with the Licensee before resorting to formal remedial action, SBA would be able to move quickly to obtain the protection of a receivership. This is critical because SBA's investment in a Licensee is generally very vulnerable by the time SBA applies for a receivership. In order to continue to afford Licensees the same work-out opportunities as have been made available in the past, SBA must be able to act quickly to protect its investment when it determines it is necessary to do so.

The consent provisions would not apply to any Licensee which only has Leverage issued prior to publication of a final rule. Prospectively, however, the consent would be incorporated in all newly-issued Debentures, Preferred Securities, and Participating Securities. As a result, for Licensees with Leverage issued both before and after SBA's promulgation of a final rule, the Licensee would be deemed to have consented to a receivership upon the occurrence of a default under Leverage issued after the final rule, but not if the default were only under Leverage issued before the final rule.

While a consent to receivership has never been required of Licensees before, it is not without precedent in other federal agency practice and has been upheld by the courts as valid and legally enforceable. See, e.g. *U.S.* v. *Mountain Village Company*, 424 F. Supp 822 (1976).

Also new in the remedies sections of this proposed rule are the type of remedies available to SBA for violations under the Participating Securities. SBA intends that these remedies be consistent with the "patient capital" nature of the security. Accordingly, the remedies under proposed § 107.262 would be different from the current approach of accelerating Leverage either automatically or upon notice. This will be discussed further below. Additionally, the Participating Security would carry certain default-like "conditions" unique to that security, such as Liquidity Impairment and excessive Management Expenses. See proposed § 107.262(d)(3) and (5).

c. Licensees With Outstanding Debentures and/or Preferred Securities; Events of Default

Proposed § 107.261 would apply to all Licensees issuing Debentures and/or Preferred Securities after the promulgation of a final rule. As is the case under present § 107.203, proposed § 107.261 provides that all such Licensees would be deemed to have consented to the remedies provided for therein as if such remedies were fully set forth in the Debentures or Preferred Securities. Such remedies include, but are not limited to, acceleration or redemption of the Debentures and/or Preferred Securities and the establishment of a receivership with SBA or its designee as receiver.

This proposed regulation sets forth three categories of defaults or violations that may or will result in the acceleration of a Licensee's outstanding Leverage and the appointment of SBA as receiver of the Licensee. The first such category, set forth in proposed § 107.261(b), consists of three events that automatically accelerate all outstanding Leverage without notice or demand to the Licensee, and allow SBA to apply for receivership of the Licensee without Licensee's objection.

The events in question are insolvency, a voluntary assignment for the benefit of creditors, and the filing of a voluntary or involuntary petition for relief under the Bankruptcy Code. A Licensee is insolvent under this proposed regulation if its liabilities exceed its assets or if it is unable to pay its debts as they come due, even if its assets exceed its liabilities at the time.

Under the second category of defaults, upon written notice, SBA may demand immediate repayment or redemption of all outstanding Debentures and/or Preferred Securities, or take any other action permitted under the Act. See proposed § 107.261(c). Ten defaults are included in this category, almost all of which include an element of either willfulness or actual fraud. No opportunity to cure the default would be afforded the Licensee. Moreover, as discussed earlier, for seven of the defaults in this category the Licensee would already have consented to SBA's right to require the Licensee to replace officers, directors, or general partners with persons approved by SBA, and to SBA's appointment as receiver for the purpose of continuing Licensee's operations. See proposed § 107.261(f). It should be noted that the written notice contemplated under proposed § 107.261(c) is notification by SBA that the Licensee's Leverage must be immediately repaid or redeemed, not a notice that SBA will make such a demand in the future.

With respect to the third category of eight violations or defaults, SBA proposes to obligate itself to give a Licensee the opportunity to cure its violations. See proposed § 107.261(d). If the Licensee fails to cure to SBA's satisfaction, SBA may accelerate and/or, in the case of two of the violations, pursue the other remedies discussed in the previous paragraph. See proposed § 107.261(f).

Proposed § 107.261(e) would authorize SBA to impose a limited sanction on Licensees that repeatedly fail to comply with one or more "non-substantive" provisions of the Act or the regulations. SBA proposes to prohibit such Licensees from receiving any additional Leverage. The Licensee may also be required to take actions necessary to bring itself into full compliance. If, under such circumstances, a Licensee were to fail to take the steps necessary to accomplish the remedial actions required by SBA, such Licensee's Debentures and/or Preferred Securities could be accelerated, or other remedies, including a receivership, could be instituted. See proposed § 107.261(c)(8).

SBA would like to provide Licensees with some guidance as to the distinction between "substantive" and "non-substantive" provisions of the Act and the regulations promulgated thereunder. SBA considers each of the provisions of the Act and the regulations to have an important purpose. Even a regulation as seemingly unimportant as the one that requires all Licensees to maintain a listed telephone number and regular business hours serves a significant purpose: Licensees should be accessible to their communities, not just their

friends. However, an unlisted telephone number or irregular business hours, in the absence of other violations, should not be equated with, for example, unacceptably high levels of capital impairment or financings that are tainted by conflicts of interest. Accordingly, phone listing and business hour requirements would be characterized as "non-substantive", as would other housekeeping-type requirements. All other requirements under the Act and the regulations, specifically including the filing of required financial and disclosure forms with SBA, would be considered "substantive".

d. Licensees With Outstanding Participating Securities; Conditions Affecting Licensee's Good Standing

Proposed § 107.262 would apply to any Licensee that issues Participating Securities and would continue to apply until the Licensee repaid or redeemed its Participating Securities and sold or otherwise liquidated its Earmarked Assets. It sets forth four categories of events that would prejudicially affect a Licensee's good standing. Proposed § 107.262 speaks of events or conditions that affect the Licensee's good standing rather than events of default because "default" implies the existence of a fixed and unconditional obligation. The remedies available to SBA under proposed § 107.262, and the Licensee's consent thereto, would be required to be set forth in the articles of incorporation or partnership agreement of the Licensee prior to its issuance of Participating Securities.

The first category of events set forth in proposed § 107.262(b) consists of six events, the occurrence of any of which would permit SBA to take certain action. If the offending Licensee were a corporation, SBA could, with notice to the Licensee, require the Licensee to replace, with individuals approved by SBA, one or more of its officers and/or a sufficient number of its directors to constitute a majority of the board. If the offending Licensee were a partnership, SBA could, with notice to the Licensee, require the removal of the responsible party and/or require replacement of the general partner by a new general partner selected by the Licensee but approved by SBA. Alternatively or in addition to the remedies just described, SBA could apply for the institution of an operating receivership, with SBA or its designee as receiver. As in the case of Debenture and Preferred Securities Leverage, Licensees with Participating Securities would be deemed to have consented to such receivership.

Proposed § 107.262(c) lists three events with remedies identical to those provided under § 107.262(b), as discussed above. However, SBA would have the right to avail itself of such remedies only if the Licensee failed to remove the person(s) identified by SBA as responsible for the violation and/or to cure the violation within a time period determined by SBA. One of the three events in this category is the willful or repeated noncompliance by the Licensee with the substantive provisions of the Act or regulations. Repeated noncompliance should be understood to mean an additional violation of a statutory or regulatory provision after the Licensee has been notified of the initial violation.

Proposed § 107.262(d) lists eleven events, the occurrence of any of which would allow SBA, on written notice to the Licensee, to take certain action aimed at controlling the flow of money in and out of the Licensee until such time as Licensee were to cure the event(s) to SBA's satisfaction. SBA could prohibit Distributions to parties other than SBA, its agent or Trustee. SBA could also prohibit the Licensee from investing in any small business which it is not currently financing unless it were legally bound to make such investment. SBA could also require that any unfunded commitments to invest in the Licensee be funded as soon as possible. If the Licensee were to fail to comply with the restrictions imposed by SBA (as described above), SBA could apply for the institution of an operating receivership with SBA or its designee as receiver, again without any objection from the Licensee.

Proposed § 107.262(e), regarding repeated non-substantive violations, corresponds to proposed § 107.261(e), previously discussed. However, if a Licensee were to fail to take the steps necessary to accomplish the remedial actions required by SBA under proposed § 107.262(e), SBA could take the actions described in the preceding paragraph to control the flow of money in and out of the Licensee.

e. Non-Waiver

Proposed § 107.263 is a recodification and amplification of the non-waiver provision presently found in § 107.203(b)(5). As discussed above, it is SBA's policy to attempt to resolve all problems with a Licensee before taking formal remedial action. Proposed § 107.263 clarifies that if SBA does nor resort to the full measure of the remedies available under §§ 107.261 and 107.262, or does so only after a delay, SBA will not be deemed to have waived its right to pursue such remedies in connection with either the original default or any subsequent default.

Compliance With Executive Orders 12291 and 12612, 12778, and With the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule will, if adopted as proposed, constitute a major rule for the purposes of Executive Order 12291.

This action is under consideration because section 415 of Public Law 102–366 requires SBA to promulgate regulations implementing certain provisions thereof, among others, that, speaking very broadly, authorize SBA to guarantee a new class of securities ("participating securities") that requires the issuer Licensee to make payments out of "retained earnings available for distribution" in exchange for a share in Licensee's "income", and "profits" from a specific class of asset. The intent of the legislation is to attract capital into the program from a variety of sources, including but not limited to pension funds, other institutional investors, and State and local governments in order to meet the needs of small business for equity capital in particular. It is anticipated that the combination of new capital invested in the SBIC industry, together with additional capital obtained through the issuance of SBA-guaranteed participating securities, will substantially exceed $100 million per year, and is likely to have a substantial impact upon a significant number of small businesses. It is expected that the availability of such capital ultimately will result in a substantial number of new jobs and associated increases in payroll, corporate, and capital gains tax revenues.

1. The legal basis for this proposed regulation is section 308(c) of the Small Business Investment Act, 5 U.S.C. 687(c).

2. The potential benefits of this proposed regulation have been set forth in the discussion of this proposal above, under Supplementary Information.

3. The potential cost of this regulation can not be quantified or estimated.

4. There are no Federal rules which duplicate, overlap, or conflict with these rules.

5. SBA is not aware of regulatory alternatives that could achieve the same objectives at lower cost.

Executive Order 12612

SBA certifies that this proposed regulation, if promulgated in final, will not have federalism implications warranting the preparation of a

Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12278

For the purposes of Executive Order 12278, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

Paperwork Reduction Act

This proposed regulation, if adopted as final, will impose additional record-keeping and reporting requirements upon those Licensees that issue participating securities with SBA's guaranty, but there is no requirement that any Licensee issue participating securities. The proposed additional recordkeeping and reporting requirements are considered indispensable for the calculation of SBA's shares of income and profits, respectively, in accordance with the statutory mandate. These additional requirements have been submitted to OMB for review.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth above, part 107 of Title 13, Code of Federal Regulations is proposed to be amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 is revised to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*; 15 U.S.C. 687(c); 15 U.S.C. 683; 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. 102–366.

2. Section 107.1 is proposed to be amended by adding at the end the following two sentences, to read as follows:

§ 107.1 Scope of part 107.

* * * Provisions of this part which are not mandated by the Act shall not supersede existing State law. A party claiming that a conflict exists shall submit an opinion of independent counsel, citing authorities, for SBA's resolution of the issues involved.

3. Section 107.3 is proposed to be amended by revising the definitions for *Leverage, SBA* and *Section 301(d) Licensee* and by adding additional definitions, in alphabetical order, to read as follows:

§ 107.3 Definition of terms.[2]

Accumulated Prioritized Payments means Prioritized Payments which are not payable as of any given date because the Licensee has insufficient cumulative Earmarked Profits. It is the aggregate of cumulative Prioritized Payments less Earned Prioritized Payments.

* * * * *

Affiliate or Affiliates has the meaning set forth in § 121.401.

* * * * *

Central Registration Agent or *CRA* means one or more agents appointed by SBA for the purpose of issuing TCs and performing the functions enumerated in § 107.250(b) and performing similar functions for Debentures and Participating Securities funded outside the pooling process.

* * * * *

Combined Capital means the sum of Regulatory Capital and outstanding Leverage.

* * * * *

Debentures means debt obligations issued by Licensees pursuant to section 303(a) of the Act and held or guaranteed by SBA.

* * * * *

Distributable Earmarked Profits shall have the meaning set forth in § 107.243(c)(2) and shall be the source for allocation of Prioritized Payments pursuant to section 303(g)(2) of the Act.

Distribution means any transfer of cash or non-cash assets to SBA, its agent or Trustee, or to partners in an Unincorporated Licensee, or to shareholders in a Corporate Licensee. Distributions shall include interest on Debentures, returns on Preferred Securities, Prioritized Payments and adjustments thereto pursuant to § 107.243(d), Profit Participation, returns on capital to private investors, repayment of Leverage and returns of Private Capital. Capitalization of Retained Earnings Available for Distribution shall constitute a Distribution.

Earmarked Assets shall have the meaning set forth in § 107.242(b) (see also § 107.247).

Earmarked Profits (Losses) mean the aggregate amount of Earmarked Net Investment Income and Earmarked Realized Gain (Loss) on Sale of Securities which becomes the basis for Prioritized Payments and Profit Participation (see § 107.242).

Earned Prioritized Payments means Prioritized Payments which have been distributed, or are distributable or deferred in accordance with § 107.243(c).

Equity Capital Investments means investments in a Small Concern in the form of common or preferred stock, limited partnership interests, options, warrants, or similar equity instruments, including subordinated debt with equity features if such debt provides only for interest payments contingent upon and limited to the extent of earnings. Equity Capital Investments shall not require amortization. Equity Capital Investments may be guaranteed; however, neither Equity Capital Investments nor such guarantee shall be collateralized or otherwise secured.

* * * * *

Guaranty Agreement means the contract entered into by SBA which is a guarantee of the full faith and credit of the United States Government as to timely payment of principal and interest on Debentures or the redemption price of and Prioritized Payments on Participating Securities and SBA's rights in connection with such guarantee.

* * * * *

Leverage means the aggregate outstanding amount of the Original Issue Price of a Licensee's Debentures, Participating Securities, and Preferred Securities.

* * * * *

Loans and Investments means Portfolio Securities, Assets Acquired in Liquidation of Portfolio Securities, Operating Concerns Acquired, and Notes and Other Securities Received, as set forth in Statement of Financial Position (SBA Form 468).

Management Expenses means, for Licensees which have Participating Securities or have Earmarked Assets in their portfolios, those expenses that include salaries, office expenses, travel, business development, office and equipment rental, bookkeeping and the development, investigation and monitoring of investments, but shall not include the cost of services provided by specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally expected of a venture capital company, nor shall such term include the cost of services provided by any Associate of the Licensee which are not part of the normal process of making and monitoring venture capital financings.

* * * * *

Original Issue Price means the price paid by the purchaser for securities at the time of issuance.

Participating Securities means preferred stock, preferred limited partnership interests, or similar

[2] Terms defined in this section are capitalized hereafter.

instruments, including debentures having interest payable only to the extent of earnings, all of which are subject to the terms set forth in §§ 107.240 through 107.247 and section 303(g) of the Act.

* * * * *

Pool means an aggregation of SBA guaranteed Debentures or SBA guaranteed Participating Securities approved by SBA.

* * * * *

Preferred Securities means nonvoting preferred stock issued to SBA by a for-profit section 301(d) Corporate Licensee, or securities having similar characteristics issued by a section 301(d) Licensee organized as a nonprofit corporation, or nonvoting preferred limited partnership interests issued by a section 301(d) Unincorporated Licensee. (See also § 107.230.)

Prioritized Payments means amounts which are preferred and cumulative and are distributable to the holder of Participating Securities provided the issuing Licensee has sufficient cumulative Earmarked Profits, and may be represented by dividends on preferred stock or interest on qualifying Debentures issued by a corporate Licensee, or priority returns on preferred limited partnership interests issued by limited partnership Licensees. For a given fiscal period, Prioritized Payments shall be the amount resulting from multiplying the Redemption Price of Participating Securities by the Trust Certificate Rate, weighted to reflect the number of days such securities were outstanding.

* * * * *

Profit Participation means a specified percentage of a Licensee's Earmarked Profits which is computed in accordance with § 107.244 and to which SBA is entitled, by agreement, in consideration for its guarantee of such Licensee's Participating Securities.

Publicly Traded and Marketable means securities that are salable without restriction or that are salable within 12 months pursuant to Rule 144 of the Securities Act of 1933, as amended, by the holder thereof or, in the case of an in-kind distribution by the distributee thereof, and are of a class which is (1) traded on a regulated stock exchange, or (2) is listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ), or (3) that have, at a minimum, at least two market makers as defined in the relevant sections of the Securities Exchange Act of 1934, as amended, and in all cases the quantity of which can be sold over a reasonable period of time without having an adverse impact upon the price of the stock.

Qualified Investments shall have the meaning set forth in § 107.230(c)(4)(iv).

* * * * *

Realized Gain (Loss) on Securities means the amount by which proceeds from the disposition of Loans and Investments are greater than (less than) the cost or other basis approved by SBA. Disposition of Loans and Investments shall include sale, exchange, write-off, recoveries from prior disposition, or any other such transaction resulting in recognition of a gain or loss.

Redemption Price means the amount required to be paid by the issuer, or successor to the issuer, of Preferred or Participating Securities to repurchase such securities from the holder. The Redemption Price shall be the Original Issue Price less any prepayments or prior redemptions.

Retained Earnings Available for Distribution means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468), and represents the amount that may be distributed to investors or transferred to Private Capital.

SBA means the Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Section 301(c) Licensee means an SBIC organized as a for-profit corporation, a limited liability company or a limited partnership organized in accordance with § 107.4, and licensed pursuant to section 301(c) of the Act.

Section 301(d) Licensee means an SBIC organized as a for-profit corporation, a limited liability company or a limited partnership organized in accordance with § 107.4, and licensed pursuant to section 301(d) of the Act. Such Licensees provided assistance only to Small Concerns that are owned by persons who are socially or economically disadvantaged.

* * * * *

Trust means the legal entity created for the purpose of holding guaranteed Debentures or Participating Securities and the guaranty agreement related thereto, receiving, holding and making any related payments, and accounting for such payments.

Trust Certificate Rate means a fixed rate determined at the time Participating Securities are issued by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with maturities comparable to the maturities of the Trust Certificates being guaranteed by SBA, adjusted to the nearest one-eighth of one percent.

Trust Certificates (TCs) means certificates issued by SBA, its agent or Trustee and representing ownership of all or a fractional part of a Trust or Pool of Debentures or Participating Securities.

Trustee means the trustee or trustees of a Trust.

Undistributed Realized Earnings means the cumulative sum of Net Investment Income plus Realized Gain (Loss) on Sale of Securities, less the cumulative sum of Distributions of Earned Prioritized Payments and other Distributions made from Retained Earnings Available for Distribution.

* * * * *

Unrealized Appreciation means the amount by which a Licensee's valuation of Loans and Investments, as determined by its Board of Directors or General Partner(s) in accordance with Licensee's valuation policies, exceeds the cost basis thereof.

Unrealized Depreciation means the amount by which a Licensee's valuation of Loans and Investments, as determined by its Board of Directors or General Partner(s) in accordance with Licensee's valuation policies, is below the cost basis thereof.

Unrealized Gain (Loss) on Securities Held means the amount by which a Licensee's aggregate valuation of its Loans and Investments is above (below) their aggregate cost basis, and is computed by summing the Unrealized Appreciation and Unrealized Depreciation on all Loans and Investments.

Venture Capital Financing shall have the meaning set forth in § 107.230(c)(3).

§§ 107.201 through 107.205 [Removed]

4. Part 107, title 13, of the Code of Federal Regulations is proposed to be amended by removing the undesignated center heading "Borrowing by Licensee" and §§ 107.201 through 107.205 and by adding after § 107.105 the undesignated center heading "Leverage" and §§ 107.210 through 107.263 to read as follows:

Leverage

§ 107.210 Leverage—General.

(a) *General.* SBA may purchase or guarantee three types of Licensee securities:

(1) Debentures;

(2) Preferred Securities; and

(3) Participating Securities.

All Licensees issuing Preferred Securities after August 16, 1982, or Debentures or Participating Securities shall be deemed to have agreed to the terms and conditions set forth in §§ 107.260 through 107.263 as in effect

at the time of such issuance and as if fully set forth in such Preferred Securities, Debentures or Participating Securities.

(b) *Application procedures.* All Leverage applications shall be filed with SBA's Investment Division located at: 409 Third Street SW., Washington, DC 20416.

(1) A section 301(c) Licensee may apply for Debentures pursuant to section 303(b) of the Act on SBA Form 1022, and for Participating Securities pursuant to section 303(g) of the Act on SBA Form 1022B, in accordance with accompanying instructions.

(2) A section 301(d) Licensee may apply for Debentures pursuant to section 303(b) of the Act on SBA Form 1022, for Preferred Securities pursuant to section 303(c) of the Act on SBA Form 1022A, and for Participating Securities pursuant to section 303(g) of the Act on SBA Form 1022B, in accordance with accompanying instructions.

(c) *Basic requirements.* Leverage applicant shall demonstrate to SBA's satisfaction that they meet the following requirements:

(1) Eligibility for the amount of Leverage requested in accordance with § 107.220 for section 301(c) Licensees and § 107.230 for section 301(d) Licensees.

(2) A need for Leverage as evidenced by Licensee's investment plan and funds available for investment: *Provided, however,* That for applicants for Participating Securities that have at least 50% of their aggregate Leverageable Capital and outstanding Leverage invested in Equity Capital Investments, any temporary excess liquidity resulting from the existence of unfunded commitments, or from draw-downs of unfunded commitments and Leverage, shall be disregarded by SBA in determining Licensee's need for Leverage.

(3) Adequacy of Private Capital and an ability to meet its obligations, both of which shall be demonstrated through use of a business plan.

(4) Applicants for Participating Securities shall also meet the requirements of § 107.241 in addition to all other Leverage requirements.

(5) Compliance with the regulations as set forth in this part.

(d) *Fees and charges.* (1) Licensees offering Debentures or Participating Securities for sale to, or for guaranty by, SBA are required to pay a one-time fee equal to 2% of the face amount of the Participating Securities or of the Debentures.

(2) The fee on Debentures or Participating Securities which are issued for the purpose of refunding maturing obligations shall be paid before such Debentures or Participating Securities are purchased or guaranteed. If the Licensee's Debentures or Participating Securities evidence a new indebtedness, as distinguished from the refinancing on a pre-existing indebtedness, the fee shall be deducted from the proceeds remitted to the Licensee.

(3) No portion of the fee shall be refundable upon prepayment of any Debenture or early redemption of any Participating Security by the Licensee.

(4) SBA may establish a fee structure for the performance of services by the CRA; however, SBA shall not collect any fee for the guarantee of TCs.

(e) *Employment of SBA officials.* Without the prior written consent of SBA, for a period of two years after the date of the most recent Leverage issued by Licensee (or the receipt of any SBA Assistance as defined in part 105 of this chapter), Licensee shall not employ, or tender any offer of employment to, or retain for professional services, any person who on or within one year prior to such date:

(1) Served as an officer, attorney, agent, or employee of SBA; and

(2) As such, occupied a position or engaged in activities which SBA shall have determined involved discretion with respect to the granting of Assistance under the Act.

(f) *SBA guarantee.* (1) SBA may in its discretion agree to guaranty a Licensee's Debentures or Participating Securities unconditionally, irrespective of the validity, regularity or enforceability of such Debentures or Participating Securities or any other circumstances which might constitute a legal or equitable discharge or defense of a guarantor and, pursuant to its guarantee, make timely payments of principal and interest on such Debentures or the Redemption Price of and Prioritized Payments on such Participating Securities, irrespective of any default by the issuing Licensee or acceleration of the maturity of such Debentures by SBA, or the inability of the Licensee to pay the Redemption Price of or to make the Prioritized Payments on such Participating Securities, or any early redemption of the Participating Securities by SBA pursuant to § 107.245.

(2) SBA in its discretion may arrange for public or private financing under its guaranty authority. Such financing arranged by SBA may be accomplished by the sale of individual Debentures or Participating Securities, aggregations of Debentures or Participating Securities, or Pools or Trusts of Debentures or Participating Securities issued or sold pursuant to § 107.250. Persons interested in providing funds to Licensees with SBA's guaranty shall notify SBA by letter, certifying any direct or indirect beneficial interest, or actual or potential voting rights, in any Licensee, or in any person directly or indirectly controlling, controlled by or under common control with, any Licensee. These reporting requirements are approved under OMB No. 3245--0081.

(3) No SBA guaranty shall be extended to any entity:

(i) Having a direct or indirect beneficial interest of ten or more percent in the Regulatory Capital of the Licensee whose securities are to be guaranteed, or in any Person directly or indirectly controlling, controlled by, or under Common Control with, such Licensee; or

(ii) Having such interest in another Licensee which has received or is about to receive, pursuant to any understanding, arrangement, cross-dealing, reciprocal or circular arrangement, and direct or indirect financing (or commitment for financing) from another lender with SBA's guarantee.

(iii) SBA may void any guarantee obtained in violation of this paragraph (f)(3), but the foregoing shall not apply to lenders whose borrowers are selected or approved by SBA or its agents.

(4) In the event SBA pays a claim under its guarantee, it shall be subrogated fully to the rights satisfied by such payment; and no state law, and no Federal law, shall preclude or limit SBA's exercise of its ownership rights acquired by subrogation upon payment under its guarantee.

(5) With respect to Debentures guaranteed after July 1, 1991, SBA's claim against any Licensee shall, as of the effective date of SBA's guaranty, be subordinated, in the event of the insolvency of such Licensee, only in favor of existing and future indebtedness outstanding to lenders, not including Associates of a Licensee, and only to the extent that the aggregate amount of such indebtedness does not exceed the lesser of two hundred percent of such Licensee's Regulatory Capital, or ten million dollars; *Provided, however,*

(i) That in its sole discretion SBA may agree in advance and in writing to a subordination in favor of an Associate or in favor of one or more loans from Lending Institutions or other lenders that would cause the aggregate amount of outstanding senior debt to exceed the foregoing limitation;

(ii) That nothing contained herein shall limit the authority of SBA to refuse to subordinate its claims against any Licensee if SBA determines at the time of issuing its guarantee, that the exercise of reasonable investment prudence and the financial soundness of the Licensee warrant such a refusal; and

(iii) That nothing contained herein shall affect the seniority of any indebtedness created prior to July 11, 1991, over the claims of SBA derived from any debenture(s) and/or guarantee(s) outstanding as of that date.

(6) After September 30, 1993, no Licensee may incur additional debt (other than Leverage) or refinance existing indebtedness without the prior written approval of SBA. This restriction applies to secured and unsecured debt, guarantees and other contingent obligations voluntarily assumed, and the establishment of lines of credit. Unless otherwise agreed to by SBA in writing, Licensees with existing lines of credit shall have such lines approved before increasing the amounts outstanding thereunder. SBA's approval under this paragraph may be conditioned upon and restrictions and limitations as it may determine.

(g) *SBA sale of Leverage securities.* Upon such conditions and for such consideration as it deems reasonable, SBA may sell, assign, transfer, or otherwise dispose of any Preferred Security, Debenture, Participating Security, or other security held by or on behalf of SBA in connection with Leverage. In such event and upon notice thereof by SBA, Licensee will make all payments of principal, dividends, interest, Prioritized Payments, and redemptions as shall be directed by SBA. Licensee shall be liable for all damage or loss which SBA may sustain by reason of such disposal, limited, however, to the extent of Licensee's liability under such security, plus court costs and reasonable attorney's fees incurred by SBA.

(h) *Maintenance of unimpaired capital.* Each Licensee with Leverage shall maintain its Regulatory Capital in such amounts so as to avoid a condition of Capital Impairment. A condition of Capital Impairment as defined in this paragraph shall be a condition affecting Licensee's good standing pursuant to §§ 107.261(d) and 107.262(d).

(1) *Definition of Capital Impairment.* A condition of Capital Impairment shall exist when a Licensee's Capital Impairment Percentage exceeds the maximum permissible level set forth in the appropriate table in paragraph (h)(6) of this section.

(2) *Preliminary impairment test.* If both Undistributed Realized Earnings and Unrealized Gain (Loss) on Securities Held are zero or greater, no Capital Impairment exists and no further procedures shall be performed pursuant to this paragraph (h). Otherwise, a Licensee shall compute its "Adjusted Unrealized Gain (Loss) on Securities Held" in accordance with paragraph (h)(3) of this section.

(3) *Adjusted unrealized gain (loss) on securities held.* (i) When a Licensee has Unrealized Depreciation in excess of Unrealized Appreciation on securities held, such excess depreciation shall be the Licensee's Adjusted Unrealized Gain (Loss) on Securities Held.

(ii) When a Licensee has Unrealized Appreciation in excess of Unrealized Depreciation on securities held, such excess appreciation shall be the Licensee's Adjusted Unrealized Gain (Loss) on Securities Held, to the extent that it represents 80% of the aggregate Unrealized Appreciation on Publicly Traded and Marketable securities and to the extent that it represents 50% of the aggregate Unrealized Appreciation on securities which meet the following criteria:

(A) The Small Concern which issued the security received a significant subsequent equity financing by an investor whose objectives were not primarily strategic and at a price that would conclusively support the Unrealized Appreciation;

(B) Such financing represents a substantial investment in the form of an arm's length transaction by a sophisticated new investor in the issuer's securities; and

(C) Such financing occurred within 24 months of the date of the calculation of the Impairment Percentage or, if the financing did not occur within such 24 month period, the Small Concern's pre-tax cash flow from operations for the most recent fiscal year was at least 10 percent of the Small Concern's average contributed capital for such fiscal year.

(4) *Computing the Capital Impairment Percentage.* Licensee shall add Adjusted Unrealized Gain (Loss) on Securities Held to Undistributed Realized Earnings. If the result is zero or greater, no Capital Impairment exists and no further computations shall be performed pursuant to this paragraph (h). If the result is less than zero, Licensee shall (i) drop the negative sign, (ii) divide by Regulatory Capital (excluding *Treasury Stock*), and (iii) multiply by 100. The result shall be Licensee's Capital Impairment Percentage.

(5) *Determination of maximum permissible Capital Impairment Percentage.* Utilizing the appropriate table in paragraph (h)(6) of this section, Licensee shall determine its maximum permissible Capital Impairment Percentage at the intersection of its Leverage Percentage and its Equity Investment Percentage. As used in the tables in paragraph (h)(6) of this section, "Equity Investments" includes those Debt Securities which, after consideration of all of the terms, conditions and documentation of such financing, are determined by Licensee's Board of Directors or General Partner(s) to have in excess of 50% of the anticipated return on such financing represented by the potential for equity appreciation.

(6) *Capital Impairment condition.* If Licensee's Capital Impairment Percentage is greater than its maximum permissible Capital Impairment Percentage, Licensee has a condition of Capital Impairment; *Provided, however,* That until the close of Licensee's fiscal year next succeeding [DATE THAT IS ONE YEAR AFTER THE PUBLICATION OF THE FINAL RULE], Licensee shall not have a condition of Capital Impairment if its Capital Impairment Percentage is, for a Section 301(c) Licensee, less than or equal to 50% or, for a Section 301(d) Licensee, less than or equal to 75%.

Note: The symbols used below have the following meanings: > means "greater than"; ≥ means "greater than or equal to"; < means "less than"; and ≯ means "not greater than".)

MAXIMUM PERMISSIBLE CAPITAL IMPAIRMENT PERCENTAGES FOR SECTION 301(C) LICENSEES

Leverage percentage	Percentage of portfolio in equity investments (at cost)		
	≥ 67% equity	≥ 40% equity	< 40% equity
> 200	45	35	30
≯ 200	55	45	35
≯ 100	65	50	40

MAXIMUM PERMISSIBLE CAPITAL IMPAIRMENT PERCENTAGES FOR SECTION 301(D) LICENSEES

Leverage percentage	Percentage of portfolio in equity investments (at cost)		
	≥ 67% equity	≥ 40% equity	< 40% equity
> 200	50	40	35
≯ 200	60	50	40
≯ 100	70	55	45

(7) *Forbearance for Licensees with outstanding Participating Securities.* (i) At any time during the first forty-eight (48) months following its initial issuance of Participating Securities, any Licensee which has Leverage consisting

of a minimum of two-thirds Participating Securities and has at least two-thirds of its Loans and Investments, at cost, in Equity Capital Investments, shall not be considered to have a condition of Capital Impairment unless such Licensee's Capital Impairment Percentage equals or exceeds 85%.

(ii) At any time during the first sixty (60) months following its initial issuance of Participating Securities, a Licensee which has Leverage consisting of a minimum of two-thirds Participating Securities and has at least two-thirds of its Loans and Investment, at cost, in Start-up Financings shall not be considered to have a condition of Capital Impairment unless such Licensee's Capital Impairment Percentage equals or exceeds 85%. "Start-up Financing" shall mean an Equity Capital Investment in a growth-oriented Small Concern engaged in activities including, but not limited to, technology development or commercialization, manufacturing, and/or exporting, which at the time of the investment has not been in existence, in any form, for more than three fiscal years, has not had sales exceeding $5 million or positive cash flow in any fiscal year, and is not formed for the purpose of acquiring any existing business.

(iii) At any time during the fifth year following its initial issuance of Participating Securities, any Licensee which meets the Leverage and investment ratios set forth in paragraph (h)(7)(i) of this section, and does not have a Capital Impairment Percentage which equals or exceeds 85%, shall not be considered to have a condition of Capital Impairment if, within thirty (30) days of Licensee's determination that it has a condition of Capital Impairment, such Licensee either (A) increases its Regulatory Capital by a cash contribution equal to 15% of its outstanding Leverage and places such funds in an escrow account, or other account satisfactory to SBA, for the benefit of SBA, or (B) provides SBA with a guarantee satisfactory to SBA, for the benefit of SBA, equal to 15% of its outstanding Leverage.

(iv) At any time during the sixth year following its initial issuance of Participating Securities, any Licensee which meets the Leverage and investment ratios set forth in paragraph (h)(7)(i) of this section, and does not have a Capital Impairment Percentage which equals or exceeds 85%, shall not be considered to have a condition of Capital Impairment if, within thirty (30) days of Licensee's determination that it has a condition of Capital Impairment, such Licensee either (A) increases its Regulatory Capital by a cash contribution equal to 30% of its outstanding Leverage and places such funds in an escrow account, or other account satisfactory to SBA, for the benefit of SBA, or (B) provides SBA with a guarantee satisfactory to SBA, for the benefit of SBA, equal to 30% of its outstanding Leverage; *Provided, however,* That any escrowed funds or guarantee received pursuant to paragraph (h)(7)(iii) of this section shall be credited toward the requirements of this paragraph (h)(7)(iv).

(v) Any funds placed in an escrow or other account pursuant to paragraphs (h)(7) (iii) or (iv) shall not be eligible for Leverage purposes.

(vi) Any fee and/or any claim to repayment by the party making the capital contribution or by the guarantor must be deferred and subordinate to all outstanding Leverage plus any unpaid Earned Prioritized Payments and other earned amounts.

(vii) Any funds in the escrow amount and/or any guarantee received by SBA under this paragraph (h)(7) shall be utilized to pay or repay any amounts due SBA in the event of an acceleration or mandatory redemption under § 107.261, or shall be released and returned to Licensee at such time as the sum of Licensee's Adjusted Unrealized Gain (Loss) on Securities Held and Undistributed Realized Earnings is determined by SBA to be zero or greater.

(8) *Quarterly requirement and procedure.* Each Licensee is responsible for determining whether it has a condition of Capital Impairment on a quarterly basis; *Provided, however,* That SBA is not precluded from making its own determination:

(i) *Collection or compromise of SBA claims.* SBA may, upon such conditions and for such consideration as it deems reasonable, collect or compromise all claims relating to Preferred or Participating Securities or obligations held or guaranteed by SBA, and all legal or equitable rights accruing to it.

(ii) Reserved.

§ 107.200 Leverage for 301(c) Licensees.

(a) *General.* SBA may provide Leverage to any Section 301(c) Licensee through the purchase of guaranty of Debentures and/or Participating Securities.

(b) *Leverage formula.* After March 31, 1993, the amount of Leverage a Section 301(c) Licensee may have outstanding at any time shall not exceed the following amounts:

(1) If Leverageable Capital is not more than $15,000,000, Leverage shall not exceed 300 percent of Leverageable Capital;

(2) If Leverageable Capital is more than $15,000,000 but not more than $30,000,000, Leverage shall not exceed $45,000,000 plus 200 percent of the amount of Leverageable Capital over $15,000,000;

(3) If Leverageable Capital is more than $30,000,000, Leverage shall not exceed $75,000,000 plus 100 percent of the amount of Leverageable Capital over $30,000,000, but not to exceed an additional $15,000,000.

(c) *Maximum limits and exceptions.* Notwithstanding paragraph (b) of this section, in no event shall the aggregate amount of outstanding Leverage of any Licensee or group of two or more Licensees (including both section 301(c) and section 301(d) Licensees) under Common Control exceed $90,000,000 unless SBA determines, on a case-by-case basis, to permit a higher aggregate amount for companies under Common Control and SBA imposes such additional terms and conditions as it determines appropriate to minimize the risk of less to SBA in the event of default.

(d) *Grandfather clause.* Nothing herein shall require any section 301(c) Licensee that on March 31, 1993, has outstanding Debentures in excess of 300 percent of Leverageable Capital to prepay such excess, and *Provided further,* That any such Licensee may apply for an additional Debenture guarantee or Participating Security guarantee with the proceeds to be used solely to pay the amount due on such maturing Debenture. The maturity of such new Debenture or Participating Security shall not be later than September 30, 2002.

(e) *Limits on Participating Securities.* The aggregate amount of Participating Securities outstanding from a Licensee shall not exceed 200 percent of Leverageable Capital.

§ 107.230 Leverage for 301(d) Licensees.

(a) *General.* SBA may provide Leverage to any section 301(d) Licensee through the purchase or guaranty of Debentures and/or Participating Securities, and/or through the purchase of Preferred Securities.

(b) *Articles requirements for Preferred Securities Leverage.* In addition to the requirements specified in § 107.101, no Preferred Securities will be acquired by SBA from any section 301(d) Licensee unless the following provisions are contained in such Licensee's Articles or partnership agreement:

(1) *Corporate Section 301(d) Licensees—(1) Payment of dividends to SBA.* Preferred stock issued by a corporate section 301(d) Licensee to SBA after November 21, 1989, shall

provide for the preferred payment of cumulative dividends at a rate of four percent per annum on the par value of such stock, accruing on a daily basis from the date of issuance to the date of payment, both inclusive. Such dividends shall be declared and payable from Retained Earnings Available for Distribution before any amount shall be set aside for or paid to any other class of stock. In the event SBA has received less than four percent in any fiscal year, the deficiency shall be payable on a preferred basis from subsequent Retained Earnings Available for Distribution without interest thereon. Before any declaration of dividends or any Distribution (other than to SBA), all dividends accumulated and unpaid on Preferred Securities issued to SBA shall be paid. The dividend rate on nonvoting Preferred Securities purchased by SBA prior to November 21, 1989, shall remain three percent of their par value and otherwise be subject to the provisions of this paragraph.

(ii) *Mandatory redemption of Preferred Securities.* Preferred Securities purchased by SBA on or after November 21, 1989, shall be redeemed by the issuer not later than fifteen years from the date of issuance, at a price not less than the par value, plus any unpaid dividends accrued to the redemption date. SBA may, in its discretion, guarantee Debentures offered for sale by such Licensee at the Debenture sale immediately preceding such fifteenth anniversary date, pursuant to section 321 of the Act, in such amounts as will permit the simultaneous redemption of such Preferred Securities, including all or part of accrued and unpaid dividends, for immediate payment to SBA. SBA shall not pay any part of the interest on such Debentures except pursuant to its guarantee in the event of default in payment by the issuer. See also § 107.230(f).

(2) *Unicorporated 301(d) Licensees—(i) Payment of Distributions to SBA.* Preferred limited partnership interests issued to SBA by a limited partnership Section 301(d) Licensee shall provide for Distributions to SBA on a preferred and cumulative basis at an annual rate of four percent on the entire amount of SBA's capital contribution (with no adjustments other than those reflecting prior returns of capital), accruing on a daily basis from the date of issuance to the date of Distribution, both inclusive. SBA shall be paid from Retained Earnings Available for Distribution. In the event SBA has received less than four percent in any fiscal year, the deficiency shall be payable on a preferred basis from subsequent Retained Earnings Available for Distribution without interest thereon. Before any allocation or Distribution (other than to SBA), all accumulated and unpaid Distributions on preferred limited partnership interests issued to SBA shall be paid.

(ii) *Mandatory redemption of preferred limited partnership interest.* Preferred limited partnership interests shall be redeemed by the issuer not later than fifteen years from the date of issuance, at a price not less than the amount of SBA's contributed capital, with no adjustments other than those reflecting prior returns of capital, plus any accumulated and unpaid Distribution to and including the redemption date. SBA may, in its discretion, guarantee Debentures offered for sale by such Licensee at the Debenture sale immediately preceding such fifteenth anniversary date, pursuant to section 321 of the Act, in such amounts as will permit the simultaneous redemption of such preferred limited partnership interests, including all or any part of accumulated and unpaid Distributions, for immediate payment to SBA. SBA shall not pay any part of the interest on such Debentures except pursuant to its guarantee in the event of default in payment by the issuer. See also § 107.230(f).

(c) *Maximum Leverage—General.* All Leverage issued by Section 301(d) Licensees shall be aggregated for purposes of determining Leverage eligibility. Subject to the limitations on Leverage issued by Licensees under common Control set forth in § 107.220(c), the total amount of Leverage permissible to a section 301(d) Licensee shall be determined as follows:

(1) *Maximum subsidized Leverage.* A section 301(d) Licensee or group of such Licensees under Common Control shall be eligible for maximum subsidized Leverage of 400 percent of Leverageable Capital or $35,000,000, whichever is less, subject to the exceptions and limitations set forth in paragraphs (c)(3) through (6) of this section. For purposes of this paragraph, "subsidized Leverage" means Preferred Securities and Debentures issued with a rate reduction or subsidy.

(2) *Leverage above $35,000,000.* A section 301(d) Licensee is eligible for Leverage in excess of $35,000,000, in the amounts and subject to the conditions set forth in § 107.220 (b) and (c); *Provided, however,* That the aggregate amount of subsidized Leverage issued by such Licensee or group of such Licensees under Common Control shall not exceed $35,000,000.

(3) *Conditions for Leverage exceeding 300 percent.* (i) To qualify for Leverage exceeding 300 percent of Leverageable Capital, at least thirty percent (30%) of a section 301(d) Licensee's Total Funds Available for Investment must be invested in (or committed to) Venture Capital Financings. Licensee must maintain thirty percent (30%) of its Total Funds Available for Investment in such investments, at the cost basis, subsequent to issuing Leverage in excess of 300 percent of Leverageable Capital. See also § 107.261(d)(5).

(ii) As used herein, "Total Funds Available for Investment" means ninety percent of the sum of total current assets plus Loans and Investments on a cost basis and net of current maturities.

(iii) As used herein, "Venture Capital Financing" means an investment in a Disadvantaged Concern represented by (A) Equity Securities as defined in § 107.3 with no repurchase requirement for at least five years, except as may be specifically approved by SBA under § 107.801 for purposes of relinquishing Control over a Small Concern; (B) any right to purchase Equity Securities in conjunction with the purchase of Equity or Debt Securities which, after consideration of all of the terms, conditions and documentation of such financing, are determined by Licensee's Board of Directors or General Partner(s) to have in excess of 50% of the anticipated return on such financing represented by the potential for equity appreciation; or (C) Debt Securities or Loans which are subordinated by their terms to all borrowings of the issuer, except borrowings from officers, directors, and owners of the Small Concern, or Close Relatives thereof, and have no part amortized during the first three years. A Financing which originally qualified as a Venture Capital Financing but is currently carried as "assets acquired in liquidation of portfolio securities" or "operating concerns acquired" shall continue to qualify as a Venture Capital Financing, at original cost.

(4) *Second Tier Preferred Securities Leverage.* SBA is authorized to purchase Preferred Securities from a section 301(d) Licensee in amounts in excess of 100 percent of Leverageable Capital, but not in excess of 200 percent of Leverageable Capital, *Provided:*

(i) Such company's license was issued on or before October 13, 1971; or

(ii) Such company's license was issued after October 13, 1971, and Licensee has Leverageable Capital of $500,000 or more; and

(iii) In either case, such section 301(d) Licensee has Qualified Investments (or commitments to make such investments), at cost, equal to the amount of Preferred Securities in excess

of 100% of Leverageable Capital—see also § 107.261(d)(5).

(iv) As used herein, "Qualified Investments" means, subject to §§ 107.320 and 107.801, an investment in a Disadvantaged Concern represented by stock of any class (including preferred stock) or limited partnership interests, or shares of any eligible syndicate, business trust, joint stock company or association, mutual corporation, cooperative or other joint venture for profit; or unsecured debt instruments which are subordinated by their terms to all other borrowings (as distinguished from all other debts and obligations) of the issuer and which, after consideration of all of the terms, conditions and documentation of such instruments, are determined by Licensee's Board of Directors or General Partner(s) to have in excess of 50% of the anticipated return on such financing represented by the potential for equity appreciation. "Qualified Investments" shall not include a debt secured by any agreement with a third party, whether or not a security interest has been created in any asset of such third party, with or without recourse against such third party.

(5) *Non-Cumulative.* If a Financing qualifies as both a Venture Capital Financing and a Qualified Investment, such Financing may be construed as both a Venture Capital Financing and a Qualified Investment.

(6) *Participating Securities Leverage.* The aggregate of a section 301(d) Licensee's Participating Securities and Preferred Securities shall not exceed 200% of Leverageable Capital. The Prioritized Payments and the Profit Participation on Participating Securities issued by Section 301(d) Licensees shall not carry a subsidy or rate reduction.

(d) *Debentures issued by 301(d) Licensees.* Subject to the limitations of paragraph (c) of this section, section 301(d) Licensees may issue three types of Debentures:

(1) Debentures guaranteed by SBA pursuant to section 303(c) of the Act. During the first five years of the term of such Debentures, the rate of interest payable by the issuer is three hundred basis points below the interest rate stated on the face of the Debenture.

(2) Debentures guaranteed by SBA pursuant to section 303(b) of the Act. Such Debentures are not entitled to a reduced interest rate.

(3) Debentures purchased by SBA pursuant to section 303(c) of the Act. Such Debentures shall be entitled to a reduced interest rate determined according to section 317 of the Act. Such Debentures purchased by SBA shall specify both the subsidized interest rate and the non-subsidized interest rate (as prescribed by sections 317 and 303(b) of the Act), together with the dates between which each applies.

(e) *Exchange of outstanding Debentures for Preferred or Participating Securities.* (1) Subject to the conditions applicable to the issuance of Preferred or Participating Securities, a section 301(d) Licensee may, in SBA's discretion, retire Debentures against the issuance of such securities. A section 301(d) Licensee proposing to exchange its outstanding Debentures shall be required to pay all unpaid accrued interest plus any applicable prepayment penalties, fees, and other charges as a condition of such exchange.

(2) Notwithstanding the provisions of paragraph (e)(1) of this section, Debentures purchased or guaranteed by SBA on the basis of funds not included in Leverageable Capital may not be retired against issuance of Preferred or Participating Securities. Such Debentures, to the extent purchased or guaranteed by SBA on the basis of ineligible funds, shall be paid at maturity, unless such maturity is extended by SBA, at its discretion, to a maximum of 15 years from the date of issuance if such extension is necessary to achieve an orderly liquidation of the indebtedness.

(f) *Preferred Securities—voluntary redemption rights.* A section 301(d) Licensee may redeem in whole or in part Preferred Securities purchased by SBA, on any dividend payment date or distribution of capital date (after giving SBA at least thirty days written notice) by paying SBA the Original Issue Price of such securities, but not less than $50,000 in any one transaction, plus any dividends or distributions accumulated and unpaid to the date of redemption. SBA is authorized to sell Preferred Securities purchased on or before November 20, 1989 to the issuer at a price less than the sum of the Original Issue Price and such unpaid dividends or distributions. SBA shall determine the sale price of such Preferred Securities in its sole discretion after considering factors including, but not limited to, the market value of such securities, the value of benefits previously provided and anticipated to accrue to the issuer, the amount of dividends previously paid, accrued, and anticipated, and SBA's estimate of any anticipated redemption. In such event, SBA may guarantee Debentures issued by the Licensee in order to accomplish the repurchase of such Preferred Securities; *Provided, however,* That SBA shall not pay any part of the interest on such Debentures except pursuant to its guarantee in the event of default by the Licensee. See also §§ 107.230(b)(1)(ii) and 107.230(b)(2)(ii).

§ 107.240 Participating Securities.

The provisions of §§ 107.241 through 107.247 shall apply to Participating Securities and all Licensees issuing such securities.

§ 107.241 Participating Securities—General.

(a) *Minimum private capital.* Subject to § 107.101(d), a Licensee with Regulatory Capital of $10 million or more shall be eligible to issue Participating Securities. A Licensee with Regulatory Capital of less than $10 million shall be eligible to issue Participating Securities if it demonstrates to SBA's satisfaction that it can be financially viable over the long term with such lesser amount; *Provided, however,* That no application shall be considered if the Licensee's Regulatory Capital is less than $5 million.

(b) *Investment requirements.* Any Licensee issuing Participating Securities shall invest an amount equal to the Original Issue Price of such securities solely in Equity Capital Investments and after the initial investment of such funds, as of the end of each fiscal year, unless SBA permits otherwise, shall maintain Equity Capital Investments with a cost basis of not less than the outstanding balance of Participating Securities.

(c) *Management and ownership diversity.* Unless otherwise approved by SBA, a Licensee applying for Participating Securities shall have, and as long as any Earmarked Assets remain in its portfolio, shall maintain diversity between management and ownership which may only be established by satisfying both of the following conditions:

(1) The Licensee shall meet at least one of the following three conditions:

(i) The Licensee or its ultimate parent shall have three or more shareholders or limited partners who in the aggregate have not less than a 30% interest in such Licensee's Regulatory Capital and (except for such status as a shareholder or limited partner) are not Associates of, or Affiliates of any Associate of, such Licensee;

(ii) The Licensee or its ultimate parent shall have one or more Institutional Investors that are: (A) Regulated by state or Federal authorities satisfactory to SBA, (B) public or private employee pension funds, (C) trusts, foundations, or endowments exempt from Federal income taxation, or (D) other Institutional Investors satisfactory to SBA, who directly or indirectly have in the aggregate not less than a 30%

interest in such Licensee's Regulatory Capital and (except for such status as a shareholder or limited partner) are not Associates of, or Affiliates of any Associate of, such Licensee; or

(iii) The common stock or limited partnership interests of Licensee or at least one class of voting common stock or the limited partnership interests of the ultimate parent (if any) of Licensee is publicly traded.

(iv) As used herein, *ultimate parent* shall mean an entity that directly or indirectly has an interest of more than 50 percent of the Regulatory Capital of a Licensee.

(2) Shareholders or limited partners of a Licensee may not delegate their voting rights to any other person or entity without prior SBA approval; *Provided, however,* That publicly traded Licensees are exempt from this provision; and *Provided further,* That this restriction shall not apply to proxies given to vote at single specified meetings, or to delegation of such rights to investment advisors that are not Affiliates of the Licensee except for their shareholder or partner status.

(d) *Management Expense ceiling.* Every Licensee that has Participating Securities outstanding or has Earmarked Assets in its portfolio shall be subject to an annual ceiling on Management Expenses which shall equal (1) an amount determined by multiplying Licensee's Combined Capital times 2.5 percent; *Provided, however,* That if Licensee's Combined Capital is less than $20,000,000, Licensee shall add $125,000 to that amount, or (2) such other amount approved or determined by SBA.

(e) *Temporary Debt.* The only debt other than Leverage that any Licensee with outstanding Participating Securities may incur shall be Temporary Debt. Licensee must obtain the prior written approval of SBA before incurring any Temporary Debt. As used in this paragraph, the term *Temporary Debt* means qualified short-term borrowings of a Licensee from a regulated financial institution or regulated credit company for the purposes of providing funds for a particular Financing of a Small Concern, or funds to maintain a Licensee's operating liquidity; *Provided, however,* That SBA may, on a case-by-case basis, permit borrowings from non-regulated lenders including shareholders or partners. To qualify as Temporary Debt: (1) Borrowings may not exceed 50 percent of Licensee's Leverageable Capital, and (2) Licensee shall have no Temporary Debt for at least 30 consecutive days during the Licensee's fiscal year. A Licensee with indebtedness which does not meet the requirements of Temporary Debt shall eliminate such third party debt to qualify for Participating Securities.

(f) *Liquidity requirements.* A Licensee with outstanding Participating Securities shall maintain adequate liquidity so as to avoid a condition of Liquidity Impairment (as defined in paragraph (f)(1) of this section). Such a condition shall affect the Licensee's good standing pursuant to § 107.262(c).

(1) *Definition of Liquidity Impairment.* A condition of Liquidity Impairment shall exist when a Licensee's Liquidity Ratio as determined in paragraph (f)(2) of this section is less than 1.20. Each Licensee is responsible for determining whether it has a condition of Liquidity Impairment as of the close of its fiscal year, at the time of application for Leverage, or at such time as Licensee contemplates making any Distribution; *Provided, however,* That SBA is not precluded from making its own determination.

(2) *Computation of Liquidity Ratio.* Licensee's Liquidity Ratio shall be equal to its Total Current Funds Available divided by its Total Current Funds Required, as determined in the following table:

CALCULATION OF SBIC LIQUIDITY RATIO

Financial account	Amt. from 468	Wt.	Wtd. amount
Cash and Invested Idle Funds.	.....	1.00	
Commitments From Investors.	.....	1.00	
Other Current Assets.	.....	1.00	
Current Portion of Maturities.	.....	.50	
Publicly Traded & Marketable Securities.	.....	.65	
Anticipated Operating Revenue for next 12 months.	(*)	1.00	
Total Current Funds Available.	.....	.....	A
Current Liabilities.	.....	1.00	
Commitments Outstanding.	.....	.75	
Anticipated Operating Expenses for next 12 months.	(*)	1.00	
Anticipated Interest Expense for next 12 months.	(*)	1.00	
Contingent Liabilities (Guarantees).	.....	.25	
Total Current Funds Required.	.....	.....	B
Liquidity Ratio: (A/B)	.....	.....	

* As determined by Licensee's management, pursuant to a plan of operations.

(g) *Redemption.* The redemption date of Participating Securities shall be the same as the maturity date of the Trust Certificates for the Trust containing such securities, and in no event shall such date be later than 15 years after the issue date. Participating Securities shall be redeemed at the Redemption Price plus any unpaid Earned Prioritized Payments and any additional earned amounts due pursuant to § 107.243 (c) and (d).

(h) *Priority in liquidation.* In the event of liquidation of a Licensee, the Redemption Price of Participating Securities plus any Prioritized Payments and any additional amounts due pursuant to § 107.243 (c) and (d), and any Profit Participation allocated pursuant to § 107.244(e), shall be senior in priority for all purposes to all other equity interests in the issuing Licensee, whenever created.

§ 107.242 Computation of Earmarked Profits (Losses).

(a) *Frequency of calculation.* As detailed in this subsection, a Licensee that has Participating Securities outstanding or has Earmarked Assets in its portfolio shall compute Earmarked Profits (Losses) no less frequently than annually at the end of its fiscal year and at such other times as Licensee elects to make a Distribution.

(b) *Earmarked Assets.* "Earmarked Assets" means Loans and Investments that exist at the time Participating Securities are issued or that are acquired by Licensee while Participating Securities are outstanding and non-cash assets received in exchange for any such assets. Notwithstanding Licensee's redemption of all or part of its Participating Securities, Licensee's Earmarked Assets shall retain such status until their disposition. Investments made subsequent to the

complete repayment or redemption of all Participating Securities are not considered Earmarked Assets unless Licensee issues additional Participating Securities, at which time all Licensee's Loans and Investments again become Earmarked Assets. For special rules providing exclusions applicable to companies licensed prior to March 31, 1993, see § 107.247.

(c) *Earmarked Asset Ratio.* Licensee shall first compute an Earmarked Asset Ratio for the fiscal year or portion thereof, as appropriate. Earmarked Asset Ration means, at the cost basis, the ratio of (1) Earmarked Assets plus the proceeds of Participating Securities not yet invested to (2) Licensee's total Loans and Investments plus the proceeds of Participating Securities not yet invested, stated as a percentage. The Earmarked Asset Ratio shall be computed on the respective weighted average amounts of Earmarked Assets, total Loans and Investments, and uninvested proceeds of Participating Securities outstanding during such fiscal year or portion thereof.

(d) *Determining Earmarked Net Investment Income*—(1) *Determining Earmarked Investment Income.* (i) Licensee shall allocate to Earmarked Investment Income all income which is directly attributable to such Earmarked Assets.

(ii) Licensee shall multiply interest on idle funds and other income not attributable to specific assets by the Earmarked Asset Ratio.

(iii) The aggregate of paragraphs (d)(1)(i) and (ii) shall be Earmarked Investment Income.

(2) *Determining Earmarked Investment Expenses*—(i) *Management Expenses.* Management Expenses shall be the Licensee's actual Management Expenses but not to exceed the lesser of (A) such expenses permitted in § 107.241(d) times its Earmarked Asset Ratio, or (B) the result of multiplying Licensee's Combined Capital times its Earmarked Asset Ration times 2.5 percent, and adding $125,000 times the Earmarked Asset Ratio to the product if Licensee's Combined Capital is less than $20,000,000.

(ii) *Non-Management Expenses.* Licensee shall allocate to Earmarked Assets those non-Management Expenses which are directly attributable to such assets. Licensee shall add to this amount the product obtained by multiplying the Earmarked Asset Ratio by those non-Management Expenses not attributable to specific assets. Interest on Debentures shall be considered a non-Management Expense.

(iii) *Earmarked Investment Expenses.* The aggregate of paragraphs (d)(2)(i) and (ii) shall be Earmarked Investment Expenses.

(3) *Earmarked Net Investment Income.* Earmarked Investment Income in paragraph (d)(1) shall be reduced by Earmarked Investment Expenses in paragraph (d)(2) to determine Earmarked Net Investment Income.

(e) *Determining Earmarked Realized Gain (Loss) on Securities.* Licensee shall compute its Earmarked Realized Gain (Loss) on Securities by subtracting the basis of such assets from their net sales price, in accordance with the following:

(1) The cost of an asset shall be the basis used for computing Realized Gain (Loss), unless another basis is permitted by SBA.

(2) If an exchange of assets occurs, the basis of the acquired asset(s) shall be the cost of the original asset being exchanged.

(3) The basis of Earmarked Assets shall only be increased by additional financings to the Small Concern, or by Licensee's share of the income of an unincorporated Small Concern in which Licensee's basis is appropriately determined using the equity method of accounting. The basis of Earmarked Assets shall not be increased by capitalization of interest.

(4) Unrealized Appreciation or (Unrealized Depreciation) on Earmarked Assets that are being distributed as an In-Kind Distribution shall be recognized as Realized Gain (Loss) on Securities. (See § 107.245(e)(3).)

(f) *Determining Earmarked Profits (Losses).* The aggregate of Earmarked Net Investment Income and Earmarked Realized Gain (Loss of Securities (paragraphs (d) and (e) of this section shall be Earmarked Profits (Losses) for the relevant period.

§ 107.243 Computation, Allocation, and Distribution of Prioritized Payments.

(a) *General.* Prioritized Payments shall be classified as either Accumulated Prioritized Payments or Earned Prioritized Payments in accordance with this section. Earned Prioritized Payments (and additional "earned" amounts determined under this section) shall be allocated from Distributable Earmarked Profits and distributed from the Prioritized Payment Distribution Account. Such Distributions shall occur before any other Distribution and accordingly shall not be included in Distributions to SBA as set forth in § 107.245.

(b) *Accounts.* Licensee shall establish the following two accounts in its books and records:

(1) *Prioritized Payment Accumulation Account.* The Prioritized Payment Accumulation Account shall be a memorandum account to which Licensee shall add all Prioritized Payments on its Participating Securities and any additional amounts (herein "Adjustments") required under paragraphs (d)(1) and (d)(2) of this section. Licensee shall deduct from the Prioritized Payment Accumulation Account all Earned Prioritized Payments and those Adjustments which are considered "earned" according to the same criteria applied to Prioritized Payments in paragraph (c) of this section. The balance in this account shall represent Licensee's Accumulated Prioritized Payments and unearned Adjustments.

(2) *Prioritized Payment Distribution Account.* The Prioritized Payment Distribution Account shall be a liability account to which Licensee shall add all Earned Prioritized Payments and earned Adjustments and from which Licensee shall deduct all Distributions of Earned Prioritized Payments and earned Adjustments. The balance in this account shall represent Licensee's undistributed Earned Prioritized Payments and earned Adjustments.

(c) *Allocation and Distribution of Prioritized Payments.* At the end of each fiscal year, and at the end of any fiscal quarter for which a Distribution is contemplated, Licensee shall perform the following procedures:

(1) Add to the Prioritized Payment Accumulation Account all Prioritized Payments for the relevant fiscal period.

(2) Determine the cumulative sum of Earmarked Profits (Losses) and subtract from such sum all Earned Prioritized Payments and earned Adjustments previously allocated to the Prioritized Payment Distribution Account. The result, if greater than zero, shall be Licensee's Distributable Earmarked Profits.

(3) If Licensee has Distributable Earmarked Profits:

(i) Licensee shall allocate to the Prioritized Payment Distribution Account an amount equal to the lesser of: (A) Distributable Earmarked Profits or (B) the balance in the Prioritized Payment Accumulation Account.

(ii) Licensee shall reduce the Prioritized Payment Accumulation Account by the amount allocated to the Prioritized Payment Distribution Account in paragraph (c)(3)(i).

(iii) Subject to the liquidity requirement set forth in § 107.241(f) Licensee shall distribute an amount equal to the balance in its Prioritized Payment Distribution Account to SBA, or its designated agent or Trustee, within 90 days after Licensee's fiscal year end or before any other Distribution is made, as appropriate.

The Prioritized Payment Distribution Account balance shall be reduced by such Distribution.

(iv) If Licensee has issued Participating Securities on more than one occasion, Prioritized Payments shall be made on such Participating Securities in order of issue date.

(4) If a Licensee has no Distributable Earmarked Profits, no allocation shall be made to the Prioritized Payment Distribution Account.

(d) *Adjustments to Prioritized Payment Accumulation Account.* The Prioritized Payment Accumulation Account shall be subject to the following adjustments:

(1) If, at the end of any fiscal year, there exists any balance in the Prioritized Payment Accumulation Account, Licensee shall add to such account an amount equal to the product of the average balance in such account during such fiscal year, multiplied by the average Trust Certificate Rate in effect during such fiscal year.

(2) If, at the end of any fiscal year, there remains any undistributed balance in the Prioritized Payment Distribution Account, Licensee shall compute an additional amount equal to the product of the average outstanding balance in such account during such fiscal year, multiplied by the average Trust Certificate Rate in effect during such fiscal year. Such amount shall be added to the Prioritized Payment Accumulation Account.

(3) If, after Licensee has performed the procedures required in paragraphs (c), (d)(1) and (d)(2) of this section, there remains any undistributed balance in the Prioritized Payment Distribution Account, Licensee shall re-perform the procedures in this § 107.243 as of the end of each subsequent fiscal quarter until such amounts are paid in full.

§ 107.244 Computation and Allocation of Profit Participation.

(a) *Profit Participation Account.* Licensee shall establish a Profit Participation Account in its books and records which shall reflect the allocation and distribution of Profit Participation. This account shall be reduced by any tax Distribution made to SBA, or its designated agent or Trustee, pursuant to § 107.245(b) or other Distributions pursuant to § 107.245(c).

(b) *Computing the Base for Profit Participation.* At the end of each fiscal year, and at the end of any fiscal quarter for which a Distribution is contemplated, Licensee shall compute and maintain a record of its Base for Profit Participation (hereinafter "Base") according to the following procedure:

(1) *Base.* The Base shall be equal to (A) Earmarked Profits (Losses) minus Prioritized Payments for the fiscal year or fiscal year-to-date, as appropriate, minus (B) any unused loss carryforward from prior fiscal years.

(2) *Unused loss carryforward.* Licensee shall compute its unused loss carryforward, if any, by subtracting all Prioritized Payments from the cumulative sum of Earmarked Profits (Losses) for all prior fiscal years; *Provided, however,* That if Licensee's Base for any prior fiscal year(s) was greater than zero, such computation shall be performed for the period beginning with the fiscal year following the most recent such fiscal year. Any negative result of the computation in this paragraph shall represent Licensee's unused loss carryforward.

(c) *Profit Participation Rates.* A Licensee which issues Participating Securities shall compute a Profit Participation Rate for the relevant fiscal year or fiscal year-to-date in accordance with the following procedure:

(1) Subject to paragraph (c)(5) of this section, the applicable Profit Participation Rate shall be based upon the highest ratio of Participating Securities Leverage to Leverageable Capital which has ever been outstanding for such Licensee, regardless of any repayment or redemption.

(2) Subject to any indexing required in paragraph (c)(4) of this section if the total amount of Participating Securities is 100 percent of Leverageable Capital or less, the Profit Participation Rate shall be the amount of Participating Securities divided by Leverageable Capital, times 9 percent.

(3) Subject to any indexing required in paragraph (c)(4) of this section, if the total amount of Participating Securities is more than 100 percent but not greater than 200 percent of Leverageable Capital, the Profit Participation Rate shall be computed as follows:

(i) 9 percent, plus

(ii) Participating Securities minus Leverageable Capital, divided by Leverageable Capital, times 3 percent.

(4) The Profit Participation Rate shall be indexed to the yield-to-maturity on Treasury bonds with a remaining term of 10 years, according to the following procedures:

(i) *Licensees that have issued Participating Securities on only one occasion.* If, on the date Participating Securities are issued, the yield on Treasury bonds with a remaining term of 10 years is other than 8 percent, the Profit Participation Rates specified in paragraphs (c) (2) and (3) of this section shall be adjusted by the percentage difference between such Treasury bond yield and 8 percent. For example, if a Licensee issued Participating Securities equal to 100 percent of Leverageable Capital and the Treasury rate were 8 percent at the time of issuance, the Profit Participation Rate would be 9 percent pursuant to paragraph (c)(2). However, if the Treasury rate were 10 percent at the time of issuance, the Licensee's Profit Participation Rate would be 11.25 percent. [{(.10–.08)/.08)+1}×.09×100=11.25%]

(ii) *Licensees that have issued Participating Securities on more than one occasion.* If, on any of the dates Participating Securities are issued, the yield on Treasury bonds with a remaining term of 10 years is other than 8 percent:

(A) First, Licensee shall compute an average of such Treasury bond yields for all issuances of Participating Securities, weighted to reflect the dollar amount of each issuance and the portion of the fiscal period during which each issuance was outstanding. For example, if a Licensee issued $10 million of Participating Securities on the first day of its fiscal year when the Treasury rate was 8 percent, and another $15 million on the 300th day of its fiscal year when the Treasury rate was 10 percent, then the weighted average Treasury rate computed as of the end of the fiscal year would be 8.42 percent.
[15,000,000×(365–300)/365=2,671,233;
10,000,000+2,671,233=12,671,233 weighted average Participating Securities;
{(10,000,000×.08)+(2,671,233×)}/12,671,233=8.42% weighted average Treasury rate]

(B) Second, the Profit Participation Rates specified in paragraphs (c) (2) and (3) of this section shall be adjusted by the percentage difference between the weighted average Treasury rate and 8 percent. In the example given in paragraph (c)(4)(ii)(A), if the $25 million of Participating Securities issued were equal to 200 percent of Leverageable Capital, the Profit Participation Rate for the fiscal year would be 12.63%.
[{(.0842–.08)/.08)+1}×.12×100=12.63%]

(5) The computation of the Profit Participation Rate shall not be modified due to an increase in the Leverageable Capital of Licensee unless the increase (i) is the result of takedown of unfunded commitments or the conversion of non-cash assets both of which having been a basis of Private Capital or (ii) is provided for in a proposed business plan submitted to and approved by SBA in writing.

(d) *Computing the Profit Participation.* If the Base for the relevant fiscal period, as determined in paragraph (b) of this section, is greater

than zero, Licensee shall compute the Profit Participation in accordance with the following procedure:

(1) The Profit Participation for the fiscal year or fiscal year-to-date shall be the result of multiplying the Base by the Profit Participation Rate determined in paragraph (c) of this section.

(2) Such Profit Participation shall be reduced by any amounts of Profit Participation that were distributed or reserved for distribution to SBA, or its designated agent or Trustee, for any interim period(s) during such fiscal year.

(3) Any computation of Profit Participation made on the basis of an interim fiscal quarter shall be adjusted, both at fiscal year-end and whenever any additional interim Distributions are made, to account for any increase in the Profit Participation Rate.

(e) *Allocation of Profit Participation.* Prior to any Distribution and in any event within 90 days following the end of the Licensee's fiscal year, the Licensee shall allocate to its Profit Participation Account the amount of Profit Participation calculated pursuant to paragraph (d) of this section. Funds equal to amounts allocated to the Licensee's Profit Participation Account shall be reserved for distribution to SBA, its designated agent or Trustee, and such amount shall not be available for reinvestment in Small Concerns.

(f) *Distribution of Allocated Profit Participation.* Distribution of allocated Profit Participation shall be made at the same time that profits are distributed to private capital investors either as tax Distributions or as other returns on capital (see § 107.245).

§ 107.245 Distributions

(a) *General.* Distributions shall only be made based on computations and allocations as of the end of a Licensee's fiscal year or fiscal quarter year-to-date. For purpose of this section, Prioritized Payments shall not be considered a Distribution, but Profit Participation shall be considered a Distribution and shall be included in Distributions made to SBA, or its designated agent or Trustee, under paragraphs (b) and/or (c) of this section.

(b) *Distributions for tax purposes.* After all Prioritized Payments have been paid, and subject to the liquidity requirements set forth in § 107.241(f), a Licensee that is operating as a limited partnership or as an "S Corporation" or an equivalent pass-through entity for tax purposes may make an annual distribution from Retained Earnings Available for Distribution to its partners or shareholders in an amount not greater than its Maximum Tax Liability. SBA, or its designated agent or Trustee, shall receive a "tax distribution" equal to its Profit Participation Rate specified in § 107.244(c) times the total tax Distribution. For purposes of this paragraph, the term "Maximum Tax Liability" means the aggregate amount of income allocated to partners or shareholders for Federal income tax purposes with respect to the fiscal year of the Licensee immediately preceding such Distribution, multiplied by the highest combined marginal Federal and State income tax rates for corporations or individuals, whichever is higher, on each type of income included in such return. For purposes of this paragraph, the term "State income tax" means the income tax of the State where the Licensee's principal place of business is located.

(c) *Returns on Capital.* After all Prioritized Payments and tax Distributions permitted under paragraph (b) of this section have been made, and the liquidity requirement set forth in § 107.241(f) has been satisfied, a Licensee which has Participating Securities outstanding or has Earmarked Assets shall make Distributions to its investors, specifically including SBA, or its designated agent or Trustee, as if it were an investor, in the ratios/percentages specified below within 90 days after Licensee's fiscal year end; *Provided, however,* That subject to prior written approval from SBA, a Licensee may withhold from such Distributions reasonable reserves necessary to protect Licensee's investments or relative position in Loans and Investments and to meet contingent liabilities; and *Provided, further,* That such reserves shall not be used to make investments in additional portfolio companies. Such postponement shall not be a payment failure in violation of § 107.262(c)(1). A Licensee may make Distributions pursuant to this paragraph (c) as of the end of any fiscal quarter, subject to the same restrictions as provided in this section. All Distributions under this paragraph to private investors shall be from Retained Earnings Available for Distribution as a return on capital. Distributions of Profit Participation to SBA, its designated agent or Trustee, shall also be from Retained Earnings Available for Distribution. Distributions under this paragraph to SBA, its designated agent or Trustee, which are in excess of the Profit Participation shall be from Retained Earnings Available for Distribution if they are applied to dividends or equivalent distributions on Preferred Securities (as provided in paragraph (c)(5) of this section), but shall be from other than Retained Earnings Available for Distribution if they are applied as a repayment or redemption of Leverage (see paragraph (c)(5) of this section). All Distributions pursuant to this paragraph shall be as follows:

(1) When the amount of Leverage outstanding as of the date of the proposed Distribution is more than 200 percent of Leverageable Capital, Distributions to the private investors and to SBA, its designated agent or Trustee, shall be made in the ratio of Leverageable Capital to Leverage.

(2) When the amount of Leverage outstanding as of the date of the proposed Distribution is more than 100 percent but not more than 200 percent of the amount of Leverageable Capital, Distributions to private investors and to SBA, its designated agent or Trustee, shall be made in a one-to-one (1:1) ratio.

(3) When the amount of Leverage outstanding as of the date of the proposed Distribution is 100 percent, or less, of the amount of Leverageable Capital, SBA's percentage share of such Distribution shall be at the Profit Participation Rate.

(4) SBA may restrict Distributions under this paragraph (c) if SBA determines that the value of Licensee's assets are materially overstated, and SBA provides the Licensee with timely Notice of such determination in advance of the proposed Distribution.

(5) Distributions to SBA, its designated agent or Trustee, under this paragraph (c) shall be applied first to Profit Participation; second, to the extent there remain any Retained Earnings Available for Distribution, to dividends or equivalent distributions on Preferred Securities, third as a redemption of Participating Securities, fourth as a redemption of Preferred Securities, and fifth as the repayment of principal of any outstanding Debentures, such repayment to be made into escrow on terms and conditions determined by SBA.

(d) *Returns of capital.* Notwithstanding § 107.802, after all Earned Prioritized Payments and any additional earned amounts computed pursuant to § 107.243 (c) and (d) and all Profit Participation computed pursuant to § 107.244(e) have been distributed, and provided Licensee does not have a condition of Capital Impairment, a Licensee which has Participating Securities outstanding or has Earmarked Assets may return capital to its investors, specifically including SBA, its designated agent or Trustee, as if it were an investor; but only if the amount of such Distribution does not: (1) Reduce Licensee's Regulatory Capital below the minimum required; or (2)

cause Licensee to have excess Leverage contrary to section 303 of the Act. Any return of capital under this paragraph shall be made to private investors and to SBA in the ratio of Leverageable Capital to Leverage as of the date of the proposed Distribution; *Provided, however,* That if a Licensee is required to compute a Capital Impairment Percentage under § 107.210(h), such ratio shall be modified by replacing Leverageable Capital with the product of Leverageable Capital multiplied by the complement of the Capital Impairment Percentage. As used herein, "complement" means a percentage equal to 100% minus the Capital Impairment Percentage, but not less than zero. Notwithstanding the above, returns of capital shall be subject to the liquidity requirement set forth in § 107.241(f) unless SBA's prior written approval is obtained. Any amounts received by SBA, its designated agent or Trustee, under this paragraph (d) shall be applied to Leverage in the order set forth in paragraph (c)(5) of this section.

(e) *In-Kind Distributions.* A Licensee making a Distribution pursuant to paragraph (c) or (d) of this section may elect to make such Distribution in the form of securities (an In-Kind Distribution) subject to the following conditions:

(1) An In-Kind Distribution may be made only if the specific securities to be distributed are Publicly Traded and Marketable at the time of Distribution.

(2) An In-Kind Distribution may be made only if the Distribution of each security is made to all investors and to SBA, its designated agent or Trustee, pro-rata based on the amounts that would have been distributed to each if such Distributions were in cash.

(3) A Licensee making an In-Kind Distribution shall impute a gain (loss) on the securities being distributed as if such securities were being sold, using the value of such securities as of the declaration date of the planned Distribution in the case of a corporate Licensee, and on the distribution date in the case of an Unincorporated Licensee. Such gain (loss) shall be included in the calculation of Earmarked Profits (Losses) pursuant to § 107.242(e) as if it were realized.

(4) A Licensee making an In-Kind Distribution shall deposit SBA's share of such securities for disposition with the CRA which will select a Disposition Agent. Alternatively, if Licensee agrees, SBA may direct that the Licensee dispose of SBA's share. If Licensee disposes of SBA's share, it shall promptly remit the proceeds to SBA, its designated agent or Trustee. As used in this paragraph, the term *Disposition Agent* means a Person who is knowledgeable about and proficient in the marketing of thinly traded securities.

§ 107.246 Post-redemption obligations.

After all Participating Securities have been redeemed, a Licensee shall have the following obligations:

(a) When a Licensee (1) has Accumulated Prioritized Payments as specified in § 107.243 and (2) has not disposed of all Earmarked Assets as specified in § 107.242(b), Licensee's obligation to distribute such Accumulated Prioritized Payments shall continue and Distributions shall be made, at the end of each fiscal quarter, from Earmarked Profits resulting from the disposition of any such asset (see § 107.243).

(b) After the disposition of all Earmarked Assets, if there remain any Accumulated Prioritized Payments, the obligation to make such payments shall be extinguished.

(c) Notwithstanding § 107.245, from the time of redemption of all Participating Securities and until all Earmarked Assets have been disposed of, Licensee shall not make any In-Kind Distributions of such assets unless it pays to SBA such sums, up to the amount of the Unrealized Appreciation on such assets, as may be necessary to pay in full any Accumulated Prioritized Payments. Prior to making any such distribution of assets which are not Publicly Traded and Marketable, Licensee shall obtain the written approval of SBA, specifically including approval of the valuation of such asset(s).

§ 107.247 Special Rules for Companies Licensed on or Before March 31, 1993.

Companies licensed on or before March 31, 1993 that apply for Participating Securities are subject to the following special rules:

(a) *Election to exclude pre-existing portfolio.* If the proceeds of the Participating Security are not used to refinance outstanding Debentures at the time of its first application for Participating Securities, such Licensee may elect to have its entire portfolio in existence as of March 31, 1993 excluded from classification as Earmarked Assets. Payment or prepayment of any outstanding Debenture shall be presumed to be a refinancing of such Debenture unless Licensee can demonstrate to the satisfaction of SBA that it had financial resources to pay the principal amount due on the Debenture independent of the proceeds of the Participating Securities.

(b) *Non-Election.* If such Licensee does not elect to exclude such assets, they shall be considered Earmarked Assets, and SBA shall receive a Profit Participation on such Earmarked Assets in accordance with conditions specified in § 107.244.

(c) *Refinancing Debentures with Participating Securities.* SBA may permit the proceeds of a Participating Security to be used to pay the principal amount due on outstanding Debentures of such Licensee, provided: (1) Licensee has outstanding Equity Capital Investments in an amount, at cost, equal to the amount of the Debentures being refinanced, and (2) Licensee has not elected to exclude assets from Earmarked Assets.

(d) *Requirements for first issuance of Participating Securities.* Whether or not a company licensed prior to March 31, 1993 elects to exclude its portfolio under paragraph (a) of this section such Licensee's application for a guarantee of its first issuance of Participating Securities shall be subject to the following requirements:

(1) Licensee shall submit a valuation report for each of its Loans and Investments as of the date of the financial statements submitted with its application and as of the end of each of the prior three fiscal years, together with the last annual report (and/or fiscal year-end financial statements) and most recent interim financial statements of each Small Concern.

(2) If Licensee has negative Undistributed Realized Earnings and/or a net Unrealized Loss on Securities Held, SBA may require Licensee to undergo a quasi-reorganization in accordance with generally accepted accounting principles.

(3) If Licensee's financial statements submitted with its application are interim financial statements, Licensee shall have a limited scope audit performed by its SBA-approved independent public accountant. For purposes of this paragraph, "limited scope audit" means auditing procedures sufficient to enable the independent public accountant to express an opinion on the Statement of Financial Position and the accompanying Schedule of Investments.

§ 107.250 Financing by use of SBA Guaranteed Trust Certificates.

(a) *Authority.*—(1) *Full faith and credit.* Sections 321 (a) and (b) of the Act authorize SBA or its CRA to issue TCs, and SBA to guarantee the timely payment of the principal and interest thereon. Any guarantee by SBA of such TC shall be limited to the principal and interest due on the Debentures or the

Redemption Price of and Prioritized Payments on Participating Securities in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts due under the guarantee of any TC.

(2) *Periodic exercise of authority.* SBA shall issue guarantees of Debentures and Participating Securities under section 303 and of TCs under section 321 of the Act at three month intervals, or at shorter intervals, taking into account the amount and number of such guarantees or trust certificates in question.

(3) *Terms and conditions of the TCs.* TCs shall provide for the pass-through to the holders thereof of all amounts of principal and interest paid on the Debentures or the Redemption Price of and Prioritized Payments on the Participating Securities composing the Pool or Trust against which they are issued. SBA shall determine the legal and other terms and conditions of TCs in conjunction with the Secretary of the Treasury and its own statutory authority and such other requirements as may be mandated by law. The interest rate on Debentures or the Prioritized Payment rate on the Participating Securities composing a Trust or Pool shall be determined pursuant to section 303 (b) or (g), respectively, of the Act.

(4) *Section 301(d) subsidy.* Subject to the limits of § 107.203(c), if SBA guarantees Debentures of a section 301(d) Licensee, section 303(d) of the Act requires SBA to make payments to the CRA, or to the holder of any such Debenture, sufficient to reduce the effective rate of interest to such Licensee during the first five years of the term of such Debenture by three percentage points.

(5) *Rights of prepayment of Debentures or early redemption of Participating Securities on a TC.* (i) The rights, if any, of a Licensee to prepay any Debenture or make early redemption of any Participating Security are established by the terms of such securities, and no such right is created or denied by the regulations in this part.

(ii) SBA's rights to purchase or prepay any Debenture without premium are established by the terms of the Guaranty Agreement relating to the Debenture. SBA's rights to redeem, at any time, any Participating Security without premium are established by the terms of the Guaranty Agreement relating to the Participating Securities.

(iii) Any prepayment of a Debenture or early redemption of a Participating Security pursuant to the terms of the Guaranty Agreement relating to such securities, shall reduce the SBA guarantee of timely payment of principal and interest on a TC in proportion to the amount of principal or Redemption Price that such prepaid Debenture or redeemed Participating Security represents in the Trust or Pool backing such TC.

(iv) SBA shall be discharged from its guaranty obligation to the holder or holders of any TC, or any successor or transferee of such holder, to the extent of any such prepayment, whether or not such successor or transferee shall have notice of any such prepayment.

(v) Interest on prepaid Debentures and Prioritized Payments on Participating Securities shall accrue only through the date of such voluntary prepayment or SBA payment, as the case may be.

(vi) In the event that all Debentures or Participating Securities constituting a Trust or Pool are prepaid, the TCs backed by such Trust or Pool shall be redeemed by payment of the unpaid principal and interest on the TCs; *Provided, however,* That in the case of the prepayment of a Debenture pursuant to the provisions of the Guaranty Agreement relating to the Debenture, the CRA shall pass through pro rata to the holders of the TCs any such prepayments including any prepayment penalty paid by the obligor Licensee pursuant to the terms of the Debenture.

(6) *SBA ownership rights.* In the event SBA pays a claim under the guarantee of a TC, it shall be subrogated fully to the rights satisfied by such payment; and no state law, and no Federal law, shall preclude or limit SBA's exercise of its ownership rights acquired by subrogation upon payment under its guarantee.

(7) *Pool or Trust approval.* SBA shall approve the formation of each Pool or Trust.

(8) *Pool or Trust attributes.* SBA may, in its discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, fees, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust it deems appropriate.

(b) *Functions of the CRA.* Pursuant to a contract entered into with SBA, the CRA shall perform the following functions as agent of SBA:

(1) *Issuance of the TCs.* Upon the formation of any Pool or Trust approved by SBA, CRA shall issue TCs, in the form prescribed by SBA, upon the primary sale of Debentures or Participating Securities, and shall issue or effect the transfer of TCs upon the sale of original issue TCs in any secondary market transaction.

(2) *Receipt of amounts due on Debentures and Participating Securities.* CRA shall receive payments from Licensees of amounts due on Debentures and Participating Securities, and amounts paid under voluntary prepayments or prepayments by SBA pursuant to the terms of the relevant Guaranty Agreements.

(3) *Payments of amounts due on TCs.* CRA shall make periodic payments as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures or redemption of Participating Securities.

(4) *Custody of Debentures and Participating Securities and documentation.* CRA shall hold and safeguard all Debentures and Participating Securities constituting Trusts or Pools and shall release, upon instructions of SBA, the Debentures and Participating Securities paid in full at maturity or prepaid in full prior to maturity. CRA shall also be custodian of such other documentation as SBA shall direct by written instructions.

(5) *Registration of Debentures and Participating Securities and TCs.* CRA shall provide for the registration of all pooled Debentures and Participating Securities, all Pools and Trusts, and all TCs. Such registration shall at a minimum include with respect to each sale of Debentures or Participating Securities the identification of the selling Licensee; the interest rate to be paid on the Debentures; the Prioritized Payment rate to be paid on the Participating Securities; commissions, fees, and/or discounts paid to brokers and dealers in TC or others; identification of each purchaser and any subsequent purchaser of any TC; the interest rate on any TC; the price paid by any purchaser for a TC; the fee of the CRA; and such other information as SBA may deem appropriate or that may be customary in the markets for transactions of similar type.

(6) *Fidelity bond or insurance.* Such Agent shall provide a fidelity bond or insurance in such amount as SBA may require to fully protect the interest of the government.

(7) *Other necessary functions.* Such other functions as may be necessary to implement the provisions hereof.

(c) *SBA regulation of disclosure and brokers and dealers*—(1) *Disclosure to purchasers.* Prior to any sale of a Debenture, Participating Security, or TC pursuant to the provisions hereof, SBA shall require the seller, or the broker or dealer as agent for the seller, in the form prescribed or approved by SBA, to disclose specified information on the terms, conditions, and yield of such

instrument to the purchaser of a Debenture, a Participating Security, or a TC.

(2) *Brokers and dealers.* Each broker, dealer, and Pool or Trust assembler approved by SBA or its agent pursuant to these regulations shall be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD), and in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. They shall also be in good standing with SBA as determined by the SBA Associate Administrator for Investment (see paragraph (c)(3)(v) of this section) and shall provide a fidelity bond or insurance in such amount as SBA may require. Nothing herein shall be construed to affect the applicability of the securities laws, as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934, or any of the rules and regulations thereunder, or otherwise supersede or limit the jurisdiction of the Securities and Exchange Commission or the authority at any time conferred under the securities laws.

(3) *Suspension and/or termination of broker or dealer.* SBA shall exclude from the sale and all other dealings in Debentures, Participating Securities or TCs any broker or dealer:

(i) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, such broker or dealer will be suspended by SBA for the duration of such suspension by the supervisory agency.

(ii) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness to participate in the market for Debentures, Participating Securities or TCs, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(iii) When such broker or dealer has suffered an adverse final civil judgment, holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures, Participating Securities or TCs may be terminated.

(iv) When such broker or dealer has failed to make full disclosure of the information required by § 107.250(c)(1) of this part, such broker's or dealer's participation in the market for Debentures, Participating Securities or TCs may be terminated.

(v) Proceedings to terminate such broker's or dealer's participation in the market for Debentures, Participating Securities or TCs shall be conducted in accordance with part 134 of this title. SBA may, for any of the reasons stated above, suspend the privilege of any broker or dealer to participate in this market. SBA shall give written notice at least ten (10) business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to part 134 of this title. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of §§ 134.32(b)(7) and 134.34.

(d) *Access to records.* The CRA and any broker, dealer and Pool or Trust assembler operating under the regulations in this part shall make all books, records and related materials associated with Debentures, Participating Securities and TCs available to SBA for review and copying purposes. Such access shall be at the place of business during normal business hours.

(e) *Selling Debentures, Participating Securities and TCs.* The function of locating purchasers, and negotiating and closing the sale of Debentures, Participating Securities and TCs, may be the function of the SBA or an agent appointed by SBA. Nothing in the regulations in this part shall be interpreted to prevent the CRA from acting as SBA's agent for this purpose.

(f) *Agents.* SBA will appoint or cause to be appointed agent(s) to perform functions necessary to market and service Debentures, Participating Securities, or TCs pursuant to this part.

(1) *Selling Agent.* As a condition of guaranteeing a Debenture or Participating Securities, SBA shall cause each Licensee to appoint a Selling Agent to perform functions which include, but are not limited to:

(i) Selecting qualified entities to become pool or Trust assemblers (herein "Poolers"). Such actions shall be subject to SBA prior written approval and paragraph (c)(2) of this section.

(ii) Receiving guaranteed Debentures and Participating Securities as well as negotiating the terms and conditions of periodic offerings of Debentures and/or TCs with Poolers on behalf of Licensees.

(iii) Directing and coordinating periodic sales of Debentures and Participating Securities and/or TCs.

(iv) Arrange for the production of the Offering Circular, certificates, and such other documents as may be required from time to time.

(2) *Fiscal Agent.* SBA shall appoint a Fiscal Agent to:

(i) Establish performance criteria for Poolers.

(ii) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding Debentures or Participating Securities.

(iii) Monitor the performance of the Selling Agent, Poolers, CRA, and the Trustee.

(iv) Perform such other functions as SBA, from time to time, may prescribe.

§ 107.260 Conditions affecting good standing of Licensees with Leverage.

Licensees with outstanding Debentures and/or Preferred Securities are subject to the provisions of § 107.261. Licensees with outstanding Participating Securities or with Earmarked Assets in their portfolios are subject to the provisions of § 107.262.

§ 107.261 Conditions affecting issuers of Debentures and Preferred Securities.

(a) *Applicability.* The provisions of this section apply to Licensees issuing Debentures and/or Preferred Securities after September 30, 1993. All such Licensees shall be deemed to have agreed to the terms, conditions and remedies set forth in this section, as in effect at the time of such issuance and as if fully set forth in such Debentures or Preferred Securities. Debentures and Preferred Securities issued prior to September 30, 1993, shall be governed by the remedies in effect at the time of their issuance.

(b) *Automatic Events of Default.* (1) Without notice, presentation or demand: (i) The entire indebtedness evidenced by Debentures, including accrued interest, (ii) the Redemption Price of Preferred Securities, together with accumulated and unpaid dividends or equivalent distributions, and (iii) any other amounts owed SBA with respect thereto, shall be immediately due and payable, and Licensee shall be deemed to have consented to the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) of the Act, upon the occurrence of any one or more of the following events:

(2) *Insolvency.* Licensee is equitably or legally insolvent.

(3) *Voluntary assignment.* Licensee makes a voluntary assignment for the benefit of creditors without SBA's prior written approval.

(4) *Bankruptcy.* A petition is filed by Licensee in commencement of any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated

against Licensee and is not dismissed within 60 days.

(c) *Events of Default with notice.* (1) Upon written notice, SBA may declare: (i) The entire indebtedness evidenced by Debentures, including accrued interest, and/or (ii) the Redemption Price of Preferred Securities, together with accumulated and unpaid dividends or equivalent distributions, and/or (iii) any other amounts owed SBA with respect thereto, immediately due and payable, and SBA may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) thereof, upon the occurrence of any one or more of the following events as determined by SBA:

(2) *Fraud.* Licensee commits a fraudulent act which causes detriment to SBA's position as a creditor or guarantor.

(3) *Fraudulent transfers.* Licensee makes any transfer or incurs any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(4) *Willful conflicts of interest.* Licensee willfully violates § 107.903.

(5) *Willful non-compliance.* Licensee willfully violates one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(6) *Repeated Events of Default.* At any time after being notified by SBA of the occurrence of an Event of Default under paragraph (d) of this section, Licensee engages in similar behavior which results in another occurrence of the same Event of Default.

(7) *Failure to make payment.* Unless otherwise approved by SBA, failure by Licensee to make timely payment of any amount due under any security or obligation of Licensee, issued to, held or guaranteed by SBA.

(8) *Transfer of Control.* Licensee violates § 107.104 and/or willfully violates § 107.601, and such violation results in a transfer of Control of Licensee.

(9) *Non-cooperation under § 107.261(e).* A Licensee fails to take appropriate steps, satisfactory to SBA, to accomplish such action as SBA may have required pursuant to paragraph (e) of this section.

(10) *Non-notification of Events of Default.* Licensee fails to notify SBA as soon as it knows or should reasonably have known that any Event of Default exists as set forth in this section.

(11) *Non-notification of defaults to others.* Licensee fails to notify SBA in writing within ten days from the date of a declaration of an event of default or nonperformance by Licensee under any note, debenture or indebtedness of Licensee issued to, or held by, anyone other than SBA.

(d) *Events of Default with opportunity to cure.* (1) Upon written notice by SBA to a Licensee of the existence of one or more of the following Events of Default as determined by SBA, and the provision by SBA of an opportunity to cure such default(s), and only if Licensee fails to cure such default(s) to SBA's satisfaction within the time period provided by SBA, SBA may declare: (i) The entire indebtedness evidenced by Debentures, including accrued interest, and/or (ii) the Redemption Price of Preferred Securities, together with accumulated and unpaid dividends or equivalent distributions, and/or (iii) any other amounts owed SBA with respect thereto, to be immediately due and payable, and SBA may avail itself of any remedy available under the Act, specifically including institution of proceedings for the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) thereof (the terms "*Retained Earnings Available for Distribution*" and "*Provided, however*" used in this section shall have the same meanings assigned to them on SBA Form 468):

(2) *Excessive compensation.* Without the prior written consent of SBA, Licensee increases the aggregate amount it pays for salaries or other compensation of officers, directors, employees, or Investment Advisers/Managers beyond the amount previously approved by SBA.

(3) *Improper Distributions.* Except as permitted under § 107.802, without the prior written consent of SBA, Licensee makes any Distribution to its shareholders or partners other than payments out of *Retained Earnings Available for Distribution* based on either the shareholder' pro-rata interests or the provisions for profit distributions in Licensee's partnership agreement, as appropriate; *Provided, however,* that Licensees issuing Participating Securities may make Distributions under such securities as permitted under §§ 107.243 and 107.245.

(4) *Failure to maintain Regulatory Capital.* Licensee fails to maintain the minimum Regulatory Capital requirement under the Act or, without the prior written consent of SBA, reduces its Regulatory Capital, except as permitted by §§ 107.245 and 107.802.

(5) *Capital Impairment.* Licensee has a condition of Capital Impairment as determined under § 107.210(h).

(6) *Cross-default.* Failure of Licensee to pay any amount when due on any obligation greater than $100,000 or the occurrence of any event or the existence of any condition, the effect of which default or event or condition is to cause or to permit such obligation to become due or to become payable (with or without notice) prior to its stated maturity, unless Licensee pays such amount within any applicable grace period or contests the payment of such obligation in good faith by appropriate proceedings.

(7) *Nonperformance.* Nonperformance or violation by Licensee of one or more of the terms and conditions of any note, Debenture, or Preferred Security, or other obligation of Licensee issued to, held or guaranteed by SBA, or of any agreement with or conditions imposed by SBA in its administration of the Act and the regulations promulgated thereunder.

(8) *Noncompliance.* Except as otherwise provided for in paragraph (c)(5) of this section, failure of Licensee, as determined by SBA, to comply with one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(9) *Failure to maintain investment ratios.* Failure of Licensee to maintain the investment ratios or amounts required for Preferred Securities in excess of 100% of Leverageable Capital (§ 107.230(c)(4)) or Leverage in excess of 300% of Leverageable Capital (§ 107.230(c)(3)), if applicable to such Licensee, as of the end of each fiscal year; *Provided, however,* That the prepayment, sale, or disposition of Qualified Investments or Venture Capital Financing, as appropriate, increases in Leverageable Capital, or the receipt of additional leverage, within 120 days prior to the end of the fiscal year shall be disregarded in determining whether Licensee meets the foregoing requirements as of the close of its fiscal year.

(e) *Repeated non-substantive violations.* If a Licensee repeatedly fails to comply with any one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated thereunder, SBA, after written notification to the Licensee and until such condition is cured to SBA's satisfaction, shall deny additional Leverage to such Licensee and/or require such Licensee to take such actions as SBA may determine to be appropriate under the circumstances.

(f) *Consent to removal of officers, directors, or general partners and/or*

appointment of receiver. The Articles of any Licensee issuing Debentures or Preferred Securities after September 30, 1993, shall include the following provisions as a condition to the purchase or guaranty by SBA of such Leverage. Upon the occurrence or any of the events specified in 13 CFR 107.261(c) (1) through (7) or 107.261(d) (1) and (2) as determined by SBA, SBA shall have the right, and Licensee consents to SBA's exercise of such right: (1) With respect to a Corporate Licensee, upon written notice, to require Licensee to replace, with individuals approved by SBA, one or more of Licensee's officers and/or such number of directors of Licensee's board of directors as is sufficient to constitute a majority of such board, or (2) with respect to an Unincorporated Licensee, upon written notice, to require Licensee to remove the person(s) responsible for such occurrence and/or to remove the general partner of Licensee, which general partner shall then be replaced in accordance with Licensee's Articles by a new general partner approved by SBA, and/or (3) with respect to either a Corporate or Unincorporated Licensee, to the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) of the Act for the purpose of continuing to operate Licensee. The appointment of a receiver to liquidate a Licensee shall not be within such consent and shall be subject to the relevant provisions of the Act.

§ 107.262 Conditions affecting issuers of Participating Securities.

(a) *Applicability.* The conditions of this section apply to Licensees with outstanding Participating Securities or with Earmarked Assets in their portfolios. The Articles of any such Licensee shall include the provisions of this § 107.262 as a condition to the guaranty by SBA of Participating Securities and for so long as the Licensee owns Earmarked Assets.

(b) *Consent to removal of officers, directors, or general partners, and/or appointment of receiver.* (1) Upon the occurrence of any of the following conditions as determined by SBA, SBA shall have the right, and Licensee consents to SBA's exercise of such right: (i) With respect to a Corporate Licensee, upon written notice, to require Licensee to replace, with individuals approved by SBA, one or more of Licensee's officers and/or such number of directors of Licensee's board of directors as is sufficient to constitute a majority of such board, or (ii) with respect to an Unincorporated Licensee, upon written notice, to require Licensee to remove the person(s) responsible for such occurrence and/or to remove the general partner of Licensee, which general partner shall then be replaced in accordance with Licensee's Articles by a new general partner approved by SBA, and/or (iii) with respect to either a Corporate or Unincorporated Licensee, to the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) of the Act for the purpose of continuing to operate Licensee. The appointment of a receiver to liquidate a Licensee shall not be within such consent and shall be subject to all of the provisions of the Act.

(2) *Insolvency.* Licensee is equitably or legally insolvent.

(3) *Voluntary assignment.* Licensee makes a voluntary assignment for the benefit of creditors.

(4) *Bankruptcy.* The Licensee commences any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against Licensee and is not dismissed within 60 days.

(5) *Transfer of Control.* Licensee violates § 107.104 and/or willfully violates § 107.601, and such violation results in a transfer of Control of Licensee.

(6) *Fraud.* Licensee commits a fraudulent act which causes serious detriment to SBA's position as a guarantor.

(7) *Fraudulent transfers.* Licensee makes any transfer or incurs any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(c) *Failure to remove.* (1) Upon the occurrence of any of the following conditions as determined by SBA, and only if Licensee fails to remove the person(s) SBA identifies as responsible for such occurrence and/or cure such occurrence to SBA's satisfaction within a time period determined by SBA, SBA shall have the right, and Licensee consents to SBA's exercise of such right: (i) With respect to a Corporate Licensee, upon written notice, to replace one or more of Licensee's officers and/or such number of directors of Licensee's board of directors as is sufficient to constitute a majority of such board, or (ii) with respect to an Unincorporated Licensee, upon written notice, to require Licensee to remove the person(s) responsible for such occurrence and/or to remove the general partner of Licensee, which general partner shall then be replaced in accordance with Licensee's Articles by a new general partner approved by SBA, and/or (iii) with respect to either a Corporate or Unincorporated Licensee, to the appointment of SBA or its designee as receiver of Licensee pursuant to section 311(c) of the Act for the purpose of continuing to operate Licensee. The appointment of a receiver to liquidate a Licensee shall not be within such consent and shall be subject to the relevant provisions of the Act.

(1) *Willful conflicts of interest.* Licensee willfully violates § 107.903.

(2) *Willful or repeated noncompliance.* Licensee willfully or repeatedly violates one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(3) *Failure to comply with restrictions under § 107.262(d).* Licensee fails to comply with the restrictions imposed by SBA under paragraph (d) of this section.

(d) *Consent to restricted operations.* (1) Upon the occurrence of any of the conditions set forth in this paragraph (d) as determined by SBA, and until such condition(s) are cured to SBA's satisfaction within a time period determined by SBA, SBA shall have the right, and Licensee consents to SBA's exercise of such right, upon written notice, to (i) Prohibit Licensee from making any additional investments except for: (A) Investments pursuant to legally binding commitments entered into by Licensee prior to such notice and (B) subject to SBA's prior written approval, investments that are necessary to protect Licensee's investment, (ii) until all Leverage is redeemed and amounts due are paid, prohibit Distributions by the Licensee to any party other than SBA, its agent or Trustee, and (iii) require all commitments to Licensee from Institutional Investors to be funded at the earliest time(s) permitted in accordance with Licensee's Articles:

(2) *Removal Conditions.* Any condition listed in paragraphs (b) or (c) of this section.

(3) *Failure to maintain Regulatory Capital.* Licensee fails to maintain the minimum Regulatory Capital as required by § 107.101(d).

(4) *Capital or Liquidity Impairment.* Licensee has a condition of Capital Impairment as determined under § 107.210(h) or a condition of Liquidity Impairment as determined under § 107.241(f) and fails to cure the impairment within time limits set by SBA in writing.

(5) *Improper Distributions.* A Licensee makes any Distribution to its shareholders or partners other than those permitted by §§ 107.245 and 107.802.

(6) *Excessive Management Expenses.* Without the prior written consent of SBA, Licensee incurs Management

Expenses in excess of those permitted under § 107.241(d).

(7) *Failure to make payment.* Failure of Licensee to make payment of any amount required by §§ 107.240 through 107.247 unless otherwise permitted by SBA.

(8) *Noncompliance.* Except as otherwise provided for in paragraphs (c)(1) and (c)(2) of this section, failure of the Licensee, as determined by SBA, to comply with one or more of the substantive provisions of the Act, specifically including but not limited to the provisions summarized in section 310(c) of the Act, or any substantive regulation promulgated under the Act.

(9) *Failure to maintain diversity.* Licensee fails to maintain diversity between management and ownership as required by § 107.241(c).

(10) *Failure to maintain investment ratios.* Failure of Licensee to maintain the investment ratios or amounts required for Participating Securities (§ 107.241(b)) or Leverage in excess of 300% of Leverageable Capital (§ 107.230(c)(3)), if applicable to such Licensee, as of the end of each fiscal year; *Provided, however,* that the prepayment, sale, or disposition of Equity Capital Investments or Venture Capital Financing, as appropriate, increases in Leverageable Capital, or the receipt of additional Leverage, within 120 days prior to the end of the fiscal year shall be disregarded in determining whether Licensee meets the foregoing requirements as of the close of its fiscal year.

(11) *Nonperformance.* Nonperformance or violation by Licensee of one or more of the terms and conditions of any Participating Security or of any agreement with or conditions imposed by SBA in its administration of the Act and the regulations promulgated thereunder.

(12) *Noncooperation under § 107.262(e).* Licensee fails to take appropriate steps, satisfactory to SBA, to accomplish such action as SBA may have required pursuant to paragraph (e) of this section.

(e) *Repeated non-substantive violations.* If a Licensee repeated fails to comply with any one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated thereunder, SBA, after written notification to the Licensee and until such condition is cured to SBA's satisfaction, shall deny additional Leverage to such Licensee and/or require such Licensee to take such actions as SBA may determine to be appropriate under the circumstances.

§ 107.263 Non-waiver.

No failure to SBA to exercise and no delay in exercising any right or remedy under the Act or the regulations in this section shall operate as a waiver thereof. Any failure of SBA at any time to require the performance by Licensee of any one or more of the terms or provisions of any debt instrument, Preferred or Participating Security of Licensee issued to, held, or guaranteed by SBA shall in no way affect SBA's right to enforce the same, nor shall SBA's waiver of, or failure to enforce, any term or provision of any debt instrument, Preferred, or Participating Security of Licensee issued to, held, or guaranteed by SBA or of any event or condition set forth in §§ 107.261 or 107.262 be taken or held to be a waiver of any suceeding breach of any such term or provision or condition.

6. Section 107.901 is proposed to be amended by revising the first sentence of paragraph (a) to read as follows:

§ 107.901 Prohibited use of funds.

* * * * *

(a) *Relending, reinvesting, etc.* For relending or reinvesting, if its primary business activity involves, directly or indirectly, providing funds to others, the purchase of debt obligations, factoring or long-term leasing of equipment with no provision for maintenance or repair; *Provided, however,* that Venture Capital Financings (as defined in § 107.230(c)(3)) of a Disadvantaged Concern engaged primarily in relending or reinvesting activities shall be permitted, except for banks and savings and loan associations not insured by agencies of the Federal Government, and agricultural credit companies.

* * *

* * * * *

7. Section 107.906 is proposed to be amended by revising paragraph (a) to read as follows:

§ 107.906 Violations based on false filings and nonperformance of agreements with SBA.

* * * * *

(a) *Nonperformance.* Nonperformance of any of the requirements of any Debenture, Participating Security or Preferred Security issued to, held or guaranteed by SBA, or any written agreement with SBA.

* * * * *

8. Section 107.1004 is proposed to be amended by revising the first sentence of paragraph (a) to read as follows:

§ 107.1004 Reporting changes not subject to prior SBA approval.

(a) *Changes to be reported.* Any change of Licensee's name, address, telephone number, officers, directors, or other participants in the management of Licensee, articles, operating area, investment policy, or increase in capitalization not otherwise required to be submitted for prior approval (see, for example, § 107.601) shall be reported to SBA not later than thirty days after these events. * * *

* * * * * * * *

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: June 5, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–18362 Filed 8–4–93; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Small Business Investment Companies; Definitions of Various Terms

AGENCY: Small Business Administration.

ACTION: Proposed rule.

In the matter of Small Business Investment Companies; Definitions of Alter Ego Concern, Commitment, Common Control, Control, Control Person, Cost of Money, Institutional Investor, Leverageable Capital, Operating Small Concern, Private Capital, and Regulatory Capital; Limited partnership SBICs; Fees and Interest Charges by SBICs; Operational Requirements; Overlines; Verification of eligibility and use of funds; Economic Impact; Other Permissible Financings; Issuance of Licensee securities; Idle Funds investments; Financing changes of ownership; Conforming amendment; Prohibited Uses of Funds; Valuation guidelines.

SUMMARY: Title IV of the "Small Business Investment Act of 1992 (September 4, 1992)" made a number of changes to the Small Business Investment Act of 1958, as amended (the Act). Several changes which are set forth in a separate rule published elsewhere in this issue of the **Federal Register** affect financial assistance provided by the Small Business Administration (SBA) to Small Business Investment companies (SBICs) that are licensed and regulated by SBA. Title IV also made changes that affect the eligibility and operations of Licensees. This proposed rule would implement these statutorily mandated eligibility and operational changes, and it would

also make other changes many of which relate to the statutory changes.

DATES: Written comments on this proposed rule must be received no later than October 4, 1993.

ADDRESSES: Written comments should be sent to: Wayne S. Foren, Associate Administrator for Investment; Small Business Administration; suite 6300; 409 3rd Street, SW.; Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Marvin D. Klapp, Director, Office of Program Development; telephone (202) 205–6515.

SUPPLEMENTARY INFORMATION:

Common Control

On May 10, 1991 SBA published a proposed rule (56 FR 21639) implementing the amendment made to section 303(b)(1) of the Small Business Investment Act (the Act) by section 215(a)(1) of Public Law 101–574, forbidding SBA to guarantee the debentures of any Licensee if, as a result thereof, the aggregate outstanding amount of SBA-guaranteed debentures issued by such Licensee and any other Licensee or Licensees under common control therewith would exceed $35 million. By the terms of section 402 of Public Law 102–366 (September 4, 1992) the $35 million debenture leverage ceiling was superseded by a $90 million ceiling on the aggregate amount of Leverage of all forms that might be outstanding in any Licensee or Licensees under common control, "unless the Administration determines on a case by case basis to permit a higher amount for companies under common control and imposes such additional terms and conditions as it determines appropriate to minimize the risk of loss to the Administration in the event of default."

SBA does not believe that Congress intended the words "commonly controlled" to mean only "commonly owned", since there are many different methods of control other than mere ownership of record. Rather, SBA believes that Congress intended both to limit the dollar amount of leverage available to a single group of investors, and to limit the dollar amount for which SBA would be at risk as a result of the business judgment of a single management group, even though the managers are not the owners. Consequently, the intention of this regulation is that two or more Licensees will be presumed to be "commonly controlled" if there is an affiliate relationship between or among them, which could be based upon ownership of stock or partnership capital of the Licensees, or upon management by affiliated persons or entities, even if there is no affiliation between or among the owners of the Licensees. The presumption that two or more Licensees are "commonly controlled" is not precluded solely because of the absence of any affiliation between or among their respective owners, or any interlock of their respective officers and/or directors, or general partners or Control Persons. Licensees shall be presumed to be "commonly controlled" under the terms of the proposed rule if day-to-day management is contracted out to a single entity, or to two or more affiliated entities.

This regulation substitutes a rebuttable presumption of common control for the conclusive presumption contemplated in the withdrawn proposed rule. Specifically, proof of common ownership need not compel the conclusion of common control if it can be satisfactorily demonstrated to SBA that, for example, two or more Licensees under common ownership operate under entirely different management teams, are located in different regions, and pursue different investment plans. On the other hand, the presumption of common control would not be rebutted by a showing that two or more Licensees are separately owned, and each has a separate Board of Directors or General Partner, if it also appeared that each Board or General Partner had effectively delegated operational control to a common adviser/manager.

Since SBA is not aware of any groups of Licensees under common control that presently have outstanding Leverage in any amount close to $90 million, much less in excess of $90 million, there is no need at this time to address the question of any phase-in of the ceiling. It should be understood that SBA has no statutory authority to extend any form of Leverage to any Licensee if the aggregate amount of Leverage of all kinds outstanding from that Licensee and the others under common control with it would thereby exceed $90,000,000 "unless [SBA] determines on a case by case basis to permit a higher amount for companies under common control and imposes such additional terms and conditions as it determines appropriate to minimize the risk of loss to the Administration in the event of default."

Cost of Money

Section 411 of Public Law 102–366 directs SBA to allow Licensees that have issued debentures with SBA's guarantee, or have issued their debentures to SBA, to charge a maximum rate of interest that also reflects "such other expenses of the company as may be approved by the Administration." Sharing Congress's concern for the general level of profitability of the SBIC industry, SBA proposes three regulatory changes. The first of these is an amendment of the definition of "Cost of Money" (COM) that would allow Licensees to impose upon Small Concerns certain fees and charges that will be excluded from the computation of COM. Other changes are proposed in the wording of §§ 107.302 and 107.402 and will be addressed hereafter. At this point, discussion is primarily directed to the proposed new definition of COM, as set forth in § 107.3.

The general rule now embodied in the definition of COM is that everything that a Small Concern and/or its affiliates is required to pay to a Licensee and/or the Licensee's Associates, regardless of the label that may be applied to any particular payment, is to be included as an element of the Small Concern's COM unless the payment in question falls within a specific exemption.

However, subject to the foregoing general rule that SBA does not propose to change, Licensees are nevertheless authorized to charge certain additional fees that are not considered part of COM. For example, reasonable prepayment penalties imposed pursuant to § 107.301(a) and fees for management services imposed pursuant to § 107.501 are now, and would continue to be, excluded from the computation of COM.

The present definition also excludes commitment fees imposed pursuant to § 107.402 from the computation of COM, but SBA proposes to eliminate the present exclusion of commitment fees and, instead, permit Licensees to charge a processing fee, in no event to exceed 3 percent of the requested amount of Financing; and to collect this fee, in full or in part, before processing the Small Concern's application. SBA intends to allow a Licensee to charge interest at the maximum permissible rate, and to collect a processing fee, not to exceed 3 percent of the amount of the Financing, in addition. If the Financing closes, the Licensee may collect or retain the full amount of the processing fee, even if no commitment was extended, and no part of this fee will be included in the computation of COM. On the other hand, if the Licensee has collected a processing fee equal to 3 percent of the requested Financing, any additional fee, whether based on the extension of a commitment, or otherwise, will be included in computation of COM.

Although the proposed regulatory changes would permit a Licensee to require a processing fee before

processing an application for Financing, SBA proposes to amend § 107.402 to make it clear that it is not intended that any Licensee will derive a profit from a rejected application. In such a case, the Licensee must return the entire amount of any processing fee collected in excess of certain specified out-of-pocket costs. See the proposed amendments to § 107.402. If the application is rejected, the Small Concern will have no obligation to reimburse the Licensee for any additional expenses the Licensee may have incurred, even if the Licensee has previously charged a smaller advance processing fee than it might have charged, or no processing fee at all.

If the Licensee does provide Financing, the Small Concern may also be required to reimburse the Licensee for out-of-pocket conveyance and/or recordation fees and taxes; and reasonable closing costs. Such reimbursement, which may be required in addition to the processing fee, is also not to be included in the computation of COM.

The proposed definition of COM would also allow Licensees to impose upon Small Concerns three other charges, in addition to presently-excluded charges, that would be excluded from the computation of COM.

By agreement with a Small Concern, a Licensee may receive a reasonable fee for its efforts in arranging Financing from non-SBIC non-Associate sources, and the amount of such fee, whether or not the Licensee itself participates in Financing, is excluded from the computation of COM.

A Licensee may require the Small Concern to reimburse it for the reasonable and necessary costs incurred by the Licensee in monitoring the Financing, and the amount of such reimbursement is excluded from computation of COM.

A Licensee that has a "watchdog" director serving on the board of a Small Concern pursuant to § 107.903(f) may receive reasonable director's fees, not in excess of those paid to outside directors; and such fees are not to be included in computing COM.

Finally, the language presently found in the definition of COM that requires a Licensee, in the event of prepayment under certain circumstances, to refund unearned front-end charges has been moved to proposed § 107.402(f), and will be discussed hereafter.

Private Capital

Section 410 of Public Law 102–366 added a definition of "private capital" to the Act that, among other things, requires SBA to recognize "unfunded commitments from Institutional Inventors that meet criteria established by the Administration" as part of a Licensee's Private Capital for certain purposes. Accordingly, SBA proposes to adopt a definition of "Institutional Investor". It is not SBA's intention to exclude any particular category of qualified investor, and there is a catch-all clause at the end that brings "any other entity that SBA shall determine to be an Institutional Investor" within the proposed definition's scope. SBA's recognition of an unfunded commitment from any entity that falls under the proposed definition of Institutional Investor will depend upon whether the entity in question is subject to meaningful State or Federal regulation that is intended to insure its solvency, or has a net worth in excess of $10,000,000, or an acceptable guarantee or letter of credit behind its unfunded commitment, or is an investing agent for any of the foregoing classes of investors. See also the discussion, below, of Private Capital.

Public Law 102–366 includes two provisions that significantly affect the definition of "Private Capital" as presently set forth in § 107.3.

Section 410 of Public Law 102–366, the first of these two provisions, adds a statutory definition of "private capital" that, among other things, recognizes funds invested in a Licensee or applicant by a pension fund as private capital, without regard to whether the fund is a public or private fund. Section 410 also requires SBA to recognize as private capital funds invested in a Licensee by any State or local governmental entity, but only to the extent that such investment does not exceed 33 percent of the total private capital of the Licensee or applicant "and otherwise meets criteria established by the Administration". Finally, section 410 recognizes unfunded commitments from an institutional investor as a part of private capital, but only for regulatory purposes, and not for purposes of either meeting the minimum capital requirement, or for leverage eligibility.

Section 413 of Public Law 102–366 is the second provision that affects the definition of private capital. Its language is reflected in the proposed definition that will be discussed in detail hereafter.

Generally speaking, "Private Capital" is the sum of private funds, as the term is ordinarily understood (subject to one exception hereafter discussed), plus "qualified nonprivate funds" which is a term explained with four clauses that define "qualified nonprivate funds". However, there are really only three categories of funds involved: Federal funds, State and local government funds, and funds granted to nonprofit corporations or other institutions. Money invested by any pension fund is considered private funds, even if the beneficiaries are State or local government employees, and the fund is managed by another governmental agency or instrumentality. On the other hand, if private investors capitalize a Licensee on the inducement of a guarantee against loss issued by a State or local governmental entity, their investment, to the extent of the guaranteed amount, will be considered qualified nonprivate funds invested directly by the guarantor.

There are only two subclasses of Federal funds that may be hereafter included in any Licensee's Private Capital if this proposed rule is adopted without change: Federal funds that SBA has already recognized as a part of a Licensee's Private Capital under the present definition, and Federal funds that Congress may, by an explicit statutory commandment, hereafter direct SBA to recognize as a part of a Licensee's Private Capital.

Despite the explicit statutory exclusion of funds derived directly or indirectly from Federal sources from private capital, SBA does not believe that Congress intended to affect any present Licensee whose Private Capital includes direct or indirect Federal funds that were previously recognized by SBA. Since September 30, 1983 SBA has recognized only direct or indirect Federal funds that were invested or committed on or before August 16, 1982. SBA also regards the introductory words of the statutory definition, "notwithstanding any other provision of law" and the statutory definition's explicit and general exclusion of Federal funds from private capital as an implicit repeal of any present laws that may direct SBA to recognize Federal funds as a part of private capital.

On the other hand, the proposed definition also recognizes the possibility that Congress may hereafter require SBA to recognize certain Federal funds as private capital.

The Private Capital status of State or local funds invested in a Licensee is more complex because the proposed regulation reflects the reconciliation of two apparently conflicting statutory provisions. In relevant part, the statutory definition of "private capital" speaks of "any funds invested in the licensee by State or local government entities, to the extent that such investment does not exceed 33 percent of a licensee's total private capital * * *". This language is located at the end of paragraph (c) of the proposed definition, which applies generally to

all money that goes into any Licensee and originates with a State or local governmental entity, regardless of the number of bank accounts or intervening entities through which the money may pass on the way to the Licensee. SBA does not believe Congress intended that the 33 percent limitation that it imposed on the percentage of State or local money in the private capital of a Licensee should be easily evaded by routing additional money through one or more conduits.

The new definition of "private capital" that was added to the Small Business Investment Act is not, however, Congress's last word on the subject. That last word is to be found in section 303(e) of the Act, as amended by section 413(2) of Public Law 102–366. As amended, section 303(e) sets forth an exception to the general rule governing the status of State or local funds invested in a Licensee. This exception applies only when two conditions, both explicitly stated in the Act, as amended, are satisfied: (1) The Licensee (or applicant) is a section 301(d) company (SSBIC); and (2) the money must be "capital indirectly obtained". Congress defined "capital indirectly obtained" in terms of illustration rather than terms of limitation, but from these illustrations SBA has concluded that "capital indirectly obtained" means money derived from the investment of State or local government money, regardless of whether the investing entity is a State or local government financing agency that "invests" by making loans, a State or local government that invests in securities as a passive investor, or a private nonprofit corporation that invests grant funds received from a State or local government. SBA does not propose to treat grant funds themselves as "capital indirectly obtained". The principal amount of any State or local government grant funds routed through a nonprofit corporation would be considered funds invested by a State or local government entity, and subject to the 33 percent limitation applicable to such funds. SBA does not regard the language of section 303(e) of the Act, as amended, as a manifestation of Congressional intent to require SBA to license an SSBIC applicant capitalized entirely with "capital indirectly obtained." Such an interpretation would be inconsistent with section 302(c) of the Act authorizing SBA to limit the "aggregate amount of shares in any [Licensee] which may be owned or controlled by any stockholder, or by any group or class of stockholders * * *". Accordingly, SBA is required to fix a 33 percent limit on the percentage of any applicant's or Licensee's Private Capital that may consist of funds invested by any State or local government entity. In the case of a section 301(d) Licensee or applicant, however, Private Capital may also include "capital indirectly obtained" from a State or local government entity, or private non-profit entity, provided the aggregate of such indirect funds and other State and local government funds does not exceed 40 percent of Private Capital.

Section 301(b) of the Act requires SBA to make a positive determination as to the probability of successful operation by any applicant before it may issue a license, specifically considering the applicant's prospects of "adequate profitability". There is substantial doubt as to the prospective profitability of an applicant that does not have at least 60 percent of its capital contributed by investors whose primary motivation is profit. SBA believes that it is essential that the majority of ownership and that control of a Licensee be vested in the private sector investors.

On the other hand, the proposed definition of Private Capital is not intended to preclude nonprofit entities from investing in Licensees. Funds of unquestionably private (non-Government) origin are private funds, not "qualified nonprivate funds" and there is no reason why a nonprofit entity may not use such funds to capitalize a Licensee, even a wholly-owned Licensee.

The proposed definition of Private Capital includes the contribution non-cash assets which represents a change in policy on SBA's part. SBA's present position, though not explicitly stated in the regulations, is that a Licensee may, without prior SBA approval, accept donations (gifts) of non-cash assets and other physical assets to be used in the Licensee's operations so long as the Licensee assumes no liabilities in connection with such assets, or does not, as owner of donated securities, become involved in the active conduct of a business through a controlled subsidiary; but while these donated assets will, of course, be regarded as assets they will not be recognized as part of Private Capital until, and only to the extent they are, reduced to cash. Moreover, a Licensee was considered to have no investment to protect in donated assets.

SBA proposes to change the above-described policy in two respects: (1) SBA's prior written consent will now be required before a Licensee may accept non-cash assets; and (2) given SBA's consent to accept such assets, a Licensee may issue its securities in exchange for them; § 107.705 is proposed to be amended to conform with this change in policy. Despite these changes, it should be clearly understood that these non-cash assets will still not be recognized as Regulatory Capital until they are converted to cash, and even a Licensee that issues its securities in exchange for non-cash assets (securities) will not be considered to have any investment to protect within the meanings of §§ 107.403, 107.706, and 107.801.

Along with the proposed definition of Private Capital, SBA proposes a definition for "Regulatory Capital". This definition would not replace the present paragraph (d) of Private Capital regarding "compliance." Both the present and the proposed paragraphs deal with assets that represent contributed capital but that SBA does not consider part of Private Capital as a general rule; however, they will be treated for certain limited purposes of regulatory compliance as if they were part of Private Capital. The only change of substance is the statutorily-mandated addition of certain unfunded binding commitments on the part of an Institutional Investor to purchase stock or limited partnership interests in, or to make capital contributions to, a Licensee. An unfunded commitment of an Institutional Investor will be recognized as regulatory capital only to the extent that SBA is satisfied that the investor in question is actually able to fund the commitment.

The present definition of Private Capital also includes a paragraph (c) captioned "Leverage eligibility". SBA proposes to adopt, instead, a definition for "Leverageable capital". The change is purely editorial. Nothing will be added to the category of "Leverageable capital" that is not now included, and nothing eliminated. The categories of Federal funds listed as part of Private Capital for leverage eligibility purposes are intended to be covered under the category of "Qualified nonprivate funds" in paragraph (c) of the proposed definition of Private Capital.

Limited Partnerships

The requirement presently set forth in § 107.4(b)(3)(i) that a limited partnership applying to become a Licensee "have a duration of not less than thirty years" is inconsistent with the Small Business Investment Act (Act), as amended by Public Law 100–590. In practice, SBA has not required a thirty-year term for applicant limited partnerships since the statutory amendment, mandating a minimum term of only ten years, became effective. SBA now proposes to amend the rule to provide, instead, for a minimum term that is the longer of ten years or two

years following the maturity date of the last-maturing security issued by such Licensee as evidence of the extension of Leverage by SBA. As a result of the enactment of Pub. L. 102–366 Leverage may be extended by SBA through guarantees of debentures and/or participating securities; and, in the case of limited partnerships licensed under section 301(d) of the Act (SSBICs), also by SBA's purchase of preferred limited partnership interests.

SBA anticipates that a substantial number of license applications will be filed by limited partnerships that wish to take eventual advantage of leverage in the form of 4-percent preferred limited partnership interest (available only to SSBICs) and/or participating securities (available to companies licensed under both sections 302 (c) and (d) of the Act). Preferred limited partnership interests have a statutorily-fixed term of fifteen years. It is anticipated that participating securities will be redeemable not later than ten years from the date of issuance.

As a matter of financial prudence, SBA does not believe that any partner should be in a position to force the liquidation of the partnership so long as any preferred limited partnership interests or participating securities, or debentures held or guaranteed by SBA are outstanding. SBA believes that the orderly liquidation of a Licensee that has obtained leverage from SBA should take approximately two years following maturity of the last-maturing obligations of the Licensee. The minimum term of any limited partnership must be at least ten years, but the maximum length of the partnership's term will depend primarily upon decisions made by the partners. If, in the Year 3 of the partnership, the partnership sells a preferred partnership interest to SBA, the minimum term of the partnership would be extended to Year 20 (the second anniversary of the maturity of the preferred partnership interest).

Accordingly, SBA proposes a new minimum term for any limited partnership applying for an SBIC or SSBIC license after the effective date of a final rule based on this proposal. Section 107.4 is also proposed to be amended to permit Unincorporated Licensees to have as their general partner limited partnerships and limited liability companies as well as inidviduals, general partnerships and corporations which presently are permitted. This change is proposed to bring the SBIC program into conformity with the general practice of the venture capital industry.

Operational Requirements

SBA proposes to amend § 107.101 regarding operational requirements in order both to increase the chances of successful operation on the part of Licensees, and to minimize SBA's exposure to loss.

A company that applies for a license, or a Licensee that applies for leverage, must demonstrate to SBA that its management has something more than general business experience. Such applicant or Licensee must show that management has experience making the types of loans or investments in Small Concerns of the sizes and types contemplated in the Licensee's Plan of Operations.

SBA's experience has shown that companies entering the SBIC program with only the minimum amount of capital have little chance of carrying on the "successful operations" and achieving the "adequate profitability" required by section 301(c) of the Act. Accordingly, every applicant will be required to have sufficient capital in excess of the minimum to operate soundly and profitably within the context of its Plan of Operations without reliance upon increases in Leverage from SBA. That is, the prospective Licensee must have sufficient capital so that it will be able to pay its expenses without reliance on additional Leverage from SBA and without dissipating its Private Capital.

SBA's experience has also shown that the portfolio valuation process is a weakness of some Licensees. Accordingly, SBA intends to improve the process and the valuation standards. All Licensees would be required to adopt guidelines for the valuation of their portfolio investments, to evaluate portfolio investments in accordance with such guidelines, and to report such evaluations to SBA. SBA also proposes to add appendix III to part 107 that would set forth the basis upon which valuation guidelines should be framed. SBA's Policy and Procedural Release No. 2006, Valuation Guide, is proposed to be adopted as appendix III, with certain minor changes. See proposed § 107.101(g) and proposed appendix III to part 107.

With the widespread use of computers in virtually all businesses, SBA is in the process of developing systems to enable SBICs to perform their reporting requirements through electronic transmission from the most commonly used types of personal computers. SBA will provide SBICs with custom software that will enable SBICs to perform their reporting tasks more easily, more accurately, and more quickly. To this end, SBA is requiring all SBICs to have personal computers that can run SBA software by December 31, 1993, and to have the capability to perform this reporting function.

Calculation of Cost of Money Ceiling

Reference has already been made to the Administrative and Congressional concern over the profitability of the SBIC industry. Section 411 of Public Law 102–366 directs SBA to permit Licensees that have outstanding debentures to "charge a maximum rate of interest based upon the coupon rate of interest on the outstanding debentures, determined on an annual basis."

At this time, the maximum permissible rate of interest that any Licensee may impose upon any Small Concern is calculated with reference to the rate of interest on the SBA-guaranteed debentures underlying the most recent offering of trust certificates to the public. While the existing rule facilitates the determination of a uniform ceiling throughout the industry, it ignores the actual interest expense on the debenture leverage drawn down by any individual Licensee.

SBA therefore proposes to amend § 107.302 to allow Licensees that have been leveraged through the sale of debentures to use their own weighted average cost of funds borrowed from SBA, or with SBA's guarantee, as the case may be, as an alternative basis for calculating their respective interest rate ceilings. Although companies licensed under section 301(d) of the Act that sell debentures to SBA (or to the public with SBA's guarantee) may enjoy the benefits of a subsidized interest rate for the first five years of the debenture's term, this subsidy may be disregarded in the calculation of the alternative interest rate ceiling SBA proposes to create. On the other hand, Licensees that have sold Preferred Securities (stock or limited partnership interests) or Participating Securities may not include dividends or distributions on such securities in the calculation of their alternative interest rate ceilings.

If SBA adopts this proposal authorizing an alternative method of calculating maximum permissible interest, SBA's intention is to make this alternative method available as soon as possible to any Licensee that wishes to use it. Such Licensee need not wait until the close of its fiscal year following adoption of this proposed regulation. Such Licensee may promptly certify its weighted average cost of leverage to SBA as if this regulation had been in effect prior to the close of the Licensee's preceding fiscal year; and

solely for the purposes of determining whether the notification is timely within the meaning of § 107.302(f), SBA will regard the effective date of this rule as the closing date of the Licensee's fiscal year. In other words, if the Licensee's fiscal year ends on December 31, and this rule is adopted as final on the following July 1, a Licensee may certify a weighted average cost of leverage based on the fiscal year that closed on the preceding December 31, and the required notification to SBA will be considered timely if made within 15 days after July 1. It should be clearly understood that the interest rate ceiling based on the Debenture Rate remains the only permissible ceiling applicable to Loans or Debt Security Financing committed or disbursed prior to the certification of the Licensee's weighted average cost of leverage.

However, while SBA and Congress are both concerned about low profitability generally in the SBIC industry, SBA is concerned that some Licensees may be imposing excessive costs of money upon their borrowers far in excess of anything contemplated by the Act or the regulations. Accordingly, SBA proposes to adopt a new rule that would limit both the amount of default penalty that a Licensee may impose, and the justification for its imposition. The proposed rule would allow a default penalty to be imposed only if the Small Concern fails to make payment in accordance with the terms of its obligation; and the default rate of interest may not exceed the maximum permitted rate at the time of default. In other words, if the rate of interest on the loan is 15 percent at the time of default, and the interest rate ceiling is 17 percent at that time, the interest may be adjusted upwards by 2% and the maximum permissible rate of interest on the defaulting borrower's loan would be 17 percent.

Regulatory Relief for Unleveraged Licensees

Section 408 of Public Law 102–366 directs SBA to review, and revise, those regulations "intended to provide for the safety and soundness of leveraged Licensees with a view toward exempting unleveraged Licensees from compliance therewith, or promulgating different rules for unleveraged Licensees." Accordingly, SBA proposes to exempt unleveraged Licensees from compliance with § 107.303 (overline limitation) and with § 107.708 (idle funds).

SBA proposes to amend § 107.708 to clarify its position with respect to a Licensee's deposit of idle funds in an Associate bank. SBA's position has always been that such a deposit does not constitute the Financing of an Associate unless the Licensee is receiving a lower interest rate than the Associate gives the public. In the case of an unleveraged Licensee, SBA will not consider the deposit of funds with an Associate bank to constitute self-dealing, even if the Licensee accepts a lower interest rate than the Associate gives the public.

SBA does not intend that any Licensee shall simultaneously be leveraged and exempted from compliance with the above-cited regulations, or with any other regulations that may hereafter be made inapplicable to unleveraged Licensees. Accordingly, no Leverage is to be made available to any unleveraged Licensee that is not, at the time of the request for Leverage, in compliance with regulations applicable to leveraged Licensees.

Verification of Use of Proceeds

SBA has encountered situations in which it would appear either (a) that once it had verified the value of this collateral, the Licensee felt no responsibility to assure that funds were used for intended purposes, or (b) that the principals of the borrower have misrepresented the nature of their present or projected business operations and then diverted loan proceeds away from the use that the Licensee indicated on the Portfolio Financing Report (SBA Form 1031) that it filed with SBA.

SBA proposes to add a § 107.305 to make it quite clear SBA expects every Licensee to look upon the representations that any applicant for Financing may make with respect to its eligibility, including the intended use of funds, as material and no less significant than the representations the applicant may make concerning its cash flow and collateral; and each Licensee is expected to exert the same degree of due diligence in verifying the Small Concern's initial and continued eligibility that it exerts in determining the quality of its investment. The use of the word "expected" is deliberate. A Licensee that declines to exert such due diligence will be presumed to have acted with full knowledge of any information that reasonable due diligence would have unearthed, and thus to have consented to any improper diversion of funds by the Small Concern and to have knowingly uttered whatever false statements were necessary to conceal or facilitate the diversion.

SBA also recognizes the possibility that Small Concerns, or their principals, may engage in fraud and deceit with respect to the Small Concern's eligibility and intended use of funds so that reasonable due diligence would not unearth the truth. The proposed amendment would give the Licensee the right to demand immediate repayment of all Financing advanced by the Licensee if post-disbursement monitoring should reveal a diversion of funds from their originally stated objective, and Licensees are reminded of the possibility that additional damages for civil fraud may be recoverable under applicable law. Licensees would also be required to report such instances of diversion promptly to SBA, so that SBA can consider its available options against the principals of a Small Concern that has fraudulently obtained Financing from a Licensee.

Most of the substance of the proposed amendment of § 107.402 has already been discussed in connection with the proposed amendment of the definition of COM. However, the proposed amendment of § 107.402 reflects a new approach to the treatment of prepayment penalties by a Licensee that has also charged front-end fees. Under the present regulations, a reasonable prepayment penalty was generally excluded from the computation of COM unless the Licensee has also charged front-end fees; and in that case the prepayment penalty itself became part of COM.

SBA proposes to change this rule. In the event of voluntary prepayment every Licensee may charge a reasonable prepayment penalty without regard to front-end charges, but a Licensee that charges an excessive prepayment penalty shall be required to refund the entire amount of the penalty to the Small Concern.

However, if a Licensee has imposed front-end charges that are not explicitly excluded from computation of COM, such as points, discounts, or processing fees in excess of 3 percent, to the extent of the excess, the amount of such fees shall be prorated over the stated term of the Financing and if the sum of interest and unearned front-end charges exceeds the applicable COM limit, the excess shall be repaid to the Small Concern.

SBA proposes to amend § 107.3 by adding a definition of the term "Commitment" to reflect the sense in which it was intended, and understood by most Licensees: an agreement to provide a Financing to a Small Concern.

Special Situations

Although the declared purpose of the Act, as stated in section 102, is the extension of "equity capital and long-term loan funds which small concerns need * * * and which are not available in adequate supply * * *, SBA

recognizes certain situations in which the needs of a Small Concern may be more effectively met by the extension of short-term assistance.

Accordingly, SBA now proposes to amend § 107.403(b)(1) to add another and narrow exception to the general requirement that all Financings have a term of at least five years. This exception is to be created in favor of Small Concerns that have received government contracts under Federal, State, or local set-aside programs for "minority" or "disadvantaged" concerns, so that Licensees may provide the short-term contract financing that the Small Concern needs to perform the contract.

Although such financing would only be to firms receiving contracts under set-aside programs wherein eligibility had been established by the contracting agency, Licensees extending short-term contract financing would have a responsibility to assure that the Small Concern in question is a "Disadvantaged Concern", as defined in § 107.3.

SBA proposes to amend § 107.707 to clarify the authority of Licensees to purchase securities of Small Concerns from SBA, as either the receiver or the assignee of another Licensee.

Economic Impact

Section 102 of the Act clearly intends that each financing by a Licensee be used by an identified eligible Small Concern for its sound financing and for its growth, modernization or expansion. The purpose of the SBIC Program, therefore, is to provide risk capital to Small Concerns in a way that will bring about greater business activity resulting in job creation or retention, expanded revenues and tax base, and economic empowerment. Other examples of economic benefits to be realized include development or commercialization of technology, minority business development, urban and rural business development, expansion of exports, and support of the manufacturing sector.

SBA proposes to add a paragraph (c) to § 107.304 to require that each Portfolio Financing Report (Form 1031) set forth the economic impact expected to result from the financing in terms of job creation or retention, expanded business activity, or other identified indicators of economic impact.

Alter Ego Financing

It is often advantageous for real estate occupied by a Small Concern to be held by an associated "alter ego" entity. Certain advantages can be realized including: Improved cash flow and profitability; elimination of overly restrictive provisions of long-term debt agreements; the ability to increase the absolute level of external funds provided to a Small Concern; and finally, facilitation of the transfer of ownership from one generation to another, thus preserving the existence of such Small Concerns.

SBA proposes to create a narrow exception to the present general rule which makes Small Concerns that are primarily engaged in leasing real estate to others ineligible to receive Assistance from a Small Business Investment Company (Licensee) by allowing Licensees to Finance the acquisition or improvement of real estate of a Small Concern if such real estate is exclusively engaged in leasing its property to an eligible operating company (known as the Operating Small Concern), and furthermore, that this lessor (known as an Alter Ego Concern) will remain a mirror image or Alter Ego of the lessee. Only the Operating Small Concern can be a lessee in privity with its alter ego lessor, but the proposed regulation is intended to allow the Operating Small Concern the same right to sublet a portion of the premises it occupies just as any other Small Concern is permitted to lease a portion of the premises it owns. However, the Operating Small Concern is to occupy and use a majority of the space, and the use of an Alter Ego Concern together with an Operating Small Concern may not be utilized as a means of having a Licensee circumvent regulations in order to make what would otherwise be an ineligible investment. In the context of this proposal, the term "Improvement" means the construction or renovation of the facility that will be used by the operating Small Concern primarily as factory, office, sales, or storage space.

Accordingly, six regulatory changes are proposed to achieve this objective. It is noted that a similar regulatory provision exists in SBA's Regular Business Loan program and in the Development Company Loan programs.

The first change would add a new definition, "Alter Ego Concern", to § 107.3. To qualify as an Alter Ego Concern, the same Persons (a term that includes both individuals and legal entities) must own the same percentage interest in both the lessor (the Alter Ego Concern) and the lessee (the Operating Small Concern), but, while the lessor concern must be either a corporation or a partnership, there is no requirement that lessor and lessee concerns be both corporations or both partnerships. For example, if A and B respectively own 55 and 45 percent of the stock of the lessee corporation, the lessor concern will be an Alter Ego only if A and B also own respectively 55 and 45 percent of that concern, but the lessor concern may be organized as a partnership. There must also be a lessor/lessee relationship between the lessor and the operating (lessee) company; and the lessor may have no other business activity other than leasing real estate to the eligible Operating Small Concern. The term of the lease must extend at least until the maturity date of the Licensee's Financing. Finally, the Operating Small Concern must be either a joint borrower (a co-maker), or a guarantor to the full extent of the borrower's obligation. Unless all the above-listed conditions are met, the lessor concern will be an ineligible real-estate lessor, not an eligible Alter Ego Concern.

The second change would add the definition of "Operating Small Concern" to clarify the relationship with the Alter Ego Concern.

The third change would broaden the definition of "Portfolio Concern" to include the Alter Ego Concern. When an Alter Ego (lessor) Concern is Financed, the Licensee must obtain the Financial reports required by § 107.304(b) from both the operating and the lessor concerns.

The fourth change is a proposed amendment to § 107.706 intended to insure both the continuation of the alter ego relationship between the lessor and the operating concern, and the continued eligibility of the operating concern as long as the Licensee's Financing is outstanding. Except for a merger of lessor and lessee concerns, the termination of any of the relationships that together create an "alter ego" relationship, which includes the lease between the lessor and the Operating Small Concern, terminates the eligibility of the Alter Ego Concern to be a Portfolio Concern of the Licensee; and the Licensee must then either promptly divest itself of the Financing, or demand immediate repayment. Any other change in the eligibility of the Operating Small Concern, except by reason of a change in size, would also terminate the eligibility of the Alter Ego lessor.

The fifth change is a proposed amendment of § 107.901(c)(1), which now generally forbids the extension of Financing to Small Concerns classifiable under Major Group 65 of the Standard Industrial Classification Manual, a group consisting principally of real property lessors and operators. This proposed rule would add another exception, which as such must be narrowly interpreted, to those already set forth in paragraphs (i) through (iii) of § 107.901(c)(1).

Proposed paragraph (iv) also includes an exception to its own rule. Concerns engaged in leasing real estate are still

generally ineligible; Alter Ego Concerns are exempted from this general rule only to permit an Operating Small Concern that would otherwise be paying rent to an unrelated party with no interest in the Operating Small Concern's prosperity beyond its ability to pay the stipulated rent to pay rent instead to the Alter Ego Concern, which will have a substantial interest and investment, directly or indirectly, in the Operating Small Concern. SBA does not intend to permit the financing of a transfer of real estate ownership, as distinguished from financing the necessary improvement of real estate, when the real estate occupied (or to be occupied) by the Operating Small Concern is already in the hands of an affiliate, or was in such hands within six months prior to the Financing. Therefore, even if a prospective investee otherwise falls within the definition of an Alter Ego Concern, as set forth in § 107.3, such a concern is nevertheless ineligible by reason of § 107.901(c)(1) if the real estate in question is already, or was within the preceding six months, in the hands of an affiliate.

Finally, § 107.901(c)(2) is to be further amended to make it clear that only an (otherwise eligible) operating company, and not an Alter Ego lessor, can lease out to third parties any part of real estate acquired through Licensee Financing. An Alter Ego Concern may have only one tenant: The Alter Ego operating company.

Change of Ownership Financings

The regulation dealing with Licensee financing of transfers of ownership of a Small Concern, § 107.711, was written many years ago, before the era of the leveraged buyout and the formation of acquisition companies. Experience had demonstrated that the part of the regulation dealing with corporate divestitures is inadequate to prevent Licensee participation in transfers of huge enterprises. Licensee participation is made possible by the Financing of a shell acquisition company that qualifies as a Small Concern under an alternative size standard (§ 121.802(a)(2)), into which a big business is subsequently merged.

SBA proposes to amend § 107.711 to impose a series of tests on the concern that would emerge from the transfer of ownership. This proposal shifts the focus of the rule from the acquisition company financed by the Licensee to the concern that will result after all planned mergers and acquisitions have closed and all necessary financing is in place. If the concern resulting from the consummated acquisition will have no more than 500 full-time equivalent employees, the Licensee may finance the acquisition. If the concern resulting from the consummated acquisition will have more than 500 full-time equivalent employees, the Licensee may still finance the acquisition if, and only if, the resulting concern also meets either one of two alternative debt/equity ratio tests. If the Licensee in question has outstanding Leverage, the resulting concern's debt/equity ratio may not exceed 5:1; in the case of an unleveraged Licensee, the applicable debt/equity ration may not exceed 7:1.

The proposed regulation contains a paragraph (c) that excludes certain classes of debt and other obligations from the category of "debt" for the purpose of determining the resulting concern's debt/equity ratio.

It should be understood that this proposed version of § 107.711 does not constitute an amendment of the size standards. The standards to be set forth in § 107.711 are applicable only in the context of financing a change of ownership.

Minimum Capital Requirements

Section 409 of Public Law 102–366 increased the statutory minimum capitalization of an SSBIC to $1,500,000. Accordingly, it is necessary to amend the reference to a $1,000,000 capitalization in § 107.712(c) to reflect the statutory language.

Compliance With Executive Orders 12291 and 12612, 12778, and With the Regulatory Flexibility and Paperwork Reduction Acts

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule will constitute a major rule for the purposes of Executive Order 12291 because, if promulgated as final, it is likely to have an annual impact on the national economy of $100 million or more, and, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, it is likely to have a substantial impact upon a number of small entities. The proposals to recognize unfunded commitments of Institutional Investors, funds invested by State-managed pension funds, and funds invested by State or local government entities or instrumentalities are, if adopted as final rules, expected to increase the amount of Private Capital in the Small Business Investment Company program, and we believe that the annual amount over the next few years of such increased capitalization will be as much as $100 million or more. The proposed revision of the rule pertaining to financing transfers of ownership, if adopted as final, is expected to reduce Licensee participation in such change of ownership transactions, and may reduce Licensee participation by as much as $100 million annually.

The present regulations that generally restrict "real estate" financing have never been interpreted to forbid loans intended to facilitate an (operating) Small Concern's acquisition or improvement of the premises on which it carries on, or will carry on, its business activity. The proposed rule would allow the Financing intended to accomplish this purpose to be formally extended instead to an Alter Ego concern that falls within SBA's definition of an affiliate, but the ultimate beneficiary would remain the same. SBA has no reason to think that the adoption of this rule would affect the dollar amount of Financing that is presently extended for plant acquisition or improvement purposes, or that the substitution of an Alter Ego holding company as the nominal Portfolio Concern would have a significant impact upon a significant number of Small Concerns. A few Licensees have, on occasion, induced SBA to extend Leverage based on the representation that such Leverage was needed to fund a commitment when none was actually made. A few other Licensees have sought to characterize points as a commitment fee. The annual economic effect of a formal definition of "Commitment" is expected to be minimal, and no substantial impact upon any significant numbers of small entities is expected. What is at stake is a principle.

The proposed rule permitting a Licensee to extend short-term contract loans to recipients of contracts under "minority" or "disadvantaged" set-aside programs will neither have an annual economic impact approaching $100,000,000 nor a substantial impact upon a significant number of small entities. The class of Small Concerns that would be affected is limited to minority or disadvantaged Small Concerns that have been awarded a contract under Federal, State, or local government set-aside programs, and Licensees. The aggregate dollar amount that this proposed rule would make available for short-term contract loans is substantially limited by the existing rule set forth in § 107.403(a), which SBA does not propose to change, that the aggregate of all the specific types of Financings permitted under the cited regulation may not exceed twenty percent of any Licensee's "total adjusted assets."

Finally, the proposed rule that would clarify a Licensee's authority to purchase portfolio securities from SBA

as well as from an operating Licensee will not have an annual economic impact approaching $100,000,000 or a substantial impact upon a significant number of small entities. Relatively few Licensees purchase portfolio securities from other Licensees, and a Licensee may have no more than one-third of its assets invested in portfolio securities purchased from another Licensee.

1. The legal basis for this proposed regulation is section 308(c) of the Small Business Investment Act, 5 U.S.C. 687(c).

2. The potential benefits of this proposed regulation have been set forth in the discussion of this proposal above, under Supplementary Information.

3. The potential cost of this regulation cannot be quantified or estimated.

4. There are no Federal rules which duplicate, overlap, or conflict with these rules.

5. SBA is not aware of regulatory alternatives that could achieve the same objectives at lower cost.

Executive Order 12612

SBA certifies that this proposed regulation, if promulgated in final, will not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

Executive Order 12278

For the purposes of Executive Order 12278, SBA certifies that this proposed rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of that Order.

Paperwork Reduction Act

SBA certifies that this proposed regulation, if adopted as final, will impose no additional record-keeping requirement upon any Licensee.

List of Subjects in 13 CFR Part 107

Investment companies, Loan program—business, Reporting and record-keeping requirements, Small businesses.

For the reasons set forth above, part 107 of title 13, Code of Federal Regulations is proposed to be amended as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 is revised to read as follows:

Authority: Title III of the Small Business Investment Act, 15 U.S.C. 681 *et seq.*, as amended; 15 U.S.C. 687(c); 15 U.S.C. 683; 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. 102–366; Pub. L. 100–590 and Pub. L. 101–162; 15 U.S.C. 637(c); 15 U.S.C. 683, as amended by Pub. L. 101–162 and Pub. L. 101–574; 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.

2. Section 107.1 is proposed to be amended by adding at the end the following two sentences, to read as follows:

§ 107.1 Scope of Part 107.

* * * Provisions of this part which are not mandated by the Act shall not supersede existing State law. A party claiming that a conflict exists shall submit an opinion of independent counsel, citing authorities, for SBA's resolution of the issues involved.

* * * * *

3. Section 107.3 is proposed to be amended by revising the definitions of *Control, Cost of Money, Private Capital,* and *Section 301(d) Licensee,* and by adding definitions of *Alter Ego Concerns, Commitment, Common Control, Control Person, Institutional Investor, Leverageable Capital, Operating Small Concern,* and *Regulatory Capital,* and *Section 301(c) Licensee* in the appropriate alphabetical order to read as follows:

§ 107.3 Definition of terms.[2]

* * * * *

Alter Ego Concern means a Small Concern that is engaged in leasing real estate to another Small Concern, but which is nevertheless eligible to receive Financial Assistance from a Licensee if all of the following characteristics are present in the relationship between the (Lessor) Alter Ego Concern and the Operating (Lessee) Small Concern:

(1) The ownership of both concerns is identical; each Person with a percentage of ownership interest in the Lessor Concern has the same percentage of ownership interest in the Operating Small Concern;

(2) The Lessor Concern is a partnership or corporation that carries on no other business activity other than leasing real estate to the Operating Small Concern;

(3) The lease under which the Operating Small Concern occupies the property extends at least until the maturity date of the Licensee's Financing to the Alter Ego Concern; and

(4) The Operating Small Concern is either a joint obligor or guarantor of the Alter Ego Concern's obligation to the Licensee.

The Operating Small Concern shall have the same right to sub-let portions of the premises it occupies under the Lease from its Alter Ego Lessor that it would have had if it had been directly Financed by the Licensee. See § 107.901(c)(2).

* * * * *

Commitment means a written agreement between a Licensee and a Small Concern that obligates the Licensee to provide Financing (except a guarantee) to a Small Concern (whose eligibility has already been determined by the Licensee) in a fixed or determinable sum, by a fixed or determinable future date. In this context the term "agreement" means that there has been agreement on the principal economic terms of the Financing; Provided, however, that the terms of the Commitment may include reasonable conditions precedent to the Licensee's obligation to fund the Commitment.

* * * * *

Common Control means a condition where two or more Licensees either through ownership, management, contract, or otherwise, are under the Control of one group or Person.

Control means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Licensee or a Small Concern, whether through the ownership of voting securities, by contact, or otherwise. Two or more Licensees are presumed to be under common Control if they are affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or advised either by a common independent investment advisor or managerial contractor, or by two or more such contractors that are affiliates of each other. This presumption may be rebutted by evidence satisfactory to SBA. The term "affiliate" is defined in § 121.401 of this title.

Control Person means (1) a general partner of an Unincorporated Licensee, including all general partners of a partnership serving either as a general partner of an Unincorporated Licensee or as general partner of any other (intervening) partnership, limited or general, that serves directly or indirectly as a general partner of an Unincorporated Licensee; (2) any officer, director, agent or employee of a corporate general partner of an Unincorporated Licensee, or of any corporation that is a general partner in a partnership serving as a general partner of an Unincorporated Licensee, or as a general partner of any other (intervening) partnership, limited or general, that serves directly or indirectly as a general partner of an Unincorporated Licensee; (3) any Person

[2] Terms defined in this section are capitalized hereafter.

that owns or controls, directly or indirectly, an interest of 10 percent or more as a stockholder in, or limited partner of, any corporation or partnership, limited or general, that serves directly or indirectly as general partner of an Unincorporated Licensee.

* * * * *

Cost of Money generally includes all consideration that a Small Concern and/or its affiliates is (are) contractually obligated to pay to a Licensee and/or the Associates of such Licensee in connection with Financial Assistance from such Licensee, such as interest, discounts, points, fees, commissions, and any other thing of value, except as hereinafter set forth. The following fees and charges are not to be included in calculating Cost of Money:

(1) Processing fees determined in accordance with § 107.402;

(2) Out-of-pocket conveyance and/or recordation fees and taxes;

(3) Reasonable closing costs;

(4) A reasonable fee for arranging Financing from non-SBIC non-Associate sources of capital, whether or not the Licensee participates in such Financing, if there is a written agreement in advance with the Small Concern to pay such fee;

(5) Fees for management consulting services, but only if calculated on a per hour, commercially reasonable basis for services actually rendered;

(6) Prepayment penalties pursuant to § 107.402;

(7) Reasonable and necessary out-of-pocket expenses incurred in monitoring the financing; and

(8) Board of Director fees not to exceed those paid to other outside directors and pursuant to § 107.903(f).

All other fees and charges shall be included in calculating Cost of Money.

* * * * *

Institutional Investor means:

(1) Any State on National bank, trust company, savings bank, or savings and loan association, including any such institution investing the funds of others in a fiduciary capacity;

(2) Any insurance company;

(3) Any 1940 Act Investment Company or Business Development Company, as defined in the Investment Company Act of 1940, as amended;

(4) Any holding company of the foregoing;

(5) Any employee benefit or pension plan established for the benefit of employees of the Federal government or any State, their political subdivisions, or any agency or instrumentality thereof;

(6) Any employee benefit or pension plan, as defined in the Employee Retirement Income Security Act of 1974, as amended;

(7) Any trust, foundation or endowment exempt from Federal income taxation under the Internal Revenue Code, as amended;

(8) Any corporation, partnership, or other entity with a net worth in excess of $10,000,000;

(9) Any individual who is an Accredited Investor as defined by the Securities Act of 1933, as amended, whose commitment to a Licensee is guaranteed by, or backed by a letter of credit from a qualified Institutional Investor;

(10) Any State, its respective political subdivisions, or any agency or instrumentality thereof;

(11) Any entity whose primary purpose is to manage and invest non-Federal funds on behalf of any of the foregoing Institutional Investors; or

(12) Any other entity that SBA shall determine to be an Institutional Investor.

* * * * *

Leverageable Capital means Regulatory Capital, excluding unfunded commitments and Qualified Non-Private funds whose source is Federal funds.

* * * * *

Operating Small Concern means the lessee Small Concern assisted by a Licensee through the financing of an Alter Ego Concern.

* * * * *

Private Capital—(1) *General. Private Capital* means the combined private (non-governmental) paid in capital and paid-in surplus of a Corporate Licensee, or the private (non-governmental) partnership capital of an Unincorporated Licensee, including (i) funds invested by a public or private pension fund; (ii) unfunded binding commitments to purchase stock or limited partnership interests in, or make capital contributions to, a Licensee by an Institutional Investor, and (iii) qualified nonprivate funds as described in paragraph (c) of this definition. The contribution of non-cash assets, except as permitted by § 107.705(a) (1) through (6) requires prior SBA written approval.

(2) *Exclusions.* Private Capital shall not include (i) funds borrowed by a Licensee from any source, (ii) leverage funds obtained as a result of SBA's purchase or guarantee of securities, or (iii) funds obtained directly or indirectly from any Federal, State, or local government, or agency or instrumentality thereof, unless such funds are qualified nonprivate funds.

(3) *Qualified nonprivate funds.* For purposes of the definition of Private Capital, *qualified nonprivate funds* means (i) funds directly or indirectly invested in any Licensee on or before August 16, 1982 by any Federal agency except SBA, pursuant to a statute explicitly mandating the inclusion of such funds in "Private Capital"; (ii) funds directly or indirectly invested in any Licensee by any Federal agency pursuant to a statute that is enacted after September 4, 1992, explicitly mandating the inclusion of such funds in "Private Capital"; (iii) funds invested in any Licensee by any State or local government entity, including the amount of any guarantee extended by such entity, and (iv) in any section 301(d) Licensee or such applicant, funds invested which are income derived from the investment of grants that have been made by a state or local government agency or instrumentality into a nonprofit corporation or institution exercising discretionary authority with respect to such funds; and funds invested by a State financing agency, or similar agency or instrumentality, to the extent such funds are derived from such agency's income and not from appropriated State or local funds; *Provided, however,* that for any Licensee or applicant, the funds described in paragraph (3) (iii) of this definition shall not exceed 33% of Regulatory Capital; and *Provided further,* that for any section 301(d) Licensee or such applicant, the funds described in paragraph (iv)(3) of this definition shall not exceed 40% of Regulatory Capital, less the amount of funds described in paragraph (3)(iii).

(4) *Compliance.* For purposes of determining whether a Licensee is in compliance with §§ 107.103, 107.203(d), 107.303, 107.401(a)(5), 107.501(c), 107.601(g), 107.710(b)(3), or § 107.901(a), the term "Private Capital" shall be deemed to mean "Regulatory Capital" as in the section below. Licensees are not considered to have any investment in contributed assets for the purposes of §§ 107.403(b), 107.706(b), 107.710, and 107.801. See also § 107.705 of the part regarding consideration for issuance of Licensee's securities.

* * * * *

Regulatory Capital—(1) *General.* Regulatory Capital means Private Capital excluding contributed non-cash assets unless such assets have been converted to cash. For purposes of this definition, sales of contributed non-cash assets with recourse or borrowing against such assets shall not constitute a conversion to cash.

(2) *Exclusions.* That portion of an Institutional Investor's unfunded commitment to a Licensee that exceeds: (i) 10 percent of the combined liquid assets of such Institutional Investor and

any subsidiaries it controls, or (ii) 10 percent of the liquid assets of an Institutional Investor that guarantees or backs by letter of credit an Accredited Investor's commitment, or (iii) in the case of an entity that invests funds on behalf of other Institutional Investors, 10 percent of the combined liquid assets of such other Institutional Investors will not be included in such Licensee's Regulatory Capital. The amount of a commitment, the collectibility of which SBA determines to be questionable, shall also be excluded from Regulatory Capital. For purposes of this definition, Liquid Assets are defined (in U.S. dollars) as cash, short-term investments in money market funds, certificates of deposit, U.S. Treasury securities, publicly traded marketable securities, or other instruments with similar liquidity characteristics.

* * * * *

Section 301(c) Licensee means an SBIC organized as a for-profit corporation, a limited liability company or a limited partnership organized in accordance with § 107.4, and licensed pursuant to section 301(c) of the Act.

Section 301(d) Licensee means an SBIC organized as a for-profit corporation, a non-profit corporation, a limited liability company or a limited partnership organized in accordance with § 107.4, and licensed pursuant to section 301(d) of the Act. Such Licensees provided assistance only to Small Concerns that are owned by persons who are socially or economically disadvantaged persons.

* * * * *

4. Section 107.4 is proposed to be amended by revising paragraphs (b) (1), (2) and (3)(i), by revising the fourth sentence in paragraph (c), and by adding a new paragraph (f), to read as follows:

§ 107.4 Limited Partnership SBIC.

* * * * *

(b) *Application.* * * *

(1) *Number of general partners.* A Licensee shall have as its general partners at least two individuals; or one or more corporations (including limited liability corporations), or one or more partnerships (including limited partnerships), or any combination of individuals, and/or corporations, and/or partnerships. General partners of a general partner of an Unincorporated Licensee shall be considered for all purposes to be general partners of such Licensee. For the status of limited partners of a limited partnership that serves as a general partner of a Licensee, see the definition of "Control Person" in § 107.3.

(2) *General partner.* A general partner which is a corporation, limited liability company or limited partnership (an "Entity General Partner") shall be organized under state law solely for service as such and its Articles or Certificate of Incorporation or Limited Partnership Agreement or other similar governing instrument (which, in each case, shall accompany the license application) shall specify that no person shall serve as an officer, director or general partner without SBA's approval. No Entity General Partner may serve as such for any other Licensee and where an Entity General Partner is a limited partnership, such partnership shall be subject to the number of general partners defined in paragraph (b)(1) of this section. The paid-in capital of each Entity General Partner which is not invested in the Unincorporated Licensee shall be invested only as permitted by the last sentence of section 308(b) of the Act, pursuant to § 107.708 or in accordance with § 107.903(c), or any one of them. An Entity General Partner is subject to the same examination and reporting requirements as a Licensee under section 310(b) of the Act. The restrictions and obligations imposed upon a Licensee by §§ 107.201 through 107.205, and 107.601, 107.603, 107.701, 107.702, 107.703, 107.708, 107.709, 107.801, 107.802, 107.803, 107.1001, 107.1002, and 107.1004 apply also to a corporate general partner of a Licensee.

(3) *Articles of partnership.* * * *

(i) The partnership shall have a minimum duration of not less than the longer of ten years or two years following the maturity of the last-maturing security issued by the partnership evidencing Leverage from SBA. After 10 years and provided all Leverage has been repaid or redeemed and provided that all amounts due SBA, its agent, or trustee have been paid, the partnership may be terminated by a vote of the Licensee's partners. (SBA shall not be considered a partner.)

* * * * *

(c) *Obligations of a Control Person.* * * * The conditions specified in §§ 107.201 through 107.205 shall apply to all general partners; the conditions specified in § 107.203(b)(4) shall apply to all Control Persons. * * *

* * * * *

(f) *Special Leverage requirement.* Prior to the extension of any Leverage, an Unincorporated Licensee shall furnish SBA with evidence that it qualifies as a partnership for tax purposes, either by a ruling from the Internal Revenue Service, or by an opinion of counsel.

6. Section 107.101 is proposed to be amended by revising paragraph (a), redesignating paragraphs (d) and (e) as paragraphs (e) and (f), by inserting a new paragraph (d), by revising redesignated paragraph (e)'s introductory language, and by adding new paragraphs (g) and (h) to read as follows:

§ 107.101 Operational requirements.

* * * * *

(a) *Management.* Each Licensee shall have and maintain qualified management (or an Investment Adviser/Manager pursuant to § 107.709) in charge of its operations who will be available during normal business hours to the public. Any manager of a Licensee shall be deemed an officer thereof. When applying for a license or for Leverage, a Licensee must demonstrate, to the satisfaction of SBA, that its management has the knowledge, experience and capability necessary for investing in the types of businesses contemplated by the Act, these regulations, and Licensee's Plan of Operations. Neither management, nor any board of directors, nor any general partner shall be controlled either directly or indirectly by investors of qualified non-private funds.

* * * * *

(d) *General capital requirements.* Each company shall have at licensing, and thereafter shall maintain Private Capital adequate to assure a reasonable prospect that the company will be operated soundly and profitably over the long term, and managed actively and prudently in accordance with its articles or partnership agreement, within the context of its Plan of Operations without reliance upon increases in Leverage from SBA. In this regard, SBA shall determine the ability of the company, both prior to licensing and prior to approving any request for financing, to meet its obligations and shall take into consideration the income which the company anticipates on its investments, the experience of the company's owners and managers, and the company's financial resources. Compliance with these requirements shall be determined within the context of capital impairment and other regulations that relate to safety and soundness.

(e) *Minimum capital.* Any company licensed after August 5, 1993, shall have Private Capital in U.S. dollars sufficient to meet the requirements of paragraph (d) of this section, but in no case shall a Licensee have Private Capital less than the following minimum levels:

* * * * *

(g) *Valuation guidelines and responsibility.* (1) Each Licensee shall adopt written guidelines for its use in determining the value of its loans and investments. Such guidelines shall

incorporate the provisions specified in appendix III to this part. The boards of directors of corporations and the general partners of partnerships shall have sole responsibility for adopting such guidelines and, pursuant thereto, for valuing loans and investments of such Licensee. Such valuations shall be made at least annually, unless SBA on a case-by-case basis requires valuations to be made more frequently. A report of the annual valuation shall be forwarded to SBA with the Licensee's Annual Financial Report on SBA Form 468 and other reports of valuation, as required, shall be forwarded to SBA within thirty days thereof with an interim Financial Report on SBA Form 468. Any Licensee which has outstanding Leverage shall value its loans and investments semi-annually, unless SBA in its discretion requires more frequent reporting.

(2) The amount of Financing provided by a Licensee shall be the cost basis of loans and investments, which is the most appropriate measure of value until a basis exists to value such securities either above or below cost. Unrealized depreciation shall be established on loans and the debt portion of debt securities to recognize the value below cost when there is a basis to do so. Unrealized appreciation shall not be established on Loans and the debt portion of debt securities.

(3) The Licensee's independent public accountant has responsibility to review the Licensee's valuation procedures and implementation of such procedures, including adequacy of documentation. The independent public accountant also has reporting responsibilities regarding the results of this review (see appendix I of this part, section III and section V, paragraphs I and J).

(h) *Computer requirement.* After December 31, 1993, all Licensees shall have a personal computer with modem capable of running software provided by SBA and person(s) trained in the use of SBA provided software and shall electronically transmit computer information as required by SBA. Such Licensees shall use such software for the purpose of reporting specific financial information required by SBA.

7. Section 107.302 is proposed to be revised to read as follows:

§107.302 Cost of Money; Loans and Debt Securities.

Subject to lower ceilings prescribed by local law, Cost of Money on Loans and Debt Securities shall not exceed the higher of the following:

(a) *Loans.* The higher of either the Licensee's certified Weighted Average Cost of Leverage, computed in accordance with paragraph (e), of this section or the current Debenture Rate, plus, in either case, 7 percentage points, rounded off to the next lower eighth of one percent; *Provided, however;* That if the current Debenture Rate is 8 percentum or lower, a Licensee is permitted to charge up to 15 percentum.

(b) *Debt Securities.* The higher of either the Licensee's certified Weighted Average Cost of Leverage, computed in accordance with paragraph (e) of this section, or the current Debenture Rate, plus, in either case, 6 percentage points, rounded off to the next lower eighth of one percent; *Provided, however;* That if the current Debenture Rate is 8 percentum or lower, a Licensee is permitted to charge up to 14 percentum.

(c) *Maximum Cost of Money.* The maximum Cost of Money on any specific Financing shall be determined with reference to either the Licensee's certified Weighted Average Cost of Leverage or to processing fee or enters into a Commitment, or makes the first disbursement, whichever shall first occur.

(d) *Effective date.* The Cost of Money limitation in effect on [day preceding effective date of the Final Rule] shall remain applicable to all Financings committed or disbursed on or before that date.

(e) *Computation of Weighted Average Cost of Leverage.* Licensee's Weighted Average Cost of Leverage (as a percent) shall be computed as follows:

where W = Weighted Average Cost of Leverage

A = Dollar amount of Interest on SBA Guaranteed Debentures for the prior year, as found on Form 468 (SSBICs are presumed to have paid interest at the coupon rate, without regard to any subsidy payments by SBA)

P = Outstanding principal amount of debenture less Leverage fees

D = Days outstanding for prior fiscal year

i = Individual debenture

n = Number of Debentures outstanding at end of fiscal year

Σ = sum of

$$W = \left(\frac{A}{\sum_{i=1}^{n} \left[\frac{P_i \times D_i}{365} \right]} \right) \times 100$$

This equation is read as: Multiply the principal balance (less Leverage fees) of each SBA guaranteed debenture still outstanding at the end of the preceding fiscal year by the number of days that the debenture was outstanding in that fiscal year and divide this product by 365; take the sum of these amounts and divide that sum into Interest on SBA Guaranteed Debentures; finally multiply the resulting number by 100.

(f) *Notification of Weighted Average Cost of Leverage.* A Licensee that wishes to utilize its Weighted Average Cost of Leverage as the basis of an alternative Cost of Money ceiling for its next succeeding fiscal year shall transmit a written certification of its Weighted Average Cost of Leverage to SBA as a part of its Annual Financial Report (SBA Form 468) for the prior fiscal year; provided however, that where such licensee provides financing using the weighted average cost of Leverage before submitting its Annual Financial Report, such Licensee shall submit its certified weighted average cost of Leverage as an attachment to the SBA Form 1031 for each such financing. Such Weighted Average Cost of Leverage shall be reviewed by the Licensee's independent public accountant, who shall provide a certification that the Weighted Average Cost of Leverage was calculated in accordance with SBA's regulations. Failure to submit timely a certified Weighted Average Cost of Leverage shall constitute a binding waiver of Licensee's right to use its Weighted Average Cost of Leverage as the basis for an alternative Cost of Money limitation, unless for good cause shown, SBA grants written approval for its use.

(g) *Application of Weighted Average Cost of Leverage to Financings involving multiple Licensees.* Where two or more Licensees participate in the same Financing of a Small Concern and a Weighted Average Cost of Leverage is used to compute the Cost of Money ceiling for the Financing, the Licensees shall use either the Weighted Average Cost of Money of the lead Licensee in the Financing, or the weighted average of the Weighted Average Cost of Money of all Licensees participating in the Financing; *Provided, however,* That in either case no Licensee participating in the Financing, other than the lead Licensee, shall receive consideration in excess of the Cost of Money ceiling based on its individual Weighted Average Cost of Money.

(h) *Default penalties.* In the event of a monetary default by a Small Concern, Licensee may charge a reasonable increased default rate of interest consistent with the practice in the geographic area of the SBIC, and raise the interest rate so long as the resulting rate remains within the Cost of Money ceiling in effect at the time of the default.

8. Section 107.303 is proposed to be amended by revising paragraph (a), by redesignating paragraph (b) as paragraph

(c), and by inserting a new paragraph (b) to read as follows:

§ 107.303 Overline limitation.

(a) *General.* Without written SBA approval, the aggregate amount of funds disbursed for securities acquired (exclusive of write-down), and of Commitments and guaranties issued for a Small Concern (including affiliated concerns as defined in § 121.401 of this chapter) shall not exceed twenty percent of such Licensee's Regulatory Capital; *Provided, however,* That for section 301(d) Licensees the limitation shall be thirty percent.

(b) *Non-Leveraged Licensees.* Any Licensee that does not have outstanding Leverage shall be exempt from this section; *Provided, however,* That no Leverage will be extended to any Licensee until such Licensee is in compliance with paragraph (a) of this section.

* * * * *

9. Section 107.304 is proposed to be amended by revising the heading and paragraphs (a)(1) and (b) and adding a paragraph (c) to read as follows:

§ 107.304 Size status, financial report, and non-discrimination.

(a) *Size status and nondiscrimination.* No assistance shall be provided unless:

(1) The Licensee has determined that the concern being assisted is a Small Concern based on the financial size standards set forth in § 121.802(a)(2)(i) or the single industry standard covering the industry in which the applicant Small Concern is, or will be, primarily engaged as set forth in § 121.802(a)(2)(ii). The Licensee and the Small Concern shall execute SBA Form 480, Size Status Declaration, including Licensee's determination that applicable size standards have been met, or SBA has determined at the request of the Licensee or of such concern that the latter is a Small Concern.

* * * * *

(b) *Financial reports*—(1)*Initial Financing decision.* In considering any Financing for a Small Concern the Licensee shall require the concern to submit such financial statements, plans of operation, (including intended use of financing proceeds), cash flow analyses and projections as are necessary to support the Licensee's investment decisions, considering the size and type of the business and the amount of the Financing being considered. Such materials shall be in English and shall be retained by, and become a part of the permanent record of, the Licensee.

(2) *Subsequent reports.* The terms of the Financing shall require each assisted Small Concern to forward to the Licensee, at least annually, such financial statements (including verification of the use of financing proceeds) as are necessary to verify not only the financial condition of the Small Concern for the purpose of valuing the Licensee's investment therein, but also the continued eligibility of such Small Concern. Such statements shall be in English and be certified by the chief financial officer, general partner, or proprietor of such Small Concern and shall be retained by, and become a part of the permanent records of, the Licensee. If the Licensee shall deem it appropriate, for financial and valuation purposes only, considering the size and type of the business involved, the Licensee may accept, instead, a complete copy of the Federal income tax return, including all appropriate schedules thereto, filed by the business or by the proprietor, as the case may be: Provided, however, that the foregoing shall not apply when the Licensee acquires the securities from an underwriter in a public offering (see § 107.404), in which event the Licensee shall keep copies of all reports furnished by such concern to the holders of its securities.

(c) *Economic Impact.* Licensees shall include in their Portfolio Financing Report (SBA Form 1031) an assessment of the expected economic impact of each financing. The assessment shall specify the full-time equivalent jobs to be created or retained, the impact of the financing on the business in terms of expanded revenue and taxes, and other appropriate economic benefits including but not limited to technology development or commercialization, minority business development, urban or rural business development, expansion of exports and assistance to manufacturing firms (SIC Codes 20–49).

* * * * *

10. Part 107 is proposed to be amended by adding a new § 107.305 to read as follows:

§ 107.305 Use of Proceeds.

Proceeds of financings by a Licensee shall be used by the Small Concern for its sound financing and for its growth, modernization, or expansion and such use shall be reported on SBA Form 1031. Accordingly, licensees shall obtain sufficient information to assure that the proposed financing will be used for purposes intended by the Act and the regulations in this part. Financing documents shall contain provisions which require the Small Concern to provide information specified in § 107.304(b), and which give the Licensee access to the Small Concern's records to confirm such use of proceeds. The Licensee shall conduct a post closing review to assure that proceeds were used for the intended purposes. The financing documents shall also provide that any diversion by a Small Concern of financing proceeds from their reported use without the Licensee's prior written consent shall constitute an event of default when the Licensee has made a loan or a violation of a covenant with the Licensee when the Licensee has made an investment. The financing documents shall specify that such event of default or covenant violation shall give the Licensee the right to demand immediate repayment of the financing. Nothing in this section shall be construed to restrict the Licensee's right to sue the Small Concern for any additional damages it may sustain or to bring suit against the individuals responsible for the diversion of such funds. Any unauthorized diversion that comes to the attention of a Licensee shall be promptly reported to SBA for such action against the Small Concern as SBA may consider proper. See also § 107.906(b).

11. Section 107.402 is proposed to be amended by revising paragraphs (a) and (d) and adding paragraphs (e), (f), and (g) to read as follows:

§ 107.402 Commitments; processing fees; additional fees; prepayment penalties.

(a) *General.* A Licensee is authorized to enter into a written Commitment to furnish Financing to a Small Concern.

* * * * *

(d) *Processing fees.* A Licensee is authorized to charge a processing fee, in no event to exceed three percent of the amount of Financing requested; *Provided however,* That if the amount of Financing offered in response by the Licensee and agreed to by the Small Concern is a lesser amount, the maximum processing fee may not exceed three percent of such lesser amount. A processing fee that does not exceed the foregoing limits shall not be considered part of the Small Concern's Cost of Money. A processing fee that exceeds the foregoing limits shall, to the extent of such excess, be considered part of the Small Concern's Cost of Money.

(1) *Collection of processing fee.* The processing fee may be collected, in full or in part, when the Licensee accepts the Small Concern's application for financing, or such fee may be deducted from Financing proceeds; *Provided, however,* That when the application is accepted for processing, the Licensee shall furnish the applicant Small Concern with a written statement setting forth:

(i) The maximum Cost of Money determined with reference to Licensee's Weighted Average Cost of Leverage, if any, or the present Debenture Rate, as appropriate;

(ii) A date by which Licensee will notify the applicant of its decision; and

(iii) The specific processing services to be performed by the Licensee.

Failure to furnish such statement shall cause the amount of any processing fee to be included in Cost of Money if the requested Financing closes, or shall obligate Licensee to refund the entire amount of the processing fee if the request for Financing is denied.

(2) *Partial refund of processing fee when Financing does not close*—(i) *No Commitment extended.* If the Licensee has not provided a Commitment and the Small Concern and the Licensee do not close the Financing, that part of the processing fee in excess of Eligible Costs, hereafter enumerated, that were incurred by the Licensee shall be refunded within thirty days to the Small Concern, together with a detailed accounting of the Eligible Costs incurred by the Licensee.

(ii) *Commitment extended.* If the Licensee has provided a Commitment and the Small Concern and the Licensee do not close the Financing, any refund of the processing fee, in whole or in part, is dependent upon which party caused the Financing not to close, as follows:

(A) *Failure to close attributable to Small Concern.* If the Financing does not close due to actions of the Small Concern, the Licensee is entitled to retain the processing fee, not to exceed three percent of the amount of the Licensee's Commitment. If Eligible Costs exceed the processing fee, Licensee may obtain reimbursement for such excess Eligible Costs only if the Small Concern has entered into a contractual agreement providing for such reimbursement. If no such contractual agreement exists, a Small Concern shall not be required to pay an additional processing fee, even if the amount of the Licensee's Eligible Costs exceed the amount of the processing fee advanced by the Small Concern.

(B) *Failure to close attributable to Licensee.* If the failure to close is attributable to actions of the Licensee, that part of the processing fee in excess of Eligible Costs incurred by the Licensee shall be refunded to the Small Concern within thirty days, together with a detailed accounting of the Eligible Costs incurred by the Licensee.

(3) *Eligible costs.* As used herein, Eligible Costs means:

(i) Actual computed costs incurred in the segregation of money to fund a Commitment, if one was extended;

(ii) Ordinary and reasonable out-of-pocket expenses necessary to process the application and perform due diligence; and

(iii) Actual costs paid to non-associates of the Licensee for specialized application processing services which are not ordinarily performed by the Licensee.

(e) *Additional fees.* If the Small Concern and the Licensee close the Financing, Licensee is authorized to deduct from the proceeds the unpaid remainder of any processing fee previously agreed upon, not to exceed 3 percent of the total Financing provided at the closing; and, in addition, to charge the Small Concern for:

(1) Eligible Costs incurred by the Licensee; and

(2) Reasonable closing costs.

Such fees and charges shall not be included in the calculation of Cost of Money.

(f) *Prepayment penalties.* A Licensee may charge a reasonable penalty for prepayment of a Financing which shall be excluded from the Cost of Money calculation; *Provided however,* That if such prepayment penalty is considered by SBA to be unreasonable, Licensee shall not be entitled to such prepayment penalty, and if collected, shall refund the entire prepayment penalty to the Small Concern.

(g) *Front-end charges.* If a Licensee has imposed front end charges such as points, discount, loan origination fee, a processing fee to the extent it exceeds three percent, or other such charges, regardless of the label the Licensee may apply, that are not specifically excluded from Cost of Money, such charges shall be prorated over the stated term of the Financing. In that case, the sum of interest and unearned front-end charges shall not exceed the Cost of Money limit in effect at the time of the Financing; and in the event of prepayment, any resulting excess Cost of Money shall be returned to the Small Concern.

12. Section 107.403 is proposed to be amended by revising paragraph (b)(1), to read as follows:

§ 107.403 Other permissible Financing.

* * * * *

(b) * * *

(1) *Short-term Financing.* Financing with a term of less than five years when it constitutes:

(i) Interim financing in contemplation of long-term Financing of a Small Concern by the Licensee or a group including the Licensee and others in an amount at least equal to such total interim financing; or

(ii) Protection of prior investments; or

(iii) Financing ownership change pursuant to § 107.711; or

(iv) Financing required by a Small Concern to perform a contract that it has been awarded under any Federal, State, or local government set-aside program for "minority" or "disadvantaged" contractors:

* * * * *

13. Section 107.705 is proposed to be amended by adding a new paragraph (a)(8) to read as follows:

§ 107.705 Consideration for issuance of Licensee securities.

(a) * * *

(8) Contributed non-cash assets provided Licensee obtains SBA's prior written approval.

* * * * *

14. Section 107.706 is proposed to be amended by redesignating the existing paragraph as paragraph (a), and by adding a new paragraph (b), to read as follows:

§ 107.706 Retention of investments.

(a) *Change in size.* * * *

(b) *Change in business activity or ownership.* A Licensee may not retain its investment in a Portfolio Concern, small or otherwise, that has become ineligible by reason of a subsequent change in such concern's business activity or in the relationship between Alter Ego Concern and an Operating Small Concern. Any such change, other than a merger between an Alter Ego Concern and an Operating Small Concern, shall constitute a default or breach of the terms of the Licensee's Financing by the Portfolio Concern that gives the Licensee the right to demand immediate repayment of all indebtedness and redemption of all equity investments in such concern; and a Licensee shall take prompt steps either to divest itself of such investment, or to collect whatever may be owed.

15. Section 107.707 is proposed to be revised to read as follows:

§ 107.707 Purchases of securities from another Licensee or from SBA.

A Licensee may exchange with or purchase for cash from another Licensee, or from SBA as the receiver or assignee of another Licensee or former Licensee, Portfolio securities (or any interest therein), but only on a non-recourse basis: *Provided, however,* That:

(a) A Licensee shall not have at any time more than one-third of its total assets (valued at cost) invested in such securities; and

(b) A Licensee that has previously sold Portfolio securities (or any interest

therein) on a recourse basis shall include the amount for which it may be contingently liable in its overline limit under § 107.303.

16. Section 107.708 is proposed to be revised to read as follows:

§ 107.708 Deposits and investments of idle funds.

(a) *General.* Except as set forth in paragraphs (b) and (c) of this section, all funds of a Licensee shall be deposited without delay in an account in a Federally-insured financial institution: *Provided, however,* That a Licensee may maintain a petty cash fund of up to $2,000.

(b) *Leveraged licensees.* Funds of a Licensee with outstanding leverage, or that has applied for leverage, that are not invested in Small Concerns and not reasonably needed for its day-to-day operations shall be invested in: (1) Direct obligations of, or obligations guaranteed as to principal and interest by the United States, the remaining maturities of which do not exceed fifteen months; or (2) in repurchase agreements with Federally-insured institutions, the maturity of which does not exceed seven days collateralized only by direct obligations of, or obligations guaranteed as to principal and interest by the United States; or (3) in certificates of deposit maturing within one year or less issued by a Federally-insured institution, up to the amount of insurance, or (4) in a deposit account in a Federally-insured institution, up to the amount of the insurance, subject to a withdrawal restriction not to exceed one year; *Provided, however,* That nothing in this paragraph (b) shall be interpreted to forbid the temporary deposit, not to exceed 30 days, of Licensee's funds in excess of the insured amount in a Federally-insured institution in a transfer account established to facilitate the receipt and disbursement of funds or to hold funds necessary to honor Commitments issued by the Licensee. The corporate assets of a corporate general partner not invested in the Licensee shall be excluded from the time limits imposed by this section.

(c) *Non-leveraged licensees.* Funds of an unleveraged Licensee that are not invested in Small Concerns and not reasonably needed for its day-to-day operations are exempt from the provisions of paragraph (b) of this section; *Provided, however,* That nothing contained in this paragraph (c) shall be deemed to authorize any Licensee to Finance and Associate in violation of § 107.903, or to engage in any other activity prohibited by this part. No Leverage will be extended to any Licensee until such Licensee is in compliance with paragraph (b) of this section. For purposes of this paragraph (c), a Licensee's deposit of funds in a Federally-insured institution that is an Associate of the Licensee is not considered a Financing of an Associate under § 107.903.

17. Section 107.711 is proposed to be revised to read as follows:

§ 107.711 Financing changes of ownership.

(a) A Licensee may finance a change of ownership in a Small Concern when it will promote the sound development or preserve the existence of the Small Concern; or will assist in creation of a Small Concern as a result of a corporate divestiture, facilitate ownership in a Disadvantaged Concern. In these cases, the Licensee must make an assessment of the concern as though the change of control had been accomplished, giving effect to all agreed to financings as well as mergers and acquisitions. Such Financings shall be permitted where the resulting concern has been determined to be small (see § 107.3049(a)(1)) and its full-time equivalent employment does not exceed 500 employees. In cases where the full-time employment exceeds 500 employees, the financing will only be permitted when the concern meets one of the following debt/equity ratio tests:

(1) If the Financing is provided by a Licensee with outstanding Leverage, the Concern's ratio of debt to equity is no more than 5 to 1;

(2) If the Financing is provided by a Licensee with no outstanding Leverage, the Concern's ratio of debt to equity is no more than 7 to 1.

(b) As used herein, *debt* means long-term debt, exclusive of accounts payable, short-term working capital loans which require that the Concern have no outstanding balance for at least 30 consecutive days during its fiscal year, operating leases, letters of credit and subordinated notes payable to the seller; and *equity* means common and preferred stock in the case of a corporation, or contributed capital in the case of a partnership.

18. Section 107.712 is proposed to be amended by revising the first sentence of paragraph (c) to read as follows:

§ 107.712 Section 301(d) Licensee wholly or partly owned by Licensee companies.

* * * * *

(c) *Capital contribution.* The capital contribution of a participant Licensee in excess of the minimum capital ($1,500,000, which shall be in cash or cash equivalents, in U.S. dollars) of the section 301(d) Licensee, may (notwithstanding § 107.705(a)) be represented by securities of Small Concerns eligible for investment by a Section 301(d) Licensee, at cost or value, whichever is lower. * * *

19. Section 107.901 is proposed to be amended by adding paragraph (c)(1)(ii), and revising (c)(2) introductory text to read as follows:

§ 107.901 Prohibited uses of funds.

* * * * *

(c) *Real estate.* (1) * * *

(iv) Persons whose business activity during the entire period that the Licensee's Financing is outstanding is that of an Alter Ego Concern whose entire activity is limited to leasing real estate exclusively to an eligible Operating Small Concern, but not real estate acquired directly or indirectly from the prospective lessee of such real estate, or from any affiliated concern, or

(2) If the Financing is to be used by an eligible Small Concern (except a Small Concern described in paragraph (c)(1)(iv) of this section), regardless of SIC classification, to acquire realty or to discharge an obligation relating to the prior acquisition of realty unless:

(i) At least fifty-one percent of the usable square footage of an existing building that is to be acquired by the Small Concern or at least two-thirds of the usable square footage of a building that is to be built or renovated by the Small Concern is to be used by the Small Concern for business activity not prohibited by paragraph (c)(1) of this section; or

(ii) Such realty is to be promptly and substantially improved for sale to others, and all necessary zoning approvals have been obtained:

* * * * *

20. Part 107 is proposed to be amended by adding, at the end thereof, a new appendix III, to read as follows:

APPENDIX III TO PART 107—VALUATION GUIDELINES FOR SBICs

I. Introduction

This appendix describes the policies and procedures to which Licensees (SBICs and SSBICs) must conform in valuing their loans and investments and provides guidance as to the techniques and standards which are generally applicable to such valuations.

The need for clearly defined valuation policies and procedures and understandable techniques arises in connection with the requirement that Licensees report the worth of their portfolios to investors and SBA. This information assists SBA in its assessment of the overall operational performance and financial condition of individual Licensees and of the industry.

II. Overall Guidelines

A. Definitions

(1) *Value.* The value of portfolio securities owned by a Licensee shall be (a) with respect to unrestricted Marketable Securities, the market price of such securities, and (b) with respect to other portfolio securities, the Fair Value as determined in good faith by Licensee's Board of Directors or General Partners.

(2) *Marketable securities.* Means securities for which market quotations are readily available and the market is not "thin", either in absolute terms, or relative to the potentially saleable holdings of the Licensee and other investors with saleable blocks of such securities. These securities are valued at the market price on the valuation date which shall be the closing price. This classification does not include securities which are subject to resale restrictions under securities laws or contractual agreements, although other securities of the same class may be freely marketable.

(3) *Other securities.* Means all portfolio securities not defined in paragraph A.(2) of this section. Such securities shall be valued at Fair Value. Most SBIC and SSBIC investments will fall in this classification.

(4) *Fair Value.* Means, generally, the amount that an owner of a portfolio security might reasonably expect to receive upon current sale of the security in a negotiated transaction (fair market value), or in the case of a loan the principal amount that is expected to be collected pursuant to its terms as determined in good faith by the Licensee's Board of Directors or General Partners. No single standard for determining "fair value * * * in good faith" can be established, since fair value depends upon the circumstances of each individual case. Also, since in the normal course of its investment activities a Licensee often does not sell its investments to a third party, the link between fair value and market value is often tenuous.

B. Valuation Responsibility

As specified in 13 CFR 107.101(g), the Licensee's Board of Directors or General Partners have the sole responsibility for determining Fair Value of each of Licensee's portfolio securities. It is incumbent upon the Board of Directors or General Partners to satisfy themselves that all appropriate factors relevant to a good faith determination of Fair Value have been considered and that the methods used are reasonable and prudent and are consistently applied. Although the Board of Directors or General Partners have the ultimate responsibility for determining Fair Value they may appoint management or other persons to assist them in such determinations and to provide supporting data and make the necessary calculations pursuant to the Board's or General Partners' direction. It is essential that a careful, conservative, yet realistic approach be taken by Licensees in determining the Fair Value of each loan and investment.

It should be noted that the Licensee's auditor has responsibility to review the Licensee's valuation procedures and implementation of such procedures including adequacy of documentation. The auditor also has reporting responsibility regarding the results of this review. (See appendix I to this part, section III and section V, paragraph I and J).

C. Written Valuation Policy

Each Licensee shall establish written Valuation Guidelines approved by its Board of Directors or General partners that include the following:

1. A statement of Valuation Policies and Procedures that includes, at a minimum, all of the material set forth in section II of this appendix, and

2. A statement of Valuation Techniques and Criteria including any pertinent information reviewed in section III of this appendix.

The information required in this paragraph C. may be incorporated by reference and attached to Licensees' Valuation Guidelines.

D. Frequency of valuation

Portfolio Securities shall be valued individually and in the aggregate by the Board of Directors or General Partners at least semiannually—as of the end of the second quarter of Licensee's fiscal year and as of the end of Licensee's fiscal year. On a case-by-case basis, SBA may require valuations to be made more frequently and Licensee shall forward the report of such valuation to SBA within thirty days following the close of the reporting period and within 90 days of the end of the fiscal year in the case of annual valuations. Material changes in valuations shall be reported not less often than quarterly within thirty days following the close of the quarter. However, any Licensee which does not have outstanding Leverage shall be required to make such determinations and reports to SBA annually, unless SBA, in its discretion, determine otherwise.

Since the valuations will only be as sound as the timeliness of the financial information upon which they are based, Licensees shall require frequent financial statements from Small Concerns. Monthly financial statements are normally appropriate.

E. Documentation

Each Licensee shall prepare and retain in its permanent files a valuation report as of each valuation date documenting for each portfolio security the cost, the current fair value and the previous value, plus the methodology and supporting data used to determine the value of each such portfolio security. The minutes of meetings of Boards of Directors or General Partners at which valuations are determined will contain a resolution confirming that the valuations of each portfolio security were determined in accordance with Licensee's duly adopted valuation procedures and will incorporate by reference the valuation report signed by each Director or General Partner along with any dissenting valuation opinions.

F. General Classifications of Investments

The Fair Value of portfolio securities will depend upon the circumstances of each individual case and will be based upon the nature of the investment or loan and the stage of a company's existence, such as:

1. Investments in early stage and growth enterprises based on their progress toward previously established targets;

2. Investments in established enterprises based on the present value of Licensee's estimated proceeds from interest, dividends, principal payments, and sales of owned securities;

3. Loans and the loan component of debt securities based on the payment history of the debtor and the value of collateral.

4. Investments in failing enterprises or those in unsound financial condition on a liquidation basis.

G. Key Factors to be Considered

Cost of portfolio securities shall be the Fair Value until there is a basis to increase or decrease the valuation. Some of the general factors which the Board of Directors or General Partners should consider in determining the Fair Value of portfolio assets are:

1. Valuations which the market currently places on similar securities issued by companies in comparable businesses and industries;

2. Fundamental analytical data including financial condition as evidenced by historical and projected operating results;

3. The long-term potential of the business;

4. The potential for successfully accomplishing future financings as necessary, and the potential for dilution, if any, to the Licensee's holdings;

5. General industry and economic conditions and trends;

6. The potential dilutionary effects from the exercise of warrants, options, convertible preferreds, convertible debentures, and any other securities which might dilute the shareholdings of Licensee;

7. The nature and duration of resale restrictions and the nature of any registration rights;

8. Exit opportunities including put and call options;

9. The percentage of the issuer's outstanding securities owned by the Licensee and other similar investors; and

10. The percentage of the issuer's outstanding securities owned by management and founders.

A detailed discussion of these factors and other valuation techniques and standards is set forth in Section III, Valuation Techniques and Criteria.

III. Valuation Techniques and Criteria

A. Introduction

The goal of a Licensee's valuation process is to determine the Fair Value of portfolio securities. Ideally, this is defined as the price at which portfolio securities would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts. However, the very nature of Licensees' investments sometimes makes this determination of fair market value problematical. In most cases there is no market for the investment at the time of valuation. Therefore, except for those securities for which market quotations are readily available, Licensees' Boards of Directors and General Partners are necessarily responsible for determining in

good faith the fair value of portfolio securities. It should be noted that loans and the debt portion of debt securities are to be valued at the principal amount expected to be collected pursuant to their terms. Accordingly, valuation below cost will be recognized on loans and the debt portion of debt securities but valuation above cost will not be recognized.

Determination of Fair Value will depend upon the circumstances in each case. No exact formula can be devised that will be generally applicable to the multitude of different valuation issues that will arise. This is especially true for semiannual valuation updates of relatively new investments for which current results either exceed or do not meet the Small Concern's forecasts. Because valuation is not an exact science, wide differences of opinion on the worth of certain investments may be encountered. Therefore, a sound valuation should be based upon all of the relevant facts, with common sense and informed judgment influencing the process of weighing those facts and determining their significance in the aggregate.

B. Valuation Techniques

1. *General considerations.* A Licensee's investment in a small business concern should be the result of due diligence and analysis of financial information. In negotiating the terms and conditions of an investment with a Small Concern, the Licensee, in effect, establishes an initial valuation for the investment, which is cost. Prudent valuation techniques generally use initial cost as value until the concern's operating experience demonstrates improvement or decline.

Appreciation in value should be recorded when warranted, but should be limited to those investments which have a sustained economic basis for an increase in value. Temporary market fluctuations or a temporary increase in earnings should not be the cause or sole reason for appreciation. When a portfolio company's operation shows sustained positive results, appreciation is indicated.

Conversely, depreciation in value should be recorded when portfolio companies show sustained unfavorable financial performance. Continuous close scrutiny of investments will provide an insight into the business cycles and problems encountered by small business concerns. This insight will allow the Licensee to differentiate between a temporary downturn or setback and a permanent problem indicating a measurable decline in value. If a portfolio concern continues to falter by not meeting its projections or by missing its payments, it should be valued down by some percentage to an appropriate fair value.

2. *Equities.* The prices of Marketable Securities which have readily available market quotations best reflect the consensus of the investing public as to fair value of the securities at a given point in time. On the valuation date, such marketable securities should be valued at the closing price for listed securities and at the average of the last bid and last ask price for over-the-counter securities. However, securities are not deemed to be freely marketable in those situations wherein such securities are very thinly or infrequently traded, or may be lacking in truly representative market quotations, or where the market for such securities cannot absorb the quantity of shares which the Licensee and similar investors may want to sell. In such cases, fair value must be determined by the Board of Directors or General Partners.

If the particular securities held by the Licensee are subject to resale restrictions under securities laws or contractual agreements, even though they are part of a class of securities which are freely marketable, then the current market value of freely marketable securities should be appropriately discounted. In unusual circumstances, a premium rather than a discount may be appropriate if the Licensee, or the Licensee together with other investors holding their shares in a trust or under a similar arrangement, own securities which represent voting control of a publicly-owned company and the Licensee's Board of Directors or General Partners determine that such voting control significantly enhances the value of the investment.

In determining the Fair Value of equity securities which are not freely marketable, a number of generally accepted techniques (or combinations thereof) are employed. These include, but are not limited to, the following:

a. Valuations based on the progress of early stage or growth enterprises toward previously established targets including among other things cash flow and profitability levels;

b. Valuations based on the discounted present value of estimated future proceeds to a Licensee including dividend income, principal payments and sales of securities, using a discount rate that reflects the degree of risk of the equity interest;

c. Valuations based on multiples of earnings, revenues, net asset value or cash flow which are commensurate with multiples which the market currently accords to comparable companies in similar businesses and industries;

d. Valuations based on recent sale prices of the issuer's securities in arm's length transactions;

e. Values placed on similar securities issued by companies in comparable businesses and industries;

f. Valuations of restricted securities based on an appropriate discount from the market value of freely marketable securities of the same class;

g. Liquidation value; and

h. Values placed on mergers and acquisitions of companies in comparable businesses and industries.

In applying Item B.2.(d) of this section, valuations may be adjusted to equate to a subsequent and significant equity financing that includes a substantial investment by a sophisticated, unrelated new investor in the issuer's securities. A subsequent and significant equity financing that includes substantially the same group of investors as the prior financing is not a factor in determining Fair Value. In addition, a small business concern's future equity financing requirements should be considered. If it appears likely that equity will be sold in the foreseeable future at a price above or below the Licensee's current valuation, then that prospective offering price should be weighed in the valuation process.

Equity interests or limited partnership interests without the benefit of stock certificates should be valued in a manner similar to the valuation methods described in this paragraph B.2. These forms of equity interest generally define a certain percentage of the profits to be allocated to each of the investors based on its relative contributions. Thus, the valuation of the interests should be based on the underlying profitability of the business and can be determined by using techniques based on future earnings, discounted cash flow analysis, or capitalization rates.

3. *Debt securities.* Debt securities as defined by the SBA are a hybrid between loans and equity. If the debt is convertible to equity ownership through exercise of conversion options or warrants, the Fair Value may increase over the loan value, depending upon factors such as the value of the equity that would be obtained through conversion, the period of convertibility, the projected future financing of the enterprise, and the parameters discussed above for equities.

There are numerous types of debt securities with a variety of equity features. The most common forms are convertible debentures and loans with detachable warrants. A generally accepted method of valuing convertible debentures is to value the loan separately using appropriate loan valuation techniques and to value the convertible portion of the investment by assuming the debenture has been converted to stock and using appropriate equity valuation techniques. Normally, the convertible debenture will be valued at the higher of its loan value (not in excess of face value) or its underlying equity value. When equity considerations govern the fair value assigned, the underlying factors will be disclosed.

Valuation of debt with detachable warrants can be done similarly to convertible debt by treating the debt and warrants as a unit, or, alternatively, the debt can be valued on its own basis as a debt instrument, and the warrants separately. If the warrants are valued separately, the following factors must be taken into account:

(a) Current value of issued shares;

(b) Time until expiration dates are reached or dates of changes in terms of exercise prices;

(c) The exercise prices at various dates;

(d) Number of shares into which the warrants are exercisable;

(e) Any restrictions and/or features of the underlying stock;

(f) The differential between the exercise price and the underlying share values if the share values are higher than the exercise price; or

(g) If the exercise price is above the current underlying share values, the probabilities that shares of the Small Concern will attain the exercise values;

(h) The ability of Licensee to perform the exercise of its rights or to sell its warrants; and

(i) The ultimate desirability, if any, of exercising the rights given by the warrants.

All of these factors must enter into the valuation process in order to assign a value to the warrants.

(4) *Loans.* Loans shall be valued at cost with depreciation being recognized to give effect for decreases in valuation; however, no valuation change shall be made to recognize the difference between the current interest rate and the interest rate on the portfolio security. Accordingly, appreciation shall not be recognized on loans for any reason. If a loan is collateralized by certain assets of a business or assets outside the business, the value of the loan to the SBIC or SSBIC is, at a minimum, the net liquidation value of the collateral after estimated selling expenses. On the other hand, if a loan is only partially secured or is an unsecured obligation of the business, then a number of factors must be taken into account, among which are the value of any collateral, the current and projected financial condition and operating results of the business, the performance history of the loan, the seniority of the debt, the net liquidation value of the tangible business assets (often through professional valuation), and the personal integrity and overall financial standing of the owners of the business. The value of the collateral should reflect current market conditions.

For those Licensees primarily involved in making loans, a loan classification system shall be employed to help manage portfolios and determine Fair Values, with loans that warrant extra attention being flagged by SBIC management. For each loan placed on this "watch list," a reason or statement should describe the particular situation. Danger signals that should alert the SBIC to potential problems include delinquency, a lack of profitability, weak or decreasing equity, increasing debt load, a deteriorating cash position, an abnormal increase in accounts payable, inaccurate financial information, insurance cancellation, judgments and tax liens, family problems, loss of employees, collateral problems, slowdown in inventory turnover, poor maintenance of plant and equipment, and heavy reliance on short term debt. This watch list should be used to report to the Board of Directors or General Partner(s).

Upon careful consideration of all the relevant factors, the Board of Directors or General Partners shall determine which loans require a provision for unrealized depreciation. It is a good rule of operation for an SBIC to perform downward valuations earlier rather than later. When the quality of a loan recovers, a higher Fair Value can subsequently be assigned.

Past due interest should not be valued or converted to a security with carrying value if (i) interest payments are more than 120 days past due, and (ii) the ability of the company to make payments is considered doubtful.

If the delinquent interest on a loan has been capitalized, the loan should be classified in the doubtful or defaulting category, and the Form 468 annual report should indicate the amount of capitalized interest. (Capitalizing delinquent interest requires prior approval by SBA.) Stringent monitoring of such loans is required and problem loan strategies should be undertaken.

C. Valuation Considerations

1. *Nature and history of the enterprise.* The nature of the business is an important consideration, as some types of businesses are more affected by changing market forces and by seasonal or cyclical variations in demand. The history of an enterprise will show its past stability or instability, its growth or lack of growth, its degree of operational diversity, and other relevant facts in forming an opinion as to the risk involved. In determining Fair Value, the factors to be studied may include, but not be limited to, the products and services of the concern, its cost structure and marketing and sales capabilities relative to its competitors, its assets, capital structure, plant facilities, production capacity, unfilled orders, capability of management, quality of budgets, sales projections and sales performance, competitive product analysis, and any legitimate offers to purchase the business in arm's length transactions.

2. *Outlook and condition of the economy and the specific industry.* Valuations should include an analysis of the economic and industry environment, together with market factors,—historic, current, and forecast. In many cases, the market may include local, regional and/or national distribution channels. In many cases, familiarity with, and access to those channels is critical to business success.

In the case of a business that is a relatively new entrant in an established industry, consideration should be especially given to the industry's past history and outlook. Where early stage companies are concerned, market acceptance and forecasted market size and share are critical factors. In all cases, performance trends for the industry involved are highly significant.

3. *Financial condition and the fair value of the Small Business Concern.* In evaluating investments in Small Concerns, three different general approaches may be taken, depending on how well established the business if and its financial health.

a. *The "New Business" approach.* In the case of new or comparatively new organizations, the lack of any operating history requires dependence on current operating results and their relation to financial forecasts. If the business fails to meet its original targets for development of products, markets and facilities, the possible negative effect on Fair Value should be carefully considered, with particular attention to the added risks caused by the possible escalation of cash losses. Disappointing results, which are frequently experienced in start-up or early-stage investments, do not necessarily dictate reduced valuations unless their duration and severity have clearly impaired the viability of the Small Concern. Conversely, the face may have exceeded original targets during the development stage of a new enterprise should not be regarded as a basis for a premature increase in Fair Value.

Business forecasts are a useful reference point in establishing initial and subsequent valuations of enterprises. Much of the material for such forecasts must by necessity come from the organizers of a business. Great care has to be taken to avoid excessive reliance on planned organizational, operating, or market developments that are contemplated but not reasonably attainable. Normal practice on the part of potential investors is to require a complete business plan from the organizers. In general, such plans are expected to contain:

(1) A description of the existing or contemplated business including pertinent history, the management and organization, board members, advisors, and current status of the business efforts.

(2) A thorough description of the product or service provided, including an answer to the question, "Who else is doing it?"

(3) A description of the market being entered, with a special emphasis on the segment or locality being addressed by the small business and what its competitive advantages are.

(4) An operational plan for the business in sufficient detail to include development schedules, production schedules, market plans, and other surveys and analyses that may apply.

(5) Financial projections for income statements and balance sheets, and most important of all in the case of small businesses, cash flow statements, monthly or quarterly for the first two years and annually for three to five years.

The Licensee should not accept this material uncritically but should prepare an independent analysis of reported and projected financial data and evaluate the risks involved. Since forecasts are being relied on so heavily in valuing a start-up business, an important factor to judge is the capability of the organizers and managers of the business, particularly their experience and personal histories gained from independent background checks. Periodic updates of the original business plan should be requested, with particular emphasis on variations of actual performance from plan and reasons for significant changes in the business plan and operating projections.

The Directors or General Partners have to use their best judgement in weighing such initial forecasts and subsequent results in the process of determining Fair Value. The original cash flow estimates and subsequent results may then be used to determine, as appropriate, discounted cash flow valuations of the Small Concern, and to conduct sensitivity analyses.

b. *The going concern approach.* To determine the Fair Value of a Licensee's investment in a small business concern that is well enough established and in sufficiently good financial health to be considered a "going concern", financial statements are of primary importance. They should be in the form of comparative annual statements for relevant years immediately preceding the date of valuation, together with a set of comparative interim statements at the end of the month preceding that date. Income statements should show (1) sales, cost of sales, and gross profit by line of business with selling, general, and administrative expenses similarly presented; (2) components of cost of sales, and other significant expenses such as depreciation and amortization, officers' salaries, income taxes and other taxes, interest on each item of long-

term debt, nonoperating income and expense, and extraordinary items; (3) net income available for dividends; and (4) adjustments to, and reconciliation with, retained earnings as stated on the balance sheet.

With income statements of this character available, Licensees should be able to separate recurring from non-recurring items of income and expense, to distinguish between net operating income and net extraordinary income, and to ascertain whether any line of business is consistently operating at a loss, and if it might be disposed of at a benefit to the company. The percentage of earnings required for business expansion should be noted when dividend paying capacity is considered. As forecasted income and cash flow are major factors in valuations, all information concerning past income and cash flow which may be helpful in predicting the future should be obtained.

The "going concern" approach should not be used without a separate determination of the financial health of the business. Financial health refers to the ability of the small business concern to generate the funds needed to meet its immediate and long-range needs. Obviously, if a company has insufficient working capital, it would not continue in business for any appreciable length of time and cannot be considered a "going concern." A review of the company's sources of income and cash flow generated from operations to meet capital requirements and provide for interest and principal payments on all debt should be made. This would necessarily require close scrutiny of the company's projected budget and its actual income and expenses. The firm's inability to meet its operating expense requirements without extraordinary measures should be taken seriously. If the firm cannot meet its continuing obligations, additional cash investments or borrowing may be urgently needed to avert an imminent liquidity crisis.

c. *The "liquidation" approach.* With respect to portfolio companies that are likely to face bankruptcy or discontinue operations for some other reason, liquidating value is of prime importance. This value will nearly always differ from the "going concern" value and may be determined by estimating the realizable value (often through professional appraisals or firm offers to purchase) of all assets and then subtracting all liabilities and associated liquidation costs. Liquidation value will depend on the decreasing value of wasting assets, the costs experienced by the business being liquidated, the expenses borne by the Licensee in order to be able to realize any liquidating value, the elapsed time until such net proceeds can be realized, the ranking of the Licensee's claims relative to other security interests and subordination agreements, and the probability of any ultimate realization of value. Incorporating this approach as a normal step in valuation can provide improved understanding of the downside of an investment.

4. *Goodwill and other intangible values.* Goodwill is based largely upon earning capacity, although such factors as prestige, ownership of a brand name, prior acquisitions, and a record of successful operation over a long period in a particular locality may also support the inclusion of intangible value. In any event, the augmentation of the value of assets by addition of goodwill should be scrutinized very closely and, when possible, checked by comparing appraised value of all assets other than goodwill with net book value thereof. Intangible values may include patents, copyrights, trade secrets and design, and manufacturing know-how. In many high technology businesses, these intangible values are an important part of the overall value of a company.

An estimate of these intangible values can be made by estimating the costs associated with duplicating such values, since such value frequently reflects the sale value of a business or its assets. Alternatively, a discounted cash flow valuation of the business can be conducted based on analysis of the business plan, and the difference between the discounted cash flow value (using discount rates that are commensurate with the risks) and the book value can be attributed to intangibles.

5. *Sales of securities.* Sales of securities of small business concerns for which market quotations are not readily available should be investigated to determine whether they represent arm's-length transactions, which more frequently than other sales may reflect fair value. Sales of additional securities to investors who have previously acquired an interest in the business, forced sales, distress sales, and sales among friends or family, often do not reflect fair value, nor do isolated arm's-length sales in small quantities.

Valuation of any thinly traded stocks or stock in a privately held company should be based primarily on the firm's fair value as defined earlier. The Board of Directors or General Partners should carefully weigh all relevant factors in valuing investments in companies whose securities have recently been sold, taking into consideration the nature of the most recent transaction before determining Fair Value.

6. *Comparative market prices.* Market values of publicly traded securities of companies in the same or similar lines of business may be considered in valuing the securities of a concern with no market or a thin unrepresentative market. Care should be taken to use only comparable companies, including not only business similarities but also similarities as to size, financial condition, and earning outlook. However, in order for comparative market prices to be meaningful, data for a representative sample of similar companies must be available. Prices paid for acquisitions of similar companies may be considered if a merger or acquisition of the portfolio concern appears likely. Market values of publicly traded companies should be discounted to arrive at the Fair Value of a private firm in order to account for the lack of marketability. After assigning such discount, a premium may be added for control, if applicable.

Values derived from comparative market prices should be confirmed by comparison with fair value arrived at by analyzing earnings, cash flow, assets, liabilities, and other fundamentals.

7. *Capitalization rates.* In the application of certain fundamental valuation factors, particularly earnings and cash flow, it is necessary to capitalize the average or current results at some appropriate rate. Determining the proper capitalization rate presents one of the most difficult problems in valuation. Among the more important factors to be considered in a particular case are (i) the nature of the business, (ii) the risk involved, and (iii) the growth, stability or irregularity of earnings and cash flows. A company with a positive earnings trend and a positive outlook will command a higher capitalization factor (multiplier) in the market place, which may result in a stock valuation well above book value. This excess value is, in effect, an intangible value comparable to goodwill.

While capitalization rates do vary, an appropriate rate can be determined by analyzing rates for comparable companies in the same industry. Investigating similar companies in the same industry or geographic area can be done directly or through published material from sources such as Value Line, Standard and Poor's, Robert Morris and Associates, or any other of the numerous sources available for comparable industry data.

8. *Weight to be accorded various criteria.* Certain of the foregoing factors may rightfully carry more weight than others, depending upon the circumstances in each case. Since valuations cannot be made solely on the basis of a prescribed formula, the assigning of weights on a purely mathematical basis cannot be justified. Thus, no useful purpose is served by averaging several factors such as book value, capitalized earnings, and capitalized dividends and deriving value from the result. Such a process also excludes active consideration of other pertinent criteria such as market potential and management capability, and, therefore, the end result cannot be expected to derive a realistic valuation.

The most useful approach appears to be to look at each investment individually, determine which methodology is best suited to analyze and value that specific type of investment, and take into consideration all applicable market and economic data. In situations where an SBIC or SSBIC concentrates in a particular type of investment, specialized valuation criteria can be developed, but it may only be applicable for that narrow range of investments.

[Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies]

Dated: June 3, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–18549 Filed 8–4–93; 8:45 am]

BILLING CODE 8025–01–M

federal register

Thursday
August 5, 1993

Part III

Department of the Treasury

Fiscal Service

31 CFR Part 206

Management of Federal Agency Receipts, Disbursements, and Operation of the Cash Management Improvements Fund; Proposed Rule

DEPARTMENT OF TREASURY

Fiscal Service

31 CFR Part 206

RIN 1510–AA34

Management of Federal Agency Receipts, Disbursements, and Operation of the Cash Management Improvements Fund

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document revises collection and deposit regulations requiring timely methods, principally Electronic Funds Transfer (EFT), for the collection and deposit of funds as authorized by section 2652 of the Deficit Reduction Act of 1984. This document also incorporates revisions, authorized by the Cash Management Improvement Act of 1990 (CMIA 90) and the Cash Management Improvement Act Amendments of 1992 (CMIA 92), that require executive agencies to use effective, efficient disbursement mechanisms, principally EFT, in the delivery of payments. An agency's failure to comply may result in a charge equal to the cost of such noncompliance to the Treasury's General Fund.

DATES: Comments must be received by September 7, 1993.

ADDRESSES: Comments may be mailed to the Cash Management Policy and Planning Division, Financial Management Service, U.S. Department of the Treasury, room 511, Liberty Center, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: John Galligan (202) 874–6935 (Director, Cash Management Policy and Planning Division); Shane Gellenthien (202) 874–6789 (Program Specialist); or Randall Lewis (Principal Attorney) (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Authority

This regulation is authorized by section 2652 of the Deficit Reduction Act of 1984, Public Law 98–369, 98 Stat. 494 (1984), codified at 31 U.S.C. 3720, as amended, section 4 of the Cash Management Improvement Act of 1990, Public Law 101–453, 104 Stat. 1058 (1990), codified at 31 U.S.C. 3335 (CMIA 90), the Cash Management Improvement Act Amendments of 1992, Public Law 102–589, 106 Stat. 5133 (1992), and additional authority found at 5 U.S.C. 301, 31 U.S.C. 321, 31 U.S.C. 3301, 31 U.S.C. 3302, 31 U.S.C. 3321, 31 U.S.C. 3327, 31 U.S.C. 3328, and 31 U.S.C. 3332 (formerly 31 U.S.C. 492). Regulations governing Federal payments by the automated clearinghouse method of EFT appear in 31 CFR part 210 and 31 CFR part 370. Agency guidance for the use of EFT is published in the Treasury Financial Manual.

Background

Prior to passage of CMIA, part 206 of CFR title 31 (Management of Federal Agency Receipts and Operation of the Cash Management Improvements Fund) reflected exclusively the requirements of section 2652 of the Deficit Reduction Act of 1984 (DRA 84). Pursuant to the authorities vested in the Secretary of the Treasury in DRA 84, and given the technological and cost-effective breakthroughs in the collection of funds such as pre-authorized debit and credit/debit cards in the years since its passage into law, this part prescribes that executive agencies shall collect and deposit monies to the Treasury via EFT, when cost effective and to the maximum extent practicable.

CMIA 90 expands the cash management regulatory role of the Secretary of the Treasury (hereinafter, Secretary) to include the disbursement of funds. Pursuant to CMIA, and given the technological and cost-effective breakthroughs in the disbursement of funds such as direct deposit and ACH/Vendor Express, this Part prescribes that executive agencies shall disburse monies via EFT, when cost effective and to the maximum extent practicable.

General Principles

It is the policy of the Secretary that all Executive Branch collections be collected by Electronic Funds Transfer (EFT) and all Executive Branch payments be disbursed by EFT. Since the overriding goal of collection and payment systems is to accommodate an efficient, effective, and timely transfer of funds in support of Federal programs, Federal agencies should use the most appropriate funds transfer mechanism, principally EFT, based upon these principles. EFT allows Federal agencies to meet program objectives with convenience, security, and reliability for recipients. By permitting greater control over the timing of collections and payments, EFT improves cash management and supports agency efforts to comply fully with such requirements as the Prompt Payment Act. In addition, EFT reduces processing costs and paperwork, and provides for electronic interface between issuer and receiver accounting systems. The Financial Management Service (Service) recognizes that, under certain circumstances, the use of EFT to collect or disburse funds may not be cost-effective, or practical, or may not be consistent with other statutes.

Proposed Implementation Process

Treasury proposes to implement the amended 31 CFR part 206 jointly with Federal agencies as has been the case with the original 31 CFR part 206 which was published as a Final Rule in 1985. To that end, six focus groups, chaired by non-Treasury officials, and comprised of 50 non-Treasury Federal agency officials are working with Treasury, identifying barriers to EFT and setting the standards of performance in utilizing cost-effective disbursement applications. Contributions from these groups have aided in shaping this document. It is understood that agencies' ability to reach the suggested future standards, will depend upon the extent to which all impediments or barriers to EFT are eliminated. Barriers include current commercial practices, statutory prohibitions, regulatory prohibitions and incompatible banking systems in some foreign countries. The Service invites comments regarding barriers to achieving EFT and proposed solutions.

Agency standards will be established by agencies, considering the unique characteristics of their operations, system, policies, legislation, regulations and expectations of their customers and programs. Once agency standards are established, Treasury will establish government wide standards which are intended to measure the Government as a whole, not as standards to be applied independently to each agency. Agencies will establish initial standards and adjust their standards based on analysis of measurement data and improvement plans. Over time, Treasury, working in consultation with OMB, will analyze and adjust government wide standards. Interagency comparisons and adjustment of standards will illustrate the fact that the performance measurement program is an iterative and evolving process to foster continuous improvement.

Federal agencies will be responsible for working with their constituencies to attain consensus on agency standards in using the most appropriate, cost-effective mechanisms for delivering payments. These constituencies include, but are not limited to: Vendors, benefit recipients, State officials, and Federal employees. Agencies may provide the public with an opportunity to comment prior to implementing new EFT mechanisms, if deemed appropriate. Treasury will assist Federal agencies in this endeavor to the maximum extent practicable.

Through the cash management review process, which has been in effect successfully for 8 years, Treasury will continue to work with Federal agencies to identify cash flows in which EFT is the most cost-effective and practical approach. Implementation plans will be jointly developed and periodically evaluated by Federal agencies and Treasury. Any modifications to these plans by Federal agencies will be brought to the attention of Treasury in the cash management review process, or on an ad hoc basis, and a negotiation process will ensue. The Service will issue directives within the Treasury Financial Manual to detail "Best Practices" to be followed. Some examples follow regarding how policies may be carried out:

—Fees/Fines: EFT shall be adopted as the presumed method of collecting fees and fines, especially when these collection cash flows are recurring and/or of large dollar amounts.

—Tax Collections: EFT shall be adopted as the primary method for collecting taxes. These methods may include the Automated Clearing House and the acceptance of credit/debit cards.

—Salary Payment: EFT shall be adopted as the presumed method for paying employees.

—Vendor and Miscellaneous Payments: Each department and agency shall exercise its authority under the Federal Acquisition Regulation to require that all contractors are paid by EFT. EFT shall be adopted as the standard method of payment for all Federal program payments originated by agencies or their agents.

—Benefit Payments: EFT shall be presented to new beneficiaries as the presumed method for receiving benefits. EFT payment methods, such as Electronic Benefits Transfer, shall be adopted and implemented to make EFT accessible to all recipients.

Agency representatives have indicated that there are some cash flows for which EFT: (1) Would not be cost-effective; (2) would be impractical; or (3) would be inconsistent with current statutory requirements. It is not the intention of the Service to require that collections or disbursements be made via EFT when it is not cost-effective, is impractical, or is inconsistent with existing statutory requirements. For some collection and disbursement cash flows, such as those which are small-dollar and/or non-recurring, it may not be practical or cost-effective to require EFT. The Service will work with each agency to identify those cash flows in which EFT may not be required.

Specific Issues

Unless otherwise indicated in this Supplementary Information, existing language within 31 CFR part 206 as authorized by section 2652 of the Deficit Reduction Act of 1984 remains unchanged except to reflect the Secretary's policy of collecting and disbursing funds via EFT and to reflect changes authorized by the Cash Management Improvement Act of 1990 and the Cash Management Improvement Act Amendments of 1992 to require that all funds be disbursed via EFT to the maximum extent practicable, whenever cost-effective and when consistent with other statutes.

Scope and Application (§ 206.1)

This part is amended to reflect the authorities conveyed by the Cash Management Improvement Act of 1990 and the Cash Management Improvement Act Amendments of 1992 to provide for the timely disbursement of funds.

This part is also amended to reflect that an agency shall require the collection of all funds by the Government via EFT and the disbursement of all funds from the Government via EFT as a provision of new contractual agreements or renewal of existing contracts which impact agency collection or payment mechanisms. This is a change from the original language which states that "an agency is prohibited from entering into new contractual agreements or renewal of existing contracts for agency collection systems without the prior approval of the Service." It is not the intention of the Service to pre-approve all agency collection and payments systems; instead, the Service clarifies its intentions to require that all agency collection and disbursement transactions are made via EFT, when cost-effective and to the maximum extent practicable, regardless of the systems utilized by the agencies.

As provided for in section 4 of the CMIA 90, payments made by the Tennessee Valley Authority are excluded from these amendments.

Definitions (§ 206.2)

New definitions have been added to § 206.2 that are based on those in 31 CFR part 210 which regulate Federal Payments through Financial Institutions by the Automated Clearing House Method, and those in 31 CFR part 205 for all funds transfers that implement Section 5 of the Cash Management Improvement Act of 1990 and the Cash Management Improvement Act Amendments of 1992. The newly defined terms are: "Cash Management," "Day," "Disburse," "Electronic Funds Transfer," "Payment," "Point-of-Sale Terminal," and "Recipient." Several existing definitions have been amended to reflect the Secretary's EFT policy.

Billing Policy and Procedures (§ 206.3)

This language has not been changed. However, the Service emphasizes that the billing requirements contained in this section do not supersede any billing requirements contained within regulations implementing the Prompt Payment Act of 1982 as Amended.

Collection and Payment Mechanisms (§ 206.4)

Language has been added to § 206.4 which requires executive agencies to use EFT, when cost-effective and to the maximum extent practicable, in the collection and delivery of all funds. General language describing the selection of appropriate collection mechanisms has been deleted to more precisely convey the Secretary's goal of collecting all collections via EFT.

This section also indicates that directives will be published by the Service in the Treasury Financial Manual, Volume I, Chapter 6–8000 (I TFM 6–8000), prescribing that collections and payments shall be made via EFT when cost-effective and to the maximum extent practicable. These directives will consider all significant costs inherent in collecting and delivering payments via EFT or other means.

Collection and Deposit Procedures (§ 206.5)

Language found in § 206.5(b) describing exceptions to collection and deposit time frame policies has been removed because existing dollar thresholds below which non-EFT collections shall be deposited daily are subject to change given fluctuations in interest rates and because mailing deposits to depositaries is strongly discouraged. Instead, § 206.5(b) has been revised to reference I TFM 6–8000 for specific exceptions to collection and deposit timeframe policies.

Cash Management Review and Planning (§ 206.6)

This section now includes a reference to the fact that the Service will evaluate an agency's EFT policy and application as part of the periodic cash management review process, as required by I TFM 6–8000.

Notice of Deficiency (§ 206.7)

Language has been added which more precisely conveys the Secretary's policy of converting all collections and

payments to EFT when cost-effective and to the maximum extent practicable.

Charges (§ 206 9)

This section is amended to reflect that, in instances of cash management payment noncompliance, an agency will absorb any charges assessed from appropriations available for executive agency operations and shall not be paid from amounts available for funding programs. Also, charges collected from an executive agency, in instances of cash management payment noncompliance, shall be deposited in the Treasury and credited as miscellaneous receipts. This differs from charges collected from an executive agency, in instances of cash management collection noncompliance, which shall be deposited into the Cash Management Improvements Fund as outlined in § 206.10.

It should be noted that the differences in treatment between collections and deposits, and disbursements are due to differences in the requirements of the underlying statutes supporting those distinct functions.

Public Comment

Public comment is solicited on all aspects of this proposed regulation. The Service will consider all comments made on the substance of this proposed regulation, but does not intend to hold hearings.

Regulatory Analysis

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The Regulatory Flexibility Act defines "small entities" to include certain non-profit, for-profit, and Governmental entities. Revisions made pursuant to CMIA 90 only will impact executive agencies, entities not encompassed by that definition. The flexibility incorporated into the revisions to deposit and collection provisions has been included in order to avoid the imposition of EFT in those situations where significant costs or impracticality preclude its effective use and, therefore, will not result in a significant economic impact on a substantial number of small entities.

It has been determined that this document is not a major regulation as defined in E.O. 12291 and a regulatory impact analysis is not required. Any economic or other consequences resulting from the revisions in this Proposed Rule which pertain to disbursements will be the direct result of implementation of Section 4 of CMIA 90. Any economic or other consequences of revisions which pertain to deposits and collections are not likely to result in an annual effect on the economy of $100 million or more, major increases in costs or prices to consumers, or a significant adverse impact on competition.

List of Subjects in 31 CFR Part 206

Accounting, Banks, Banking, Electronic funds transfer.

Issuance

For the reasons set out in the preamble, it is proposed to revise part 206 of title 31 of the Code of Federal Regulations to read as follows:

PART 206—MANAGEMENT OF FEDERAL AGENCY RECEIPTS, DISBURSEMENTS, AND OPERATION OF THE CASH MANAGEMENT IMPROVEMENTS FUND

Sec.

206.1 Scope and application.
206.2 Definitions.
206.3 Billing policy and procedures.
206.4 Collection and payment mechanisms.
206.5 Collection and deposit procedure exceptions.
206.6 Cash management planning and review.
206.7 Compliance.
206.8 Appeals.
206.9 Charges.
206.10 Operation of and payments from the Cash Management Improvements Fund.

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3301, 3302, 3321, 3327, 3328, 3332, 3335, 3720, and 6503.

§ 206.1 Scope and application.

(a) This part applies to all Government departments and agencies in the Executive Branch (except the Tennessee Valley Authority) and all monies collected and disbursed by these departments and agencies. This subpart does not apply to interagency transfers of funds.

(b) Policies and guidelines are prescribed for promoting efficient, effective cash management through improved billing, collection, deposit, and payment of funds. These objectives seek to improve funds availability and the efficiency and effectiveness with which funds are transferred.

(c) Authority to implement this regulation has been delegated within the Department of the Treasury (hereinafter, "Treasury") to the Commissioner (hereinafter "the Commissioner") of the Financial Management Service (hereinafter "the Service".) The Service maintains the final authority as granted under the Deficit Reduction Act of 1984 to specify use of a particular method or mechanism of collection and deposit and to recover costs that result from noncompliance. Authority is also granted to the Service, under the Cash Management Improvement Act of 1990 and the Cash Management Improvement Act Amendments of 1992, to provide for the timely disbursement of funds. As described in the Treasury Financial Manual, Volume I, Chapter 6–8000 (I TFM 6–8000), an agency shall require the collection or disbursement of funds by the agency via EFT as a provision of new contractual agreements or renewal of existing contracts which impact agency collection or payment mechanisms.

§ 206.2 Definitions.

For the purpose of this part, the following definitions apply:

Agency means any department, instrumentality, office, commission, board, service, Government corporation, or other establishment in the Executive Branch, except the Tennessee Valley Authority.

Billing means any of a variety of means by which the Government places a demand for payment against an entity that is indebted to the Government. The term encompasses invoices, notices, initial demand letters and other forms of notification.

Cash management means practices and techniques designed to accelerate and control collections, ensure prompt deposit of receipts, improve control over disbursement methods, and eliminate idle cash balances. "Cash Management Review Process" means periodic examinations of collection and disbursement cash flows to ensure that the most effective mechanisms are used to process the funds.

Collect means the process of effecting a collection.

Collection means the transfer of monies from a source outside the Federal Government to an agency or to a financial institution acting as an agent of the Government.

Collection mechanism means any one of a number of tools or systems by which monies are transferred to the Government from a source outside the Government.

Cutoff time means a time predesignated by a financial institution beyond which transactions presented or actions requested will be considered the next banking day's business.

Day means a calendar day unless otherwise specified.

Deposit means as a noun, money that is being or has been presented for credit to the Treasury. Deposits can be made by an agency or directly by the remitter. All such transfers are effected through a Federal Reserve Bank or other financial

institution. As a verb, deposit means the act of presenting monies for credit to the Treasury by an official of an agency.

Depositary means a bank or other financial institution which has been authorized by the Treasury to receive monies for credit to the Treasury.

Disburse means the initiation of an Electronic Funds Transfer (EFT) transaction or other methods of drawing funds from accounts maintained by the Government.

Electronic funds transfer (EFT) means any transfer of funds, other than a transaction originated by cash, check or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes Fedwire transfers, Automated Clearing House (ACH) transfers, and transfers made at automatic teller machines (ATM) and Point-of-Sale (POS) terminals.

Fund means the Cash Management Improvements Fund.

Monies (or "receipts") means EFT transactions, currency, negotiable instruments, and/or demand deposits owed to or collected by an agency.

Next day deposit means a deposit made before the cutoff time on the day following the day on which the funds were received by an agency. For example, if an agency receives funds for deposit at 3 p.m. on Monday and transmits the deposits to the depositary by 2 p.m. on Tuesday (the depositary's next cutoff time) then next-day deposit requirements are met.

Payment means a sum of money transferred to a recipient in satisfaction of an obligation. A payment includes any Federal Government benefit or non-benefit payment.

(1) A benefit payment is a disbursement for a Federal Government program or annuity. Benefit payments may be one-time or recurring payments including, but not limited to, payments for Social Security, Supplemental Security Income, Black Lung, Civil Service Retirement, Railroad Retirement Board Retirement/Annuity, Veterans Administration Compensation/Pension, Central Intelligence Agency Annuity, Military Retirement Annuity, and Coast Guard Retirement.

(2) A non-benefit payment is a Federal Government disbursement other than a benefit payment. Non-benefit payments may be one-time or recurring payments, including but not limited to, payments for vendors, Internal Revenue Service tax refunds, Federal salaries and allotments therefrom, grants, travel disbursements and reimbursements, loans, principal and/or interest related to United States savings bonds, notes, and other savings-type securities, and payments of service fees to organizations qualified to issue and/or redeem savings bonds.

Point-of-Sale (POS) terminal means an automated credit card or debit card transaction device.

Recipient means a person, corporation, or other public or private entity receiving benefit or non-benefit payments from the Government.

Same day deposit means a deposit made before the cutoff time on the day on which the funds were received by an agency. For example, if an agency receives funds for deposit at 10 a.m. on Monday and transmits the deposits by 2 p.m. on Monday (the depositary's cutoff time) then a same-day deposit has been achieved.

Service means the Financial Management Service, Department of the Treasury.

Treasury Financial Manual (TFM) means the manual issued by the Service containing procedures to be observed by all Government departments and agencies in relation to central accounting, financial reporting, and other Government-wide fiscal responsibilities of the Department of the Treasury. Volume I, Chapter 6–8000 (I–TFM 6–8000) contains cash management procedures to be followed pertaining to these regulations.

§ 206.3 Billing policy and procedures.

The billing process is considered an integral part of an effective cash management collection program. In those situations where bills are required and the failure to bill would affect the cash flow, bills will be prepared and transmitted within 5 business days after goods have been shipped or released, services have been rendered, or payment is otherwise due. An agency may prepare and transmit bills later than the 5 day timeframe if it can demonstrate that it is cost effective to do so. In addition, the bill must include the terms and dates of payments, and late payment provisions, if applicable. Terms and dates of payments will be consistent with industry practices. I TFM 6–8000 describes detailed billing policies, procedures and industry standards.

§ 206.4 Collection and payment mechanisms.

(a) All funds are to be collected and disbursed by EFT when consistent with the provisions of paragraph (b) of this section. These mechanisms include, but are not limited to, Fedwire transfers, Automated Clearing House (ACH) transfers, and transfers made at automatic teller machines (ATM) and Point-of-Sale (POS) terminals.

(b) The Service will publish directives in I TFM 6–8000 requiring that collections and payments shall be made by EFT when cost effective and practicable. The Service will also establish in I TFM 6–8000 the process by which Federal agencies and FMS shall construct and agree upon implementation timetables for conversion to EFT.

(c) The Service is the required approval authority when an agency desires to convert from one collection or payment mechanism to another. In proposing the use of a collection or payment mechanism other than EFT, an agency may be required to provide a cost-benefit analysis, as directed in I TFM 6–8000, which justifies its use. This analysis may include, at a minimum, known or estimated agency personnel costs, costs of procurement, recurring operational costs, equipment and system implementation and maintenance costs, costs to payment recipients, and costs to remitters. Agencies should consult with Treasury to determine the need to include interest costs in their computations of benefits and costs.

(d) An agency shall require the collection of funds by the agency to be made via EFT and the disbursement of funds by the agency to be made via EFT as a provision of new contractual agreements or renewal of existing contracts which impact agency collection or payment mechanisms.

§ 206.5 Collection and deposit procedure exceptions.

(a) The following collection and deposit timeframe requirements are to be followed in exception cases where EFT mechanisms are not utilized:

(1) An agency will achieve same day deposit of monies. Where same day deposit is not cost-effective or is impracticable, next day deposit of monies must be achieved except in those cases covered by paragraph (b) of this section.

(2) Deposits will be made at a time of the day prior to the depositary's specified cutoff time, but as late as possible in order to maximize daily deposit amounts.

(3) When cost-beneficial to the Government, an agency may make multiple deposits.

(b) Any additional exceptions to the above policies are listed in I TFM 6–8000.

§ 206.6 Cash management planning and review.

(a) The primary responsibility to implement an effective cash management program rests with an agency. As part of its overall responsibility, an agency must constantly seek methods to bring about cash management savings and periodically perform cash management reviews to identify areas needing improvement.

(b) As part of its cash management review process, an agency is expected to document cash flows in order to provide an overview of its cash management activities and to identify areas that will yield savings after cash management initiatives are implemented. The Service will evaluate an agency's EFT policy and application, to include mitigating circumstances which may prevent the use of EFT, as part of the cash management reviews.

(c) An agency's initial and subsequent cash management reviews will provide the basis for identification of improvements and preparation of cash flow reports for submission to the Service as prescribed by I TFM 6–8000. That Chapter provides requirements for an agency in performing periodic cash management reviews, identifying improvements, and preparing cash flow reports. In addition, periodic reports must be submitted by an agency to the Service on progress made in implementing cash management initiatives and associated savings.

(d) The Service will periodically review an agency's cash management program to ensure that adequate progress is being made to improve overall cash management at an agency. As part of its oversight authority, the Service may visit an agency and review all or specific cash management activities of an agency. An agency will be notified in advance of the Service's review and will be required to provide the Service with documentation of the agency cash management review within the timeframes and format required by I TFM 6–8000.

§ 206.7 Compliance.

(a) The Service will monitor agency cash management performance. Part of the monitoring process will include establishing implementation and dates for conversion to, or expansion of, EFT mechanisms, as well as the identification of mitigating circumstances which may prevent the use of EFT.

(b) In cases where an agency fails to meet a scheduled date within its control, the Commissioner will send a formal Notice of Deficiency to an agency's designated cash management official. A separate Notice will be sent for each initiative. The Notice of Deficiency will include, at a minimum, the nature of the deficiency, the amount of the proposed charge, the method of calculation, the right to file an appeal, and the date the charge will be imposed in the absence of an appeal.

§ 206.8 Appeals.

(a) An agency which chooses to file an appeal must submit the appeal in writing to the Commissioner, within 45 calendar days of the date of the Notice of Deficiency. In the event of an appeal, the charge imposed under the Notice of Deficiency will be deferred pending the results of the appeal. If an appeal is not submitted (i.e., received by the Commissioner) within 45 calendar days, the amount indicated in the Notice of Deficiency will be charged per § 206.9(a).

(b) The appeal shall contain the elements and follow the submission procedures specified in I TFM 6–8000. The appeal will include the background leading to the Notice of Deficiency, the basis of the appeal, and the action requested by an agency. An agency should state its disagreements with the Notice of Deficiency which may include cost/benefit factors, the amount of the charge, and other items.

(c) An agency must state what action it requests in its appeal. An agency may request that the Notice of Deficiency be completely overturned for cost/benefit or other considerations. Alternatively, an agency may request a reduced charge, deferral of the charge, an alternative solution to cash management improvement, or a combination of these actions.

(d) *Appeals board.* The appeals board shall consist of three members—two permanent members and one temporary member. The permanent members will be the Commissioner, and the Service's Assistant Commissioner, Federal Finance (hereinafter "the Assistant Commissioner"). The temporary board member will be a cash management official from an agency other than the agency appealing the Notice of Deficiency. The board will be convened on an as-needed basis. The order of agency assignment to the board will be published by Treasury. The Commissioner, Assistant Commissioner, and the designated agency cash management official may delegate their responsibility to a staff subordinate having sufficient experience in cash management matters. The Assistant Commissioner's designee may be from any area other than that which issued the Notice of Deficiency.

(e) *Appeal review process.* The Appeals Board will review the Notice of Deficiency, any additional information submitted by the Service, and the written appeal from an agency. Based on this review, the Board may decide additional investigation is required. The Board may request an agency and/or the Service to meet with the Board as part of the review process.

(f) *Appeal finding.* A written majority decision shall be rendered by the Appeals Board within 30 calendar days of receipt of the appeal. The Board may extend this period for an additional 30 calendar days if required. The decision of the Board whether to uphold the Notice of Deficiency, to overturn the Notice of Deficiency, or to mandate some other action will be stated in the finding. Other action mandated may include a reduced charge, a deferral of the charge, an alternate solution to cash management improvement, or a combination of these actions. The basis of the decision, the amount of the charge and the effective date of the charge will be stated in the finding. The effective date of the charge may be retroactive to the date indicated in the Notice of Deficiency.

(g) Any terms related to charge deferral will be stated; the Service and an agency will be required to submit evidence of compliance to such terms at a future specified date. At this future time, the Appeals Board will review the evidence of compliance. Based on this evidence, the Board will decide whether to impose a charge.

§ 206.9 Charges.

(a) Within 30 calendar days of the effective date of the charge or the appeals decision, an agency must submit appropriate accounting information to the Assistant Commissioner. The charge will be calculated following procedures outlined in I TFM 6–8000, and will be assessed for each month that noncompliance continues.

(b) *Collection noncompliance.* In the case of cash management collection noncompliance, an agency will absorb the charge from within funds available for the administration or operation of the program(s) to which the collections or payments relate. Charges collected from an executive agency in the case of cash management collection noncompliance shall be deposited in the Cash Management Improvements Fund as outlined in section 206.10.

(c) *Payment noncompliance.* In the case of cash management payment noncompliance, an agency will absorb the charge to the maximum extent practicable out of appropriations

available for agency operations, and shall not be paid from amounts available for funding programs of an agency. Also, charges collected from an executive agency, in the case of cash management payment noncompliance, shall be deposited in the Treasury and credited as miscellaneous receipts.

(d) If an agency does not voluntarily pay the charge assessed under § 206.9(a), the Service will debit the appropriate account automatically. By failing to pay voluntarily the charges as required by the Deficit Reduction Act of 1984 or the Cash Management Improvement Act of 1990, an agency shall be deemed to authorize the automatic debit to its account.

(e) The Commissioner will formally terminate the charge when the Commissioner has determined that an agency has complied. In addition, on an annual basis, the Commissioner will review an agency's performance and calculation of the charge, and will notify an agency in writing of any changes to the amount being charged.

§ 206.10 Operation of and payments from the Cash Management Improvements Fund.

(a) The Cash Management Improvements Fund (Fund) will be operated as a revolving fund by the Service. Charges assessed under § 206.9(a) for cash management collection noncompliance will be deposited into the Fund according to the Deficit Reduction Act of 1984. The Service will also disburse any payments from the Fund based on projects selected by a project selection and approval committee.

(b) *Committee composition.* The committee shall consist of three members—two permanent members and one temporary member. The permanent members will be the Commissioner, and the Assistant Commissioner. The temporary committee member will be a cash management official from an agency other than an agency being considered for funds. Decisions of the project selection and approval committee cannot be appealed. Agencies will be notified of any available amounts in the Fund, and requirements to apply for such monies through a TFM bulletin.

(c) As provided by 31 U.S.C. 3720, sums in the Fund shall be available without fiscal year limitation for the payment of expenses incurred in developing improved methods of collection and deposit and the expenses incurred in carrying out collections and deposits using such methods, including the costs of personal services and the costs of the lease or purchase of equipment and operating facilities.

(d) In addition to all reports required by law and regulation, the Service will prepare and publish a full report on payments, receipts, disbursements, balances of the Fund, and full disclosure on projects financed by the Fund.

Russell D. Morris,

Commissioner

[FR Doc. 93–18624 Filed 8–4–93; 8:45 am]

BILLING CODE 4810–35–P

federal register

Thursday
August 5, 1993

Part IV

Department of Education

National Institute on Disability and Rehabilitation Research

Proposed Funding Priorities for Fiscal Years 1994–1995 for Rehabilitation Research and Training Centers; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

Notice of Proposed Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for fiscal years 1994–1995 for Rehabilitation Research and Training Centers.

SUMMARY: The Secretary proposes funding priorities for Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to focus research attention on areas of national need identified through NIDRR's long-range planning process. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: Comments must be received on or before (September 7, 1993.)

ADDRESSES: All comments concerning these proposed priorities should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue, SW., room 3424, Switzer Building, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains seven proposed priorities under the RRTC program. Two of the priorities are in areas related to children and youth with serious emotional disturbances. The remaining priorities are for research related to long-term mental illness, mental health and deafness, pediatric rehabilitation, medical rehabilitation services, and the rehabilitation needs of persons with disabilities in the Pacific Basin.

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide such training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities. These proposed priorities support the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 352.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

NIDRR is in the process of developing a revised long-range plan. The priorities proposed in this notice are consistent with the long-range planning process.

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Description of the Rehabilitation Research and Training Center Program

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, and promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

The statute requires that each applicant for a grant, including an RRTC, demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities. NIDRR encourages all Centers to involve individuals with disabilities and minorities as recipients in research training, as well as clinical training.

Applicants have considerable latitude in proposing the specific research and related projects they will undertake to achieve the designated outcomes; however, the regulatory selection criteria for the program (34 CFR 352.31) states that the Secretary reviews the extent to which applicants justify their choice of research projects in terms of the relevance to the priority and to the needs of individuals with disabilities. The Secretary also reviews the extent to which applicants present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a means to evaluate the extent to which project objectives have been achieved.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General

The Secretary proposes that the following requirements will apply to all of the RRTCs pursuant to the priorities:

Each RRTC must conduct a multifaceted program of research to develop solutions to problems confronted by individuals with disabilities.

Each RRTC must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research.

Each Center must disseminate and encourage the use of new rehabilitation knowledge. They must publish all materials for dissemination or training in alternate formats to make them accessible to individuals with a range of disabling conditions.

Each RRTC must involve individuals with disabilities and, if appropriate, their family members, as well as rehabilitation service providers, including vocational rehabilitation service providers, in planning and implementing the research and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under this competition only applications that meet one of these absolute priorities:

Proposed Priorities 1 and 2—Children and Youth With Serious Emotional Disturbances (CYSED)

Background

The proportion of children and youth under 18 years of age who have serious emotional disturbances has been estimated to be anywhere from three percent to five percent of the population (Koyanagi and Gaines, "All Systems Failure," National Mental Health Association, Arlington, VA, 1993). CYSED may receive services from a number of social service systems including education, juvenile justice, mental health, health, and vocational rehabilitation. The extent of the coordination that takes place between service agencies varies widely, and parents are sometimes called upon to serve as case managers. Coordination between systems is particularly important when a child transitions into young adult and adult services.

Many CYSED appear to be "falling through the cracks" as reflected by high hospitalization and arrest rates and low rates of employment, poor school attendance and low participation rates in vocational training (Stoep, "Through the Cracks: Transition to Adulthood for Severely Psychiatrically Impaired Youth" Fourth Annual Research Conference Proceedings, Florida Mental Health Institute, Tampa, 1991). When coordination efforts fail or when appropriate services are unavailable, CYSED may be placed in highly restrictive residential settings, including incarceration. The number of CYSED entering the juvenile justice system and the number of violent offenses they commit are increasing (Loeber, "Antisocial Behavior: More Enduring than Changeable?" Journal of the Academy of Child and Adolescent Psychiatry, 30, 1990). Parents and teachers of CYSED experience very similar feelings of isolation and burn-out (Soler et al., "Fighting Fragmentation: Coordination of Services for Children and Families," Nebraska Law Review, 69, (2), 1990).

The financing of services provided to CYSED can be a costly and complicated matter. Flexible and efficient funding strategies need to be developed and evaluated, particularly within the mental health, social services, and education systems.

The importance of providing support to families and, as appropriate, involving them in the services that are provided to their children has been increasingly recognized by State mental health and education administrators. Many States mandate parent representation on committees that coordinate, plan and evaluate services. More research is needed to determine the impact that family support and involvement has on the effectiveness of the services provided to CYSED. In addition, outreach strategies are needed to identify and meet the needs of parents from minority backgrounds and increase their participation on these committees and other bodies which influence policy and practice. As the mental health system moves toward a family focus, there is a need to identify measures that reflect the values of family-centered services, family participation, family support, and empowerment.

The Center on Mental Health Services within the Substance Abuse and Mental Health Services Administration is presently supporting demonstration projects on the development of statewide family-controlled information and support networks. It is important to understand the impact of these information and support networks.

NIDRR, in collaboration with the Substance Abuse and Mental Health Services Administration, Center on Mental Health Services, announces two proposed research priorities related to CYSED.

Proposed Priority 1—Improving Service Systems for CYSED

An RRTC on improving service systems for children and youth with serious emotional disturbances shall—

- Utilizing existing databases, identify principal demographic characteristics of children and youth with serious emotional disturbances and the services they receive in the education, juvenile justice, mental health, health, and vocational rehabilitation systems;
- Identify, develop and evaluate models of service system coordination for each of the systems listed above, emphasizing the transition from childhood to young adulthood and adult services;
- Identify, develop and evaluate innovative methods of early identification, educational programming, rehabilitation and treatment for each of the systems listed above;
- Identify and evaluate innovative models of financing and enhanced resource control at the local level for each of the systems listed above;
- Coordinate its activities with related projects supported by the Office of Special Education Programs; and
- Evaluate the impact of the Children's Mental Health Services demonstration projects on the development of statewide family-controlled information and support networks throughout the United States and the effectiveness of the different strategies employed by these family-controlled organizations to expand and include families and children from culturally diverse backgrounds.

Proposed Priority 2—Services to Families of CYSED

An RRTC on services to families of children and youth with serious emotional disturbances shall—

- Identify, develop, and evaluate models of family participation in the provision of education, juvenile justice, mental health, health, vocational, and rehabilitation services;
- Identify factors contributing to family burnout and develop and evaluate strategies to prevent it;
- Identify factors for determining when out-of-home placement is appropriate and when it is not;

- Evaluate the impact that supports provided to families have on the effectiveness of the services provided to CYSED;
- Compare and evaluate, across States, the effectiveness of State-mandated parent representation on committees that coordinate, plan, and evaluate services;
- Develop and evaluate strategies for outreach to families from minority backgrounds in order to increase their participation on advisory committees and other bodies that influence policies and practices;
- Coordinate its activities with related projects supported by the Office of Special Education Programs; and
- Develop and maintain a national clearinghouse of family participation in the provision of services that will provide information and technical assistance to parents and professionals.

Proposed Priority 3—Rehabilitation in Long-Term Mental Illness

Background

In September, 1992, NIDRR sponsored a Consensus Validation Conference (CVC) on "Strategies to Secure and Maintain Employment for Persons With Long-Term Mental Illness (LTMI)" that produced a number of resource papers. Consumers, providers, family members and researchers submitted papers and provided testimony on current knowledge and recommendations for future research. Areas of concern that emerged as a result of the conference included (1) the importance of a systematic approach to increasing consumer empowerment; (2) the need to address the financial disincentives to employment in various Federal and State systems; (3) the need to explore and improve practices of employers with regard to hiring persons with LTMI; and (4) the importance of the emerging practice of "supported education" which involves the provision of assistance to individuals with disabilities in educational environments that enables them to perform successfully.

The prevalence of mental illness in the United States in 1992 was approximately 45 million individuals, of whom an estimated 4 to 5 million adults are considered "seriously mentally ill" (Rutman, "How Psychiatric Disability Expresses Itself as a Barrier to Employment," CVC Resource Paper, 1992). Severe and persistent mental illness encompasses more than an episodic disorder. It implies significant impairment and disability and, as a result, treatment is often extensive, long-term, and expensive (Goldmen et al., "Defining and Counting the Chronically Mentally Ill," Hospital and Community Psychiatry, 1988).

Consumer-directed vocational, residential, and social-support programs are beginning to appear throughout the country. Typically, in these programs, professionals provide options and consumers set goals, plan services, and assertively ask for help when needed (Mellon, "Member Needs Drive the Program," CVC Public Testimony, 1992). Exploration of the benefits of consumer-directed programs may prove to be valuable.

Persons with LTMI have one of the lowest rates of successful vocational rehabilitation. Many are unable to find or maintain employment for a variety of reasons that include (1) the impact of psychiatric symptoms and the unpredictability of the illness itself; (2) the barriers to employment created by employer discrimination and stigma; (3) the disincentives to work created by professionals and financial support systems; and (4) a lack of marketable skills.

Although effective short-term treatment programs now exist to help people with psychiatric disabilities, there are indications that an array of long-term support services such as personal care attendants and job coaches may be necessary in order to maintain life in the community and lifetime involvement in the labor market.

Employers often express concerns regarding the unpredictable recurrence of symptoms and difficulties in controlling the behavior of persons with LTMI (Cook et al., "Cultivation and Maintenance of Employer Relationships," CVC Resource Paper, 1992). Studies report that employers interested in hiring persons with disabilities are concerned about the availability of support services that will facilitate the individual's employment (Greenwood et al., "Employer Perspectives on Employer Rehabilitation Partnerships," Journal of Rehabilitation Counseling, 19, (1), 1988).

Application of the concept of "supported" services is proving to be beneficial to persons with long-term mental illness. Developments in the field of psychiatric rehabilitation indicate that supported education programs can improve access to education and retention in education programs and may subsequently increase the employability of participants (Unger, "Access to Educational Programs," CVC Resource Paper, 1992).

NIDRR, in collaboration with the Substance Abuse and Mental Health Services Administration, Center on Mental Health Services, announces a proposed priority on Long-Term Mental Illness.

Proposed Priority

An RRTC on long-term mental illness shall—

- Identify, compare, and evaluate strategies to increase consumer empowerment in the provision of social and employment training services;
- Identify, develop, and evaluate strategies, including provision of reasonable accommodations as required by the Americans with Disabilities Act, to improve employment training, hiring, retention and promotion outcomes for persons with LTMI;
- Identify financial disincentives to employment and develop recommendations to overcome those disincentives;
- Identify, compare, and evaluate models which provide support to employers, as well as persons with LTMI in the community, including supported employment and education models; and
- Identify and evaluate strategies to reduce and eliminate stigma in the workplace attached to persons with long-term mental illness.

Proposed Priority 4—Pediatric Rehabilitation

Background

It is estimated that 10 to 15 percent of the children under 18 years of age have a chronic illness or disability (Pless and Perrin, "Issues Common to a Variety of Illnesses," *Issues in the Care of Children with Chronic Illnesses*, Hobbs and Perrin (eds.), Jossey-Bass, 1985). Although most have no limitation in activities of daily living, approximately one million are estimated to be severely limited in their ability to participate in activities of childhood, preschool, or school. It is further estimated that 400,000 children, including 100,000 in institutions, are unable to engage in any major childhood activities (Kohrman, NIDRR Long-Range Plan Hearing Testimony, Chicago, 1991).

There is evidence that the number of infants infected with human immunodeficiency virus (HIV) are growing, and there is an increasing concern about the potentially disabling, long-term effects of crack cocaine use during pregnancy (Office of Technology Assessment, *Adolescent Health*, Washington, DC, 1991). According to a Public Health Service Report, "Family Centered Comprehensive Care for

Children with HIV Infection" (August, 1991) by June 1991 the Center for Disease Control had received reports of 3,140 children (less than 13 years old) with AIDS. This same report estimates that 1,800–2,000 infants were born infected with HIV in 1989 based on a 30 percent transmission rate from the 5,000–6,000 HIV-infected women who gave birth.

Advances in diagnosis and treatment have dramatically changed mortality rates for children with chronic illnesses, and many survive into adulthood (Gortmaker, "Demography of Chronic Childhood Disease," *Issues in the Care of Children with Chronic Illnesses,* Hobbs and Perrin (eds.), Jossey-Bass, 1985). As a result of medical, technological, social, and legal advances, treatment of children with chronic illnesses has shifted from being based in hospitals and institutions to communities and family homes. While there appears to be a growing consensus about the ideal of providing home and community-based care for even the sickest children, or those with the most severe disabilities, there is much less consensus about how to do it (Patterson, "Family Resilience to the Challenge of a Child's Disability," Pediatric Annals, September, 1991).

The role of parents in the treatment of children with chronic illness is changing. Quality of care is often dependent on a parent's assertiveness and ability to coordinate the efforts of numerous medical and social service systems (Smith, "Parents: The Critical Team Members," OSERS News In Print, Summer 1992). In addition, the shift to community-based services has placed new demands on the relationship between professionals and parents.

There are a variety of funding mechanisms that support the treatment of children with chronic illness, such as private health insurance, Medicaid, and an array of managed-care programs. Nevertheless, parents of children with chronic illnesses often have difficulty accessing the services their children need. Parents may encounter service delivery systems that are fragmented as a result of inadequate communication and coordination among providers, varying eligibility requirements for services and financial assistance, and insufficient resources (Fox et al., "An Examination of HMO Policies Affecting Children with Special Needs," U.S. Department of Health and Human Services Grant #MCJ–063500, 1990).

The psychosocial impact of chronic illness through, for example, restrictions of activities of daily living and participation in community life have just begun to be explored (Sinnema, "Resilience Among Children with Special Health Care Needs and Among Their Families," Pediatric Annals, September, 1991). More information is needed about what contributes to resiliency and coping in families (including siblings) with a child with a chronic illness (Leonard, "Siblings of Chronically Ill Children: A Question of Vulnerability Versus Resilience," Pediatric Annals, September, 1991).

The use of health services and patterns of expenditures vary markedly by race and ethnicity (Butler et al., "Health Care Expenditures for Children with Chronic Illness," *Issues in the Care of Children with Chronic Illnesses,* Hobbs and Perrin (eds.), Jossey-Bass, 1985). National survey data revealed a rapid increase in the number of uninsured Black and Hispanic persons between 1977 and 1987 (Fox et al., "An Examination of HMO Policies Affecting Children with Special Needs," U.S. Department of Health and Human Services Grant #MCJ–063500, 1990). Moreover, many poor minority families are ineligible for Medicaid due to employment or citizenship status (McManus, "Health Insurance Differentials Among Minority Children with Chronic Conditions and the Role of Federal Agencies and Private Foundations in Improving Financial Access," Unpublished Paper, University of Minnesota, RRTC on Children with Chronic Illness, 1992). A critical concern to adolescents and their families is the transition from pediatric to adult health care services. Adolescents and young adults have different needs from children and ideally, transition services should take these needs into account (Court, "Outpatient Based Transition Services for Youth," Pediatrician, June, 1991). More information is needed on the process of transition from pediatric to adult services for young people with chronic illnesses.

For this priority, pediatric rehabilitation is defined as those services necessary to assist children to minimize the effects of disability or serious illness so that they may achieve maximum participation in the activities of childhood, preschool, or school. While acute care medical services and improved clinical interventions are included in this combination of services, the improvement of medical services for children, in isolation, is not the focus of this priority.

Proposed Priority

An RRTC in pediatric rehabilitation shall—

- Identify, develop, and disseminate effective models for the provision of pediatric rehabilitation services in the community and at home;
- Identify and disseminate models of family-centered, community-based systems of care for HIV-infected children and their families and identify and evaluate the financing options available to meet the multiple needs of this population;
- Identify, develop, and disseminate effective models of parent involvement in the provision of community and home-based pediatric rehabilitation services;
- Develop and disseminate pre-service and in-service training for pediatric rehabilitation professionals in order to improve their ability to provide community and home-based care treatment;
- Identify and analyze the strengths and limitations of the range of financial mechanisms that support the provision of rehabilitative services to children with chronic illness;
- Identify, develop, and disseminate successful interventions that improve the ability of families to cope;
- Identify, develop, and disseminate successful interventions that improve the psychosocial adjustment of children and adolescents with chronic illness and their families;
- Identify and analyze the pediatric rehabilitation service delivery problems facing chronically ill children from minority backgrounds and their parents and, based on that analysis, recommend strategies to improve pediatric rehabilitation service delivery systems;
- Coordinate its activities with related activities supported by the Office of Special Education Programs; and
- Identify and evaluate models of transition from pediatric rehabilitation to adult health and rehabilitation services for children and youth with chronic illnesses.

Proposed Priority 5—Mental Health and Deafness

Background

The National Institute on Deafness and Other Communication Disorders (NIDCD) estimates that at least 28 million Americans have some degree of hearing loss. It also estimates that, of this number, 15 to 20 million persons have a hearing loss, ranging from mild to deaf, that begins in adulthood.

Over the past two decades, there has been a significant increase in the provision of mental health services for persons who are perlingually deaf, i.e., persons who are born deaf. Little attention, however, has been paid to the mental health needs of persons who

have severe hearing loss or persons who become deaf in adulthood. Furthermore, appropriate mental health services are not always available to persons with hearing loss. For example, some States offer no specialized mental health services for persons with hearing loss, and the quality of mental health services in those States that do provide such services varies widely (Karchmer and Williган, "Mental Health Service Delivery for Deaf Individuals in the U.S.: A National Study of Programs and Providers," Unpublished Paper, 1992).

Currently, little is known about the mental health needs, the provision of services, and appropriate interventions for persons with severe hearing loss and those who become deaf in adulthood. What is known suggests that persons with severe hearing loss and those who become deaf in adulthood are likely to have different problems and mental health needs than those who are perlingually deaf. Most persons with severe hearing loss continue to communicate through speech and speech reading, often depending upon strong amplification to heighten their residual hearing. However, because they frequently experience significant variations in sound discrimination that may leave them unable to understand speech while hearing other levels of sound, their capacity to communicate may be undermined. As a result, they may begin to exhibit paranoid-like behavior, withdraw from social contact, and feel isolated because they believe they do not fit in with either the hearing or the deaf world.

Unlike persons who are perlingually deaf and persons with severe hearing loss, persons who become deaf in adulthood are culturally hearing; that is, they have been raised from birth with a language and communication style that depends primarily on voice and sound. When this communication style fails because of deafness, they may not be able to cope. They are likely to become angry, anxious, and depressed. They often isolate themselves from others, and their personal and professional relationships may break down. Their capacity to function independently may be undermined, and they may become overly dependent upon others (Interim Report, Research in Adventitious Hearing Impairment, NIDRR Research and Demonstration Project #133A90003, University of California and San Francisco, 1992).

Additional research is needed regarding the availability and appropriateness of mental health services for persons with hearing loss, particularly those with severe hearing loss and those who become deaf in adulthood, and how the provision of mental health services to such persons can be improved.

Proposed Priority

An RRTC on research in mental health services for persons with hearing loss shall—

- Assess and analyze, on a State-by-State basis, the availability of mental health services for persons with hearing loss, particularly on services for persons with severe hearing loss and those who become deaf in adulthood, including the types of services provided, the kinds of locations where services are provided, the delivery systems that provide the services, the sources of funding for the services, and the qualifications of persons providing the services;
- On the basis of the above analysis, identify the barriers to providing adequate and appropriate mental health services to persons with hearing loss, particularly those with severe hearing loss and those who become deaf in adulthood, and develop and evaluate strategies to overcome those barriers;
- Identify, develop, and evaluate interventions that would improve mental health outcomes for persons with hearing loss, particularly those with severe hearing loss and those who become deaf in adulthood, including the identification of interventions already developed for the perlingually deaf that may be appropriate, or can be adapted, for persons with severe hearing loss and persons who become deaf in adulthood;
- Identify the needs for improving the skills of mental health practitioners who provide services to persons with hearing loss, particularly those with severe hearing loss and those who become deaf in adulthood, and develop mechanisms, including the provision of in-service and pre-service training, to meet those needs;
- Develop a national clearinghouse on issues related to mental health services for persons with hearing loss; and
- Include research on persons with hearing loss from a variety of socioeconomic levels, from all racial and ethnic groups, and from rural and inner city areas; involve persons with hearing loss in the planning, implementation, and evaluation of activities undertaken by the Center; coordinate activities with other Rehabilitation Research and Training Centers dealing with sensory disability issues; and, as appropriate, serve as a resource for States, the regional Disability Business Technical Assistance Centers, and others.

Proposed Priority 6—Rehabilitation in the Pacific Basin

Background

In the Rehabilitation Act Amendments of 1984, the Congress mandated that NIDRR establish an RRTC to address rehabilitation needs of the Pacific Basin, and further described a scope of work for the Center in the 1986 Amendments. In response to the Congressional mandates of 1984 and 1986, NIDRR provided support, on a competitive basis, to the University of Hawaii to conduct a program of research and training to address needs for rehabilitation knowledge concerning the Pacific Basin. In the Rehabilitation Act Amendments of 1992, the Congress again mandated that NIDRR support such a Center.

For the purpose of this priority, the Pacific Basin is defined to include Hawaii, American Samoa, the Commonwealth of Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, and Guam. With the exception of Hawaii, the entities in the Pacific Basin are small, geographically-isolated island governments with limited resources for addressing the needs of persons with disabilities.

Disability should be studied and understood in terms of culturally acceptable norms and behaviors. Prior research suggests differences among various cultural groups, such as Asian-American and Pacific Islanders, related to perceptions of impairment and disability, participation in the rehabilitation process, and outcomes of the rehabilitation process. The concepts of independence, independent living, integration, and economic self-sufficiency must be defined in the context of island cultures that value interdependence and the sharing of community and family resources.

At the time the first RRTC was established in the Pacific Basin, little was known about disability in the region. Epidemiologic and rehabilitation service system data regarding individuals with disabilities in the various entities were either incomplete, inaccurate, or non-existent. There was little definitive knowledge about the influence of cultural values or local lifestyles on the experiences of disability and the outcomes of rehabilitation. The capacity to produce, analyze, report and use data was limited. Mechanisms to translate such information into the development of effective programs, practices, and service systems also were limited.

The RRTC focused on the design and development of demographic databases; the design of training for personnel who provide vocational and independent living rehabilitation services and special education; investigations of the primary and secondary long-term disabilities of islanders, such as diabetes, stroke and spinal cord injuries; and the development of rehabilitation data systems in Hawaii, American Samoa, and the Commonwealth of the Northern Marianas.

There is an ongoing need for research directed to epidemiologic and rehabilitation service system databases to enhance the capacity of the Pacific Basin entities to (1) identify rehabilitation needs, patterns, and priorities; (2) engage in coordinated planning for disability and prevention of disability; (3) provide services to persons with disabilities and their families; and (4) evaluate programs.

In addition, while Hawaii is improving its assistive technology service-delivery systems, the use of assistive technology in the other entities continues to present problems. For example, many assistive devices manufactured for use on the mainland do not always have the capacity to withstand the climate and terrain of the Pacific Basin. Furthermore, the need for assistive technology devices may overwhelm the rehabilitation service delivery systems in some entities.

Prior research has led to the identification and development of some assistive technology devices that are cost-effective, able to endure the physical conditions of the islands, and constructed of materials that are available on the islands. Further efforts are needed to refine and disseminate information about assistive technology that is developed in collaboration with persons with disabilities, that supports the infrastructure and economy of each island, and that is acceptable within the culture and social system of each island. Persons with disabilities and their family members, service providers, and local agencies require further training to enable them to maintain assistive devices.

Technical assistance is needed to establish rehabilitation systems, interagency communication and collaboration, and strategies to provide responsive services at low cost. These strategies include on-island services, use of indigenous personnel, networking among islands, and use of modern telecommunications.

There is a continuing need for training of more rehabilitation service providers, including independent living and vocational rehabilitation service providers, from the variety of cultural, linguistic, and ethnic backgrounds represented in the region, and for updated training to address the demands of new and emerging technologies.

Proposed Priority

An RRTC on rehabilitation in the Pacific Basin shall—

- Design new or expand and improve existing rehabilitation service system databases and demographic databases that describe Pacific Basin populations in need of rehabilitation services and promote the implementation and effective use of databases to assess and improve rehabilitation programs;
- Identify or develop, assess, and promote the use of assistive technology devices and services appropriate for use on the islands in the Pacific Basin other than Hawaii;
- Develop strategies to facilitate interagency communication and collaboration among rehabilitation-related service providers in the Pacific Basin to expand the capacity to provide effective rehabilitation services;
- Conduct collaborative and participatory research to identify pertinent disability-related differences among cultural and ethnic groups in the Pacific Basin and develop culturally relevant interventions to improve vocational rehabilitation and independent living outcomes;
- Develop and provide pre-service and in-service training, including advances in assistive technology devices, for rehabilitation services personnel that is culturally relevant;
- Develop and disseminate educational materials on rehabilitation interventions that are culturally relevant and in accessible formats to persons with disabilities, their family members, and to vocational rehabilitation, education, and health care personnel.
- Involve individuals with disabilities, including those from minority backgrounds, in all phases of planning, conducting, and disseminating the research and in evaluating the research and training activities;
- Develop all materials for training and dissemination in formats and media that will make them usable by individuals from the relevant cultural backgrounds and accessible to individuals with various types of disabilities; and
- Cooperate with the Hawaii Technology Assistance Project, with vocational rehabilitation agencies, and with other RRTCs and Rehabilitation Engineering Research Centers addressing related problems.

Proposed Priority 7—Medical Rehabilitation Services

Background

The health care system in the United States is undergoing substantial changes, not the least of which are in the mechanisms for delivering and financing comprehensive medical rehabilitation services, primary health care, and long-term health care. Individuals with disabilities, as a group, are major consumers of health care services (Zook and Moore, "High Cost Users of Medical Care," 302, The New England Journal of Medicine, 1980) and have a substantial stake in the policies that determine the availability of health care—service delivery mechanisms, financing mechanisms, and types of services available. Much of the recent analysis of health care issues has been directed at acute care or communicable diseases. There is a need for more information on the long-term medical and rehabilitation needs of persons with disabilities, particularly those with the most severe disabilities, and how to provide these services.

For this priority, "medical rehabilitation services" are defined as those services provided by physicians, nurses, and allied health professionals to meet the acute care needs of persons with newly-acquired disabilities, and those interdisciplinary services necessary to restore function or achieve maximum possible functioning and independence.

Medical rehabilitation service providers are a rapidly growing sector of the health care industry, with the number of rehabilitation hospitals doubling between 1980 and 1987 (England, Ed., "Medical Rehabilitation Services in Health Care Institutions," American Hospital Association, 1989). Reasons for this development include the less restricted rehabilitation bed space allocations allowed by Federal regulations and comparatively favorable reimbursement sources and rates. The demand for medical rehabilitation services is expected to continue to grow in the coming decades because of increased chances of survival after trauma, disease, or birth anomaly; increased prevalence of disability related to the general aging of the population; and more opportunity for individuals with disabilities to acquire secondary disabilities or chronic conditions as a result of increased longevity.

Rehabilitation researchers and clinicians must define the optimal organization and delivery of rehabilitative care, including such parameters as, for example, ideal facility

and program sizes (economies of scale) and the appropriate numbers and mix of health care providers needed to serve various disability groups. Existing data sources can be used to help define optimal organizational strategies for inpatient rehabilitation, but few data are available to define optimal strategies for outpatient services. Little is known about how different models for the organization of rehabilitation services affect outcomes and costs. A better understanding is needed of how the type, intensity, and setting of rehabilitation services affect rehabilitation costs and outcomes.

More research also is needed on how the demographic, economic, and medical characteristics of consumers affect their utilization of rehabilitation services and the outcomes that are achieved. The rational targeting of appropriate and responsive rehabilitation services to different population subgroups could increase the cost-effectiveness of rehabilitation services. Health care policy must focus on the means to achieve quality care, leading to a corresponding need to define quality of rehabilitative care. Defining quality care entails developing and validating relevant measures of outcomes, establishing outcome norms, defining practice guidelines, identifying acceptable practice variations, and other quality-of-care criteria.

Personnel shortages and increased medical rehabilitation costs may require the consideration of alternative modes of rehabilitation services delivery, such as the increased use of outpatient services, use of home-based rehabilitation services, use of paraprofessional staff, and less reliance on the traditional team approach during inpatient rehabilitation. Many factors in the larger health care economy have an effect on the costs and outcomes of rehabilitation services that cannot be controlled by rehabilitation providers. These include payment ceilings, length-of-stay limits, minimum services requirements, and other factors over which providers have little control and which may result in less than optimal outcomes.

The purpose of this priority is to generate new knowledge to help resolve important health services issues that have an impact on the delivery of comprehensive acute in-patient medical rehabilitation services. Issues that require study in this area include: The costs and efficacy of rehabilitation services and specific rehabilitation modalities; the impact of various innovative payment methods on rehabilitation hospitals and regional service delivery systems; and the development of innovative methods of delivering and financing comprehensive medical rehabilitation services.

NIDRR proposes to support an RRTC to investigate issues surrounding the delivery of medical rehabilitation services. NIDRR expects this Center to coordinate with other RRTCs on trauma services, chronic illness, and serious emotional disorders in children, aging with disabilities, and personal assistance services, as well as with research projects supported by the Agency for Health Care Policy and Research and the National Center for Medical Rehabilitation Research.

The proposed Center is expected to use the emerging approaches of "health services research," a field of scientific investigation that systematically examines the organization, provision, and funding of health care services. The research effort is expected to draw on the skills of such varied disciplines as epidemiology, health care economics, medical ethics and law, the allied health professions, and medical sociology. The research is expected to consider issues concerning access, cost, effectiveness, and quality of health care services.

Proposed Priority

An RRTC on medical rehabilitation services shall—

- Identify the service needs of major impairment groups, excluding persons with spinal cord injury, traumatic brain injury, or burns, to serve as a guide for providers, sponsors, and regulators of health services;
- Conduct a definitive survey to develop specific characterizations of existing medical rehabilitation service capacities, including both inpatient and outpatient services currently available and needed;
- Conduct a national longitudinal study of persons served in public and private hospitals to track cohorts of newly impaired persons, including all disabilities except those persons with spinal cord injury, traumatic brain injury, or burns, to ascertain patterns of recovery, optimal patterns of utilization of medical rehabilitative services, service outcomes, and costs;
- Evaluate the continuity of services and identify the types of disabled and socially and economically disadvantaged disabled individuals who fail to receive the services they need, with special attention to the needs of individuals from minority backgrounds; and
- Evaluate the relative costs and outcomes—including consumer satisfaction—of current methods of providing rehabilitation services, including costs and outcomes of post-rehabilitation services for community reintegration, comprehensive medical follow-up, and health maintenance services.

Invitation to Comment: Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 3423, Mary Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8 a.m. and 3:30 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations: 34 CFR parts 350 and 352.

Program Authority: 29 U.S.C. 760–762.

Dated: June 18, 1993.

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Richard Riley,

Secretary of Education.

[FR Doc. 93–18662 Filed 8–4–93; 8:45 am]

BILLING CODE 4000–01–P

Federal Register

Thursday
August 5, 1993

Part V

Department of Education

Bilingual Vocational Instructor Training Program; Notice Inviting Applications for New Grant Awards for Fiscal Year 1994

DEPARTMENT OF EDUCATION

[CFDA No.: 84.099]

Bilingual Vocational Instructor Training Program; Notice Inviting applications for new grant awards for fiscal year (FY) 1994.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: The Bilingual Vocational Instructor Training Program provides financial assistance for preservice and inservice training for personnel participating in or preparing to participate in bilingual vocational education and training programs for limited English proficient individuals.

This program supports the National Education Goals by helping to improve vocational education and training for limited English proficient adults. National Education Goal 5 calls for all adult Americans to be literate by the year 2000 and able to compete in the workforce.

Eligible Applicants: State agencies or public and private non-profit educational institutions.

Deadline for Transmittal of Applications: September 20, 1993.

Deadline for Intergovernmental Review: November 19, 1993.

Available Funds: $441,936.

Estimated Range of Awards: $150,000-$300,000.

Estimated Average Size of Awards: $220,000.

Estimated Number of Awards: 2.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbing).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug-Free Schools and Campuses).

(b) The regulations for this program in 34 CFR parts 400 and 428.

Content of the Application

An application must—

(a) Provide an assurance that the activities and services for which assistance is sought will be administered by or under the supervision of the applicant;

(b) Propose a project of a size, scope and design that will make a substantial contribution toward carrying out the purpose of the Bilingual Vocational Instructor Training Program;

(c) Describe the capabilities of the applicant, including vocational training or education courses offered by the applicant, accreditation, and any certification of courses by appropriate State agencies;

(d) Describe the qualifications of principal staff to be used in the bilingual vocational instructor training project;

(e) Describe the number of participants to be served, the minimum qualifications for project participants, and the selection process for project participants;

(f) Include the projected amount of the fellowships or traineeships, if any;

(g) Contain sufficient information for the Secretary to determine that the applicant has an ongoing vocational education program in the field in which participants will be trained, and can provide instructors with adequate language capabilities in the language other than English to be used in the bilingual vocational training project; and

(h) Provide an assurance that preservice training will be provided to individuals who have indicated their intent to engage as personnel in a vocational education program that serves limited English proficient individuals.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

For this competition, the Secretary assigns the 15 points, reserved in 34 CFR 428.20(b), as follows:

Program design. (34 CFR 428.21(b)). Five points are added to this criterion for a possible total of 25 points.

Dissemination plan. (34 CFR 428.21(g)). Ten points are added to this criterion for a possible total of 20 points.

(a) *Need.* (15 points)

(1) The Secretary reviews each application to determine the need for the proposed bilingual vocational instructor training project, including—

(i) The need for the project in the specific geographic area or areas to be served by the proposed project;

(ii) The training needs of program participants to be served by the proposed project;

(iii) How these needs will be met through the proposed project; and

(iv) The relationship of the proposed project to other ongoing personnel development programs in the geographic area or areas to be served by the proposed project.

(2) The Secretary reviews each application to determine the extent to which, upon completion of their training, program participants will work with programs that provide vocational education to limited English proficient individuals.

(b) *Program design.* (25 points) The Secretary reviews each application to determine the quality of the program design and the potential of the project to have a lasting impact on the geographic area or areas to be served by the proposed project, including—

(1) Potential to increase the skill level of program participants, with particular regard to the following areas:

(i) Knowledge of the needs of limited English proficient individuals enrolled in vocational education programs, and how those needs should influence teaching strategies and program design.

(ii) Understanding of bilingual vocational training methodologies.

(iii) Techniques for preparing limited English proficient individuals for employment; and

(2) Potential to increase access to vocational education for limited English proficient individuals.

(c) *Plan of operation.* (15 points) The Secretary reviews each application for an effective plan of management that ensures proper and efficient administration of the project, including—

(1) Clearly defined project objectives that relate to the purpose of the Bilingual Vocational Instructor Training Program;

(2) For each objective, the specific tasks to be performed in order to

achieve the specified project objective; and

(3) How the applicant plans to use its resources and personnel to achieve each objective.

(d) *Key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the director and other key personnel to be used in the project;

(ii) The appropriateness of the time that each person referred to in paragraph (d)(1)(i) of this section will commit to the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that personnel will be selected without regard to race, color, national origin, gender, age, or disability.

(2) To determine personnel qualifications under paragraph (d)(1)(i) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is sufficient to support the proposed project, and that it represents a cost effective use of Bilingual Vocational Instructor Training Program funds;

(2) Costs are necessary and reasonable in relation to the objectives of the proposed project; and

(3) The facilities that the applicant plans to use are adequate for the proposed project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan, including the extent to which the plan—

(1) Is clearly explained and appropriate for the bilingual vocational instructor training project;

(2) To the extent possible, is objective and will produce data that are quantifiable;

(3) Identifies outcomes of the project in terms of enrollment, completion and after-training work commitments of participants by sex, racial or ethnic group, and by level and kinds of language proficiency;

(4) Identifies expected learning and skills outcomes for participants and how those outcomes will be measured; and

(5) Includes activities during the formative stages of the project to help guide and improve the project, as well as a summative evaluation that includes recommendations for replicating project activities and results.

(g) *Dissemination plan.* (20 points) The Secretary reviews each application to determine the effectiveness and efficiency of the plan to disseminate information about the project and demonstrate project activities and results, including—

(1) High quality in its design and procedures for evaluating the effectiveness of the dissemination plan; and

(2) A description of the types of materials the applicant plans to develop and make available to help others replicate project activities, and the methods to be used to make the materials available.

Additional Factors

(a) After evaluating the applications according to the selection criteria, and consulting with the appropriate State board established under section 111 of the Carl D. Perkins Vocational and Applied Technology Education Act, the Secretary determines whether the most highly rated applications are equitably distributed among populations of individuals with limited English proficiency within the affected State.

(b) The Secretary may select other applications for funding if doing so would improve the—

(1) Equitable distribution of assistance among populations of individuals with limited English proficiency within the affected State; or

(2) Geographical distribution of projects funded under this program.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on April 23, 1993 (58 FR 21872–73).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.099, U.S. Department of Education, room 4161, 400 Maryland Avenue SW., Washington, DC. 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please Note that the Above Address is not the Same Address as the one to Which the Applicant Submits its Completed Application. Do not Send Applications to the Above Address.

Instructions for Transmittal of Applications:

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA #84.099), Washington, DC 20202–4725.

or

(2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to:

U.S. Department of Education, Application Control Center, Attention: (CFDA #84.099), Room #3633. Regional Office Building #3, 7th and D Streets SW., Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 732–2495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms:

The appendix to this application is divided into five parts, plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized.

The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information.

Part III: Budget Narrative

Part IV: Program Narrative.

Part V: Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and Instructions.

c. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and Instructions. (NOTE: The grantee should keep this form on file. It should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and Instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A.)

All forms and instructions are included as Appendix A of this notice. Questions and answers pertaining to this program are included, as Appendix B, to assist potential applicants.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances and SIX copies of the application. Please mark each application as original or copy. Local or State agencies may choose to submit two copies with the original. No grant may be awarded unless a complete application form has been received.

For Further Information Contact: Cindy Towsner, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue SW., (room 4512, Mary E. Switzer Building), Washington, DC 20202–7242. Telephone (202) 205–5864. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 2441(b).

Dated: July 27, 1993.

Augusta Kappner,

Assistant Secretary, Office of Vocational and Adult Education.

Appendix A

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED		Applicant Identifier
3. DATE RECEIVED BY STATE		State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration

D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 0 9 9

TITLE: Bilingual Vocational Instructor Training Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (lines 1 through 7			
9. Indirect Cost (Rate %)			
10. Training Costs/Stipends			
11. TOTAL, Federal Funds Requested (lines 8 through 10)			

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	C
1. Cash Contribution			
2. In-Kind Contribution (only costs specifically for this project)			
3. TOTAL, Cost Sharing (Rate %)			

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the first 12-month budget period; Column B to record the remaining months of the project; and Column C to record the total.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. Personnel: Show salaries to be paid to project personnel.

2. Fringe Benefits: Indicate the rate and amount of fringe benefits.

3. Travel: Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for at least one trip for two people to attend a project director's meeting in Washington, D.C.

4. Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local or Tribal Government).

5. Supplies: Include the cost of consumable supplies and materials to be used during the project.

6. Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment; and (2) sub-contracts.

7. Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. Total, Direct Cost: Show the total for lines 1 through 7.

9. Indirect Costs: Indicate the rate and amount of indirect costs. NOTE: For training grants, the indirect cost rate cannot exceed 8%.

10. Training/Stipend Cost: (if allowable)

11. TOTAL, Federal Funds Requested: Show total for lines 8 through 10.

SECTION B - Cost Sharing Summary

Indicate the actual rate and amount of cost sharing when there is a cost sharing requirement. If cost sharing is required by program regulations, the local share required refers to a percentage of TOTAL PROJECT COST, not of Federal funds.

BILLING CODE 4000-01-C

Instructions for Part III—Budget Narrative

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

Instructions for Part IV—Program Narrative

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, where, why, and how of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and regulations of the program, eligibility requirements, information on any priority set by the Secretary, and the selection criteria for this competition.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your proposed project. Then describe the project in detail, addressing each selection criterion in order.

The Secretary strongly suggests that the applicant limit the program narrative to no more than 40 double-spaced, typed pages (on one side only), although the Secretary will consider applications of greater length. Be sure to number consecutively ALL pages in your application.

You may include supporting documentation as appendices. Be sure that this material is concise and pertinent to this program competition and is numbered consecutively.

Applicants are advised that: (a) The Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217)

(b) The technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments that pertain to the established technical review criteria, such as commitment and resources.

Additional Materials

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 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. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0013, Washington, DC 20503. (Information collection approved under OMB control number 1830–0013. Expiration date: 2/28/95.)

BILLING CODE 4000–01–P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3 Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made. and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C 2131 et seq.) pertaining to the care, handling and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90, and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the departme it or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transacti in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by 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.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

BILLING CODE 4000-01-C

Authorized for Local Reproduction
Standard Form - LLL-A

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Our new policy calls for an original and six copies to be submitted. The binding of applications is optional.

Q. May we use this same application to compete for funds under a different grant program?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the specifications of the grant program to which it is submitted.

Q. I'm not sure which grant program is most appropriate for my project. What should I do?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the application closing date, depending on the number of applications received and the number of grant programs with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. Will my application be returned if I am not funded?

A. We no longer return unsuccessful applications. Thus applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed. Because we may request the project director of funded projects to attend an annual project directors meeting, you may also wish to include a trip or two to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424B, "Assurances—Non-Construction Programs," which must be completed, simply state in writing that you are meeting a prescribed requirement.

Q. Where can copies of the **Federal Register**, a program's regulations, and Federal statues be obtained?

Copies of these materials can usually be found at your local library. If not, most can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Telephone: (202) 783–3238. When requesting copies of regulations or statues, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice would be referred to as follows: Carl D. Perkins Vocational and Applied Technology Education Act (Public Law 101–392).

[FR Doc. 93–18674 Filed 8–4–93; 8:45 am]
BILLING CODE 4000–01–P

Federal Register

Thursday
August 5, 1993

Part VI

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 718, 720, and 735
Adoption of State Standards; State Enforcement Activities; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 718, 720 and 735

RIN 1029–AB58

Adoption of State Standards; State Enforcement Activities

AGENCY: The Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is removing regulations on the adoption of state standards and state enforcement activities from the initial regulatory program under the Surface Mining Control and Reclamation Act of 1977 (the Act). These provisions have been rendered redundant or unnecessary by enactment of the permanent regulatory program.

EFFECTIVE DATE: September 7, 1993.

FOR FURTHER INFORMATION CONTACT: James L. Hedglin, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 208–2634.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion
III. Procedural Matters

I. Background

The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq., (the Act), was enacted August 3, 1977. Two principal purposes of the Act are to establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations and to assist the States in developing and implementing a program to achieve the purposes of the Act.

The scheme designed by Congress to implement the requirements of the Act consisted of two distinct regulatory programs on non-Federal and non-Indian lands, one transitional and one permanent. In each coal producing State the transitional program, known as the initial program, took effect six months after the enactment of the Act and created a dual inspection and enforcement role for OSM and the States in ensuring compliance with certain key provisions of the Act at all surface coal mining and reclamation operations. A permanent program would in turn become effective in each State upon either approval by the Secretary of the Interior (the Secretary) of a State regulatory program based on findings that the program provisions met the purposes of the Act and the State had the capability of carrying them out; or, where a State did not submit an application for a State program, upon promulgation and implementation of a Federal program. The initial program in each coal producing State effectively ended upon approval of a permanent State program by the Secretary or the implementation of a Federal program. All such States had either received full or conditional approval of their permanent programs or implementation of a Federal program by 1988.

To implement the requirements of sections 502 and 503 of the Act, the Secretary promulgated regulations on December 13, 1977 (42 FR 62639) and March 13, 1978 (44 FR 14902) for the initial and permanent programs respectively. Among the numerous performance standard and procedural regulations promulgated for the initial program were 30 CFR part 718—Adoption of State Standards, and part 720—State Enforcement Activities, both of which are subject of this rulemaking. Part 718 contains procedures for adoption of State laws and regulations when they prescribe more stringent standards of performance than the general or special performance standards of the initial regulatory program. Part 720 sets forth the regulations governing enforcement activities to be carried out by the States during the initial regulatory program. OSMRE published a proposed rule in the **Federal Register** on August 11, 1992 (56 FR 35960) which would remove these two parts from the initial program regulations. The comment period closed on October 13, 1992. No comments were submitted nor requests made for either a public hearing or meeting. OSMRE is adopting the removal of parts 718 and 720 as proposed with one additional conforming change made to the permanent program rules at 30 CFR 735.21 which deletes its references to part 720.

II. Discussion of the Final Rule

This final rule removing parts 718 and 720 of the initial regulatory program arose as a result of the periodic review of OSM's regulations required by the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35. In accordance with the Paperwork Reduction Act, agencies must review their regulations and, where regulations are identified which are unnecessary or duplicative, they are required to be removed. Parts 718 and 720 were identified by OSM as unnecessary or duplicative for the reasons discussed below.

Part 718—Adoption of State Standards

Section 718.1 provided that States could request the Secretary to review any State surface coal mining performance standard in relation to the Federal initial program counterpart to determine which is more stringent and whether the State standard should through rulemaking procedures be adopted as the Federal standard in that State. Since the effective date of the initial program in 1977, no State has ever made a request to the Secretary under this section. Sufficient authority exists under the procedures of 30 CFR 732.17 for a regulatory authority to request approval of a more stringent performance standard for inclusion in a State program. Accordingly, OSM believes this section is no longer necessary.

Section 718.10 sets forth the Secretary's information collection responsibilities under the Paperwork Reduction Act in accordance with 5 CFR 1320.7. Removal of this Section will result in the elimination of the associated burden hours currently charged to the agency.

Part 720—State Enforcement Activities

Section 720.10 sets forth the Secretary's information collection responsibilities under the Paperwork Reduction Act in accordance with 5 CFR 1320.7. Removal of this Section will result in the elimination of the associated burden hours currently charged to the agency.

Section 720.11 specifies that a State may continue to exercise its authority to enforce State laws, regulations, and permit conditions in place during the initial program so long as compliance with State law, regulations or permit conditions does not preclude compliance with the initial program performance standards. This section is no longer applicable nor has any meaning to initial program minesites since all States where initial program permits remain either adopted regulations that contained the performance standards of the Federal initial regulatory program or became subject to direct regulation by the Office of Surface Mining through a Federal program. Thus, once the States adopted these regulations or came under a Federal program, the possibility of conflict between State laws and regulations and the Federal initial program performance standards became nonexistent.

The requirement under § 720.12 that States incorporate terms in initial

program permits that comply with the initial program performance standards in unnecessary because the issuance of permits pursuant to the initial regulatory program ended in all States upon the adoption of permanent State or Federal programs.

Section 720.13 specifies certain initial regulatory program reporting requirements regarding the condition of mine sites and the issuance of permits. These reporting requirements are obsolete and no longer necessary since the requirements of the initial program ended with the adoption of State or Federal permanent programs. Moreover, the requirements of this section have been carried over into 30 CFR 840.14 of the permanent program regulations. This latter section requires that each State make available to OSM upon request, copies of all documents relating to applications for and approvals of existing, new or revised coal exploration approvals or surface coal mining and reclamation operations permits and all documents relating to inspection and enforcement actions. The specified information is currently being made available to all local OSM offices for both initial and permanent program minesites as necessary to evaluate the administration of each State program.

Removal of parts 718 and 720 does not in any way abrogate any unsatisfied obligation to comply with initial program standards for operators who operated during that program.

III. Procedural Matters

Executive Order 12778 on Civil Justice Reform

This rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

To the extent that the rule would remove, rather than impose regulatory requirements, the rule will not preempt State law or regulation.

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified.

This rule modifies the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

To the extent that the rule would remove specific regulatory requirements, the rule promotes simplification and burden reduction.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items.

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

As of August 5, 1993 the Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Executive Order 12291

The Department of the Interior (DOI) has examined the final rule according to the criteria of Executive Order 12291 (February 17, 1981), and has determined that it is not a major rule within the standards established by the Executive Order. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., that the final rule will not have a significant economic impact on a substantial number of small entities. No negative economic effects are anticipated as a result of the rule where the chief purpose is to remove unnecessary and redundant initial program requirements.

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

National Environmental Policy Act

OSM has prepared an environmental assessment (EA) and has made a finding that this rule will not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The EA is on file in the OSM Administrative Record, room 660, 800 North Capitol St., NW., Washington, DC.

Author

The author of this final rule is James L. Hedglin, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202) 208–2634.

List of Subjects

30 CFR Part 718

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 720

Intergovernmental relations, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 735

Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: June 14, 1993.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

Accordingly, 30 CFR parts 718 and 720 are removed and part 735 is amended as set forth below.

SUBCHAPTER B—INITIAL PROGRAM REGULATIONS [REMOVED]

PART 718—ADOPTION OF STATE STANDARDS

1. Part 718 is removed.

Authority: Secs. 201 and 501, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 et seq.)

PART 720—STATE ENFORCEMENT ACTIVITIES [REMOVED]

2. Part 720 is removed.

Authority: Secs. 201, 501 and 502, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 et seq.)

SUBCHAPTER C—PERMANENT REGULATORY PROGRAMS FOR NON-FEDERAL AND NON-INDIAN LANDS

PART 735—GRANTS FOR PROGRAM DEVELOPMENT AND ADMINISTRATION AND ENFORCEMENT

3. The authority citation for part 735 continues to read as follows:

Authority: Secs. 201, 501, and 502, Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201).

4. Section 735.21 paragraph (a)(6) is revised to read as follows:

§ 735.21 Grant reduction and termination.

(a) * * *

(6) If an agency fails to submit reports required by this part or part 705 of this chapter the Director shall reduce or terminate the grant.

* * * * *

[FR Doc. 93–18676 Filed 8–4–93; 8:45 am]
BILLING CODE 4310–05–M

federal register

Thursday
August 5, 1993

Part VII

National Institute for Literacy

Application for State-Capacity Building Awards to Governors for State Literacy Resource Centers; Notices

NATIONAL INSTITUTE FOR LITERACY

[CFDA NO.: 84.257C]

Application for State-Capacity Building Awards to Governors for State Literacy Resource Centers To Promote the Development and Implementation of Interagency Performance Measurement and Reporting Systems That Foster Continuous Improvement in Adult Literacy and Basic Skills Programs

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), this Notice contains all the information, application forms, regulations, and instructions needed to apply for a cooperative agreement.

AGENCY: The National Institute for Literacy.

ACTION: The National Institute for Literacy invites applications from Governors for a new award for Fiscal Year 1993 to fund State Literacy Resource Centers to provide assistance to state leaders in creating performance measurement, reporting, and improvement systems that can be applied to all adult literacy and basic skills programs in a state.

Definitions

For purposes of this application, the following definitions apply:

"Literacy"—"An individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society to achieve one's goals and develop one's knowledge an potential." (As stated in the National Literacy Act of 1991)

"Adult Literacy System"—"All public and private programs and organizations providing or seeking to provide adult literacy or basic skills instruction, including local educational agencies, agencies responsible for corrections education, programs supported by the Job Training Partnership Act (JTPA), welfare agencies, labor organizations, businesses, volunteer groups, and community-based organizations." (As stated in the National Literacy Act of 1991)

"Performance Measurement, Reporting, and Improvement System"—A clearly defined and coordinated process for (1) measuring literacy outcome for adult learners who participate in literacy and basic skills program, (2) reporting this information on a regular basis to service providers, program administrators, elected officials, service consumers, and the public, and (3) using this information to improve program quality and state-level policies that guide these programs. A performance measurement, reporting and improvement system (PMRIS) uses a set of common, agreed upon, measures to gauge learner outcomes across all programs in the adult literacy system. A PMRIS for literacy enables states to combine elements of existing measurement and reporting systems including those developed under the National Literacy Act, JTPA and JOBS, to produce a comprehensive picture of literacy efforts and accomplishments in a state.

Purpose of Program

The National Institute for Literacy proposes to establish a program of capacity-building cooperative agreements (grants) to Governors for administration by State Literacy Resource Centers (SLRCs). The Purpose of the program is:

(1) To help state and local leaders create performance measurement, reporting and improvement systems that will enhance states' abilities to monitor the results of their adult literacy systems and to make continuous improvements in their literacy programs and policies;

(2) To provide information to federal and state policy makers on the feasibility of implementing comprehensive statewide performance measurement, reporting, and improvement systems in the area of literacy, including the identification of barriers, opportunities, and incentives for instituting such systems;

(3) To strengthen the ability of SLRCs to promote greater coordination of literacy programs across state and local agencies and to facilitate the development of results-oriented adult literacy systems; and

(4) To contribute to "the creation and maintenance of a national support system for literacy" (National Literacy Act of 1991).

Building State Capacity To Measure Progress and Improve Performance

Goal 5 of the National Education Goals states that "by the year 2000, every adult will have the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship." To meet this goal, states' adult literacy systems must begin to perform at peak capacity. They must provide high quality literacy and basic skills services. They must have the ability to make changes in service delivery that lead to improved performance. And, most importantly, they must produce recognizable results: Adults who have the skills and abilities to help their children succeed in school, participate actively in civic life, and successfully compete in the job market.

A cornerstone of a high-quality, productive, continuously improving adult literacy system is a well-conceived performance measurement and reporting sytem—a system that provides timely and useful information to many crucial audiences. Governors, legislators, and other top policy makers need information that will help them track the state's progress toward Goal 5, and decide how best to invest state and federal resources to achieve this end. Administrators of state programs for specific groups of adult learners—such as welfare recipients, JTPA participants, or adults with limited English proficiency—need to know what are the characteristics of literacy programs that consistency enable adult learners in these populations to achieve desired outcomes. Local service providers need to know if their current services are effective, or if they need to make program adjustments to improve service delivery.

Adults who are the potential consumers of literacy services need to know which programs are the most likely to help them achieve their goals. Finally, the taxpayers and the general public need to know whether the money invested in literacy programs is producing desired results.

Creating an information and reporting system for adult literacy that meets the needs of these multiple audiences is a formidable challenge. It is challenging in part because of the diversity of programs, organizations, and services that comprise a state's adult literacy system. Not only are literacy services delivered by a multitude of organizations—from volunteer networks, to community-based organizations and private nonprofits, to public schools and community colleges—but they are funded through a wide variety of state and federal programs. These commonly include: Adult Education Act and state-funded literacy and basic skills programs; Administration for Families with Dependent Children/Job Opportunities and Basic Skills (AFDC/JOBS) and state funded education and training programs for welfare recipients; Job Training Partnership Act (JTPA) and state-funded education and training programs for disadvantaged adults and for dislocated or other unemployed workers.

The diversity of the programs in a state's adult literacy system is both a

strength and a problem. For the service consumer, diversity means a greater likelihood of finding a program that will meet his or her individual needs. For policy makers, such as the Governor and the legislature, this same diversity may make it hard to recognize that the state even has an adult literacy system. Often all they can see is a patchwork of seemingly overlapping or competing programs that all claim to be tackling the issue of adult literacy. It is easy to lose sight of the fact that every program—regardless of whether literacy is its only focus, or whether literacy and basic skills education is but one of many services provided—is part of a common system with a common mission: To improve the literacy skills of certain populations of adults so that they can participate fully in civic and economic life.

Since all literacy and basic skills programs, regardless of funding source or method of service delivery, have the same basic aim, it makes sense to establish a common system for measuring and reporting their effectiveness. This has not happened so far. Instead, multiple independent efforts have been launched to develop performance measures for discrete portions of the overall adult literacy system. Because these measurement and reporting systems have been developed separately by different groups, they frequently have incompatible data elements, reporting formats, and standards for judging performance.

These differences make it difficult for policy makers, administrators, and others to measure progress across agencies and funding streams or, generally, to see how well the state is meeting critical adult needs.

Overview of the Program

In response to this situation, the National Institute for Literacy has designed a two year demonstration program to assist as many as five states in launching or advancing an interagency partnership effort to plan, test, and implement an integrated statewide system for adult literacy performance measurement, reporting, and program improvement. Such an effort would aim to develop common agreement across programs and agencies on—

- Core outcomes for key populations of participants in adult literacy and basic skills programs,
- Core definitions and core data elements for describing participant characteristics and measuring program outcomes,
- Basic approaches to measurement for each outcome identified, and
- Critical program factors that assist participants in achieving desired outcomes and therefore, are effective indicators of program quality.

Agreement in these areas, across programs and agencies, should lead to the development and implementation of an integration statewide system for measuring performance and for reporting results that fosters continuous improvement in adult literacy and basic skills programs. Such a system also would enable Governors and others to track a State's progress toward Goal 5.

Promoting Continuous Improvement in Literacy Policies and Programs

The primary purpose of such a system would be to promote continuous improvement in a State's literacy policies and programs. It would provide timely and useful information on policy and program outcomes to key policy makers. In addition, the links established in this system between program quality and program results would provide the basis for a comprehensive, performance-based program evaluation and improvement process that would assist local literacy and basic skills programs in systematically improving the quality of services they offer. In this way, such a system would lead to programs that more consistently enable adults to achieve desired outcomes and, as a result, will bring us closer to assuring that all adults have the literacy skills they need to participate fully in economic and civic life.

Promoting Knowledge Development

This program also has a strong demonstration research component. The NIFL is as much interested in the strategies States use to plan, develop, and test the system as in the system itself. The NIFL recognizes that the process of putting in place such an interagency system is extremely complex and time-consuming and may take up to five years, from initial planning and research to full implementation. By supporting several States through the process of forming successful interagency coordination mechanisms, reaching agreement in key areas, and developing a strategic plan for implementing such systems, the NIFL hopes not only to enhance the delivery of adult literacy services in those states, but also to increase our national knowledge base in this area so that it can assist other states in this critical process. States funded through this program will be expected to work closely with the NIFL to—

- Explore and document barriers, opportunities, and incentives for the development and establishment of such a system,
- Investigate and document the impacts of such an effort on the State's ability to provide quality literacy and basic skills services to adults, and
- Share the knowledge gained through the process of implementation and documentation with other States to assist them in efforts to undergo a similar process.

Building State Capacity

This program is also designed to enable the NIFL to accomplish one of its major priorities: Building literacy capacity at the State level. The NIFL assists state efforts to build integrated adult learning systems that can meet the needs of all adults, primarily through its links with State Literacy Resource Centers (SLRCs). These centers were established by the National Literacy Act of 1991 "to [1] stimulate the coordination of literacy services, (2) enhance the capacity of state and local organizations to provide literacy services, and (3) serve as a reciprocal link between the NIFL and service providers for the purpose of sharing information, data, research, expertise and literacy resources with the intent of improving the quality of literacy services and building a national support system for literacy." In fulfilling this mandate, SLRCs are encouraged to—

- Develop innovative approaches to the coordination of literacy services within and among states and with the federal government;
- Assist public and private agencies in coordinating the delivery of services;
- Provide technical and policy assistance to state and local governments and service providers to improve literacy policies and programs and access to such programs.

The NIFL believes this broad mandate makes the SLRCs an ideal vehicle for spearheading interagency partnership efforts to establish performance measurement, reporting, and improvement systems for literacy in the States. For this reason, the grants to States under this program will be administered by the SLRCs.

Description of Program

This announcement envisions a two-year grant (cooperative agreement) to Governors to be administered by the State Literacy Resource Centers in up to five states that will support interagency partnership efforts to plan, develop, and begin implementation of a performance measurement, reporting, and improvement system (PMRIS) for all adult literacy and basic skills programs. It is anticipated that states will link this work with state efforts to establish a

broader human resource investment or workforce development system, and will make every effort to assure that the PMRIS is compatible with and complementary to accountability systems for vocational training and employment programs that are part of such a human resource investment system.

The SLRC in each selected state will facilitate the collaborative process of developing and testing a PMRIS. The SLRC will ensure that all major programs that comprise the state's adult literacy system participate in the process. It will also ensure that the process includes structured opportunities for all potential user groups—from policy makers to consumers—to participate in each phase of the design, testing, and implementation of the system. Potential user groups include public and private programs and organizations providing or seeking to provide adult literacy or basic skills instruction, including local educational agencies, agencies responsible for corrections education, programs supported by the Job Training Partnership Act, welfare agencies, labor organizations, businesses, volunteer groups, and community based organizations.

The center will also coordinate necessary research to support system development—for example, documenting how particular indicators of learner progress relate to "real world" outcomes that are expected to result from a literacy program. In addition, the center will serve as a liaison to the NIFL for conducting technical assistance and for other project-related purposes.

As part of this project, each SLRC will be required to hire a full-time professional to coordinate and facilitate the process of developing the PMRIS. While the complexity of the process warrants a full-time staff person, the need to balance multiple, sometimes competing interests requires an individual broadly perceived as "an independent broker" by all the parties concerned. Each interagency group will want to agree upon a full description for this position that specifies particular roles and responsibilities and identifies key qualifications. Groups may want to identify this staff person as Project Director as well as Facilitator to ensure that the project is represented by an individual who meets the concerns of all parties for independence.

Program Objectives

The NIFL has established the following objectives to be achieved through this program:

1. States will establish regular, on-going interagency policy and planning mechanisms for adult literacy and basic skills that are well-integrated with broader coordination mechanisms for employment and training, such as State human resource investment councils, job training coordinating councils, or vocational or adult education councils.

- Through the process of participating in the grant program, States will have the opportunity to strengthen existing and create new interagency coordination mechanisms as well as to more thoroughly integrate statewide systems for performance measurement, reporting, and improvement.
- Key agencies and groups that will be incorporated into the project will include the Governor's Office, key legislative representatives, state agencies administering JTPA, AFDC/JOBS, AEA, Perkins, Headstart and Even Start, and other state agencies or offices involved in funding, managing, or utilizing adult literacy and basic skills services.

2. States will document the process of establishing such mechanisms, including identifying the barriers, opportunities, and incentives for effective collaboration and coordination. This information will be used to benefit other states undertaking the establishment of such mechanisms.

3. States will design a performance measurement, reporting, and improvement system that is based on:

- A common understanding of how the major literacy and basic skills training programs operate in the State;
- Agreement on what short-term and long-term outcomes should result for specific adult learner populations (e.g., welfare recipients, dislocated workers, etc.) if these programs are successful;
- Agreement on which indicators of program quality are associated with improved learner outcomes;
- Agreement on potential outcome and quality measures that could be included in a PMRIS, as well as on existing and potential data sources for these measures.

The PMRIS will have the following attributes:

- Clearly articulates the desired outcomes for the various subgroups/populations of adult learners in the State.
- Identifies key performance indicators that can be used to monitor learner progress and outcomes (regardless of which program serves them).
- Identifies key indicators of program quality (program factors that affect learner outcomes, such as skills and knowledge of program staff, availability of support services, etc.).
- Promotes the use of a common set of performance and quality indicators across agencies and programs for basic skills and literacy programs that serve adults.
- Establishes a comprehensive reporting system, combining both performance and quality indicators, that enables and is designed to promote continuous improvement in (a) the operations of State and local programs for adult learners and (b) the development of State and federal policies that guide these programs. Such a system will also provide case workers and other intake workers with information about programs that will enable them to make more effective referrals.

4. States will develop (no later than June 1994) a long-term strategic plan for the implementation of the adult literacy and basic skills performance measurement, reporting, and improvement system. The strategic plan will describe the basic design of the PMRIS and include a detailed work plan for how the interagency group will work together to develop the PMRIS, including a schedule of activities, assignments, definitions of roles and responsibilities, and benchmarks for progress. The plan will also address such implementation issues as: (1) How the interagency group plans to implement or test at least portions of the PMRIS during the second year of the grant and the resources needed for this activity, (2) how it intends to build statewide consensus for the establishment and use of the PMRIS, and (3) what steps it will take to institutionalize the PMRIS through legislation, executive order, interagency agreements, revision of provider contracting procedures, etc.

5. States will pilot and implement key aspects of their PMRISs, in accordance with their strategic plans, will document the impact of these efforts on state-level planning and local service delivery systems and will assist NIFL in disseminating knowledge gained through this process to other States.

It is anticipated that achieving these goals will require a great deal of work by team members and others in the State. During the grant period, this work might include: Conducting focus groups or surveys of state policy makers, agency staff, service providers, private sector employers, and adult learners to determine their information needs; establishing interagency work groups to review existing measurement and reporting systems or to examine State and Federal regulations; conducting

research on elements of program quality; examining performance measurement systems in other States, etc.

Program Technical Assistance

The NIFL will assist states in achieving these goals through an intensive, carefully targeted technical assistance effort that includes:

- An Academy on Performance Accountability to be held the week of December 5, 1993. The Academy will be an intensive work session that gives State teams the opportunity to work with leading national experts on performance measurement and reporting in designing a PMRIS for literacy and basic skills programs. The academy will provide the right balance of informational seminars, individual team work with expert faculty, team presentations, and peer exchange and critique.
- Resource experts who will be available, upon request, throughout the grant period to provide targeted technical assistance to states in areas such as: strategic planning, team facilitation, selecting performance indicators, building consensus and resolving interagency turf issues, performance-based contracting, linking data bases, or designing outcome reports for various audiences. Some resource experts will also be available to meet with a State's PMRIS group to provide intensive feedback on their strategic plan.
- A national meeting for participating States in November 1994 to review progress, share results, and plan further targeted assistance over the remaining grant period.

Program Timetable

The NIFL has developed the following timetable for the project:

September 8, 1993: States submit applications for participation in program, including statements of commitment by State leaders to participate as members of the project team.

September 30, 1993: Up to five States are notified of acceptance into the program. NIFL Grants Officer negotiates cooperative agreement with States.

October–November 1993: State interagency groups meet and hire independent brokers. SLRCs work with their State groups to assemble background information in preparation for the Academy.

December 5–9, 1993: Academy on Performance Measurement (site to be announced).

Dec. 1993–June 1994: States design PMRISs, develop strategic plans for implementation, document potential barriers, opportunities, and incentives for interagency collaboration, and prepare funding requests for year two. Technical assistance provided upon request by NIFL, SLRCs, and national experts.

June 30, 1994: State strategic plans and funding requests due to NIFL on or before this date.

July–August 1994: NIFL reviews plans and requests, conducts site visits, and negotiates second-year objectives with States.

September 30, 1994: States awarded second-year funding.

November 1994: Follow-up meeting of State team representatives to review strategic plans and progress with other States (site and dates to be determined).

Oct. 1994–Sept. 1995: Each State develops and tests components of PMRIS; achieves consensus on the design and use of the PMRIS to track learner outcomes and improve programs; integrates the work of the interagency group with other efforts to develop performance measurement systems for employment and training programs; documents barriers, opportunities, and incentives for effective interagency collaboration; and ensures that there is continued funding for implementing and refining the system. Technical assistance provided upon request by NIFL, SLRCs and national experts.

December 31, 1995: States submit final reports on their activities and accomplishments.

January 1996: Possible national conference on performance accountability for literacy and basic skills programs featuring grantee States.

Proposal Processing and Review

Application Narrative

The application narrative should address the following issues and questions:

(1) *Adult Literacy System*—Briefly describe the State's current adult literacy system, including—

- An overview of the major public and private programs and organizations that comprise the system;
- Mechanisms for coordinating these programs at the State and/or local levels;
- The extent to which interagency policy and planning mechanisms for adult literacy and basic skills are integrated with broader coordination mechanisms for employment and training, such as State human resource investment councils, job training coordinating councils, or vocational or adult education councils;
- A description of major literacy-related initiatives in the State, including initiatives in the areas of family or workforce literacy;
- Evidence that the goal of improving adult literacy and basic skills is a high priority for the State and is linked with other state policy goals.

(2) *Performance Measurement and Reporting*—Provide an overview of the current system or systems that are used to measure and improve the quality and performance of adult literacy and basic skills programs in the State. Be sure to include discussion of what the State education agency has done to implement those provisions of the National Literacy Act that call for "the development and implementation in consultation with a widely representative group of appropriate experts, educators and administrators, of indicators of program quality * * *" (National Literacy Act, title III, section 301(c)(2). Address the following questions for each system:

- What types of data are collected, how these data elements are defined, and how this information is reported?
- Who are the primary audiences for this information, and what do they do with it?
- What efforts have been made to integrate, standardize, link, or otherwise coordinate data collection and reporting across programs?
- To what extent does the system mesh with accountability systems for vocational training and employment programs that are part of broader human resource investment or workforce development systems?
- What are the major strengths and weaknesses of the current measurement and reporting system for adult literacy?

(3) *Plan of Operation for the Project*—Describe the project to be conducted. Include the following information:

- A statement of the State's purpose for participating in this NIFL State capacity building program and the primary needs to be addressed by the project.
- The project's goals and objectives and how each relates to the NIFL's objectives for this program, including the objective to establish ongoing interagency policy and planning mechanisms for adult literacy. If the project meets its objectives, what will be accomplished at the end of one year, two years, and five years? (Note: These grants are intended to help States complete the critical planning and design phase of a multi-year initiative;

therefore, project goals and objectives should have at least a five-year time frame, extending beyond the two years of funding provided by NIFL.)

• A description of project activities to be conducted during year one, year two, and years three to five.

• Identification of the primary State-level agencies and organizations that will be involved in and responsible for the design, development, and implementation of the project. Describe the mechanism for coordinating their activities and the role that each will play in the project.

• The plan for involving other key stakeholder groups in the design, development, and implementation of the project. Indicate which groups or individuals will be asked to provide advice, counsel, feedback, or assistance.

• The plan for using the special resources and technical assistance available through the NIFL program (including the Independent Broker) to achieve the project's first and second-year objectives.

• The plan to ensure continued funding and support for the project beyond the two-year grant period, including steps that will be taken to guarantee that key agencies and organizations remain committed to and involved in the project.

(4) *Key Personnel*—Identify the key individuals who will be responsible for planning, developing, and implementing the project according to the following categories:

• Project Staff. Describe how the project will be staffed, including the names (if already known), titles, roles and responsibilities, qualifications, and organizational affiliations of all staff members. Indicate which staff members will be funded by the grant and the percentage of in-kind staff time to be contributed by others.

• Independent Broker. Describe the procedures and timetable for identifying and selecting a person to fill this crucial full-time position. Provide a "job description" detailing the roles, responsibilities, and authority of the position, and where it will be located.

• Policy Team. Identify by name the key policy makers on the interagency group who will have primary responsibility for planning and overseeing the implementation of the project and who have agreed to participate. Include their titles, the agencies or offices they represent, their responsibilities and authority within those organizations, and their roles and responsibilities in regard to the project. The group should include the following positions:

• Senior staff from the Governor's Office;

• State human service agency staff (Assistant Commissioner or above) for the AFDC/JOBS program;

• State adult basic education agency staff (Director or above);

• State JTPA agency staff (Asst. Commissioner or above);

• The Director of the State Literacy Resource Center;

• Independent Broker/Facilitator;

• Representatives of other State offices involved in the funding, management, or utilization of adult literacy and basic skills services;

• Key legislative leadership/senior staff from relevant committees or appropriations subcommittees (strongly recommended);

• Staff having expertise with State data bases (recommended);

• Consultants. Identify the names and qualifications of any consultants to be hired by the project. Describe their roles and responsibilities.

(5) *Documentation and Evaluation*—Describe the plan to evaluate the project. Indicate how the project plans to document the effects of the project and evaluate progress in the following areas:

• Achievement of the goals and objectives specified in the grant proposal;

• Achievement of the five NIFL program objectives specified in this request for proposals;

• The effects of the project on State and local literacy planning and service delivery.

Applicable Regulations

The National Institute for Literacy is subject to the rulemaking requirements of the Administrative Procedures Act (APA). Under the APA, as now codified in title 5 of the United States Code, section 553, matters relating to public property, loans, grants, benefits, or contracts are not subject to the rulemaking requirement of that section. The NIFL is now in the initial stages of establishing a new program recently authorized by Congress and must obligate funds under this authority by September 30, 1993. The NIFL considered waiving this exemption to rulemaking requirements but determined that there was too little time to propose rules and offer applicants a reasonable amount of time to prepare applications for the award announced in this notice. Therefore, the National Institute for Literacy has adopted the following rules for the conduct of this competition and the resulting award.

The following regulations of the Department of Education apply:

34 CFR Part 74, Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations. The following provisions of 34 CFR part 75: §§ 75.50, 75.51, 75.102–75.104, 75.109, 75.117, 75.190–75.192, 75.200, 75.201, 75.215.

34 CFR Part 77, Definitions.

34 CFR Part 80, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

34 CFR Part 82, New restrictions on Lobbying.

34 CFR Part 85, Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

The selection criteria used for this competition are set out in this Notice. While the criteria are patterned on those used generally by the Department of Education, they have been adapted by the National Institute for Literacy to meet the needs of this program.

While the NIFL is associated with the Departments of Education, Labor, and Health and Human Services, the policies and procedures regarding rulemaking and administration of grants are not adopted by the National Institute for Literacy except as expressly stated in this Notice.

Proposal Processing and Review

Selection Criteria

(a)(1) In evaluating applications for a cooperative agreement under this competition, the Director uses the following selection criteria.

(2) The maximum score for all the criteria in this section is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion:

(b) The Criteria:

(1) *State Capability and Commitment (30 points).* The Director reviews each application to determine the capability and commitment of the State to form an interagency partnership to undertake the development and implementation of a comprehensive performance measurement, reporting, and improvement system in adult literacy and basic skills, including:

(i) The extent to which this effort builds upon other successful or unsuccessful efforts at interagency coordination in related areas;

(ii) The extent to which this effort will link with other existing interagency coordination efforts at the State, regional, and local level, including any State-level councils such as a human resource investment council, job training coordinating council, etc.;

(iii) The extent to which this effort shows a knowledge of and builds upon existing performance management systems in the State's adult education, JTPA, AFDC/JOBS, vocational-technical education, Headstart, and other related programs, including National Literacy Act mandated development of indicators of program quality.

(iv) The extent to which State program administrators have involved local providers in prior planning and development efforts, including the State Education Agency process for developing indicators of program quality.

(v) The explicit and documented commitment of all members of an interagency partnership, including the Governor and the head of each State agency involved in the funding, management, or utilization of adult literacy and basic skills services to plan, develop, and begin implementation of an integrated performance measurement, reporting, and improvement system to improve the quality of the State's adult literacy and basic skills programs and the outcomes for adult learners.

(vi) The explicit and documented commitment of all agencies referenced above—(b)(1)(iv)—to participate in a collaborative decision-making process to design and implement an integrated PMRIS.

(vii) The explicit and documented commitment of all key participants referenced below—(b)(3)(ii)—to attend the Academy on Performance Accountability.

(2) *Plan of Operation (30 points).* The Director reviews each application to determine the quality of the plan of operation for the project, including:

(i) The clarity and persuasiveness of the applicant's rationale for participating in the program, including: (a) a statement of needs and goals, and (b) an understanding of the data needs of key stakeholders and decision-makers in the State;

(ii) The extent to which the applicant's plan of operation, including goals and objectives, reflects an understanding of the purposes of the program and the nature of a PMRIS;

(iii) The quality of the applicant's plan for utilizing the resources (including the Independent Broker) and technical assistance provided through the cooperative agreement to achieve the five program objectives identified by the NIFL above;

(iv) The quality of the plan to make use of the SLRC as a home for the project and as a vehicle for administering the grant, and for facilitating, staffing, and providing technical assistance to the interagency group as it designs and implements the PMRIS;

(v) The quality of the plan to involve other key State, regional, and local stakeholders in each stage of the process of designing, testing, and implementing the PMRIS.

(3) *Qualifications of Key Personnel (20 points).* The Director reviews each application to determine the qualifications, responsibilities, and authority of key personnel, including:

(i) Procedures for identifying a person to serve as "Independent Broker" that will assure that the individual (a) meets all parties' concern for independence, (b) has sufficient authority to be able to coordinate a high-level interagency policy process, and (c) has appropriate knowledge, skills, and expertise to properly fill the role. Applicant should provide a "job description' for the Independent Broker that clarifies expected roles and responsibilities, including the extent to which the Independent Broker will fill the role of Project Director.

(ii) The extent to which policy makers who have agreed to participate in the process and to attend the Academy on Performance Accountability have direct responsibilities in the State for literacy policy and programs, and are able to make decisions on policy and allocation of resources on behalf of their agencies or offices. The applicant should be sure to include the following positions:

- Senior staff from the Governor's Office;
- State human service agency staff (Assistant Commissioner or above) for the AFDC/JOBS program;
- State adult basic education agency staff (Director or above);
- State JTPA agency staff (Assistant Commissioner or above);
- The Director of the State Literacy Resource Center;
- Independent Broker Facilitator (to be hired or appointed prior to the academy meeting);
- Representatives of other State offices involved in the funding, management, or utilization of adult literacy and basic skills services;
- Key legislative leadership/senior staff from relevant committees or appropriations subcommittees (strongly recommended);
- Staff having expertise with State data bases (recommended).

(iii) The appropriateness of the roles and responsibilities assigned to each State policy maker participating in the project, individually and on behalf of their agency or office, including representatives of the Governor's office, key agencies, and the State legislature.

(iv) Qualifications of SLRC staff to fulfill the roles and responsibilities assigned under this project and how this use of the SLRC staff fits with their ongoing roles and responsibilities.

(v) The applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected for employment without regard to race, color, national origin, religion, gender, disability or age.

(4) *Documentation and Evaluation Plan (10 points).* The Director reviews each application to determine the quality of the project's plan for formative and summative evaluation, including:

(i) The quality of the plan to document the five NIFL objectives for the program, including an examination of barriers, opportunities, and incentives for programs to adopt a common PMRIS for literacy and basic skills programs;

(ii) The quality of the plan to document the project's progress toward achieving the goals and objectives specified in its grant proposal;

(iii) The quality of the plan to document and evaluate the effects of the project on state and local literacy planning and service delivery;

(iv) The extent to which the applicant integrates a continuous improvement approach into evaluating the process of design and implementation of the PMRIS;

(v) The extent to which the applicant plans to involve relevant stakeholders in the evaluation process;

(vi) The willingness of the applicant to participate in a program-wide (cross-state) evaluation process coordinated by the NIFL.

(vii) The willingness of the applicant to participate in NIFL efforts to disseminate findings of the project.

(5) *Budget and cost effectiveness (10 points).* The Director reviews each application to determine the extent to which:

(i) The applicant's budget for the two-year period is reasonable in relation to the objectives of the project;

(ii) The applicant's budget includes cash or in-kind contributions that reflect the commitment of each of the key state agencies and offices to the project;

(iii) The applicant's budget reflects the decision to house the project in the SLRC and to utilize SLRC staff for support and technical assistance;

(iv) The applicant's budget reflects personnel costs for a full-time Independent Broker;

(v) The applicant's budget demonstrates a commitment to send key personnel to the Academy on Performance Accountability (a team of

6–10 participants) and to the follow-up national meetings (2–3 participants), using either grant funds or contributions from other sources;

(vi) The applicant's budget narrative includes a plan for how the state will support costs related to continued implementation of the PMRIS after the two-year grant.

Selection of Applications

The Director uses 34 CFR 75.217 in selecting an application for award. The Director is particularly interested in bringing together States that have a strong commitment to interagency coordination in the area of adult literacy and that represent a variety of regions and programmatic characteristics. The Director will consider States at different levels of development in the area of outcome measures and reporting for adult literacy, as long as they have an ability to benefit from the project and can demonstrate a strong commitment to interagency coordination.

Other Applications Requirements

The application shall include the following:

Project Summary: The proposal must contain a 200-word summary of the proposed project suitable for publication. It should not be an abstract of the proposal, but rather a self-contained description of the activities that would explain the proposal. The summary should be free of jargon and technical terminology, and should be understandable to a non-specialist reader.

Project Description: This description should not exceed fifteen (15) single-spaced pages, or thirty (30) double-spaced pages. The description may be amplified by material in attachments and appendices, but the body should stand alone to give a complete picture of the project. Proposals which exceed 15 single-spaced pages or 30 double-spaced pages will not be reviewed.

Summary Proposal Budget: The proposal must contain a budget for each year of support requested and a cumulative budget for the full term of the cooperative agreement. The budget format may be reproduced as needed. Facsimiles may be used, but do not make substitutions in prescribed budget categories. Additional pages for budget explanation and amplification should be attached and must be consistent with the data and categories on the form. All budget requests must be documented and justified. Complete and detailed summary budgets are expected for the entire 2 year project period.

The budget proposal should be Bound in a Separate Document. In addition to submitting a budget for the project as a whole, applicants should prepare separate budgets for individual activities. Personnel items should include the names (or position titles) of key staff, number of hours, and applicable hourly rates. Discussion of equipment, supplies, and travel should include both the cost and the purpose and justification. Budgets should include all project costs and should identify contributed costs, and support from other sources, if any. Sources of support should be clearly identified in all instances. The financial aspects of any cost sharing and joint or cooperative funding by members of a partnership formed for purposes of the proposal should be shown in a detailed budget for each party. These budgets should reflect the arrangements among the parties, and should show exactly what cost-sharing is proposed for each budget item.

[Note: Cost sharing is not a requirement of this announcement].

Current and Pending Support: All current project support from whatever source (such as Federal, State, or local government agencies, private foundations, commercial organizations) must be listed. The list must include the proposed project and all other projects requiring a portion of time of the Project Director and other senior personnel, even if they receive no salary support from the project. The number of person-months or percentage of effort to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals that are being considered by or will be submitted soon to other sponsors.

If the project now being submitted has been funded previously by another source, the information requested in the paragraph above should be furnished for the immediately preceding funding period. If the proposal is being submitted to other possible sponsors, all of them must be listed. Concurrent submission of a proposal to other organizations will not prejudice its review by the Institute.

Any fee proposed to be paid to a collaborating or "partner" for-profit entity should be indicated. (Fees will be negotiated by the Grants Officer.) Any copyright, patent or royalty agreements (proposed or in effect) must be described in detail, so that the rights and responsibilities of each party are made clear. If any part of the project is to be subcontracted, a budget and work plan prepared and duly signed by the subcontractor must be submitted as part of the overall proposal and addressed in the narrative.

Eligible Applicants

The following are eligible for a new award under this program: Governors of each State, U.S. Possessions and Trust Territories, and the Mayor of the District of Columbia. (Application may be made by a group of Governors acting in behalf of a Regional State Literacy Resource Center).

Deadline for Transmittal of Applications: September 8, 1993.

Available Funds: In Fiscal Year 1993, $1,000,000 is available for State accountability systems cooperative agreement awards.

Estimated Number of Awards: 5–7.

Average Award Size: $200,000 per year for a two year project. To provide maximum flexibility in award, an applicant may not receive more than $250,000 for year-1.

Note: The National Institute for Literacy is not bound by any estimates in this Notice.

Project Period: Up to 24 months.

Instructions for Transmittal of Applications:

(a) To apply for a cooperative agreement—

(1) Mail the original and ten (10) copies of the application on or before the deadline date of September 8, 1993, to: National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006, Attention: (CFDA #84.257C).

(2) Hand deliver the application by 4:30 p.m. (Washington, DC time) on the deadline date to the address above.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(c) If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The National Institute for Literacy will mail a Grant Applicant Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the National Institute for Literacy at (202) 632–1500.

(3) The applicant must indicate on the envelope and in Item 10 of the application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Forms

The appendix to this announcement is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III. Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debasement, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (ED 90–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of recipients and should not be transmitted to the National Institute for Literacy.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances and the certifications. However, the application form, the assurances, and certifications must each have an original signature. No award can be made unless a completed application has been received.

Grant Administration

The administration of the State Capacity-Building cooperative agreements will be governed by the conditions of the award letter. The Education Department General Administrative Regulations, (EDGAR) 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85 and 86 (July 1, 1992), set forth administrative and other requirements. This document is for sale through the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The telephone number is (202) 783–3288 for subscription information. It is recommended that appropriate administrative officials become familiar with the policies and procedures in the EDGAR which are applicable to this award. If a proposal is recommended for an award, the Grants official will request certain organizational, management, and financial information.

The following information on grant administration deals with questions that project directors often raise.

General Requirements

Grants and Cooperative Agreements for Federal financial assistance are subject to certain general requirements, such as compliance with the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, the Americans with Disabilities Act of 1990 and other laws and regulations prohibiting discrimination; drugfree workplace requirements; restrictions on lobbying; patent and copyright requirements; cost sharing; and the use of U.S. flag carriers for international travel. These are summarized in the Grant General Conditions. The appropriate terms and conditions will accompany notification of award.

Prior Approval Requirements

Prior written approval from NIFL is required for transferring a significant part of project activities; making a major change in objectives or scope; making a change in the project director or level of effort; making rearrangements or alterations costing $10,000 or more; and transferring funds from participant support. These changes require prior NIFL approval.

Transfer of Project Director

When a Project Director plans to leave an institution during the course of an award, the institution has the prerogative to nominate a replacement or request that the award be terminated and closed out. Replacement of the project director is subject to NIFL approval. In those cases where a particular project director's participation is integral to a given project and the original and new institutions agree, the NIFL will facilitate a transfer of the award and the assignment of remaining unobligated funds to the project director's new institution.

Suspension or Termination of Award

NIFL grants and cooperative agreements may be suspended or terminated in accordance with the procedures contained in the Grant General Conditions. Termination may be by mutual agreement. Termination by mutual agreement shall not affect any commitment of funds that, in the judgment of the Institute and the grantee, had become firm before the effective date of the termination.

Reporting

The applicant will be required to submit an annual report of activities. This annual report will be presented to the NIFL staff and Interagency Group. Specifications for the annual report for year 1 and year 2 are provided on pp. 9 and 11 above. More detailed specifications will be provided within 3 months after the award.

The grantee must submit the following reports:

- Quarterly Performance: A brief 2–3 page report of progress; due: Within 20 days of the end of each quarter.
- Continuation Application (Annual Report Year 1): Contents to be determined by the NIFL; due: By the end of the 3rd quarter of year-1.
- Final Report: Due 90 days after the expiration of or termination of support.

Electronic Submission of Proposals and Reports

The NIFL is exploring the feasibility of receiving reports and proposals using technology that will be part of the National Literacy Database. Further information about this activity will be provided by the Institute during year one of the award.

Continuation Proposal

Following year 1 of the award, and to receive funding for year 2, the recipient is required to submit a strategic plan for year 2, which will serve as a continuation proposal (see above pp. 9, 11).

Acknowledgment of Support and Disclaimer

An acknowledgment of the NIFL support and disclaimer must appear in publication of any material, whether copyrighted or not, based on or developed under NIFL-supported projects:

This material is based upon work supported by the National Institute for Literacy under Grant No. (grantee should enter NIFL grant number).

Except for articles or papers published in professional journals, the following disclaimer should be included:

Any opinion, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Institute for Literacy.

FOR FURTHER INFORMATION CONTACT: Victor Westbrook, Director, Contracts and Grants, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone: 202–632–1500. FAX: 202–632–1512. Individuals who use a telecommunications device for the deaf (TDD) may call 202–632–1529 between the hours 8 a.m. and 5 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1213C.

Instructions for Estimated Public Reporting Burden: Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing the Act, the National Institute for Literacy invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 65 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and disseminating the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the National Institute for Literacy, and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

(Information collection approved under OMB control number 3200–0021, Expiration date: June 1994)

Lilian Dorka,

Acting Interim Director, National Institute for Literacy.

BILLING CODE 6055–01–M

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application / Preapplication ☐ Construction / ☐ Construction ☐ Non-Construction / ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐ - ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

National Institue for Literacy

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

84 - 257C

TITLE Performance Measurement

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (REV. 4-92)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget. Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1	Self-explanatory
2	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: — "New" means a new assistance award. — "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. — "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a-6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Previous Edition Usable

Authorized for Local Reproduction

Standard Form 424A (Rev. 4-92)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL (sum of lines 8 – 11)	$	$	$	$

SECTION D - FORCASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 4-92) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f) Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S C. §§276a to 276a - 7), the Copeland Act (40 U.S.C. §§276c and 18 U. S. C §§874), and the Contract Work Hours and Safety Standards Act (40 U.S C. §§327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11 Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 4/92) back

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

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

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

•U.S. G.P.O. 1990-260-708:00012

Authorized for Local Reproduction
Standard Form - LLL-A

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.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

[FR Doc. 93–18577 Filed 8–4–93; 8:45 am]
BILLING CODE 6055-01-C

NATIONAL INSTITUTE FOR LITERACY

[CFDA NO.: 84.257D]

Application for State Capacity-Building Awards to Governors for State Literacy Resource Centers To Develop and Demonstrate Statewide Interagency Systems for Adult Literacy Staff Development That Build State Capacity To Support Integrated Adult Literacy Service Delivery

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all the information, application forms, regulations, and instructions needed to apply for a cooperative agreement under this competition.

AGENCY: The National Institute for Literacy.

ACTION: The National Institute for Literacy invites applications from Governors for new awards for Fiscal Year 1993 to fund State Literacy Resource Centers to develop and demonstrate statewide intergency staff development systems that support all local programs providing literacy and basic skills services to adults.

Definitions

For the purposes of this application, the following definition apply: "Adult literacy system"—All public and private programs and organizations providing or seeking to provide adult literacy or basic skills instruction, including local educational agencies, agencies responsible for correctional education, programs supported by the Job Training Partnership Act, welfare agencies, labor organizations, businesses, volunteer groups, and community-based organizations. (As stated in the National Literacy Act of 1991).

"Literacy"—An individual's ability to read, write, and speak in English, and compute and solve problems at levels of proficiency necessary to function on the job and in society, to achieve one's goals and develop one's knowledge and potential. (As stated in the National Literacy Act or 1991.)

"Staff development"—A comprehensive effort to help staff learn and use new and effective approaches to working with clients and with one another, and to respond to the changing circumstances of their shared work environment, providing for continuous improvement program quality and outcomes.

Purpose of Program

The National Institute for Literacy proposes this program of capacity-building cooperative agreements to State Literacy Resource Centers for the purposes of—

1. Helping State leaders create and institutionalize interagency staff development systems for staff of all local programs providing literacy an basic skills services to adults.

2. Strengthening the ability of SLRCs to—

a. Promote greater coordination of literacy programs across agencies;

b. Improve and promote the use of state-of-the-art approaches to literacy services;

c. Provide training and technical assistance to literacy practitioners; and

d. Facilitate and support interagency efforts to develop state literacy systems.

3. Contributing to the creation and maintenance of a national support system for literacy.

This program is designed to help the NIFL accomplish one of its major priorities—"building literacy capacity at the State level. The NIFL will assist State efforts to build integrated adult learning systems that can meet the needs of all adults, primarily through its links with SLRCs." SLRCs were established by the National Literacy Act of 1991 to—

1. stimulate the coordination of literacy services,

2. enhance the capacity of State and local organizations to provide literacy services, and

3. serve as a reciprocal link between the National Institute for Literacy and service providers for the purpose of sharing information, data, research, and expertise and literacy resources.

The SLRCs' broad mandate makes them ideal vehicles for putting in place the infrastructure for a seamless, integrated adult literacy service delivery system. Such a system will enhance the capacity of the States and the nation to achieve Goal 5 of the National Education Goals, which states that "every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship."

The Importance of Staff Development

This staff development demonstration project will help SLRCs develop systems that provide continuous assistance to staff in all literacy-related programs in enhancing their ability to help adults reach Goal 5. Statewide systems for continuous staff development will assure that new knowledge in the field can have a direct positive impact on the quality of literacy services.

Strong staff development is essential to building integrated, high-quality adult learning systems that can meet the literacy needs of all adults. By "staff development," we mean not just "teacher training," but a comprehensive effort to help all staff members—teachers, counselors, administrators, case workers, and other front-line workers—learn and use new and effective approaches to working with their clients and with one another, and to respond to the changing circumstances of their shared work environment. Staff development is a critical way to provide for continuous upgrading of proper quality and outcomes.

While teacher training traditionally focuses on individuals' learning needs, staff development deals with how individual staff's needs affect and are affected by those of the group and organization. Staff development for literacy focuses on the skills and knowledge that are specific to the context in which literacy staff are working, preparing them to better serve a particular group of learners or to more effectively address a broader program concern, such as the need for more extensive follow-up for students who drop out before achieving their goals.

Seen in this way, effective staff development is a process of continuous growth and change for both staff and program, leading to increasingly better services and outcomes for clients. Virtually all major programs that provide literacy-related services have begun to invest more in human resources through staff development, but more needs to be done to consolidate and institutionalize these investments.

The need for systematic, continuous, well-integrated staff development as a primary means of program improvement is a major concern in the field of adult basic education. Most States do not have a true staff development *system* for full and part-time staff but rely instead on periodic conferences, workshops, and training courses for subsets of staff. Moreover, States generally have not established a staff development system for adult literacy that cuts across the programs of all funding sources.

Staff development needs related to the provision of literacy services across agencies are many and varied. For example, Job Training Partnership Act (JTPA) and Aid to Families with Dependent Children (AFDC)/Job Opportunities and Basic Skills (JOBS) staff may need to learn methods for screening and serving or referring

clients who have literacy needs. Adult education practitioners may need to upgrade their skills in using multiple instructional techniques or in preparing students to meet the entry requirements for various employment and training programs. Administrators may need help in learning new and better ways to plan and manage programs. All staff in all programs, paid and volunteer, share the need for ongoing professional development.

The NIFL sees the institutionalization of Statewide interagency staff development systems as essential to program development and improved student achievement, as a key strategy for achieving the larger goals of all participating programs, and as a critical element of the infrastructure necessary to maintain a national support system for literacy.

Description of Demonstration Project

The cooperative agreements will support the development and demonstration of Statewide interagency systems for adult literacy staff development in up to seven States. These systems are to be Statewide networks for providing systematic, regular staff development to staff in all public and private agencies and organizations that work with adults in need of basic skills or literacy-related services.

Program Goals

The NIFL has established the following goals to be achieved through these cooperative agreements:

1. States will build awareness across agencies of all literacy-related services and their requirements, standards, priorities, and needs at local delivery and State policy levels.

2. States will design Statewide systems for the continuous delivery of staff development services to the full- and part-time staff of all programs providing adult literacy and basic skills services, notably those funded by AFDC/JOBS, JTPA, and AEA. The systems must be based on—

• Agreements across agencies on common core values, goals, and priorities for staff development, and

• Commitments from these agencies to integrate support and accommodations (such as release or compensated time for full- and part-time staff) for staff development activities into their provisions for local service delivery programs. These systems will include mechanisms for—

a. Identifying and responding to the staff development needs of staff in all participating programs, and for evaluating the adequacy and quality of responses.

b. Sharing effective staff development responses among localities and sub-State regions, and developing responses centrally that can be tried and used in many localities.

c. Using state-of-the-art approaches to staff development that are based on accepted and innovative adult learning principles.

d. Developing training expertise among local staff to assure that all communities have increasing capability to identify and address staff development needs locally.

e. Assuring that staff development is an integrated, on-going educational process for staff, rather than occasional, unrelated training or workshop exercise.

3. States will document the process of creating such Statewide interagency systems, including information on incentives and barriers to successful implementation within and across programs.

4. States will develop materials and processes to assist other States in planning their own Statewide systems, and will work with NIFL in disseminating these materials to other States and interested parties.

This announcement envisions two-year cooperative agreements with SLRCs with an initial award for one year, and an option for one additional year, subject to program authorization and availability of appropriations. A non-competing proposal will be required to exercise the option for year two.

Plan of Operation

The application narrative must include a 2-year plan for meeting the program goals outlined above in developing and demonstrating an interagency staff development system.

The plan must describe how the SLRC will facilitate and support the following activities:

1. Creating or reconstituting a State Interagency Planning Group for staff development. The extent of planning will depend on the progress the State has already made toward establishing a staff development system. The group must include representatives from all agencies with literacy-related programs, including AEA, JTPA, AFDC/JOBS, Head Start, Even Start, vocational education, and corrections.

2. Assisting the Interagency Planning Group in developing a long-range plan for staff development that—

a. Devises mechanisms for conducting staff development needs assessment and priority-setting for each agency;

b. Gathers and incorporates input on staff development needs from local or sub-State regional interagency groups (described below);

c. Ensures input from non-profit State-level literacy organizations;

d. Provides for input from prospective employers of literacy clients;

e. Is tied to State goals for all agencies with literacy-related services;

f. Defines measurable objectives for staff development in terms of learner progress, improvements in program quality, and changes in staff behavior and attitudes.

g. Develops plans for formative and summative evaluation of staff development processes, techniques, activities, and learning outcomes of staff and adult students. These plans shall provide for the involvement of an independent evaluator.

h. Assures the provision of continuous, integrated staff development activities.

i. Provides for continuing reassessment and adjustments of activities based on changes in State and local needs, as well as staff feedback.

j. Establishes processes for facilitating the development or improvement of State and local policies concerning staff development.

3. Helping to create local interagency groups, made up of representative staff from all literacy-related programs, as well as appropriate community leaders, to—

a. Do staff development needs assessment to help shape State plans; and

b. Plan ways of meeting provisions of the State plan and accomplishing any special local goals.

4. Carrying out start-up staff development activities based on preliminary findings of State and local needs assessment. These initial activities might include cross-program orientation and interaction among staff from various programs, and training for local literacy practitioners in how to conduct program needs assessments. Since the NIFL is concerned that appropriate staff development services be delivered to local staff as early as possible in the grant term, planning and implementation activities should take place simultaneously.

5. Testing the effectiveness of the staff development system in the process of providing staff development services at the local level. States may want to focus their staff development efforts on—

a. One or more key populations of particular concern within the state (such as limited English, inner-city or rural residents, dislocated workers, single parents on public assistance, homeless, prisoners, Native Americans); or

b. One or more staff development issues of particular concern in the State, (such as how to do program assessment, how to use volunteers, how to conduct field-based research, or how to serve adults with learning disabilities).

In developing staff development services, the applicant should consider the results of a recent Department of Education study, conducted by Pelavin Associates, Inc., which identify the following key elements of effective staff development programs:

- experienced and dedicated training administrators and staff
- decentralized training services;
- systematic follow-up of training;
- evaluation procedures;
- services that are responsive to the needs of staff;
- active involvement of participants in learning process;
- modeling of appropriate instruction;
- placement of learning in a theoretical framework;
- training topics that are appropriate for staff.

The overall plan must also explain how the applicant will make explicit provisions for—

1. Effective use of existing human and material resources for staff development from multiple sources;
2. A process for documenting all major activities and outcomes, both intended and unintended;
3. Demonstration of state-of-the-art techniques, processes, and materials, including use of technology; and
4. A process for supporting NIFL's efforts to disseminate project findings.

Applicable Regulations

The National Institute for Literacy is subject to the rulemaking requirements of the Administrative Procedures Act (APA). Under the APA, as now codified in title 5 of the United States Code, section 553, matters relating to public property, loans, grants, benefits, or contracts are not subject to the rulemaking requirement of that section. The National Institute for Literacy is now in the initial stages of establishing a new program recently authorized by Congress and must obligate funds under this authority by September 30, 1993. The National Institute for Literacy considered waiving this exemption to rulemaking requirements but determined that there was too little time to propose rules and offer applicants a reasonable amount of time to prepare applications for the award announced in this notice. Therefore, the National Institute for Literacy has adopted the following rules for the conduct of this competition and the resulting award.

The following regulations of the Department of Education apply:

34 CFR Part 74, Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations. The following provisions of 34 CFR part 75: §§ 75.50, 75.51, 75.102–75.104, 75.109, 75.117, 75.190–75.192, 75.200, 75.201, 75.215.

34 CFR Part 77, Definitions.

34 CFR Part 80, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

34 CFR Part 82, New restrictions on Lobbying.

34 CFR Part 85, Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

The selection criteria used for this competition are set out in this Notice. While the criteria are patterned on those used generally by the Department of Education, they have been adapted by the National Institute for Literacy to meet the needs of this program.

While the NIFL is associated with the Departments of Education, Labor, and Health and Human Services, the policies and procedures regarding rulemaking and administration of grants are not adopted by the NIFL except as expressly stated in this Notice.

Proposal Processing and Review

Selection Criteria

(a)(1) In evaluating applications for a cooperative agreement under this competition, the Director uses the following selection criteria.

(2) The maximum score for all the criteria in this section is 100 points.

(3) The maximum score for each criterion is indicated in parentheses with the criterion:

(1) *Capability and Commitment.* (15) The Director reviews each application to determine the State's capability and commitment to develop and demonstrate a comprehensive Statewide system for the continuous delivery of staff development to staff of all programs providing adult literacy and basic skills services. Evidence of capability and commitment include—

(i) A demonstration of how well the applicant understands the purpose of such a system in relation to the overall goals and priorities of NIFL;

(ii) The extent to which this effort is tied to State goals for all agencies and groups with literacy-related services;

(iii) The extent to which the applicant knows about and builds on existing staff development mechanisms;

(iv) The explicit and documented commitment of all State agencies with programs related to adult literacy and basic skills services to participate in a collaborative decision-making process to design and implement a statewide system for staff development;

(v) The explicit and documented commitment of all such State agencies to integrate support and accommodations (such release or compensated time for full and part-time staff) for staff development activities into their provisions for local service delivery programs; and

(vi) The explicit and documented commitment of State agencies to institutionalize the staff development system at the end of the cooperative agreement.

(2) *Plan of Operation.* (25) The Director reviews each application to determine the quality of the plan of operation for the project, including:

(i) The extent to which provisions have been made to develop a long-range planning process for capacity-building and program improvement through staff development;

(ii) The extent to which the planning process includes the appropriate range of agencies and groups with literacy-related programs, literacy providers, and policymakers, including Governor's staff and prospective employers of literacy clients;

(iii) The extent to which the plan includes a process for developing consensus across agencies and groups on common core values, goals, and priorities for staff development;

(iv) The extent to which the plan includes appropriate mechanisms for conducting initial and ongoing needs assessment and priority-setting for staff development that involve key State and local constituencies;

(v) The extent to which the plan proposes a process for developing and testing measurable objectives for staff development in terms of learner progress, program improvement, and changes in staff behavior and attitudes;

(vi) The extent to which the plan provides for centrally-developed and locally-provided responses to staff development needs;

(vii) The extent to which the plan provides for implementing the staff development system through the provision of continuous, integrated, local staff development services;

(viii) The extent to which the plan addresses the need for developing training expertise among local staff to assure that communities increase their ability to identify and address staff development needs locally;

(ix) The extent to which the plan provides for the effective use of existing human and material resources from all participating agencies; and

(x) The extent to which the plan identifies a process for developing or improving State and local policies to institutionalize ongoing staff development practices.

(3) *Quality of Key Personnel.* (20) The Director reviews each application to determine the quality of key personnel for the project, including:

(i) The extent to which the qualifications of key personnel reflect experience and training in staff development and related areas;

(ii) The extent to which the qualifications of participating SLRC staff are appropriate to the responsibilities assigned in this project, and how well these assignments fit with any other roles and responsibilities;

(iii) The quality of personnel to be assigned by each agency to the State interagency planning group for staff development, and the extent to which these assignments reflect the agencies' high-level commitment to the project; and

(iv) The applicant's policy, as part of its nondiscriminatory employment practices, to ensure that its personnel are selected for employment without regard to race, color, national origin, religion, gender, age, or disability.

(4) *Budget, Cost Effectiveness, and Use of Resources.* (10) The Director reviews each application to determine the extent to which:

(i) The budget is adequate to support project activities;

(ii) Costs are reasonable in relation to the objectives of the project;

(iii) Other related funds and resources are used to help support the project; and

(iv) The applicant describes a plan for securing and maintaining financial support for the staff development system beyond the term of the cooperative agreement.

(5) *Documentation and Evaluation Plan.* (20) The Director reviews each application to determine the quality of the evaluation plan for the project, including the extent to which:

(i) The applicant's methods of evaluation are appropriate to the project;

(ii) The applicant outlines a process for documentation of all major activities and outcomes, both intended and unintended;

(iii) The plan includes formative and summative evaluation of staff development processes, techniques, activities, and learning outcomes of staff and adult students; and

(iv) An independent evaluator, with appropriate qualifications and experience, will be involved throughout the project period; and

(v) The applicant is willing to participate in NIFL efforts to disseminate project findings.

(6) *Significance of the Proposed Project.* (10) The Director reviews each application to determine the proposed project's potential to make a significant contribution to staff development systems, as measured by factors such as:

(i) The addition to the knowledge base of statewide staff development practices for literacy and basic skills,

(ii) The extent to which the project is designed to yield materials and outcomes that can be disseminated and used in other States,

(iii) The quality of the plan for disseminating findings and materials to other States and interested parties; and

(iv) The likelihood that the project will result in the institutionalization of ongoing mechanisms for staff development in literacy and basic skills.

Selection of Applications

The Director uses 34 CFR 75.217 in selecting an application for award. The Director is particularly interested in bringing together States that have made a strong commitment to interagency coordination in the area of adult literacy and that represent a variety of regions and programmatic characteristics. The Director will consider States at different levels of development in the area of staff development systems for adult literacy as long as those States have an ability to benefit from the project and can demonstrate a strong commitment to interagency coordination.

Other Applications Requirements

The application shall include the following:

Project Summary

The proposal must contain a 200-word summary of the proposed project suitable for publication. It should not be an abstract of the proposal, but rather a self-contained description of the activities that would explain the proposal. The summary should be free of jargon and technical terminology, and should be understandable by a non-specialist reader.

Project Description

This description, which is to include the Plan of Operation, should not exceed fifteen (15) single-spaced pages, or thirty (30) double-spaced pages. The description may be amplified by material in attachments and appendices, but the body should stand alone to give a complete picture of the Center. Proposals which exceed 15 single-spaced pages or 30 double-spaced pages will not be reviewed.

Budget Proposal

The proposal must contain a budget for each year of support requested and cumulative budget for the full 2 year term of the cooperative agreement. The budget format may be reproduced as needed. Facsimiles may be used, but do not make substitutions in prescribed budget categories. Additional pages for budget explanation and amplification should be attached and must be consistent with the data and categories on the form. All budget requests must be documented and justified.

The budget proposal should be bound in a Separate Document. In addition to submitting a budget for the project as a whole, applicants should prepare separate budgets for individual activities. Personnel items should include the names (or position titles) of key staff, number of hours, and applicable hourly rates. Discussion of equipment, supplies, and travel should include both the cost and the purpose and justification. Budgets should include all Center costs and should identify contributed costs, and support from other sources, if any. Sources of support should be clearly identified in all instances. The financial aspects of any cost sharing and joint or cooperative funding by members of a partnership formed for purposes of the proposal should be shown in a detailed budget for each party. These budgets should reflect the arrangements among the parties, and should show exactly what cost-sharing is proposed for each budget item.

Applications should provide a detailed breakdown of each cost category in the budget summary.

Applications should indicate all direct and indirect costs that the applicant will require of the project. It should also indicate in detail all resources, whether direct or in-kind, that the applicant or others will provide to the project over and above the funds provided by the National Institute for Literacy.

[Note: Matching is not required for this announcement].

Current and Pending Support

All current project support from whatever source (such as Federal, State, or local government agencies, private foundations, commercial organizations) must be listed. The list must include the proposed project and all other projects requiring a portion of time of the Project Director and other senior personnel, even if they receive no salary support from the project. The number of person-

months or percentage of effort to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals that are being considered by or will be submitted soon to other sponsors.

If the project now being submitted has been funded previously by another source, the information requested in the paragraph above should be furnished for the immediately preceding funding period. If the proposal is being submitted to other possible sponsors, all of them must be listed. Concurrent submission of a proposal to other organizations will not prejudice its review by the Institute.

Any fee proposed to be paid to a collaborating or "partner" for-profit entity should be indicated. (Fees will be negotiated by the Grants Officer.) Any copyright, patent or royalty agreements (proposed or in effect) must be described in detail, so that the rights and responsibilities of each party are made clear. If any part of the project is to be subcontracted, a budget and work plan prepared and duly signed by the subcontractor must be submitted as part of the overall proposal and addressed in the narrative.

Eligible Applicants: The following are eligible for a new award under this program: Governors of each State, U.S. Possessions and Trust Territories, and the Mayor of the District of Columbia. (Application may be made by a group of Governors acting in behalf of a Regional State Literacy Resource Center).

Deadline for Transmittal of Applications: September 8, 1993.

Available Funds: This project will be awarded as a cooperative agreement. In Fiscal Year 1993, $1,700,000 is available for the first year of funding. The funding level for year 2 depends upon program authority, the availability of funds, and needs as reflected in the approved application.

Estimated Number of Awards: 5–7.

Note: The National Institute for Literacy is not bound by any estimates in this Notice.

Project Period: Up to 24 months.

Instructions for Transmittal of Applications:

(a) To apply for a cooperative agreement—

(1) Mail the original and ten (10) copies of the application on or before the deadline date of September 8, 1993, to: National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006, Attention: (CFDA #84.257D).

(2) Hand deliver the application by 4:30 p.m. (Washington, DC time) on the deadline date to the address above.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(c) If an application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The National Institute for Literacy will mail a Grant Applicant Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the National Institute for Literacy at (202) 632–1500.

(3) The applicant must indicate on the envelope and in Item 10 of the application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Forms

The appendix to this announcement is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials:

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying; Debasement, Suspension, and other Responsibility Matters; and Drug-Free Workplace Requirements (ED 90–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of recipients and should not be transmitted to the National Institute for Literacy.

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions; and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances and the certifications. However, the application form, the assurances, and certifications must each have an original signature. No award can be made unless a completed application has been received.

Grant Administration

The administration of the cooperative agreement for the Center for Learning Disabilities is governed by the conditions of the award letter. The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 76, 77, 79, 80, 81, 82, 85 and 86 (July 1, 1992), set forth administrative and other requirements. This document is for sale through the Superintendent of Documents, Government Printing Office, Washington, DC 20402. The telephone number is (202) 783–3288 for subscription information. It is recommended that appropriate administrative officials become familiar with the policies and procedures in the EDGAR which are applicable to this award. If a proposal is recommended for an award, the Grants official will request certain organizational, management, and financial information.

The following information on grant administration deals with questions that project directors often raise.

General Requirement

Grants and Cooperative Agreements for Federal financial assistance are subject to certain general requirements, such as compliance with the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Americans with Disabilities Act of 1990 and other laws and regulations prohibiting discrimination; drugfree workplace requirements; restrictions on lobbying; patent and copyright requirements; cost sharing; and the use of U.S. flag carriers for international travel. These are summarized in the Grant General Conditions. The appropriate terms and conditions will accompany notification of award.

Prior Approval Requirements

Prior written approval from NIFL is required for transferring a significant part of the project activities; making a major change in objectives or scope; making a change in the project director or level of effort; making rearrangements or alterations costing $10,000 or more; and transferring funds from participant

support. These changes require prior NIFL approval.

Transfer of Project Director

When a Project Director plans to leave an institution during the course of an award, the institution has the prerogative to nominate a replacement of request that the award be terminated and closed out. Replacement of the project director is subject to NIFL approval. In those cases where a particular project director's participation is integral to a given project and the original and new institutions agree, the NIFL will facilitate a transfer of the award and the assignment of remaining unobligated funds to the project director's new institution.

Suspension or Termination of Award

NIFL grants and cooperative agreements may be suspended or terminated in accordance with the procedures contained in the Grant General Conditions. Termination may be by mutual agreement. Termination by mutual agreement shall not affect any commitment of funds that, in the judgment of the Institute and the grantee, had become firm before the effective date of the termination.

Reporting Requirements

The grantee must submit the following reports:

- Quarterly Performance: A brief 2–3 page report of progress; due: Within 20 days of the end of each quarter.
- Continuation Application: Contents to be determined by the NIFL; due: By the end of the 2nd quarter of year-1.
- Final Report: Due: 90 days after the expiration of or termination of support.

More detailed specifications about reporting requirements will be provided within three months after the award.

Electronic Submission of Proposals and Reports

The NIFL is exploring the feasibility of receiving reports and proposals using technology that will be part of the National Literacy Database. Further information about this activity will be provided by the Institute during year one of the award.

Continuation Proposal

Following year 1 of the award, and to receive funding for year 2, the recipient is required to submit a continuation proposal. The proposal should describe significant activity during the past year, and explain what will be accomplished during the next award. This proposal should also contain projections of work for the next year.

Acknowledgment of Support and Disclaimer

An acknowledgment of the NIFL support and a disclaimer must appear in publications of any material, whether copyrighted or not, based on or developed under NIFL-supported projects:

This material is based upon work supported by the National Institute for Literacy under Grant No: (grantee should enter NIFL grant number).

Except for articles or papers published in professional journals, the following disclaimer should be included:

Any opinion, findings, and conclusions or recommendations expressed in this material are those of the author(s) and do not necessarily reflect the views of the National Institute for Literacy.

FOR FURTHER INFORMATION CONTACT: Victor Westbrook, Director, Contracts and Grants, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone: 202–632–1500. FAX: 202–632–1512. Individuals who use a telecommunications device for the deaf (TDD) may call 202–632–1529 between the hours 8 a.m. and 5 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1213C.

Instructions for Estimated Public Reporting Burden: Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing the Act, the National Institute for Literacy invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 65 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and disseminating the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the National Institute for Literacy, and the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

(Information collection approved under OMB control number 3200–0020, Expiration date: June 1994)

Lilian Dorka,

Acting Interim Director,National Institute for Literacy.

BILLING CODE 6055–01–M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, state, and zip code)*:	Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

National Institute for Literacy

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 2 5 7D

TITLE: Staff Development

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a-6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

Previous Edition Usable

Authorized for Local Reproduction

Standard Form 424A (Rev. 4-92)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL (sum of lines 8 – 11)	$	$	$	$

SECTION D - FORCASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17				
18.				
19.				
20. TOTAL (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

Authorized for Local Reproduction

Standard Form 424A (Rev. 4-92) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including 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 the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i—Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f) Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a - 7), the Copeland Act (40 U.S.C. §§276c and 18 U. S. C. §§874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984 or OMB Circular No. A-133, Audits of Institutions of Higher Learning and other Non-profit Institutions.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 4/92) back

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification, and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs, and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

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

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

* U.S. G.P.O. 1990-260-708:00012

Authorized for Local Reproduction
Standard Form - LLL-A

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.

Public reporting burden for this collection of information is estimated to average 30 mintues per response, including time for reviewing instructions, seatching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

[FR Doc. 93–18578 Filed 8–4–93; 8:45 am]
BILLING CODE 6065–01–C

Reader Aids

Federal Register

Vol. 58, No. 149

Thursday, August 5, 1993

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection desk	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

ELECTRONIC BULLETIN BOARD

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

FEDERAL REGISTER PAGES AND DATES, AUGUST

41023–41170.....2
41171–41420.....3
41419–41620.....4
41621–41980.....5

CFR PARTS AFFECTED DURING AUGUST

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6583.....41169
6584.....41621

5 CFR

550.....41623
Proposed Rules:
Ch. 21.....41193

7 CFR

319.....41124
944.....41124
1211.....41023
1446.....41625
1728.....41394
1755.....41394
1980.....41171
3015.....41410
3051.....414102
Proposed Rules:
800.....41439
1211.....41203
1413.....41641

9 CFR

318.....41138
320.....41138
Proposed Rules:
82.....41048
92.....41204, 41623
94.....41623

10 CFR

766.....41160
Proposed Rules:
12.....41061
766.....41164

12 CFR

703.....41419

13 CFR

Proposed Rules:
107.....41852, 41882

14 CFR

39.....41172, 41174, 41175, 41177, 41179, 41419, 41421
71.....41181
Proposed Rules:
39.....41066, 41210, 41441, 41442, 41444, 41645
71.....41211, 41212
73.....41214
255.....41068

15 CFR

30.....41422
Proposed Rules:
295.....41069
500.....41215

16 CFR

306.....41356

18 CFR

2.....41626
Proposed Rules:
36.....41074
284.....41647

19 CFR

4.....41422
101.....41633
122.....41422

20 CFR

416.....41181

21 CFR

5.....41634
14.....41635
73.....41024, 41182, 41183
74.....41183
210.....41348
211.....41348
520.....41024
524.....41024
Proposed Rules:
103.....41612

23 CFR

1200.....41025
1204.....41025
1205.....41025

24 CFR

50.....41328
200.....41328
203.....41328
204.....41328
791.....41426
Proposed Rules:
200.....41445

28 CFR

16.....41038

30 CFR

718.....41936
720.....41936
735.....41936
914.....41039
Proposed Rules:
914.....41669

31 CFR

Proposed Rules:
206.....41902
209.....41449

32 CFR

Proposed Rules:
246.....41671
296.....41679

33 CFR

100.....41428
175.....41602
181.....41602

Proposed Rules:
100.....41449

38 CFR

3.....41635
21.....41636

Proposed Rules:
21.....41325

40 CFR

52.....41430
141.....41344
186.....41430

Proposed Rules:
52.....41218, 41451
180.....41452

41 CFR

101–26.....41637

43 CFR

3730.....41184
3820.....41184
3830.....41184
3833.....41325
3850.....41184

44 CFR

Proposed Rules:
351.....41154

45 CFR

301.....41432
303.....41432

46 CFR

160.....41602

47 CFR

0.....41042
69.....41184
73.....41045, 41046, 41638
76.....41042

Proposed Rules:
73.....41680, 41681

49 CFR

571.....41638

Proposed Rules:
531.....41228
552.....41077
571.....41078
594.....41681
1312.....41684

50 CFR

17.....41378, 41384
646.....41438
625.....41191
672.....41438, 41191, 41640
675.....41325

Proposed Rules:
17.....41231, 41237, 41684, 41688, 41690, 41696, 41700
226.....41454

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 843/P.L. 103–56

Cave Creek Canyon Protection Act of 1993 (Aug. 2, 1993; 107 Stat. 278; 1 page)

H.R. 847/P.L. 103–57

To provide for planning and design of a National Air and Space Museum extension at Washington Dulles International Airport. (Aug. 2, 1993; 107 Stat. 279; 1 page)

H.R. 1347/P.L. 103–58

To modify the boundary of Hot Springs National Park. (Aug. 2, 1993; 107 Stat. 280; 1 page)

H.R. 2683/P.L. 103–59

To extend the operation of the migrant student record transfer system. (Aug. 2, 1993; 107 Stat. 281; 1 page)

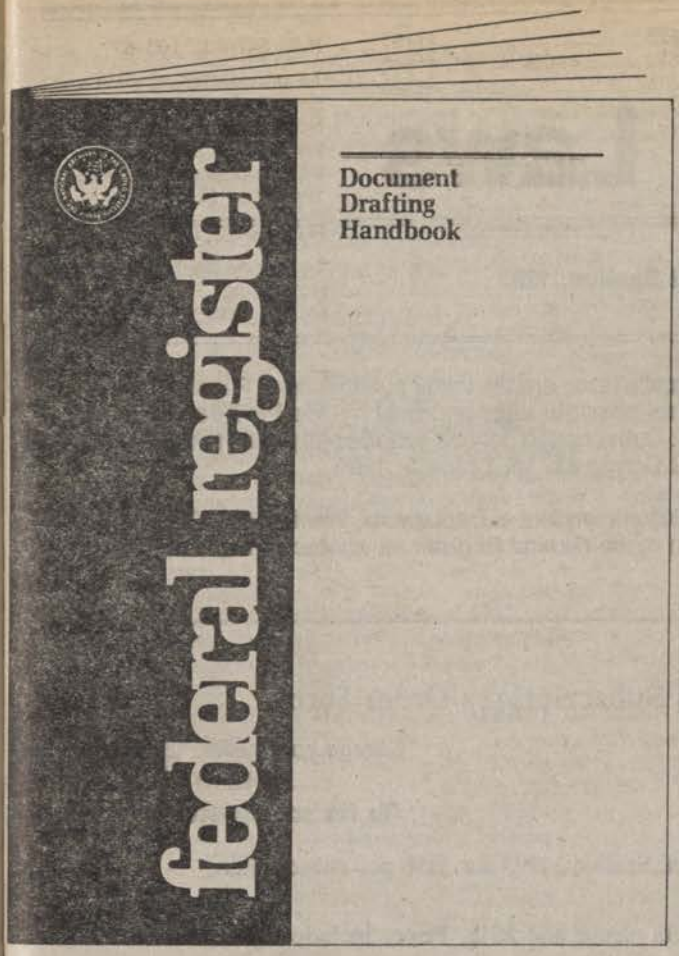
S.J. Res. 54/P.L. 103–60

Designating April 9, 1994, as "National Former Prisoner of War Recognition Day". (Aug. 2, 1993; 107 Stat. 282; 1 page)

S.J. Res. 111/P.L. 103–61

To designate August 1, 1993, as "Helsinki Human Rights Day". (Aug. 2, 1993; 107 Stat. 283; 2 pages)

Last List August 3, 1993



Federal Register Document Drafting Handbook

A Handbook for Regulation Drafters

This handbook is designed to help Federal agencies prepare documents for publication in the Federal Register. The updated requirements in the handbook reflect recent changes in regulatory development procedures, document format, and printing technology.

Price $5.50

Superintendent of Documents Publication Order Form

Order processing code: *6133

Charge your order. It's easy!
To fax your orders and inquiries—(202) 512-2250

☐ **YES,** please send me the following indicated publications:

_____ copies of **DOCUMENT DRAFTING HANDBOOK at $5.50 each.** S/N 069-000-00037-1

1. The total cost of my order is $_____ Foreign orders please add an additional 25%. All prices include regular domestic postage and handling and are subject to change.

Please Type or Print

2. _____
(Company or personal name)

_____
(Additional address/attention line)

_____
(Street address)

_____
(City, State, ZIP Code)

(_____) _____
(Daytime phone including area code)

3. Please choose method of payment:

☐ Check payable to the Superintendent of Documents
☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐
☐ VISA or MasterCard Account
☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

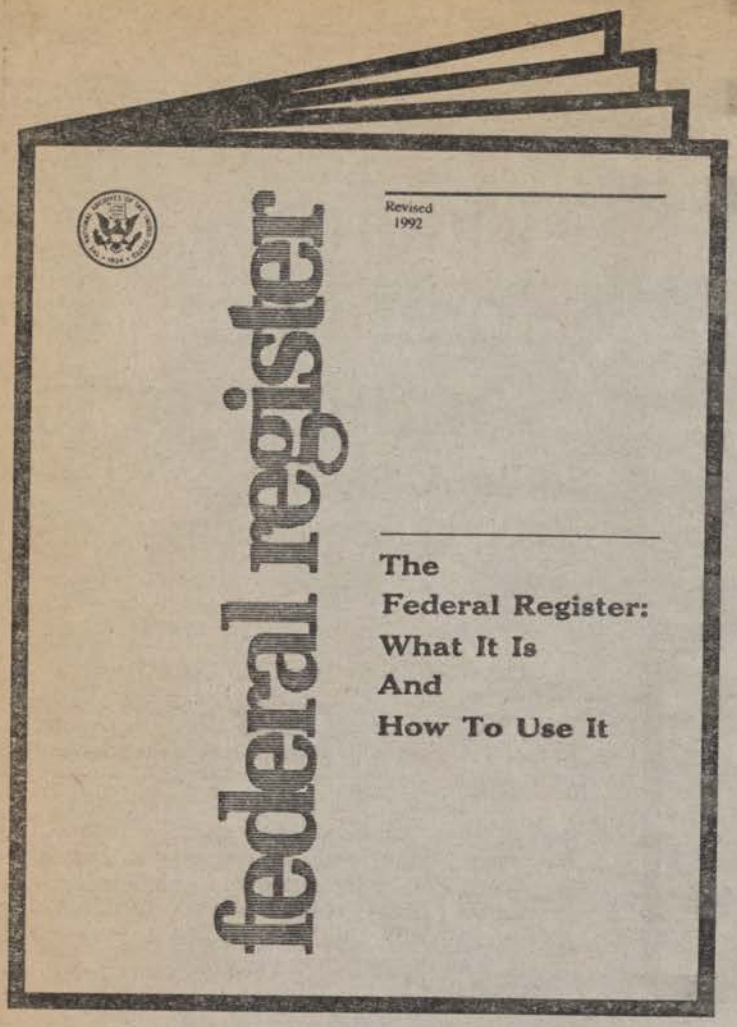
_____
(Credit card expiration date)

Thank you for your order!

_____
(Signature)

(Rev 12/91)

4. **Mail To:** New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954



Announcing the Latest Edition

The Federal Register: What It Is and How to Use It

A Guide for the User of the Federal Register—Code of Federal Regulations System

This handbook is used for the educational workshops conducted by the Office of the Federal Register. For those persons unable to attend a workshop, this handbook will provide guidelines for using the *Federal Register* and related publications, as well as an explanation of how to solve a sample research problem.

Price $7.00

Superintendent of Documents **Publications** Order Form

P3

Order processing code:
*6173

Charge your order. It's Easy!

To fax your orders (202)-512-2250

☐ **YES**, please send me the following:

_____ copies of **The Federal Register - What It Is and How To Use It**, at $7.00 per copy. Stock No. 069-000-00044-4

The total cost of my order is $_____. International customers please add 25%. Prices include regular domestic postage and handling and are subject to change.

(Company or Personal Name) (Please type or print)

(Additional address/attention line)

(Street address)

(City, State, ZIP Code)

(Daytime phone including area code)

(Purchase Order No.)

May we make your name/address available to other mailers? YES ☐ NO ☐

Please Choose Method of Payment:

☐ Check Payable to the Superintendent of Documents

☐ GPO Deposit Account ☐☐☐☐☐☐☐-☐

☐ VISA or MasterCard Account

☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

☐☐☐☐ (Credit card expiration date)

Thank you for your order!

(Authorizing Signature) (Rev. 1-93)

Mail To: New Orders, Superintendent of Documents
P.O. Box 371954, Pittsburgh, PA 15250-7954

Printed on recycled paper