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

WHO: The Office of the Federal Register.

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

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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(TWO BRIEFINGS)

WHEN: February 17 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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

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

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RINs 3209–AA04, 3209–AA15

Additional Grace Period Extension for Certain Existing Agency Standards of Conduct

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendment.

SUMMARY: The Office of Government Ethics is granting an additional grandfathering grace period extension for up to one year for certain existing executive agency standards of conduct, dealing with financial interest prohibitions and prior approval for outside employment/activities, which have been temporarily preserved. This action is necessary because many agencies have not been able to develop, with OGE concurrence, supplemental regulations for such provisions during the first one-year grace period. This additional extension will help ensure that concerned agencies have adequate time to issue successor regulatory provisions to replace the restrictions noted.

EFFECTIVE DATE: February 2, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Office of Government Ethics, telephone: 202–523–5757, FAX: 202–523–6325.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics (OGE) is granting under the executive branch standards of ethical conduct an additional extension of time for up to one year, until February 3, 1995, for certain agencies' existing conduct standards dealing with prohibited financial interests and prior approval for outside employment and activities. When OGE published its ethical conduct standards for executive branch employees in the **Federal Register** on August 7, 1992 (as now codified at 5 CFR part 2635), it provided, by means of notes following 5 CFR 2635.403(a) and 2635.803, that although most existing individual agency standards of conduct would be superseded once the executive branch-wide standards took effect on February 3, 1993, existing agency standards dealing with the two types of restrictions noted above would be preserved for one year (until February 3, 1994) or until the agency concerned issued a supplemental regulation, whichever occurred first. See 57 FR 35006–35067, as corrected at 57 FR 48557 and 52583.

Various executive branch departments and agencies have expressed an interest in developing supplemental regulations involving one or both of these types of provisions. Through OGE's liaison efforts, the Office of the Federal Register has assigned new chapters and parts at the end of title 5 of the Code of Federal Regulations to accommodate these agencies' future supplemental standards regulations (on these two and other appropriate subject areas), as well as any supplemental agency regulations under OGE's executive branch-wide financial disclosure provisions at 5 CFR part 2634. However, although some of the agencies have, with OGE concurrence, issued interim final or final supplemental regulations, many have not yet had the time to finalize their planned supplemental regulations.

The Office of Government Ethics has therefore determined to permit preservation of existing agency standards setting forth financial interest prohibitions and outside employment/activities prior approval requirements for up to one more year, until February 3, 1995 (or until issuance by each agency of its supplemental regulation, whichever comes first), while the concerned agencies continue to work to promulgate their new provisions in these two areas. The agencies subject to this additional grandfathering grace period extension are enumerated at new appendix A, which is being added to 5 CFR part 2635, in the order of the assignment of chapter numbers at the end of 5 CFR. Agencies not listed either have not expressed an interest in issuing supplemental agency regulations pursuant to 5 CFR 2635.105 (or 5 CFR 2634.103) or have already issued final or interim final supplemental regulations. For agencies not listed in appendix A, the initial grace period for any existing standards of conduct financial interest prohibitions and prior approval for outside employment/activities expires on February 3, 1994.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 (b) and (d), as Director of the Office of Government Ethics, I find good cause exists for waiving the general notice of proposed rulemaking and 30-day delay in effectiveness as to this grace period extension. The notice and delayed effective date are being waived because this rulemaking concerns a matter of agency organization, practice and procedure and because it is in the public interest that those agencies concerned have adequate time to promulgate successor provisions to their existing standards of conduct regulations in these two areas, while preserving existing restrictions in the meantime.

Executive Order 12866

In promulgating this grace period extension technical amendment, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This amendment has not been reviewed by the Office of Management and Budget under that Executive order, as it is not deemed "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2635

Conflict of interests, Government employees.

Approved: January 27, 1994.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, the Office of Government Ethics pursuant to its authority under title IV of the Ethics in Government Act is amending 5 CFR part 2635 as follows:

PART 2635—[AMENDED]

1. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. The notes following both §§ 2635.403(a) and 2635.803 are amended by adding a new sentence at the end to read as follows:

Note: * * * Provided, that for those agencies listed in appendix A to this part, the grace period for any such existing provisions shall be extended for an additional year until February 3, 1995 (for a total of two years after the effective date of this part) or until issuance by each individual agency concerned of a supplemental regulation, whichever occurs first.

3. A new appendix A is added at the end of part 2635 to read as follows:

Appendix A to Part 2635—Agencies Entitled to Additional One-Year Grace Period Extension Pursuant to Notes Following §§ 2635.403(a) and 2635.803

1. Department of the Treasury
2. Federal Deposit Insurance Corporation
3. Department of Energy
4. Federal Energy Regulatory Commission
5. Department of the Interior
6. Department of Commerce
7. Department of Justice
8. Federal Communications Commission
9. Department of Veterans Affairs
10. Farm Credit Administration
11. ACTION
12. Securities and Exchange Commission
13. Office of Personnel Management
14. Thrift Depositor Protection Oversight Board
15. United States Information Agency
16. Occupational Safety and Health Review Commission
17. Department of State
18. Department of Labor
19. National Science Foundation
20. Small Business Administration
21. Department of Health and Human Services
22. Nuclear Regulatory Commission
23. Federal Labor Relations Authority
24. Department of Transportation
25. Pension Benefit Guaranty Corporation
26. Export-Import Bank of the United States
27. Department of Education
28. Environmental Protection Agency
29. Committee for Purchase from People Who Are Blind or Severely Disabled
30. National Transportation Safety Board
31. General Services Administration
32. Board of Governors of the Federal Reserve System
33. National Aeronautics and Space Administration
34. United States Postal Service
35. National Labor Relations Board
36. Equal Employment Opportunity Commission
37. Inter-American Foundation
38. Resolution Trust Corporation
39. Department of Housing and Urban Development
40. National Archives and Records Administration
41. Peace Corps
42. Federal Maritime Commission
43. Tennessee Valley Authority
44. Defense Nuclear Facilities Safety Board
45. Consumer Product Safety Commission
46. Executive Office of the President
47. Department of Agriculture
48. Federal Mine Safety and Health Review Commission
49. National Endowment for the Humanities
50. Federal Retirement Thrift Investment Board
51. Office of Management and Budget
52. Agency for International Development

[FR Doc. 94–2289 Filed 2–1–94; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 231

Regulation EE; Docket No. R–0801]

Netting Eligibility for Financial Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board has adopted a rule to include certain entities under the definition of "financial institution" in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 so that they will be covered by the Act's netting provisions. The Act authorizes the Board to expand the definition of "financial institution" to the extent consistent with the purposes of enhancing efficiency and reducing systemic risk in the financial markets.

EFFECTIVE DATE: March 7, 1994.

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452–3625), or Stephanie Martin, Senior Attorney (202/452–3198), Legal Division. For the hearing impaired *only*: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Background

The Federal Deposit Insurance Corporation Improvement Act of 1991 (Act) (Pub. L. 102–242, sections 401–407; 105 Stat. 2236, 2372–3; 12 U.S.C. 4401–4407) validates netting contracts among financial institutions. Parties to a netting contract agree that they will pay or receive the net, rather than the gross, payment due under the netting contract. The Act provides certainty that netting contracts will be enforced, even in the event of the insolvency of one of the parties. The Act's netting provisions, effective December 19, 1991, are designed to promote efficiency and reduce systemic risk within the banking system and financial markets.

The netting provisions apply to bilateral netting contracts between two financial institutions and multilateral netting contracts among members of a clearing organization. Section 402(9) of the Act defines "financial institution" to include a depository institution, a securities broker or dealer, a futures commission merchant, and any other institution as determined by the Board. In addition, the Act's definition of "broker or dealer" (section 402(1)(B)) includes any affiliate of a registered broker or dealer, to the extent consistent with the Act, as determined by the Board.

Proposed Rule

In May 1993, the Board requested comment on a proposed regulation that would expand the application of the Act's netting provisions to a broader range of financial market participants (58 FR 29149, May 19, 1993). The Board proposed that persons meeting certain tests based on market activity would qualify as "financial institutions" under the Act. The proposed tests were designed to capture institutions that are significant market participants whose coverage could enhance market liquidity and whose failure without coverage could have systemic risk implications. The Board chose the activity-based tests instead of tests based on an institution's status as a regulated entity, its affiliation with a defined financial institution, or its class of charter. As these three latter tests likely would be both over- and under-inclusive, the Board believed they were not as appropriate as an activity-based test.

The test proposed by the Board had both a qualitative and a quantitative aspect. First, to qualify as a financial institution under the proposed rule, a

person [1] would have to participate actively in a financial market for its own account and hold itself out as a counterparty that will engage in transactions both as a buyer and a seller in the financial market. Second, the person would have to meet one of two quantitative thresholds: It must have either (1) had one or more financial contracts of a total gross dollar value of $1 billion in notional principal amount outstanding on any day during the previous 15-month period with counterparties that are not its affiliates, or (2) incurred total gross mark-to-market positions of $100 million (aggregated across counterparties) in one or more financial contracts on any day during the previous 15-month period with counterparties that are not its affiliates.

Final Rule

The final rule adopted by the Board retains the qualitative test, in a modified form, as well as the quantitative test. Under the final rule, a person would qualify as a financial institution if it represents that it will engage in financial contracts as a counterparty on both sides of one or more financial markets and meets one of the quantitative thresholds, which are largely unchanged from the proposal.

The operation of the rule is prospective, i.e., the Act's netting provisions will apply only to those netting contracts entered into after a person qualifies as a financial institution. The final rule clarifies that a person will continue to be considered a financial institution for the purposes of any contract entered into during the period in which it qualifies, even if the person subsequently fails to qualify during the life of the contract. In addition, the Board has grandfathered those netting contracts in existence on the effective date of the final rule. If a person qualifies as a financial institution on the effective date, that person will be considered a financial institution for the purposes of any outstanding contract entered into prior to that date.

The Board also made various revisions to the proposed definitions. Those revisions are discussed in the comment summary below.

Summary of Comments

The Board received 32 comment letters (from 30 commenters) on proposed Regulation EE. The commenters were distributed as follows:

Type of institution	Number
Trade association	7
Federal Reserve Bank	4
Commercial bank	4
Government-sponsored entity	3
Clearing house	2
Financial institution holding company	2
Swaps dealer	3
Federal agency	2
Law firm	1
Financial corporation	1
International agency	1
Total	30

General Comments

Virtually all of the commenters supported the objectives of the Act's netting provisions and the Board's proposed regulation. The commenters generally agreed that broadening the Act's definition of "financial institution" would enhance efficiency and reduce risk in the financial markets. Only two commenters expressed doubts as to whether broader netting protection would decrease systemic risk.

One commenter specifically supported expansion of the definition by rule rather than by case-by-case determinations. Two commenters suggested that the Board should indicate in advance how it intends to use its discretion in case-by-case determinations. The Board, however, has set forth in the regulation the standards it believes should apply for a person to qualify as a financial institution in most circumstances. In case of unanticipated circumstances, the Board has the flexibility to make case-by-case determinations based on standards different from those in the regulation.

Qualitative Test

Fifteen commenters raised concerns about the qualitative prong of the proposed rule's test. Eleven of these commenters argued that the rule should cover major market participants that are end users, in addition to covering market intermediaries. (Four commenters suggested that the Board eliminate the test altogether, and one commenter suggested that coverage be extended to any entity that enters into a netting contract as defined by the Act.) The commenters stated that the insolvency of a major end user would raise substantial settlement, liquidity, and systemic risks and that such risks arise from the size and nature of an entity's positions, not from the character of its business. The commenters noted that although end users may not be market-makers, their arbitrage strategies may cause them to take positions on both sides of the market. The commenters observed that including end users would provide certainty of enforceability for a broader range of netting contracts. They stated that this broader range of coverage would enhance market liquidity, as dealers could do a larger volume of business with end users without raising credit limits, and would eliminate a competitive disadvantage for end users.

The Board has determined to retain the qualitative test, in a modified form. Although the Board recognizes that end users (as well as their counterparties) might benefit by the netting provisions and the failure of certain end users could create systemic risk, the Board believes it would be difficult to justify inclusion of many end users as "financial institutions." The Act defines "financial institution" to include traditional financial market intermediaries such as banks, broker-dealers, and futures commission merchants. Expanding the definition to cover end users would include many non-financial corporations and, potentially, even individuals. The Board believes it would be a stretch of the statutory definition of "financial institution" to include institutions or individuals that are not market intermediaries and are not in the financial services business.

Eleven commenters offered suggestions on how to achieve certainty that a given entity qualifies as a financial institution. The commenters argued that market participants would have no choice but to rely on the representations of their counterparties in many cases. Many commenters suggested that market participants be allowed to rely in good faith on the written representation of a counterparty, signed by an appropriate officer, stating that the tests were met. The commenters argued that this "safe harbor" would provide certainty in instances where a participant might otherwise refuse to deal with an institution solely because it cannot verify the institution's qualifications.

With regard to the qualitative test, five commenters noted that, as a practical matter, it would be difficult for counterparties to verify that an institution participates "actively" in the financial markets and holds itself out as a market intermediary. In addition, one commenter suggested that the rule should cover certain entities that do not enter into transactions for their own account, such as collective investment funds and master trust arrangements that act in a fiduciary capacity. One commenter noted that a statement from an entity that it meets the test could be

[1] "Person" is defined broadly to include any legal entity, such as a corporation, partnership, or individual.

considered the equivalent of "holding itself out" as a market intermediary. Other commenters suggested eliminating the "participates actively" clause.

The Board agrees that an institution that represents that it is willing to engage in transactions on both sides of the market is, in effect, holding itself out as a market intermediary. Accordingly, the Board has revised the language of the qualitative test to provide that such a representation would suffice to meet the test. The Board has eliminated that part of the proposed rule that would have required a financial institution to participate actively in a financial market for its own account. The Board believes that the revised final rule provides counterparties with greater certainty that an institution meets the qualitative test because counterparties can rely on the institution's representation.

Three commenters made drafting suggestions, such as (1) replacing the reference to "buyer and seller," which is appropriate in a securities market, with the more generic "participates on both sides" of the market, and (2) clarifying that an institution may be active in one or more financial markets simultaneously. The Board has revised the rule to incorporate both of these suggestions. Under § 231.3(a) of the final rule, a person meets the qualitative test if it "represents that it will engage in financial contracts as a counterparty on both sides of one or more financial markets."

Quantitative Test

Fourteen commenters cited problems with the proposed quantitative test. Seven commenters noted that financial market participants will have difficulty verifying whether their counterparties meet the volume thresholds because publicly available financial statements typically do not present information in a format that would allow verification. Five commenters stated that small-volume dealers would be placed at a competitive disadvantage, resulting in concentration of trading at large dealers and barriers to entry. In addition, two commenters noted that the test would penalize business wind-downs, as financial institutions would cease to be covered as their contracts expired. Two commenters argued that counterparties could circumvent the test by engaging in reciprocal transactions to raise their outstanding principal amounts artificially.

As a solution to the problems cited above, eight commenters suggested that the Board eliminate the quantitative test. These commenters stated that the qualitative test would be sufficient to guarantee coverage of parties with a material presence in the financial markets, so a quantitative test is unnecessary.

The purpose of the rule, however, is to further the Act's objectives of increasing efficiency and decreasing systemic risk in the financial markets. The qualitative test targets institutions that are market intermediaries in order to restrict coverage to those entities that can reasonably be included in the Act's definition of "financial institution." The qualitative test alone does not necessarily focus on those institutions whose coverage would help achieve the Act's objectives. The purpose of the quantitative test is to ensure that a covered institution engages in a level of business such that its failure to meet its obligations could create systemic risk.

The Board believes that most institutions that meet the qualitative test engage in a volume of transactions substantially above the quantitative test thresholds. Although institutions entering the market may not be able to meet the quantitative test right away, the test would aid in reducing systemic risk by helping to ensure the creditworthiness of new market participants because they would have to achieve a certain level of market participation without the benefit of certainty of the validity of netting provided by the rule. In addition, the quantitative test tends to encourage active market participation by financial institutions by requiring them to meet certain volume thresholds within a set period of time. The netting contracts of institutions that are winding down their businesses would continue to be covered as long as the institution entered into the contracts while it qualified as a financial institution. (See discussion of timing issues below and § 231.3(b) of the final rule.) For these reasons, the Board has retained the proposed quantitative test in § 231.3(a)(1) and (2) of the final rule.

The commenters also suggested changes in the event the quantitative test is not eliminated. Five commenters asked that the volume thresholds be reduced from $1 billion in notional principle to $500 million and from $100 million in gross mark-to-market positions to $50 million. As the Board does not believe these thresholds would be overly limiting, it has not decreased the threshold levels. The Board may reexamine the thresholds if it finds that these levels prove to be overly limiting.

One commenter suggested that the Board establish one set of quantitative thresholds for dealers, but allow non-dealers to be covered at higher thresholds. As discussed above, the Board believes that inclusion of end users, even at higher volume thresholds, would be a stretch of the term "financial institution."

Another commenter suggested that the quantitative test measure average activity levels over a 24-month period to discourage short-run attempts to increase activity. Although using average volumes could help discourage artificial short-run increases in activity, it would also add more complexity to the determination of whether an institution meets the quantitative test. Rather than focusing on one day in a 15-month period, averaging would require surveillance of activity on a much more frequent basis. The final rule retains the proposed "one-day" test.

Several commenters suggested that the Board allow counterparties to rely on an external auditor's certificate or that the Board redesign the test so that a party could verify its counterparty's qualifications by examining publicly available information. The Board believes that institutions desiring to qualify as financial institutions under the rule will have a strong incentive to present information in publicly available documents, such as financial reports, showing that the institution meets the quantitative test. These reports could be verified by an outside auditor, if the participants so desire.

One commenter suggested that, for the purposes of the quantitative test, the Board should treat the aggregate risk of an affiliated group as one entity, i.e. an institution would qualify as a financial institution if it meets the qualitative test and it and/or its affiliates meet the quantitative test. If an institution fails to meet its obligations, however, those obligations are not automatically assumed by its affiliates, even though in some cases a holding company, for example, may make contributions to a troubled subsidiary. The Board believes that treating each institution separately under the rule reflects more closely the risk that institution poses for its counterparties.

Two commenters requested that the Board allow the quantitative test to be satisfied by financial contracts from several financial markets, even though the institution may not satisfy the qualitative test for each one of those financial markets. The rule would allow aggregation of financial contracts across markets for purposes of the quantitative test, but would not require an institution to meet the qualitative test for each type of its financial contracts. For example, an institution might meet the qualitative test by representing that it will engage in foreign exchange contracts on both sides of the market

and meet the quantitative test with both its foreign exchange and interest rate contracts. The institution would nevertheless qualify as a financial institution, and all of its netting contracts would be subject to the Act's protection.

Finally, in § 231.3(a)(2), the Board has changed the word "incurred" to "had" to clarify that the contracts that yield mark-to-market positions of $100 million need not be entered into on a single day. Rather, the $100 million refers to positions in outstanding contracts on a single day.

Charter Test

Six commenters suggested that the Board supplement the market activity tests with charter tests. The commenters argued that charter tests are consistent with the approach taken in the Act and are competitively neutral for each charter type. The commenters did not agree with the Board's statement that charter tests would foster inaccurate presumptions about the riskiness of covered institutions. Rather, they believed that charter tests would promote certainty without harmful results. The commenters requested coverage for a variety of charter types, including bank holding companies and their subsidiaries, insurance companies, foreign banks (rather than solely their U.S. branches and agencies), affiliates of registered broker-dealers, trust companies, Federal Reserve Banks, Federal Home Loan Banks, and certain government-sponsored entities.

The Board has determined not to expand the rule's coverage through charter tests. Charter tests would include many end user institutions that are not market intermediaries, which the Board believes would stretch beyond the meaning of "financial institution." A charter test would also cover many institutions whose business volumes do not give rise to systemic risk considerations. Although Congress used charter tests in the Act, the Board does not believe that charter tests are necessarily the most appropriate means to expand Congress' definition.

There may be certain end user institutions that reasonably can be described as financial institutions even though they are not market intermediaries. The Board has the ability to make case-by-case determinations in these instances and has done so. For example, in 1992, the Board made individual determinations in the cases of three CHIPS members. Similarly, there may be certain government-sponsored entities or international organizations that do not meet the requirements of the rule yet could reasonably be considered financial institutions due to their roles in the financial markets. The Board would consider making individual determinations in such cases.

Definitions

The commenters also made various technical suggestions concerning the definitions. One commenter suggested that, in the definition of "affiliate," the Board replace the word "dealer" with "person." The Board has revised the definition in § 231.2(b) accordingly.

Two commenters requested that the Board revise the definition of "gross mark-to-market positions" to replace the word "price" with "value" to clarify that market participants may use their normal market valuation methods rather than the method used to price each transaction at its inception. Section 231.2(e) of the final rule reflects this revision.

Six commenters requested that the definition of "person" explicitly include an entity organized outside the U.S., thereby assuring that foreign banks and other foreign market participants could qualify as financial institutions. Another commenter asked that the definition explicitly include trusts and that "similar entity" be changed to the more general "other entity." The Board intends that "person" be defined broadly to include all entities, foreign and domestic, and has revised the definition in § 231.2(f) to incorporate both of these comments.

One commenter suggested that the Board include a comprehensive description of the financial institutions defined by the Act as well as those defined by the regulation. However, to keep the rule as simple as possible, the Board has not included the Act's definitions. Section 231.1(b) of the rule specifically states that the rule does not affect the status of those financial institutions defined by the Act.

One commenter suggested that the Act's definition of netting contract also be used in the regulation, rather than the proposed "financial contract" definition, which is based on the Federal Deposit Insurance Act's (FDIA's) definition of qualified financial contract. The commenter believed that using a common definition would reduce confusion and avoid litigation. The final rule retains the concept of a financial contract based on the FDIA. The concept of a financial contract narrows the focus of the rule to participants in the financial markets and is relevant only to the determination of whether a particular institution qualifies as a financial institution under the rule. Once an institution qualifies, the Act's netting provisions would apply to all of that institution's netting contracts, as defined by the Act.

The Board has expanded upon the FDIA to include spot forward contracts (contracts with maturities of two days or less) as financial contracts for purposes of the qualitative and quantitative tests. Arguably, the FDIA definition of swap agreement already includes spot forward contracts, however, for purposes of clarity, the Board has included spot contracts expressly in the forward contract definition.

Timing Issues

Many commenters raised timing-related issues regarding the rule's coverage. Eight commenters requested that the Board clarify that the Act's netting provisions will apply for the life of a contract as long as the parties qualify as financial institutions at the time they enter into the contract. The Board has revised the rule to clarify that a person will continue to be considered a financial institution for the purposes of any contract entered into during the period it qualifies, even if the person subsequently fails to qualify. (See § 231.3(b).)

Four commenters suggested that the Board clarify that an institution's status as a financial institution will be determined at the time it enters into a netting contract because that is when the counterparty will evaluate the institution's creditworthiness. On the other hand, two commenters suggested that the netting provisions should be applied retroactively to an institution's existing contracts once it qualifies as a financial institution. One commenter requested clarification as to whether existing contracts will be grandfathered when the rule takes effect. Under the final rule, the Act's netting provisions will apply only to those netting contracts entered into after a person qualifies as a financial institution. However, the Board has revised the rule to grandfather those contracts in existence on the effective date of the final rule for entities qualifying under the rule at that time. (See § 231.3(c).)

One commenter requested that the Board define the 15-month rolling period in the quantitative test with reference to the time parties enter into a master agreement, not the time of the first transaction under that agreement. In the absence of a master agreement, the commenter suggested that the period be measured with reference to a particular netting transaction. In practice, to determine whether a party meets the quantitative test, the 15-month period will date back from the day a party enters into a netting

contract, whether or not that netting contract is a master agreement. Thus, on a particular day ("Day X"), a party meets the quantitative test if its financial contracts, as defined in the rule, met one of the rule's threshold levels on any day during the previous 15 months. Assuming the party qualifies as a financial institution and enters into a netting contract, as defined in the Act, on Day X, § 231.3(b) of the rule provides that the netting contract will be covered by the Act's provisions regardless of whether the party ceases to qualify as a financial institution on a subsequent day. If the netting contract that the party enters into on Day X is a master agreement, e.g., an agreement to net specified types of underlying transactions that the counterparties may enter into in the future, § 231.3(b) would provide that netting under that master agreement would continue to be protected under the Act even though the party enters into individual underlying transactions after it ceases to qualify as a financial institution. The Act's provisions would not extend to netting under any new master agreement entered into after the party ceases to qualify as a financial institution.

Board List.

Two commenters requested that the Board keep a list of entities that have declared themselves to be financial institutions. The Board believes that the commenters' concerns about lack of certainty are largely addressed by allowing counterparties to rely on an institution's representation that it will act as a market intermediary and creating an incentive for institutions to publish volume threshold information to establish that they meet the quantitative test. Thus, the Board does not believe an "official" list is necessary.

Automatic Stays.

Section 405 of the Act provides that no injunction or similar order issued by a court or agency will interfere with the application of netting. One commenter believed that section 405 could be interpreted so as *not* to override provisions for automatic stays in bankruptcy under federal or state law. The commenter asked that the Board indicate its view on this matter. Although the Board cannot authoritatively interpret the provisions of the Act, the Board believes the intent of the Act is to override the automatic statutory bankruptcy stays for valid netting contracts. Sections 403 and 404 of the Act explicitly provide that netting is effective "notwithstanding any other provision of law." The Board believes that section 405 was included to clarify that the netting provisions override court or agency actions in addition to overriding statutory law.

CFTC Comment.

The Commodity Futures Trading Commission (CFTC) noted that it can exempt certain contracts between "appropriate persons" from the Commodity Exchange Act's (CEA's) exchange-trading requirement and has done so for certain swaps, hybrid instruments, and energy contracts. The CFTC may also exempt appropriate multilateral netting arrangements, in which case the arrangement may not meet the Act's definition of clearing organization, which refers to an organization that "performs clearing functions for a contract market designated pursuant to the CEA." The CFTC stated that it would like to work with the Board to ensure that a clearing organization exempted by the CFTC would be covered by the Act's netting provisions. The Board is willing to work with the CFTC in this area.

Final Regulatory Flexibility Analysis

Two of the three requirements of a final regulatory flexibility analysis (5 U.S.C. 604), (1) a succinct statement of the need for and the objectives of the rule and (2) a summary of the issues raised by the public comments, the agency's assessment of the issues, and a statement of the changes made in the final rule in response to the comments, are discussed above. The third requirement of a final regulatory flexibility analysis is a description of significant alternatives to the rule that would minimize the rule's economic impact on small entities and reasons why the alternatives were rejected.

The rule, however, should not have an economic impact on small entities. The rule will apply only to entities with financial contracts of $1 billion in gross notional principal amount or gross mark-to-market positions of $100 million over a period of 15 months. Entities with a smaller level of market activity would not be covered by the Board's expanded definition of "financial institution." Many small market participants are included in the Act's definition of "financial institution" and thus are already covered by the netting provisions. The Board limited its expansion of the Act's definition to entities with a relatively large volume of activity because the lack of netting coverage for small entities is unlikely to affect overall market efficiency or systemic risk.

List of Subjects in 12 CFR Part 231

Banks, banking, Financial institutions, Netting.

For the reasons set out in the preamble, the Board adds a new part 231 to Title 12, Chapter II of the Code of Federal Regulations to read as follows:

PART 231—NETTING ELIGIBILITY FOR FINANCIAL INSTITUTIONS REGULATION EE

Sec.

231.1 Authority, purpose, and scope.
231.2 Definitions.
231.3 Qualification as a financial institution.

Authority: 12 U.S.C. 4402(1)(B) and 4402(9).

§ 231.1 Authority, purpose, and scope.

(a) *Authority.* This part (Regulation EE; 12 CFR part 231) is issued by the Board of Governors of the Federal Reserve System under the authority of sections 402(1)(B) and 402(9) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402(1)(B) and 4402(9)).

(b) *Purpose and scope.* The purpose of the Act and this part is to enhance efficiency and reduce systemic risk in the financial markets. This part expands the Act's definition of "financial institution" to allow more financial market participants to avail themselves of the netting provisions set forth in sections 401–407 of the Act (12 U.S.C. 4401–4407). This part does not affect the status of those financial institutions specifically defined in the Act.

§ 231.2 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Act* means the Federal Deposit Insurance Corporation Improvement Act of 1991 (Pub. L. 102–242, 105 Stat. 2236), as amended.

(b) *Affiliate,* with respect to a person, means any other person that controls, is controlled by, or is under common control with the person.

(c) *Financial contract* means a qualified financial contract as defined in section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)), as amended, except that a forward contract includes a contract with a maturity date two days or less after the date the contract is entered into (i.e., a "spot" contract).

(d) *Financial market* means a market for a financial contract.

(e) *Gross mark-to-market positions* in one or more financial contracts means the sum of the absolute values of positions in those contracts, adjusted to

reflect the market values of those positions in accordance with the methods used by the parties to each contract to value the contract.

(f) *Person* means any legal entity, foreign or domestic, including a corporation, unincorporated company, partnership, government unit or instrumentality, trust, natural person, or any other entity or organization.

§ 231.3 Qualification as a financial institution.

(a) A person qualifies as a financial institution for purposes of sections 401–407 of the Act if it represents that it will engage in financial contracts as a counterparty on both sides of one or more financial markets and either—

(1) Had one or more financial contracts of a total gross dollar value of at least $1 billion in notional principal amount outstanding on any day during the previous 15-month period with counterparties that are not its affiliates; or

(2) Had total gross mark-to-market positions of at least $100 million (aggregated across counterparties) in one or more financial contracts on any day during the previous 15-month period with counterparties that are not its affiliates.

(b) If a person qualifies as a financial institution under paragraph (a) of this section, that person will be considered a financial institution for the purposes of any contract entered into during the period it qualifies, even if the person subsequently fails to qualify.

(c) If a person qualifies as a financial institution under paragraph (a) of this section on March 7, 1994, that person will be considered a financial institution for the purposes of any outstanding contract entered into prior to March 7, 1994.

By order of the Board of Governors of the Federal Reserve System, January 27, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–2324 Filed 2–1–94; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 567

[No. 93–145]

RIN 1550–AA49

Regulatory Capital: Intangible Assets

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its risk-based capital treatment of intangible assets held by savings associations. These amendments implement section 475 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which requires the OTS and each of the other federal banking regulators to determine the amount of purchased mortgage servicing rights (PMSRs) that insured depository institutions may include in capital. Section 475 also requires PMSRs to be included in capital at 90 percent of market value, calculated at least quarterly. This rule defines "qualifying intangible assets" as PMSRs and purchased credit card relationships (PCCRs). Such assets may be included in the aggregate in core capital calculations up to 50 percent of core capital, provided that PCCRs may not exceed a sublimit of 25 percent of core capital. Savings associations may include the same dollar amount of PMSRs in tangible capital that they include in core capital. These assets must be valued at the lower of 90 percent of fair market value (in accordance with section 475 of FDICIA) or 100 percent of remaining unamortized book value computed in accordance with instructions to the Thrift Financial Report. PMSRs and PCCRs in excess of applicable limits, as well as core deposit intangibles (CDIs) and other types of nonqualifying intangibles, must be deducted from both assets and capital in calculating core and tangible capital.

EFFECTIVE DATE: March 4, 1994.

FOR FURTHER INFORMATION CONTACT: John F. Connolly, Program Manager, Capital Policy, (202) 906–6465, Supervision Policy; Evelyne Bonhomme, Counsel (Banking and Finance), (202) 906–7052, Deborah Dakin, Assistant Chief Counsel, (202) 906–6445, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background and Description of Proposal

In April 1992, the OTS proposed to amend its capital treatment of intangible assets. 57 FR 12761 (April 13, 1992). The public comment period closed on May 13, 1992. The proposal was based on a tentative agreement on the treatment of intangible assets reached by the OTS, the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) (collectively with the OTS referred to as the "federal banking agencies" or "agencies").

Previously, all of the agencies allowed PMSRs to count towards core (Tier 1) capital calculations, with qualitative and quantitative limits that varied among the agencies. Each agency had determined that PMSRs generally met criteria comparable to those set forth in section 567.5(a)(2)(ii) of the OTS capital regulation, which provides that: (1) The intangible asset must be able to be separated and sold apart from the savings association or from the bulk of the association's assets; (2) the market value of the intangible asset must be established on an annual basis through an identifiable stream of cash flows, and there must be a high degree of certainty that the asset will hold this market value notwithstanding the future prospects of the savings association; and (3) the savings association must demonstrate and document that a market exists that will provide liquidity for the intangible asset.

The agencies differed on the extent to which other intangibles met this three-part test and treated such assets differently in calculating capital. The OTS policy, which is being modified with the adoption of this rule, was that other identifiable intangible assets, specifically CDIs, could satisfy the three-part test. The OTS did not require the deduction of such other qualifying intangible assets from capital, but limited them to 25 percent of core capital.

All the agencies limited the amount of qualifying intangibles that institutions could include in capital.[1] The FDIC and the OTS also imposed certain PMSR valuation requirements and reduced the amount of PMSRs reported on the balance sheet to the lesser of: (1) 90 percent of fair market value; (2) 90 percent of original purchase price; or (3) 100 percent of remaining unamortized book value.

The OTS proposed the following treatment for identifiable intangible assets for purposes of the tangible, core, and risk-based capital requirements:

1. PMSRs and PCCRs would be considered qualifying intangible assets.[2]

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[1] Before the enactment of section 475 of FDICIA, savings associations' PMSR holdings were subject to quantitative limits set by the FDIC, as well as by the qualitative standards of the FDIC and OCC. Under the FDIC's PMSR rule, thrifts could include PMSRs up to 50 percent of core capital and 100 percent of tangible capital.

[2] In accordance with FIRREA and its statutorily specified transition, savings associations are permitted to count qualifying supervisory goodwill in core capital. The continued inclusion in core

Continued

As such, they would not be deducted from capital provided that, in the aggregate, they did not exceed 50 percent of core capital and provided that PCCRs did not exceed a sublimit of 25 percent of core capital. Excess PMSRs and PCCRs would be deducted in determining core capital.

To illustrate, assume that a savings association has total core capital of $1,000,000. The association also has qualifying PCCRs of $300,000 and qualifying PMSRs of $200,000. For capital computation purposes, the association could include $250,000 of its PCCRs (25 percent of $1,000,000) and all $200,000 of its PMSRs because the total of PMSRs and allowable PCCRs does not exceed 50 percent of core capital.

2. Savings associations could include the same amount of PMSRs in tangible capital that they include in core capital. Amounts excluded from core capital must also be excluded from tangible capital.

3. PCCRs would be includable only in core capital, not tangible capital.

4. The limits on PMSRs and PCCRs would be based on a percentage of core capital before excess holdings of these assets are deducted, but after nonqualifying identifiable intangible assets (*i.e.*, nongrandfathered CDIs) are deducted.[3]

5. Savings associations would be required to determine the fair market value and to review the book value of their PMSRs and PCCRs at least quarterly. Such assets could not be carried at a book value that exceeds the discounted value of their future net income.

6. For purposes of calculating regulatory capital, the amount of PMSRs and PCCRs reported as balance sheet assets would be reduced to the lesser of 90 percent of their fair market value, 90 percent of their original purchase price, or 100 percent of their remaining unamortized book value.

7. Nongrandfathered CDIs and all identifiable intangible assets other than qualifying intangible assets would be deducted from capital in calculating core capital.

II. Summary of Comments and OTS Response

The OTS received twenty-seven comment letters on the proposed rule. Commenters included eighteen savings associations, six trade associations, a group of fifteen mortgage servicers, one commercial bank, and one law firm. No comments addressed PCCRs. Comments focused primarily on two areas: the treatment of PMSRs and the treatment of CDIs. Issues raised by commenters are addressed below.

A. PMSR Treatment and Valuation

No commenters objected to the inclusion of PMSRs as qualifying intangible assets.

1. Fifty Percent Capital Limitation

Some commenters objected to limiting qualifying intangibles to 50 percent of core capital. One suggested that less disruptive ways to achieve the same goals exist such as substituting a case-by-case supervisory approach to determine capital adequacy of depository institutions holding PMSRs.

The OTS is adopting a 50 percent of core capital limit on PMSRs to be consistent with the rules issued by the other federal banking agencies.[4] OTS capital rules are in the main patterned after those of the other banking agencies, especially the OCC. The statute, as well as sensible practice, dictates uniformity to the greatest extent feasible.

2. Annual Independent Market Valuation of PMSRs

Many commenters objected to an annual independent valuation of PMSRs as excessively costly and unnecessarily burdensome when combined with other limitations in the proposal, and suggested that the requirement be eliminated. Many commenters noted that banks regulated by the OCC and the FRB are not subject to this requirement. Some commenters recommended establishing a minimum threshold below which OTS would not require independent annual valuation of PMSRs. Other commenters suggested that an independent valuation be required only where an institution cannot produce a satisfactory internal valuation.

In response to these comments, the OTS is modifying § 567.12(d) to remove the independent valuation requirement. The OTS, however, will reserve the right to require certain savings associations to obtain independent valuations, either on a case-by-case basis or according to general guidance issued in conjunction with the adoption of this rule.

3. PMSR Valuation Basis

Some commenters proposed that an association should be permitted to calculate the discounted book value of qualifying intangibles on an aggregate basis for the institution's total purchased servicing portfolio rather than on a pool-by-pool basis. The OTS and the other agencies will permit an institution to use either method. The accounting practices otherwise required by this rule protect adequately against potential abusive practices.

4. Discounting Approach

Some commenters stated that limiting PMSRs and PCCRs to 90 percent of fair market value was arbitrary and that no other assets are subject to such treatment. Two commenters argued that a constant discount rate should be applied to book value, but not market value. One commenter suggested using a case-by-case approach based on criteria such as efficiency, effectiveness, and profitability.

Section 475 of FDICIA requires PMSRs included in capital to be valued at no more than 90 percent of fair market value computed at least quarterly. The agencies have chosen to apply the same limit to PCCRs for consistency. The OTS and the other agencies never intended to require institutions to use a constant discount rate in computing market value. This rule, however, retains the proposed rule's requirement that savings associations use a discounting approach in calculating book value because the OTS believes that the nondiscounted approach can result in inflated carrying values. The OTS has issued a Thrift Bulletin regarding the valuation of PMSRs.[5]

5. Discount Rate

Some commenters believed that the proposed requirement to limit the discount rate used in the quarterly PMSR valuation to a rate that is no less than the discount rate used at the original acquisition of the assets contradicts the concept of determining current market value. The limitation on discount rate would only be used in calculating book value. The agencies believe that requiring a discounting approach that uses the discount rate embedded in the yield estimate at original purchase is appropriate in calculating book value because it will deter any overvaluation of the book value of PMSRs and is consistent with historical cost accounting.

This final rule is consistent with the final rules of the other agencies. These

capital of remaining qualifying supervisory goodwill is unaffected by this rulemaking or the standards for PMSRs and PCCRs.

[3] Remaining qualifying supervisory goodwill, grandfathered CDIs, and grandfathered PMSRs are not deducted in calculating this amount.

[4] See 58 FR 7973 (Feb. 11, 1993) (FRB); 58 FR 16481 (Mar. 29, 1993) (OCC); and 58 FR 6363 (Jan. 28, 1993) (FDIC).

[5] See OTS Thrift Bulletin 60, June 23, 1993.

rules retain the requirement to use a discounting approach but transfer the specific guidance on the applicable discount rate and other valuation guidance to their Consolidated Reports of Condition and Income (Call Reports).

The Thrift Financial Report will require PMSRs and PCCRs to be carried at a book value that does not exceed the discounted amount of estimated future net cash flows. Management of an association must review the carrying value at least quarterly, adequately document this review, and adjust the book value as necessary. If unanticipated prepayments, defaults, account attrition, or other events reduce the amount of expected future net cash flows, a write down of the book value of the PMSRs or PCCRs must be made to the extent that the discounted amount of future net cash flows is less than the assets' carrying amounts. The discount rate used for this book value calculation may not be less than the original discount rate inherent in the intangible asset at the time of its acquisition based upon the estimated net cash flows and the price paid at the time of purchase.

6. Valuation Limitation of 90 Percent of Original Cost

Some commenters recommended that the agencies drop the proposed requirement that qualifying intangibles be carried at no more than 90 percent of their original purchase price. They argued that this limitation provides no additional protection to the insurance fund from economic risk and unfairly penalizes institutions with recently acquired PMSRs or PCCRs. The agencies agree and believe that the other valuation limitations should ensure that qualifying intangibles are conservatively valued for capital purposes. Accordingly, the 90 percent of original cost limitation has been removed.

7. OTS Transition Provision for PMSRs

The proposed transition provision would permit grandfathered PMSRs that "run-off" to be replaced without loss of grandfathered status if certain criteria are satisfied. Many commenters agreed with the proposed transition provisions for PMSRs. Several commenters recommended that the grandfathering provisions become effective as of January 28, 1991 (the effective date of the FDIC's PMSR rule, 12 CFR 325.5) rather than February 9, 1990 (the date of publication of the FDIC PMSR proposal for that rule) or on the effective date of this regulation. One commenter suggested that the OTS consider allowing large servicers to replace PMSR run-offs to minimize economic loss to institutions from depletion of assets.

The final rule retains the February 9, 1990, grandfathering date. This grandfathering date was used in the FDIC's PMSR rule, which was applicable to both savings associations and state nonmember banks until the enactment of section 475 in FDICIA. The OTS believes that no distinction between large and small servicers is warranted. The OTS has, however, retained the discretion to extend, on a case-by-case basis, grandfathered treatment to all or some of an association's newly acquired PMSRs if purchased to replace grandfathered PMSRs that have prepaid or otherwise run off. This approach is designed to mitigate harm to associations from precipitous drops in the level of their PMSR portfolios. Because mortgage servicing is a business that has relatively high fixed costs, its profitability is highly sensitive to achieving and maintaining a certain volume of servicing. This transition treatment will only be available if the OTS determines that: (1) The association is phasing down PMSRs as a percentage of capital at an acceptable rate, and (2) such treatment would be consistent with the association's safe and sound operation.

B. CDI Treatment and Grandfathering

The OTS has previously allowed certain CDIs to be included in assets and capital provided that they are conservatively valued and meet the three-part test articulated in section 567.5(a)(2)(ii). The OTS is concerned that excluding all CDIs from capital might impose an artificial regulatory barrier to sound mergers and acquisitions. The proposed uniform interagency proposal specifically excluded CDIs from qualifying intangible assets.

Eleven commenters objected to the proposed treatment of CDIs and argued that CDIs should be treated as qualifying intangible assets. One commenter urged the OTS to apply the three-part test to CDIs, with periodic reviews of CDIs and continuous evaluations of CDI amortization. Another commenter proposed that the set of qualifying intangibles be expanded to include CDIs, and that CDIs and PCCRs be subjected to the sublimit of 25 percent of core capital, and that CDIs should only be deducted from capital for undercapitalized institutions. One commenter questioned the inclusion of the three-part test in the regulation if PMSRs and PCCRs are the only acceptable qualifying intangibles. Another commenter recommended that CDIs existing at the time the proposal is finalized be grandfathered as a component of core capital.

To minimize confusion, all the banking agencies agreed to delete the three-part test from their capital regulations and guidelines. Although the three criteria are no longer part of the agencies' regulations and guidelines, they may be used in the future to determine whether other intangibles should be added to the definition of qualifying intangible assets.

In the interest of interagency uniformity, the OTS is changing its current policy on CDIs and will henceforth no longer treat CDIs as qualifying intangibles. The OTS is also rescinding Thrift Bulletin No. 38–1 regarding CDIs.

The OTS, however, will grandfather CDIs that result from prior transactions or that will arise from transactions that are under firm contract as of the effective date of this rule. Nongrandfathered CDIs shall be deducted from assets and capital in computing core capital. No CDIs or PCCRs are included in tangible capital.

Some commenters suggested that CDIs should not be subject to the requirements for annual and quarterly market valuations, quarterly determinations of book value, and value limitations set forth in 12 CFR 567.12(d), (e), and (f), respectively. They also said that these assets should be recorded in accordance with GAAP. In response to those comments, the OTS is modifying its treatment of grandfathered CDIs to require associations to apply GAAP. The OTS, however, will require associations to use credible and supportable assumptions in applying GAAP to CDIs not deducted from assets and capital. Valuing CDIs depends upon assumptions regarding interest rates for alternative funding, costs other than interest associated with the core deposit base, the decay rate for an acquired customer base, and a discount rate. The amortization rate should be adjusted each year for changes in experienced and expected decay in the acquired customer base. Typically, the decay rate in the customer base is greater in the early years. The OTS may restrict an association's inclusion of grandfathered CDIs in capital if the OTS determines that the association is not using prudent valuation assumptions.

III. Description of Final Rule

The final rule makes some significant changes from the proposal, but follows the same general framework set forth in the proposal and the previous FDIC rule. PMSRs and PCCRs will be considered qualifying intangible assets

and included in the aggregate in core capital up to 50 percent of core capital, provided that PCCRs may not exceed 25 percent of core capital. Associations may include the same amount of PMSRs in tangible capital that they include in core capital. The valuation requirements of this rule apply to PMSRs and PCCRs to be included in assets and not deducted from capital.

The major differences between the final rule and the proposal, then, are: (1) The deletion from section 567.5(a)(2)(ii) of the three criteria used to determine whether an intangible asset qualifies for inclusion in core capital; (2) the reservation by the OTS of the authority to require an independent market valuation of PMSRs and PCCRs on a case-by-case basis or by the issuance of separate policy guidance; (3) the transfer of the requirements imposed in conducting the book value test from this rule to the Thrift Financial Report; and (4) the elimination of the 90 percent of original cost limitation for purposes of calculating capital.

IV. Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this rule will not have a significant or disproportionate economic impact on a substantial number of small savings associations. Furthermore, this rule will not impose any new recordkeeping or other requirements on any associations. It generally will retain the current treatment of thrifts' PMSRs and will allow PCCRs to be counted in thrifts' core capital. Accordingly, a Regulatory Flexibility Act analysis is not required.

V. Executive Order 12866

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

List of Subjects in 12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision amends part 567, subchapter D, title 12 of the Code of Federal Regulations as follows:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 567—CAPITAL

1. The authority citation for part 567 is revised to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

2. Section 567.5 is amended by revising paragraphs (a)(2)(i) and (a)(2)(ii), and by removing and reserving paragraph (a)(2)(iii) to read as follows:

§ 567.5 Components of capital.

(a) * * *

(2) *Deductions from core capital:* (i) Intangible assets are deducted from assets for purposes of determining core capital except as provided in paragraph (a)(2)(ii) of this section and § 567.12 of this part.

(ii) Paragraph (a)(2)(i) of this section does not apply to qualifying supervisory goodwill held by an eligible savings association (as defined in § 567.1(h) of this part) to the extent permitted by this paragraph. The amount of qualifying supervisory goodwill may not exceed the applicable percentage of adjusted total assets as calculated for the tangible capital requirement set forth in the following table:

	Percent
Jan. 1, 1993—Dec. 31, 1993	0.750
Jan. 1, 1994—Dec. 31, 1994	0.375
Thereafter	0

(iii) [Reserved]

* * * * *

3. Section 567.6 is amended by revising paragraph (a)(1)(iv)(L) to read as follows:

§ 567.6 Risk-based capital credit risk weight categories.

(a) * * *

(1) * * *

(iv) * * *

(L) Any intangible assets not deducted from capital pursuant to § 567.5(a)(2) of this part;

* * * * *

4. Section 567.9 is amended by revising paragraph (c)(1) to read as follows:

§ 567.9 Tangible capital requirement.

* * * * *

(c) * * *

(1) Any intangible assets, except certain purchased mortgage servicing rights as provided in § 567.12 of this part.

* * * * *

5. A new § 567.12 is added to read as follows:

§ 567.12 Qualifying intangible assets.

(a) *Scope.* This section prescribes the maximum amount of qualifying intangible assets that savings associations may include in calculating tangible and core capital.

(b) *Definition. Qualifying intangible assets* means purchased mortgage servicing rights and purchased credit card relationships. Purchased mortgage servicing rights may be included in (that is, not deducted from) tangible and core capital calculations and purchased credit card relationships may be included in core capital calculations. These assets may be included in capital only to the extent they meet the limitations and restrictions set forth in this section. Other identifiable intangible assets, including core deposit intangibles not grandfathered pursuant to paragraph (g)(3) of this section, must be deducted from assets and capital, except as provided by § 567.5(a)(2)(ii) of this part.

(c) *Market valuations.* The OTS reserves the authority to require any savings association to perform an independent market valuation of qualifying intangible assets on a case-by-case basis or through the issuance of policy guidance. An independent market valuation, if required, shall be conducted in accordance with any policy guidance issued by the OTS. A required valuation shall include adjustments for any significant changes in original valuation assumptions, including changes in prepayment estimates or attrition rates. The valuation shall determine the current fair market value of the qualifying intangibles by applying an appropriate market discount rate to the net cash flows expected to be generated from the intangibles. This independent market valuation may be conducted by an independent valuation expert evaluating the reasonableness of the internal calculations and assumptions used by the association in conducting its internal analysis. The association shall calculate an estimated fair market value for the qualifying intangibles at least quarterly regardless of whether an independent valuation expert is required to perform an independent market valuation.

(d) *Value limitation.* For purposes of calculating core capital under this part (but not for financial statement purposes), each qualifying intangible asset must be valued at the *lesser* of:

(1) 90 percent of the fair market value of the intangible assets determined in accordance with paragraph (c) of this section; or

(2) 100 percent of the remaining unamortized book value of the intangible assets determined in accordance with the instructions in the Thrift Financial Report.

(e) *Core capital limitation*—(1) *Aggregate limit.* The maximum aggregate amount of qualifying intangible assets that may be included in core capital shall be limited to the lesser of:

(i) 50 percent of the amount of core capital computed before the deduction

of any disallowed qualifying intangible assets; or

(ii) The amount of qualifying intangible assets determined in accordance with paragraph (d) of this section.

(2) *Sublimit for purchased credit card relationships.* In addition to the aggregate limitation on qualifying intangible assets set forth in paragraph (e)(1) of this section, a sublimit shall apply to purchased credit card relationships. The maximum allowable amount of purchased credit card relationships shall be limited to the *lesser* of:

(i) 25 percent of the amount of core capital, as computed before the deduction of any disallowed qualifying intangible assets; or

(ii) The amount of qualifying intangible assets determined in accordance with paragraph (d) of this section.

(f) *Tangible capital limitation.* The maximum amount of purchased mortgage servicing rights that may be included in tangible capital shall be the same amount includable in core capital in accordance with the limitations set by paragraph (e)(1) of this section.

(g) *Grandfathering.* (1) Notwithstanding the core capital and tangible capital limitations set forth in paragraphs (e) and (f) of this section, any otherwise disallowed purchased mortgage servicing rights that were acquired on or before February 9, 1990, and any otherwise disallowed purchased mortgage servicing rights for which a contract to purchase the servicing rights had been executed on or before February 9, 1990, may be grandfathered and recognized for regulatory capital purposes under this part to the extent permitted by the OTS. Grandfathered purchased mortgage servicing rights must be treated in accordance with generally accepted accounting principles and the requirements of paragraphs (c) and (d) of this section. Grandfathered purchased mortgage servicing rights will count toward the core capital and tangible capital limitations described in paragraphs (e) and (f) of this section.

(2) (i) On a case-by-case basis, the OTS may extend grandfathered treatment prospectively to all or part of the purchased mortgage servicing rights acquired by an association to replace its grandfathered purchased mortgage servicing rights if OTS determines that:

(A) The association is reducing, at an acceptable rate, its level of purchased mortgage servicing rights to the levels permitted by this section; and

(B) The granting of such grandfathered treatment is consistent with the safe and sound operation of the association.

(ii) The OTS may terminate or limit such grandfathered treatment at any time if it determines that either of the conditions in paragraph (g)(2)(i) of this section is not being satisfied.

(3) Core deposit intangibles resulting from transactions consummated or under firm contract on the effective date of this rule may be grandfathered and recognized for capital purposes under this part, to the extent permitted by OTS, provided that such core deposit intangibles are valued in accordance with generally accepted accounting principles, supported by credible assumptions, and have their amortization adjusted at least annually to reflect decay rates (past and projected) in the acquired customer base.

(h) *Exemption for certain subsidiaries.*—(1) *Exemption standard.* An association holding purchased mortgage servicing rights in separately capitalized, nonincludable subsidiaries may submit an application for approval by the OTS for an exemption from the deductions and limitations set forth in this section. The deductions and limitations will apply to such purchased mortgage servicing rights, however, if the OTS determines that:

(i) The thrift and subsidiary are not conducting activities on an arm's length basis; or

(ii) The exemption is not consistent with the association's safe and sound operation.

(2) *Applicable requirements.* If the OTS determines to grant or to permit the continuation of an exemption under paragraph (h)(1) of this section, the association receiving the exemption must ensure the following:

(i) The association's investments in, and extensions of credit to, the subsidiary are deducted from capital when calculating capital under this part;

(ii) Extensions of credit and other transactions with the subsidiary are conducted in compliance with the rules for covered transactions with affiliates set forth in sections 23A and 23B of the Federal Reserve Act, as applied to thrifts; and

(iii) Any contracts entered into by the subsidiary include a written disclosure indicating that the subsidiary is not a bank or savings association; the subsidiary is an organization separate and apart from any bank or savings association; and the obligations of the subsidiary are not backed or guaranteed by any bank or savings association and are not insured by the FDIC.

Dated: August 2, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 94–2297 Filed 2–1–94; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–120–AD; Amendment 39–8794; AD 94–01–12]

Airworthiness Directives; Airbus Industrie Model A310–200 and A310–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Airbus Industrie Model A310–200 and A310–300 series airplanes, that currently requires inspections and test to detect broken or missing vespel bushes in the flap universal joint assemblies, and replacement of universal joint bushes, if necessary. This amendment adds a terminating modification for the currently required inspections and tests. This amendment is prompted by the development of a modification that will improve the integrity of the flap universal joints. The actions specified by this AD are intended to prevent rupture of the flap universal joints, subsequent partial loss of lift in one wing, and reduced controllability of the airplane.

DATES: Effective March 4, 1994.

The incorporation by reference of Airbus Industrie Service Bulletin A310–27–2059, dated March 1, 1993, as listed in the regulations, is approved by the Director of the Federal Register as of March 4, 1994.

The incorporation by reference of Airbus Industrie Service Bulletin A310–27–2054, Revisions 2, dated November 9, 1990, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 11, 1991 (56 FR 37462, August 7, 1991).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the

Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91–16–05, Amendment 39–7095 (56 FR 37462, August 7, 1991), which is applicable to all Airbus Industrie Model A310–200 and A310–300 series airplanes, was published in the **Federal Register** on October 6, 1993 (58 FR 52041). The action proposed to add a requirement to modify the flap universal joint assemblies. Installation of this modification would terminate the currently required inspections and tests to detect broken or missing vespel bushes in the flap universal joint assemblies.

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

Both commenters support the proposal.

After careful review of the available data, including the comments noted above the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 25 airplanes of U.S. registry will be affected by this AD.

The inspections and tests currently required by AD 91–16–05 take approximately 5 work hours to accomplish, at an average labor cost of $55 per work hour. Based on these figures, the total cost impact on U.S. operators of the actions previously required by AD 91–16–05 is estimated to be $6,875, or $275 per airplane, per inspection and testing cycle.

It will take approximately 47 work hours per airplane to accomplish the modification required by this new AD action, at an average labor rate of $55 per work hour. Required parts will cost approximately $1,000 per airplane. Based on these figures, the total additional cost impact associated with the modification requirements of this AD on U.S. operators is estimated to be $89,625, or $3,585 per airplane.

The cost figures discussed above are based on assumptions that no operator has yet accomplished the requirements of this AD action.

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–7095 (56 FR 37462, August 7, 1991), and by adding a new airworthiness directive (AD), amendment 39–8794, to read as follows:

94–01–12 Airbus Industrie: Amendment 39–8794. Docket 93–NM–120–AD. Supersedes AD 91–17–05, Amendment 39–7095.

Applicability: All Model A310–200 and A310–300 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the flap universal joints, subsequent partial loss of lift in one wing, and reduced controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 5,500 total landings, or within 350 hours time-in-service after September 11, 1991 (the effective date of AD 91–16–05, Amendment 39–7095), whichever occurs later, and thereafter at intervals not to exceed 3,500 landings, perform repetitive visual inspections and electrical continuity tests of the flap system.

(b) If any universal joint bushes are missing or broken, prior to further flight, replace the bushes with new bushes in accordance with Airbus Industrie Service Bulletin A310–27–2054, Revision 2, dated November 9, 1990. After replacement, repeat the inspections required by paragraph (a) of this AD at intervals not to exceed 3,500 landings.

(c) Within 3,500 landings after the effective date of this AD, modify the flap universal joint assemblies (Airbus Industrie Modification 10091D20285) in accordance with Airbus Industrie Service Bulletin A310–27–2059, dated March 1, 1993. Accomplishment of this modification constitutes terminating action for the inspection and test requirements of this AD.

(d) Modification of the flap universal joint assemblies (Airbus Industrie Modification 10091D20285) in accordance with Airbus Industrie Service Bulletin A310–27–2059, dated March 1, 1993, constitutes terminating action for the inspection and test requirements of this AD.

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

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

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

(g) The inspections, testing, and replacement shall be done in accordance with Airbus Industrie Service Bulletin A310–27–2054, Revision 2, dated November 9, 1990. The incorporation by reference of this document was approved previously by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, as of September 11, 1991 (56 FR 37462, August 7, 1991). The modification shall be done in accordance with Airbus Industrie Service Bulletin A310–27–2059, dated March 1, 1993. The incorporation by reference of this document is approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these documents may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on March 4, 1994.

Issued in Renton, Washington, on January 4, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-452 Filed 2-1-94; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8519]

RIN 1545-AS25

Imposition of Accuracy-Related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These amendments to the regulations under 26 CFR part 1 provide guidance on the imposition of the accuracy-related penalty under Internal Revenue Code sections 6662 (e) and (h) and section 6664(c) for transactions between persons described in Internal Revenue Code section 482 and net section 482 transfer price adjustments. This action is necessary because of changes to the applicable tax laws made by the Omnibus Budget Reconciliation Act of 1993.

EFFECTIVE DATE: These regulations are effective February 2, 1994.

These regulations apply to taxable years beginning after December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas L. Ralph at (202) 622-3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1365. The estimated annual burden per recordkeeper varies from 5 hours to 15 hours, depending on individual circumstances, with an estimated average of 10 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble in the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

On January 21, 1993, the IRS published a notice of proposed rulemaking in the **Federal Register** (58 FR 5263) that proposed amendments to the Income Tax Regulations under sections 6662 (e) and (h) and section 6664(c) of the Internal Revenue Code of 1986 (Code), as amended. Those proposed regulations implemented section 11312 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, 104 Stat. 1388. Comments responding to the notice of proposed rulemaking were received and a public hearing was held on May 14, 1993. Section 13236 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103-66, 107 Stat. 312) further amended sections 6662 (e) and (h) of the Code. After consideration of all comments received and pursuant to the statutory changes, the IRS has withdrawn the previous proposed regulations and adopts this Treasury decision.

Explanation of Provisions

The principal purpose of these regulations is to set forth rules implementing the imposition of accuracy-related penalties in the context of section 482. The exceptions from the penalty imposed under section 6662(e) in the case of certain net section 482 transfer pricing adjustments are a key component of these rules are. Reflecting the amendments to the statute pursuant to section 13236 of the Omnibus Budget Reconciliation Act of 1993, the regulations provide a two-part exception from the imposition of the penalty with respect to such adjustments, depending on whether the taxpayer used a specified or unspecified method under the regulations under section 482. If the taxpayer used a specified method, the taxpayer must have reasonably concluded, based on the available data and the potentially applicable alternative specified methods, that its application of the selected method resulted in the most accurate measure of an arm's length result. Thus, if the taxpayer reasonably concluded that a different specified method would result in a more accurate measure of an arm's length result than the selected method, the taxpayer would not satisfy the requirements of this exception. If the taxpayer used an unspecified method, the taxpayer generally must have reasonably concluded, based on the available data, that none of the specified methods was likely to achieve an arm's length result and that the method used was likely to achieve such a result.

Finally, irrespective of the method selected, the taxpayer must have prepared documentation articulating the required analysis at the time that the tax return was filed, and provide such documentation to the Internal Revenue Service within 30 days of a request for such documentation.

The Need for Transfer Pricing Analysis and Documentation

The arm's length standard seeks to mirror the results obtained by unrelated parties in their business dealings. Unrelated parties analyze the value of property or services prior to selling or buying such property or services in the open market. However, transactions between related parties do not involve the transfer of goods outside of the related party group. A transfer price will not affect the total profit ultimately realized by the group but may affect total tax liability. To ensure that the transfer price a taxpayer reports on its income tax return is determined in a manner consistent with the arm's length standard, section 6662(e) encourages a taxpayer engaged in related party transactions to prepare a factual and economic analysis based on reasonably available related party and third party market data that substantiates the price chosen, and to maintain appropriate documentation of that analysis.

The experience of the IRS has been that the majority of taxpayers do not provide an explanation of how their intercompany pricing was established. In many cases examiners' access to a corporation's transfer pricing information is delayed or denied. Moreover, many taxpayers do not rely upon any form of comparables or other contemporaneous information either in planning or in defending intercompany transactions. The taxpayer, not having attempted to structure the transaction in accordance with the arm's length standard, seeks to defend its position on examination by finding whatever uncontrolled transaction or transfer pricing method provides a result that most closely approximates the result

initially reported. The failure by taxpayers to analyze their intercompany pricing prior to audit increases controversy between taxpayers and the IRS, as both seek to develop *post hoc* analyses of the arm's length character of the transactions. Thus, the failure to apply the arm's length standard in setting prices for controlled transactions (and the lack of contemporaneous documentation explaining that application) increases the time spent and expense incurred by both the taxpayer and the IRS in determining whether that result was consistent with the arm's length standard. Accordingly, these regulations are designed to encourage taxpayers to make a serious effort to comply with the arm's length standard, report an arm's length result on their income tax return, document their transfer pricing analyses, and provide that documentation to the IRS upon request.

Statutory Requirements

Section 6662(a) imposes a penalty in the amount of 20 percent of any underpayment to which the section applies. Section 6662(b) lists the types of underpayments to which section 6662(a) applies. One such underpayment is an underpayment attributable to any substantial valuation misstatement under chapter 1 of the Code.

Section 6662(e) defines a substantial valuation misstatement. These temporary regulations under section 6662(e) contain the rules for determining whether there is a substantial valuation misstatement attributable to section 482 allocations. A substantial valuation misstatement exists if (1) the transfer price for any property or services (or for the use of property) claimed on a return is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the arm's length amount (the transactional penalty), or (2) the net section 482 adjustment exceeds the lesser of five million dollars or ten percent of gross receipts (the net adjustment penalty).

Section 6662(h) increases the amount of the penalty to 40 percent for both the transactional and the net adjustment penalties in the case of a gross valuation misstatement. There is a gross valuation misstatement if (1) the price for any property or services (or for the use of property) claimed on any return in connection with any transaction between persons described in section 482 is 400 percent or more (or 25 percent or less) of the amount determined under section 482 to be the arm's length amount, or (2) the net section 482 adjustment exceeds the lesser of twenty million dollars or twenty percent of gross receipts.

Amounts Excluded From a Net Section 482 Adjustment

An amount is excluded from the calculation of a net section 482 adjustment if the requirements of § 1.6662–6T(d)(2), (3), or (4) are met with respect to that amount. If a taxpayer meets the requirements of paragraph (d) of these regulations with respect to some, but not all of the allocations made under section 482, then for purposes of determining the net section 482 adjustment, setoffs, as taken into account under § 1.482–1T(e)(5), must be applied ratably against all such allocations.

Specified Method Applied

Paragraph (d)(2) provides that an adjustment will be excluded from the calculation of a net section 482 adjustment if the taxpayer satisfies the specified method requirement of paragraph (d)(2)(ii) and the documentation requirement of paragraph (d)(2)(iii). A taxpayer will meet the specified method requirement if the taxpayer selects and applies a method specified in the section 482 regulations in a reasonable manner. A method is a specified method if it is described in the regulations under section 482. With respect to transfers of tangible property, these methods currently include the comparable uncontrolled price method, resale price method, cost-plus method, and comparable profits method. With respect to transfers of intangible property these methods currently include the comparable uncontrolled transactions method and comparable profits method. A bona fide cost sharing arrangement under § 1.482–2A(d)(4) is considered a specified method.

Unspecified methods are methods other than specified methods. The profit split method, under § 1.482–6 of the proposed regulations and qualified cost sharing arrangements, under § 1.482–2(g) of the proposed regulations, will become specified methods if and when regulations describing those methods are finalized. A taxpayer will ordinarily not be considered to have applied an unspecified method merely because it failed to make an adjustment in the application of a specified method. However, the failure to make adjustments is relevant to the reasonableness of the application of that method. The selection and application of a method are reasonable only if, given the available data and the potentially available methods, the taxpayer reasonably concluded that the method (and its application of that method) provided the most accurate measure of an arm's length result under the principles of the best method rule in § 1.482–1T(b)(2)(iii).

The specified method standard differs from the more likely than not be sustained on the merits standard set forth in proposed regulations issued on January 21, 1993. This change reflects the amendments made by section 13236 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66, 107 Stat. 312) to section 6662(e), under which a section 482 adjustment is to be excluded from the calculation of a net section 482 adjustment if the taxpayer reasonably applied one of the specified section 482 methods (and satisfied the documentation requirements described below). In selecting the method to apply, a taxpayer should select the specified method that is most appropriate under the facts and circumstances. Thus, the taxpayer must reasonably conclude that its application of the transfer pricing method chosen will provide the most accurate measure of an arm's length result under the facts and circumstances of the transaction under review. The application of a specified method will not satisfy this standard if the taxpayer concluded, or should have concluded, that a reasonable application of another specified method would provide a more accurate arm's length result than the method chosen. For example, a taxpayer might not satisfy this standard if the taxpayer applied the comparable profits method to determine its prices but the taxpayer had data relating to a comparable uncontrolled transaction involving substantially similar conditions. Given the guidance set forth in the section 482 regulations and the existence of closely comparable data, a conclusion that a different analysis would provide a more accurate measure of an arm's length result, ordinarily would not be reasonable.

A taxpayer's analysis of its transfer prices must include the most current data that is available at the time that the taxpayer files its tax return. These regulations require that taxpayers perform a reasonably thorough search for data. However, this data may not reflect transactions in the current taxable year. Accordingly, it may be necessary for taxpayers to make compensating adjustments to reflect changes in the data between the time that prices were set for the year and the time that the return is filed.

Factors

The regulations discuss several nonexclusive factors that are to be taken into account in determining whether the taxpayer reasonably concluded that its application of the method selected would provide the most accurate measure of an arm's length result. The first factor is that a taxpayer's experience and knowledge in transfer pricing will be relevant in determining how thorough and precise the taxpayer's analysis must be. In assessing the experience and knowledge of the taxpayer, the experience and knowledge of the controlled group is taken into account, rather than the experience and knowledge of any member of the controlled group. Thus, the larger and more sophisticated a controlled group of corporations, the more thorough and precise its analysis should be.

The second factor is the extent to which sufficient accurate data is available to apply a method reasonably. A taxpayer is obligated to engage in a reasonably thorough search for comparable transactions and other data necessary to apply the methods under section 482. A factor to consider in determining whether a search for data is reasonably thorough is the cost of searching for the data in relation to the dollar amount of the intercompany transaction in question. For example, a taxpayer need not obtain data regarding a comparable uncontrolled transaction if the intercompany transaction had a value of $50,000 and the search for and analysis of the data will cost $25,000. Alternatively, if necessary to reasonably apply a specified method, it ordinarily would be reasonable to expect that a taxpayer would incur a similar expense to search for and analyze data if the taxpayer is engaged in intercompany transactions with a dollar amount of $250 million. If a taxpayer's analysis neglected data that it would have been expected to obtain under the above criteria, then the analysis would not be considered reasonable.

The third factor is the extent to which a taxpayer follows the relevant requirements set forth in regulations under section 482. Furthermore, in applying the selected method, the extent to which the taxpayer makes all the adjustments necessary to reasonably conclude that its application of the method chosen would provide the most accurate measure of an arm's length result will be taken into account.

The fourth factor is the extent to which the taxpayer relied on the advice of a qualified professional. The extent to which reliance is appropriate will depend on the qualifications of the professional and the quality of the study or other advice that is rendered, rather than the relationship that the professional has to the taxpayer.

Unspecified Method Applied

Paragraph (d)(3) provides that an adjustment will be excluded from the calculation of a net section 482 adjustment if the taxpayer satisfies the unspecified method requirement of paragraph (d)(3)(ii) and the documentation requirement of paragraph (d)(3)(iii). The unspecified method requirement is met if a method other than a specified method was applied and the requirements of paragraph (d)(3)(ii) (B) or (C) are met, as appropriate.

Paragraph (d)(3)(ii)(B) provides that if the transaction is of a type for which there are specified methods, then a taxpayer will be considered to have met the unspecified method requirement if the taxpayer reasonably concludes that, given the available data, none of the specified methods was likely to provide an accurate measure of an arm's length result, and that it selected and applied an unspecified method in a way that would likely provide an accurate measure of an arm's length result, given the available data.

Paragraph (d)(3)(ii)(C) provides that if the transaction is of a type for which there are no specified methods, then a taxpayer will be considered to have met the unspecified method requirement if it selected and applied an unspecified method in a reasonable manner. A taxpayer's selection and application is reasonable if the taxpayer reasonably concludes that the method (and its application of that method) provided the most accurate measure of an arm's length result under the principles of the best method rule in § 1.482–T(b)(2)(iii).

Documentation Requirement

An examiner cannot effectively examine a taxpayer's transfer pricing without adequate documentation setting forth the basic transfer pricing analysis conducted by the taxpayer. Accordingly, the documentation requirement does not provide a long, rigid list of documents that must be maintained; rather it focuses on the type of information necessary to evaluate how the taxpayer determined its transfer prices. The documentation requirements are essentially the same regardless of whether the taxpayer uses a specified method or an unspecified method. They diverge only in what the documentation must establish rather than the type of information that must be maintained. A taxpayer that uses a specified method must maintain sufficient documentation (that is in existence when the return is filed) to establish that it met the specified method requirement. A taxpayer that uses an unspecified method must maintain sufficient documentation (that is in existence when the return is filed) to establish that it met the unspecified method requirement. Regardless of the method used by the taxpayer, it must provide that documentation to the IRS within 30 days of a request.

The temporary regulations set forth two classifications of documentation—principal and background documents. Principal documents consist of the basic transfer pricing analysis conducted by the taxpayer. Background documents are documents that typically support the principal documents. Only principal documents must be provided upon the IRS's request for principal documents. However, both types of documentation must be produced within thirty days of a request.

A district director has discretion to extend the period for producing principal documents only if the taxpayer has made a minor or inadvertent failure to provide the required documents, has otherwise made a good faith effort to comply, and remedies the failure when it becomes known. For background documents, a district director has discretion to extend the production period for a short period.

Foreign-to-Foreign Transactions

Finally, paragraph (d)(4) provides that adjustments that are attributable to a transaction between foreign corporations are also excluded from the calculation of a net section 482 adjustment, unless the treatment of that transaction affects the determination of U.S. source income or taxable income that is effectively connected with the conduct of a trade or business within the United States.

Carryovers and Carrybacks

The regulations contain a special rule concerning tax benefits, such as losses, deductions, or credits, that may be carried to another taxable year. If a taxpayer's substantial or gross valuation misstatement gives rise to such a tax benefit that is carried to another taxable year, then the penalty will be imposed on any resulting underpayment of tax attributable to such a tax benefit in that other taxable year. In determining whether there is a substantial or gross valuation misstatement for a taxable year, no amount carried from another taxable year shall be included.

Coordination Rules

The coordination rules remain substantively unchanged from the proposed regulations issued on January 21, 1993. These regulations provide rules for coordinating imposition of the transactional penalty and the net adjustment penalty.

Advance Pricing Agreements

If a transfer pricing methodology is developed and applied pursuant to an Advance Pricing Agreement in any tax year, that methodology may reasonably be relied upon in the current year if the relevant facts and circumstances have not changed or if the methodology has been appropriately modified to reflect any changes in facts and circumstances.

Effective Date

These regulations apply to taxable years beginning after December 31, 1993. For taxable years ending after November 5, 1990, but beginning prior to January 1, 1994, the Treasury Department considers the proposed regulations issued on January 21, 1993, to be a reasonable interpretation of sections 6662 (e) and (h), except that no requirement of contemporaneous documentation may be imposed for transactions prior to April 21, 1993. In any case, contemporaneous documentation may be helpful in establishing that the taxpayer had reasonable cause and acted in good faith.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, an initial Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Thomas L. Ralph of the Office of the Associate Chief Counsel (International), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
§§ 1.6662–0 and 1.6662–6T also issued under 26 U.S.C. 6662. * * *

Par. 2. Section 1.6662–0 is amended by:

1. Adding the entries for § 1.6662–5T.
2. Adding the entries for § 1.6662–6T.
3. The additions read as follows:

§ 1.6662–0 Table of contents. * * *

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Section 1.6662–5T Substantial and Gross Valuation Misstatements Under Chapter 1 (Temporary)

(a) through (d) [Reserved]
(e) Definitions.
(1) Substantial valuation misstatement.
(i) 200 percent test.
(ii) Tests related to section 482.
(2) Gross valuation misstatement.
(i) 400 percent test.
(ii) Tests related to section 482.
(3) Property.
(f) through (i) [Reserved]
(j) Transactions between persons described in section 482 and net section 482 transfer price adjustments.

Section 1.6662–6T Transactions Between Persons Described in Section 482 and Net Section 482 Transfer Price Adjustments (Temporary)

(a) In general.
(1) Purpose and scope.
(2) Reported results.
(3) Identical terms used in section 482 regulations.
(b) The transactional penalty.
(1) Substantial valuation misstatement.
(2) Gross valuation misstatement.
(3) Reasonable cause and good faith.
(c) Net adjustment penalty.
(1) Net section 482 adjustment.
(2) Substantial valuation misstatement.
(3) Gross valuation misstatement.
(4) Setoff allocation rule.
(5) Gross receipts.
(6) Coordination with reasonable cause exception under section 6664(c).
(7) Examples.
(d) Amounts excluded from net section 482 adjustments.
(1) In general.
(2) Application of a specified section 482 method.
(i) In general.
(ii) Specified method requirement.
(iii) Documentation requirement.
(A) In general.
(B) Principal documents.
(C) Background documents.
(3) Application of an unspecified method.
(i) In general.
(ii) Unspecified method requirement.
(A) In general.
(B) Specified method potentially applicable.
(C) No specified method applicable.
(iii) Documentation requirement.
(A) In general.
(B) Principal and background documents.
(4) Certain foreign to foreign transactions.
(5) Special rule.
(6) Examples.
(e) Special rules in the case of carrybacks and carryovers.
(f) Rules for coordinating between the transactional penalty and the net adjustment penalty.
(1) Coordination of a net section 482 adjustment subject to the net adjustment penalty and a gross valuation misstatement subject to the transactional penalty.
(2) Coordination of net section 482 adjustment subject to the net adjustment penalty and substantial valuation misstatements subject to the transactional penalty.
(3) Examples.
(g) Effective date.

Par. 3. Section 1.6662–5T is added to read as follows:

§ 1.6662–5T Substantial and gross valuation misstatements under chapter 1 (temporary).

(a) through (d) [Reserved]

(e) *Definitions*—(1) *Substantial valuation misstatement.* There is a substantial valuation misstatement if—

(i) *200 percent test.* The value or adjusted basis of any property claimed on a return of tax imposed under chapter 1 of the Internal Revenue Code is 200 percent or more of the correct amount; or

(ii) *Tests related to section 482.* There is a misstatement described in § 1.6662–6T (b)(1) or (c)(1) (concerning substantial valuation misstatements pertaining to transactions between related persons).

(2) *Gross valuation misstatement.* There is a gross valuation misstatement if—

(i) *400 percent test.* The value or adjusted basis of any property claimed on a return of tax imposed under chapter 1 of the Internal Revenue Code is 400 percent or more of the correct amount; or

(ii) *Tests related to section 482.* There is a misstatement described in § 1.6662–6T (b)(2) or (c)(2) (concerning gross valuation misstatements pertaining to transactions between related persons).

(3) *Property.* For purposes of this section, the term property refers to both tangible and intangible property. Tangible property includes property such as money, land, buildings, fixtures, and inventory. Intangible property includes property such as goodwill, covenants not to compete, leaseholds, patents, contract rights, debts, choses in action, and any other item of intangible property described in § 1.482–4T(b).

(f) through (i) [Reserved]

(j) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.* For rules relating to the penalty imposed with respect to a substantial or gross valuation misstatement arising from a section 482 allocation, see § 1.6662–6T.

Par. 4. Section 1.6662–6T is added to read as follows:

§ 1.6662–6T Transactions between persons described in section 482 and net section 482 transfer price adjustments.

(a) *In general*—(1) *Purpose and scope.* Pursuant to section 6662(e) a penalty is imposed on any underpayment attributable to a substantial valuation misstatement pertaining to either a transaction between persons described in section 482 (the transactional penalty) or a net section 482 transfer price adjustment (the net adjustment penalty). The penalty is equal to 20 percent of the underpayment of tax attributable to that substantial valuation misstatement. Pursuant to section 6662(h) the penalty is increased to 40 percent of the underpayment in the case of a gross valuation misstatement with respect to either penalty. Paragraph (b) of this section provides specific rules related to the transactional penalty. Paragraph (c) of this section provides specific rules related to the net adjustment penalty, and paragraph (d) of this section describes amounts that will be excluded for purposes of calculating the net adjustment penalty. Paragraph (e) of this section sets forth special rules in the case of carrybacks and carryovers. Paragraph (f) of this section provides coordination rules between penalties. Paragraph (g) of this section provides the effective date of this section.

(2) *Reported results.* Whether an underpayment is attributable to a substantial or gross valuation misstatement must be determined from the results of controlled transactions that are reported on an income tax return, regardless of whether the amount reported differs from the transaction price initially reflected in the taxpayer's books and records. The results of controlled transactions that are reported on an amended return will be used only if the amended return is filed before the Internal Revenue Service has contacted the taxpayer regarding the corresponding original return. A written statement furnished by a taxpayer subject to the Coordinated Examination Program will be considered an amended return for purposes of this section if it satisfies either the requirements of a qualified amended return for purposes of § 1.6664–2(c)(3) or such requirements as the Commissioner may prescribe by revenue procedure. In the case of a taxpayer that is a member of a consolidated group, the rules of this paragraph (a)(2) apply to the consolidated income tax return of the group.

(3) *Identical terms used in section 482 regulations.* For purposes of this section, the terms used in these regulations shall have the same meaning as identical terms used in regulations under section 482.

(b) *The transactional penalty*—(1) *Substantial valuation misstatement.* In the case of any transaction between related persons, there is a substantial valuation misstatement if the price for any property or services (or for the use of property) claimed on any return is 200 percent or more (or 50 percent or less) of the amount determined under section 482 to be the correct price.

(2) *Gross valuation misstatement.* In the case of any transaction between related persons, there is a gross valuation misstatement if the price for any property or services (or for the use of property) claimed on any return is 400 percent or more (or 25 percent or less) of the amount determined under section 482 to be the correct price.

(3) *Reasonable cause and good faith.* Pursuant to section 6664(c), the transactional penalty will not be imposed on any portion of an underpayment with respect to which the requirements of § 1.6664–4 are met. A taxpayer that meets the requirements of paragraph (d) of this section with respect to an allocation under section 482 will be treated as having established that there was reasonable cause and good faith with respect to that item for purposes of § 1.6664–4. If a substantial or gross valuation misstatement under the transactional penalty also constitutes (or is part of) a substantial or gross valuation misstatement under the net adjustment penalty, then the rules of section (d) (and not the rules of § 1.6664–4) will be applied to determine whether the adjustment is excluded from calculation of the net section 482 adjustment.

(c) *Net adjustment penalty*—(1) *Net section 482 adjustment.* For purposes of this section, the term net section 482 adjustment means the sum of all increases in the taxable income of a taxpayer for a taxable year resulting from allocations under section 482 (determined without regard to any amount carried to such taxable year from another taxable year) less any decreases in taxable income attributable to collateral adjustments as described in § 1.482–1T(e). For purposes of this section, amounts that meet the requirements of paragraph (d) of this section will be excluded from the calculation of the net section 482 adjustment. Substantial and gross valuation misstatements that are subject to the transactional penalty under paragraphs (b) (1) or (2) are included in determining the amount of the net section 482 adjustment. See paragraph (f) of this section for coordination rules between penalties.

(2) *Substantial valuation misstatement.* There is a substantial valuation misstatement if a net section 482 adjustment is greater than the lesser of 5 million dollars or ten percent of gross receipts.

(3) *Gross valuation misstatement.* There is a gross valuation misstatement if a net section 482 adjustment is greater than the lesser of 20 million dollars or twenty percent of gross receipts.

(4) *Setoff allocation rule.* If a taxpayer meets the requirements of paragraph (d) of this section with respect to some, but not all of the allocations made under section 482, then for purposes of determining the net section 482 adjustment, setoffs, as taken into account under § 1.482–1T(e)(5), must be applied ratably against all such allocations. The following example illustrates the principle of this paragraph (c)(4).

Example. (i) The Internal Revenue Service makes the following section 482 adjustments for the taxable year:

(1)	$9,000,000
(2)	6,000,000
(3) Because of a setoff under § 1.482–1T(e)(5)	(5,000,000)
Total section 482 adjustments	10,000,000

(ii) The taxpayer meets the requirements of paragraph (d) with respect to adjustment number one, but not with respect to adjustment number two. The five million dollar setoff will be allocated ratably against the nine million dollar adjustment ($9,000,000/$15,000,000 × $5,000,000 = $3,000,000) and the six million dollar adjustment ($6,000,000/$15,000,000 ×

$5,000,000 = $2,000,000). Accordingly, in determining the net section 482 adjustment, the nine million dollar adjustment is reduced to six million dollars ($9,000,000 − $3,000,000) and the six million dollar adjustment is reduced to four million dollars ($6,000,000 − $2,000,000). Therefore, the net section 482 adjustment equals four million dollars.

(5) *Gross receipts.* For purposes of this section, gross receipts must be computed pursuant to the rules contained in § 1.448–1T(f)(2)(iv), as adjusted to reflect allocations under section 482.

(6) *Coordination with reasonable cause exception under section 6664(c).* Pursuant to section 6662(e)(3)(D), a taxpayer will be treated as having reasonable cause under section 6664(c) for any portion of an underpayment attributable to a net section 482 adjustment only if the taxpayer meets the requirements of paragraph (d) of this section with respect to that portion.

(7) *Examples.* The principles of this paragraph (c) are illustrated by the following examples.

Example 1. (i) The Internal Revenue Service makes the following section 482 adjustments for the taxable year:

(1) Attributable to an increase in gross income because of an increase in royalty payments	$2,000,000
(2) Attributable to an increase in sales proceeds due to a decrease in the profit margin of a related buyer	2,500,000
(3) Attributable to a decrease in the cost of goods sold because of a decrease in the cost plus mark-up of a related seller	2,000,000
Total section 482 adjustments	6,500,000

(ii) None of the adjustments are excluded under paragraph (d) of this section. The net section 482 adjustment ($6.5 million) is greater than five million dollars. Therefore, there is a substantial valuation misstatement.

Example 2. (i) The Internal Revenue Service makes the following section 482 adjustments for the taxable year:

(1)	$11,000,000
(2)	2,000,000
(3) Because of a setoff under § 1.482–1T(e)(5)	9,000,000)
Total section 482 adjustments	4,000,000

(ii) The taxpayer has gross receipts of sixty million dollars after taking into account all section 482 adjustments. None of the adjustments are excluded under paragraph (d) of this section. The net section 482 adjustment ($4 million) is less than the lesser of five million dollars or ten percent of gross receipts ($60 million × 10% = $6 million). Therefore, there is no substantial valuation misstatement.

Example 3. (i) The Internal Revenue Service makes the following section 482 adjustments to the income of an affiliated group that files a consolidated return for the taxable year:

(1) Attributable to Member A	$1,500,000
(2) Attributable to Member B	1,000,000
(3) Attributable to Member C	2,000,000
Total section 482 adjustments	4,500,000

(ii) Members A, B, and C have gross receipts of 20 million dollars, 12 million dollars, and 11 million dollars, respectively. Thus, the total gross receipts are 43 million dollars. None of the adjustments are excluded under paragraph (d) of this section. The net section 482 adjustment ($4.5 million) is greater than the lesser of five million dollars or ten percent of gross receipts ($43 million×10%=$4.3 million). Therefore, there is a substantial valuation misstatement.

Example 4. (i) The Internal Revenue Service makes the following section 482 adjustments to the income of an affiliated group that files a consolidated return for the taxable year:

(1) Attributable to Member A	$1,500,000
(2) Attributable to Member B	3,000,000
(3) Attributable to Member C	2,500,000
Total section 482 adjustments	7,000,000

(ii) Members A, B, and C have gross receipts of 20 million dollars, 35 million dollars, and 40 million dollars, respectively. Thus, the total gross receipts are 95 million dollars. None of the adjustments are excluded under paragraph (d) of this section. The net section 482 adjustment (7 million dollars) is greater than the lesser of five million dollars or ten percent of gross receipts ($95 million×10%=$9.5 million). Therefore, there is a substantial valuation misstatement.

Example 5. (i) The Internal Revenue Service makes the following section 482 adjustments to the income of an affiliated group that files a consolidated return for the taxable year:

(1) Attributable to Member A	$2,000,000
(2) Attributable to Member B	1,000,000
(3) Attributable to Member C	1,500,000
Total section 482 adjustments	4,500,000

(ii) Members A, B, and C have gross receipts of 10 million dollars, 35 million dollars, and 40 million dollars, respectively. Thus, the total gross receipts are 85 million dollars. None of the adjustments are excluded under paragraph (d) of this section. The net section 482 adjustment ($4.5 million) is less than the lesser of five million dollars or ten percent of gross receipts ($85 million×10%=$8.5 million). Therefore, there is no substantial valuation misstatement even though individual member A's adjustment ($2 million) is greater than ten percent of its individual gross receipts ($10 million×10%=$1 million).

(d) *Amounts excluded from net section 482 adjustments*—(1) *In general.* An amount is excluded from the calculation of a net section 482 adjustment if the requirements of paragraph (d)(2), (3), or (4) of this section are met with respect to that amount.

(2) *Application of a specified section 482 method*—(i) *In general.* An amount is excluded from the calculation of a net section 482 adjustment if the taxpayer establishes that both the specified method and documentation requirements of this paragraph (d)(2) are met with respect to that amount. For purposes of this paragraph (d), a method will be considered a specified method if it is described in the regulations under section 482 and the method applies to transactions of the type under review. A bona fide cost sharing arrangement is considered a specified method. See § 1.482–2A(d)(4). An unspecified method is not considered a specified method. See § 1.482–3T(e) and § 1.482–4T(d).

(ii) *Specified method requirement.* The specified method requirement is met if the taxpayer selects and applies a specified method in a reasonable manner. The taxpayer's selection and application of a specified method is reasonable only if, given the available data and the applicable pricing methods, the taxpayer reasonably concluded that the method (and its application of that method) provided the most accurate measure of an arm's length result under the principles of the best method rule in § 1.482–1T(b)(2)(iii). For examples illustrating the selection of a specified method consistent with this paragraph (d)(2)(ii), see § 1.482–1T(b)(2)(iii)(C). An application of a specified method provides the most accurate measure of an arm's length result if it provides a more accurate measure of an arm's length result than any alternative specified method and any alternative application of the method chosen. Thus, it is not necessary for a taxpayer to conclude that the selected specified method provides a more accurate measure of an arm's length result than any unspecified method. Whether the taxpayer's conclusion was reasonable must be determined from all the facts and circumstances. The factors relevant to this determination include the following:

(A) The experience and knowledge of the taxpayer, including all members of the taxpayer's controlled group.

(B) The extent to which accurate data was available and the data was analyzed in a reasonable manner. A taxpayer must engage in a reasonably thorough search for the data necessary to determine which method should be selected and how it should be applied. Furthermore, a taxpayer must use the

most current reliable data that is available before the return is filed. In this regard, the expense of collecting data relative to the dollar amount of the transactions in question is a factor that may be taken into account in determining the scope of a reasonably thorough search for data.

(C) The extent to which the taxpayer followed the relevant requirements set forth in regulations under section 482 with respect to the application of the method.

(D) The extent to which the taxpayer reasonably relied on the analysis of, or a study done by, a professional qualified to conduct such an analysis or study, including an attorney, accountant, or economist. Whether the professional is an employee of, or related to, the taxpayer is not determinative in evaluating the reliability of that analysis or study, as long as the analysis or study is objective, thorough, and well reasoned. Such reliance is reasonable only if the taxpayer disclosed to the professional all relevant information regarding the controlled transactions at issue. A transfer pricing study or analysis that was reasonably relied upon in a prior year may reasonably be relied upon in the current year if the relevant facts and circumstances have not changed or if the study or analysis has been appropriately modified to reflect any change in facts and circumstances.

(iii) *Documentation requirement*—(A) *In general.* The documentation requirement of this paragraph (d)(2)(iii) is met if the taxpayer maintains sufficient documentation to establish that the taxpayer reasonably concluded that, given the available data and the applicable pricing methods, the method (and its application of that method) provided the most accurate measure of an arm's-length result under the principles of the best method rule in § 1.482–1T(b)(2)(iii), and provides that documentation to the Internal Revenue Service within 30 days of a request for it. That documentation must be in existence when the return is filed. The district director may, in his discretion, excuse a minor or inadvertent failure to provide required documents, but only if the taxpayer has made a good faith effort to comply, and the taxpayer promptly remedies the failure when it becomes known. The required documentation is divided into two categories, principal and background documents, as described in paragraphs (d)(2)(iii) (B) and (C) of this section.

(B) *Principal documents.* The principal documents should accurately and completely describe the basic transfer pricing analysis conducted by the taxpayer. The documentation must include the following—

(*1*) An overview of the taxpayer's business, including an analysis of the economic and legal factors that affect the pricing of its property or services;

(*2*) A description of the taxpayer's organizational structure (including an organization chart) covering all related parties engaged in transactions potentially relevant under section 482, including foreign affiliates whose transactions directly or indirectly affect the pricing of property or services in the United States;

(*3*) Any documentation explicitly required by the regulations under section 482;

(*4*) A description of the specified method selected and an explanation of why that method was selected;

(*5*) A description of the unspecified methods that were considered and an explanation of why they were not selected;

(*6*) A description of the controlled transactions (including the terms of sale) and any internal data used to analyze those transactions;

(*7*) A description of the comparables that were used, how comparability was evaluated, and what (if any) adjustments were made;

(*8*) An explanation of the economic analysis and projections relied upon in developing the method; and

(*9*) A general index of the principal and background documents and a description of the recordkeeping system used for cataloging and accessing those documents.

(C) *Background documents.* The assumptions, conclusions, and positions contained in principal documents ordinarily will be based on, and supported by, additional background documents. Documents that support the principal documentation may include the documents listed in § 1.6038A–3(c) that are not otherwise described in paragraph (d)(2)(iii)(B) of this section. Every document listed in those regulations may not be relevant to pricing determinations under the taxpayer's specific facts and circumstances and, therefore, each of those documents need not be maintained in all circumstances. Moreover, other documents not listed in those regulations may be necessary to establish that the taxpayer's method was selected and applied in the way that provided the most accurate measure of an arm's length result under the principles of the best method rule in § 1.482–1T(b)(2)(iii). Background documents need not be provided to the Internal Revenue Service in response to a request for principal documents. If the Internal Revenue Service subsequently requests background documents, a taxpayer must provide that documentation to the Internal Revenue Service within 30 days of the request. However, the district director may, in his discretion, extend the period for producing the background documentation.

(3) *Application of an unspecified method*—(i) *In general.* An adjustment is excluded from the calculation of a net section 482 adjustment if the taxpayer establishes that both the unspecified method and documentation requirements of this paragraph (d)(3) are met with respect to that amount.

(ii) *Unspecified method requirement*—(A) *In general.* If a method other than a specified method was applied, the unspecified method requirement is met if the requirements of paragraph (d)(3)(ii) (B) or (C), as appropriate, are met.

(B) *Specified method potentially applicable.* If the transaction is of a type for which methods are specified in the regulations under section 482, then a taxpayer will be considered to have met the unspecified method requirement if the taxpayer reasonably concludes that, given the available data, none of the specified methods was likely to provide an accurate measure of an arm's length result, and that it selected and applied an unspecified method in a way that would likely provide an accurate measure of an arm's length result, given the available data. This conclusion must be based on all the facts and circumstances. The factors relevant to this conclusion include those set forth in paragraph (d)(2)(ii) of this section.

(C) *No specified method applicable.* If the transaction is of a type for which no methods are specified in the regulations under section 482, then a taxpayer will be considered to have met the unspecified method requirement if it selected and applied an unspecified method in a reasonable manner. For purposes of this paragraph (d)(3)(ii)(C), a taxpayer's selection and application is reasonable if the taxpayer reasonably concludes that the method (and its application of that method) provided the most accurate measure of an arm's length result under the principles of the best method rule in § 1.482–1T(b)(2)(iii). This conclusion must be based on all the facts and circumstances. The factors relevant to this conclusion include those set forth in paragraph (d)(2)(ii) of this section.

(iii) *Documentation requirement*—(A) *In general.* The documentation requirement of this paragraph (d)(3) is met if the taxpayer maintains sufficient documentation to establish that the

unspecified method requirement of paragraph (d)(3)(ii) of this section is met and provides that documentation to the Internal Revenue Service within 30 days of a request for it. That documentation must be in existence when the return is filed. The district director may, in his discretion, excuse a minor or inadvertent failure to provide required documents, but only if the taxpayer has made a good faith effort to comply, and the taxpayer promptly remedies the failure when it becomes known.

(B) *Principal and background documents.* See paragraphs (d)(2)(iii) (B) and (C) of this section for rules regarding these two categories of required documentation.

(4) *Certain foreign to foreign transactions.* For purposes of calculating a net section 482 adjustment, any increase in taxable income resulting from an allocation under section 482 that is attributable to any controlled transaction solely between foreign corporations will be excluded unless the treatment of that transaction affects the determination of either corporation's income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States.

(5) *Special rule.* If the regular tax (as defined in section 55(c)) imposed on the taxpayer is determined by reference to an amount other than taxable income, that amount shall be treated as the taxable income of the taxpayer for purposes of section 6662(e)(3). Accordingly, for taxpayers whose regular tax is determined by reference to an amount other than taxable income, the increase in that amount resulting from section 482 allocations is the taxpayer's net section 482 adjustment.

(6) *Examples.* The principles of this paragraph (d) are illustrated by the following examples.

Example 1. (i) The Internal Revenue Service makes the following section 482 adjustments for the taxable year:

(1)	$9,000,000
(2) Not a 200 percent or 400 percent adjustment	2,000,000
(3)	9,000,000
Total section 482 adjustments	20,000,000

(ii) The taxpayer has gross receipts of seventy-five million dollars after all section 482 adjustments. The taxpayer establishes that for adjustments number one and three, it applied a transfer pricing method specified in section 482, the selection and application of the method was reasonable, it documented the pricing analysis, and turned that documentation over to the IRS within 30 days of a request. Accordingly, eighteen million dollars is excluded from the calculation of the net section 482 adjustment. Because the net section 482 adjustment is two million dollars, there is no substantial valuation misstatement.

Example 2. (i) The Internal Revenue Service makes the following section 482 adjustments for the taxable year:

(1)	$9,000,000
(2) Attributable to an adjustment that is 200 percent or more of the correct section 482 price	2,000,000
(3)	9,000,000
Total section 482 adjustments	20,000,000

(ii) The taxpayer has gross receipts of seventy-five million dollars after all section 482 adjustments. The taxpayer establishes that for adjustments number one and three it applied a transfer pricing method specified in section 482, the selection and application of the method was reasonable, it documented that analysis, and turned the documentation over to the IRS within 30 days. Accordingly, eighteen million dollars is excluded from the calculation of the section 482 transfer pricing adjustments for purposes of applying the five million dollar or 10% of gross receipts test. Because the net section 482 adjustment is only two million dollars, the taxpayer is not subject to the net adjustment penalty. However, the taxpayer may be subject to the transactional penalty on the underpayment of tax attributable to the two million dollar adjustment.

Example 3. CFC1 and CFC2 are controlled foreign corporations within the meaning of section 957. Applying section 482, the IRS disallows a deduction for twenty five million dollars of the interest that CFCI paid to CFC2, which results in CFC1's U.S. shareholder having a subpart F inclusion in excess of five million dollars. No other adjustments under section 482 are made with respect to the controlled taxpayers. However, the increase has no effect upon the determination of CFC1's or CFC2's income from sources within the United States or taxable income effectively connected with the conduct of a trade or business within the United States. Accordingly, there is no substantial valuation misstatement.

(e) *Special rules in the case of carrybacks and carryovers.* If there is a substantial or gross valuation misstatement for a taxable year that gives rise to a loss, deduction or credit that is carried to another taxable year, the transactional penalty and the net adjustment penalty will be imposed on any resulting underpayment of tax in that other taxable year. In determining whether there is a substantial or gross valuation misstatement for a taxable year, no amount carried from another taxable year shall be included. The following example illustrates the principle of this paragraph (e).

Example. The Internal Revenue Service makes a section 482 adjustment of six million dollars in taxable year 1, no portion of which is excluded under paragraph (d) of this section. The taxpayer's income tax return for year 1 reported a loss of three million dollars, which was carried to taxpayer's year 2 year income tax return and used to reduce income taxes otherwise due with respect to year 2. A determination is made that the six million dollar allocation constitutes a substantial valuation misstatement, and a penalty is imposed on the underpayment of tax in year 1 attributable to the substantial valuation misstatement and on the underpayment of tax in year 2 attributable to the disallowance of the net operating loss in year 2. For purposes of determining whether there is a substantial or gross valuation misstatement for year 2, the three million dollar reduction of the net operating loss will not be added to any section 482 adjustments made with respect to year 2.

(f) *Rules for coordinating between the transactional penalty and the net adjustment penalty*—(1) *Coordination of a net section 482 adjustment subject to the net adjustment penalty and a gross valuation misstatement subject to the transactional penalty.* In determining whether a net section 482 adjustment exceeds five million dollars or 10 percent of gross receipts, an adjustment attributable to a substantial or gross valuation misstatement that is subject to the transactional penalty will be taken into account. If the net section 482 adjustment exceeds five million dollars or ten percent of gross receipts, any portion of such amount that is attributable to a gross valuation misstatement will be subject to the transactional penalty at the forty percent rate, but will not also be subject to net adjustment penalty at a twenty percent rate. The remaining amount is subject to the net adjustment penalty at the twenty percent rate, even if such amount is less than the lesser of five million dollars or ten percent of gross receipts.

(2) *Coordination of net section 482 adjustment subject to the net adjustment penalty and substantial valuation misstatements subject to the transactional penalty.* If the net section 482 adjustment exceeds twenty million dollars or 20 percent of gross receipts, the entire amount of the adjustment is subject to the net adjustment penalty at a forty percent rate. No portion of the adjustment is subject to the transactional penalty at a twenty percent rate.

(3) *Examples.* The following examples illustrate the principles of this paragraph (f).

Example 1. (i) Applying section 482, the Internal Revenue Service makes the following adjustments for the taxable year:

(1) Attributable to an adjustment that is 400 percent or more of the correct section 482 arm's length result	$2,000,000

(2) Not a 200 or 400 percent adjustment	2,500,000
Total	4,500,000

(ii) The taxpayer has gross receipts of 75 million dollars after all section 482 adjustments. None of the adjustments is excluded under paragraph (d) (Amounts excluded from net section 482 adjustments) of this section, in determining the five million dollar or 10% of gross receipts test under section 6662(e)(1)(B)(ii). The net section 482 adjustment (4.5 million dollars) is less than the lesser of five million dollars or ten percent of gross receipts ($75 million × 10% = $7.5 million). Thus, there is no substantial valuation misstatement. However, the two million dollar adjustment is attributable to a gross valuation misstatement. Accordingly, the taxpayer may be subject to a penalty, under section 6662(h), equal to 40 percent of the underpayment of tax attributable to the gross valuation misstatement of two million dollars. The 2.5 million dollar adjustment is not subject to a penalty under section 6662(b)(3).

Example 2. The facts are the same as in *Example 1*, except the taxpayer has gross receipts of 40 million dollars. The net section 482 adjustment ($4.5 million) is greater than the lesser of five million dollars or ten percent of gross receipts ($40 million × 10% = $4 million). Thus, the five million dollar or 10% of gross receipts test has been met. The two million dollar adjustment is attributable to a gross valuation misstatement. Accordingly, the taxpayer is subject to a penalty, under section 6662(h), equal to 40 percent of the underpayment of tax attributable to the gross valuation misstatement of two million dollars. The 2.5 million dollar adjustment is subject to a penalty under sections 6662(a) and 6662(b)(3), equal to 20 percent of the underpayment of tax attributable to the substantial valuation misstatement.

Example 3. (i) Applying section 482, the Internal Revenue Service makes the following transfer pricing adjustments for the taxable year:

(1) Attributable to an adjustment that is 400 percent or more of the correct section 482 arm's length result	$6,000,000
(2) Not a 200 or 400 percent adjustment	15,000,000
Total	21,000,000

(ii) None of the adjustments are excluded under paragraph (d) (Amounts excluded from net section 482 adjustments) in determining the twenty million dollar or 20% of gross receipts test under section 6662(h). The net section 482 adjustment (21 million dollars) is greater than twenty million dollars and thus constitutes a gross valuation misstatement. Accordingly, the total adjustment is subject to the net adjustment penalty equal to 40 percent of the underpayment of tax attributable to the 21 million dollar gross valuation misstatement. The six million dollar adjustment will not be separately included for purposes of any additional penalty under section 6662.

(g) *Effective date.* This section applies to taxable years beginning after December 31, 1993.

Par. 5. Section 1.6664–O is amended by adding an entry for § 1.6664–4T to read as follows:

§ 1.6664–O Table of contents.

* * * * *

§ 1.6664–4T Reasonable cause and good faith exception to section 6662 penalties

(a) through (c) [Reserved]

(d) Transactions between persons described in section 482 and net section 482 transfer price adjustments.

Par. 6. Section 1.6664–4T is added to read as follows:

§ 1.6664–4T Reasonable cause and good faith exception to section 6662 penalties.

(a) through (c) [Reserved]

(d) *Transactions between persons described in section 482 and net section 482 transfer price adjustments.* For purposes of applying the reasonable cause and good faith exception of section 6664(c) to net section 482 adjustments, the rules of § 1.6662–6T(d) of the regulations apply. A taxpayer that does not satisfy the rules of § 1.6662–T(d) for a net section 482 adjustment cannot satisfy the reasonable cause and good faith exception under section 6664(c). The rules of this section apply to underpayments subject to the transactional penalty in § 1.6662–6T(b). If the standards of the net section 482 penalty exclusion provisions under § 1.6662–6T(d) are met with respect to such underpayments, then the taxpayer will be considered to have acted with reasonable cause and good faith for purposes of this section.

Par. 7. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 7. Section 602.101(c) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	* *
1.6662–6T	1545–1365
* * *	* *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved:

Leslie B. Samuels,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 94–2078 Filed 1–27–94; 11:10 am]

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26 CFR Parts 1 and 602

[TD 8517]

RIN 1545–AH46

Debt Instruments With Original Issue Discount; Imputed Interest on Deferred Payment Sales or Exchanges of Property

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the tax treatment of debt instruments with original issue discount and the imputation of interest on deferred payments under certain contracts for the sale or exchange of property. The final regulations provide needed guidance to holders and issuers of debt instruments with original issue discount and to buyers and sellers of property.

DATES: The removal of §§ 1.163–11T, 1.1275–3T, 1.1275–6T and 1.6050H–2 is effective February 2, 1994. The remaining regulations are effective April 4, 1994.

For dates of applicability of these regulations, see Effective Dates under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: William E. Blanchard, 202–622–3950 (not a toll-free number), or Andrew C. Kittler, 202–622–3940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this final regulation have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1353. The estimated annual burden per respondent varies from .3 hours to .5 hours, depending on individual circumstances, with an estimated average of .4 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the IRS.

Individual respondents may require more or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

On December 22, 1992, the IRS published a notice of proposed rulemaking in the **Federal Register** (57 FR 60750) relating to original issue discount (OID) under section 163(e) and sections 1271 through 1275 of the Internal Revenue Code (Code). The notice also contained proposed amendments to the regulations under sections 446 (relating to the accrual of interest), 483 (relating to unstated interest), 1001 (relating to amount realized), and 1012 (relating to basis). The notice withdrew most of the proposed regulations that were previously published in the **Federal Register** on April 8, 1986 (51 FR 12022), as amended on May 7, 1991 (56 FR 21112), and July 12, 1991 (56 FR 31887).

On February 16, 1993, the IRS held a public hearing on the proposed regulations. In addition, the IRS received a number of written comments on the proposed regulations. The proposed regulations, with certain changes to respond to comments, are adopted as final regulations; to permit further comment, § 1.446–2(e)(3) remains outstanding in proposed form. The changes, as well as several comments and suggestions that were not adopted in the final regulations, are discussed below.

Explanation of Provisions

Section 1.163–7 Deduction for OID on Certain Debt Instruments

The final regulations retain the rule of the proposed regulations that allows the issuer of a debt instrument to deduct de minimis OID using a straight line method. As requested by a commentator, the final regulations also allow the issuer the choice of deducting de minimis OID at maturity or in proportion to stated interest payments.

Because the proposed regulations permit flexible accrual periods, a commentator requested guidance on what accrual period controls to determine whether a debt instrument is an applicable high yield debt obligation under section 163(i). The final regulations provide that the issuer's choice of accrual periods governs for purposes of section 163(i).

A commentator requested that an immediate deduction be allowed for a repurchase premium in a debt-for-debt exchange even if the issue price of the debt instrument received in the exchange is determined under section 1274. The IRS and Treasury, however, believe that taxpayers could inappropriately accelerate deductions in these situations because of the flexibility inherent in section 1274 for determining the issue price of a debt instrument. Thus, the final regulations retain the rule in the proposed regulations.

Section 1.446–2 Method of Accounting for Interest

The proposed regulations provide a special payment allocation rule for certain small transactions. Because of the rule's limited scope and uncertainty regarding its application, the IRS and Treasury believe that the rule should not be finalized. However, to allow further comment on the need for this rule, § 1.446–2(e)(3) is reserved in the final regulations and remains in proposed form.

Section 1.483–1 Through 1.483–3 Unstated Interest

The proposed regulations provide that stated or unstated interest under a contract subject to section 483 is taken into account under a taxpayer's regular method of accounting. One commentator suggested that an accrual method taxpayer should account for unstated interest in the year a payment is due, which was the rule in previous final regulations under section 483. The IRS and Treasury, however, believe that it is appropriate to treat stated and unstated interest consistently. Thus, the final regulations retain the rule in the proposed regulations.

Sections 1.1001–1(g) and 1.1012–1(g) Amount Realized and Basis

If a debt instrument is issued in exchange for property, the proposed regulations provide that the issue price of the debt instrument is used to determine the seller's amount realized and the buyer's basis. The final regulations adopt the rules of the proposed regulations, but clarify the treatment of a debt instrument with an issue price determined under section 1273(b)(4).

Section 1.1271–1 Special Rules Applicable to Amounts Received on Retirement, Sale, or Exchange of Debt Instruments

As requested by a commentator, the final regulations provide that the intention to call rules do not apply to debt instruments sold pursuant to a private placement memorandum that is distributed to more than ten offerees and that is subject to certain sanctions of the Securities Act of 1933 or the Securities Exchange Act of 1934.

Section 1.1272–1 Current Inclusion of OID in Income

The proposed regulations provide that accrual periods may be of any length and may vary in length over the term of the debt instrument, provided that each accrual period is not longer than one year and that all payments are made at the end of an accrual period. In response to one comment, the final regulations provide that payments also may be made on the first day of an accrual period.

The rule permitting accrual periods to vary in length was provided in response to commentators who criticized the prior proposed regulations as too mechanical and inflexible. While commentators commended the flexibility of the rule, they noted that the rule raised several technical issues: (1) the accrual periods used to determine whether an instrument is an applicable high yield debt obligation under section 163(i); (2) the accrual periods used by a subsequent holder to determine adjusted issue price for purposes of OID accruals, market discount, and acquisition premium; and (3) the accrual periods used for Form 1099 reporting. As noted above, § 1.163–7 of the final regulations provides that the issuer's determination of accrual periods controls for purposes of determining whether a debt instrument is an applicable high yield debt obligation. In addition, § 1.1275–1(b)(2) of the final regulations provides that a subsequent holder determines adjusted issue price for purposes of OID accruals, market discount, and acquisition premium in any manner consistent with these final regulations. Rules on Form 1099 reporting will be addressed in a separate project. Until guidance regarding Form 1099 reporting is issued, however, an issuer should use the same accrual periods for Form 1099 purposes as it uses for computing OID deductions.

The proposed regulations provide rules to determine the yield and maturity of a debt instrument with a stated contingency that could result in

the acceleration or deferral of payments if the timing and amounts payable upon occurrence of the contingency are fixed. The contingency is ignored unless, based on all the facts and circumstances, the contingency is more likely than not to occur. The final regulations clarify that this rule applies when the contingency, if triggered, would result in an alternative payment schedule as long as the timing and amounts of the payments comprising the alternative payment schedule are known as of the issue date. The final regulations also clarify that these rules apply if the debt instrument is subject to multiple contingencies that result in alternative payment schedules. The final regulations retain the rule in the proposed regulations for determining the yield and the maturity of a debt instrument in the case of a put or call option.

The final regulations modify the proposed rules regarding subsequent adjustments that are required when a contingency occurs (or does not occur) contrary to the assumption initially made. This modification treats both the acceleration and deferral of payments as a deemed reissuance for purposes of OID accruals. In addition, the subsequent adjustment rules are coordinated with the new pro rata prepayment rule described below in connection with the description of § 1.1275–2.

Finally, in response to a comment, an example describing the consequences of a pay-in-kind debt instrument issued at par has been included in the final regulations.

Section 1.1272–2 Treatment of Debt Instruments Purchased at a Premium

The final regulations retain the rules in the proposed regulations for debt instruments purchased at a premium. Thus, the holder's basis in a debt instrument that is acquired in exchange for property and that otherwise would take a substituted basis generally will not exceed the fair market value of the property immediately after the exchange. This rule corresponds to a similar rule in section 171(b)(4) of the Code. The final regulations clarify the application of the rule to a situation in which a debt instrument is received in a distribution from a partnership.

Section 1.1272–3 Election by a Holder to Treat all Interest on a Debt Instrument as OID

The proposed regulations permit accrual method holders to treat all interest on a debt instrument as OID. In response to comments, the final regulations extend this election to holders that use the cash receipts and disbursements method of accounting.

Section 1.1273–1 Definition of OID

The final regulations retain the definition of qualified stated interest, but clarify that a conversion feature is ignored for purposes of determining whether stated interest is unconditionally payable. In response to a comment, the final regulations provide that if a debt instrument has payment intervals that are equal in length throughout the term of the instrument, except for the first or final payment interval (or both intervals), the interest payment for that interval (or intervals) is considered to be made at a fixed rate if the value of the rate on which the payment is based is adjusted in any reasonable manner to take into account the length of the interval. The final regulations also clarify the determination of qualified stated interest for a debt instrument that provides for an alternative payment schedule (or schedules) upon the occurrence of one or more contingencies. In the case of these debt instruments, each alternative payment schedule (including the stated payment schedule) is treated as if it were the debt instrument's sole payment schedule. Based on this analysis, the debt instrument provides for qualified stated interest to the extent of the lowest fixed rate at which qualified stated interest would be payable under any payment schedule.

The final regulations also provide rules for a subsequent holder's treatment of a debt instrument issued with de minimis OID. Under these rules, if a subsequent holder purchases the debt instrument at a premium, the subsequent holder does not include any de minimis OID in income. Because the debt instrument is treated as having zero OID under section 1273(a)(3), if a subsequent holder purchases the debt instrument at a discount, the subsequent holder reports the discount under the market discount rules of sections 1276 through 1278 of the Code, rather than under the rules for de minimis OID.

Finally, the final regulations retain the rule of the proposed regulations that de minimis OID is includible in the income of the holder as principal payments are made. Commentators objected to the fact that this rule is written as applying on a loan-by-loan basis because it could preclude a financial institution from using the loan liquidation method. Although the rule is stated in terms of a single loan, the IRS and Treasury recognize that it may be appropriate to permit financial institutions to account for de minimis OID on an aggregate basis. The IRS is reviewing its published position with respect to the loan liquidation method and plans to issue updated guidance that permits financial institutions to use some form of aggregate accounting.

Section 1.1273–2 Determination of Issue Price and Issue Date

If an issue of debt instruments sold for money is publicly offered, the proposed regulations provide that the issue price of each debt instrument in the issue is the first price at which a substantial amount of the debt instruments in the issue is sold to the public. However, if the issue is not publicly offered, the issue price of each debt instrument in the issue is the price paid by the first buyer of a debt instrument that is part of the issue. Commentators suggested that the issue price rules should be the same for publicly offered and non-publicly offered issues. In addition, commentators suggested that all debt instruments in an issue should be fungible with other debt instruments in the issue.

In response to these comments, the definition of issue price has been modified. Under the final regulations, if a substantial amount of debt instruments in an issue is sold for money, the issue price of each instrument in the issue is the first price at which a substantial amount is sold for money. If an issue is not subject to this rule, but a substantial amount of the instruments in the issue is publicly traded, the issue price of each instrument in the issue is the fair market value of the instrument as of the issue date. If an issue is not subject to either of these rules, but a substantial amount of instruments in the issue is issued in exchange for publicly traded property, the issue price of each instrument in the issue is the fair market value of the property as of the issue date. Finally, if an issue of debt instruments is not described in any of the above rules, the issue price of each debt instrument in the issue is determined as if the instrument were a separate issue.

The proposed regulations define publicly traded property generally to include exchange listed property, property traded on a board of trade or an interbank market, property appearing on a quotation medium, and debt instruments for which price quotations are readily available. In response to a comment, the final regulations clarify that, for purposes of determining whether an instrument is publicly traded, a quotation medium is limited to a medium that provides a reasonable basis to determine fair market value. One commentator suggested that the

rule regarding readily available price quotations should be eliminated. The IRS and Treasury, however, believe that one principal way in which debt instruments are traded is through brokers and dealers from whom price quotations are readily available, that this market is liquid, and that instruments so traded are susceptible to ready valuation. In such a case, it is consistent with the purposes of the rules applicable to publicly traded property that the instruments be considered publicly traded.

The final regulations clarify the determination of issue price for a debt instrument that is part of an investment unit. In general, the issue price of an investment unit is determined as if the investment unit were a debt instrument. The issue price of the investment unit is then allocated between the debt instrument and the property right that comprise the investment unit based on their relative fair market values. If, however, the issue price of the investment unit is not determined under the rules of paragraph (a)(1), (b)(1), or (c)(1) of § 1.1273–2 (e.g., because the investment unit is not issued for money or publicly traded property), the issue price of the debt instrument included in the investment unit is determined under section 1273(b)(4) or 1274, whichever is applicable.

To coordinate the definition of issue date with the revised definition of issue price discussed above, the definition of issue date has been moved from § 1.1275–1 of the proposed regulations to § 1.1273–2 of the final regulations.

Sections 1.1274–1 Through 1.1274–5 Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

The final regulations modify the rule to determine the test rate for purposes of sections 483 and 1274. Under the modified rule, the test rate is generally the lowest of the applicable Federal rates (based on the appropriate compounding period) in effect during either (i) the 3-month period ending with the first month in which there is a binding written contract that substantially sets forth the terms under which the sale or exchange is ultimately consummated, or (ii) the 3-month period ending with the month in which the sale or exchange occurs.

The proposed regulations generally provide that the imputed principal amount of a contingent payment debt instrument is the sum of the present values of the noncontingent payments and the fair market value of the contingent payments. Several comments and questions were received on this rule, including the comment that the rule should be reserved pending the resolution of the contingent payment rules in regulations under section 1275. To allow further study of this issue and coordination with the contingent payment regulations under section 1275, the final regulations do not adopt the rule in the proposed regulations. Thus, for example, consistent with existing authorities, the value of contingent payments is not taken into account for purposes of determining the basis of property under section 1012. With the publication of the final regulations in the **Federal Register**, § 1.1274–2(e) of the proposed regulations no longer remains as a proposed regulation. Pending resolution of the issue and publication of new proposed regulations, paragraphs (c) and (d) of § 1.1275–4 of the proposed regulations, as proposed in 1986, remain authority under section 6662 of the Code for a nonpublicly traded debt instrument issued in exchange for nonpublicly traded property.

Section 1.1274A–1 Special Rules for Certain Transactions Where Stated Principal Amount Does Not Exceed $2,800,000

No comments were received on these regulations and no material changes were made to this section.

Section 1.1275–1 Definitions

In response to a comment, the definition of issue has been expanded. As a result, debt instruments issued in different markets or for different consideration can be part of the same issue.

Section 1.1275–2 Special Rules Relating to Debt Instruments

The proposed regulations provide that all payments (other than qualified stated interest payments) consist first of accrued but unpaid OID, then of principal. Several commentators suggested that unscheduled prepayments should be treated as partial retirements of the debt instrument. In response to these comments, the final regulations add new rules for the treatment of pro rata prepayments. In general, a pro rata prepayment is an unscheduled payment made on a debt instrument prior to maturity that results in a substantially pro rata reduction of each payment of principal and interest remaining on the instrument. If a prepayment on a debt instrument is a pro rata prepayment, the prepayment is treated as a payment in retirement of a portion of the instrument, which may result in gain or loss to the holder. The gain or loss is calculated by assuming that the debt instrument consists of two instruments, one that is retired and one that remains outstanding, and by allocating the adjusted issue price, the holder's adjusted basis, and the accrued but unpaid qualified stated interest between the two instruments based on the portion of the instrument that is treated as retired by the pro rata prepayment. In the case of a pro rata prepayment, the issuer may realize discharge of indebtedness income (as determined under § 1.61–12) or repurchase premium (as determined under § 1.163–7).

Partial retirement treatment is restricted to pro rata prepayments because the IRS and Treasury believe that this type of prepayment is common. The extension of the rule to non-pro rata prepayments would add undue complexity to the regulations. In addition, extension of the rule to non-pro rata prepayments may cause inappropriate recognition of gain or loss if, in addition to a prepayment, the interest rate or the payment schedule is altered. Furthermore, as noted by one commentator, a rule for non-pro rata prepayments may not be necessary because an unscheduled prepayment may, depending on the circumstances, result in a deemed exchange under section 1001.

The proposed regulations contain a number of rules that generally require a holder to follow the issuer's treatment of an item, such as whether a debt instrument is issued in a potentially abusive situation. In response to comments, the final regulations provide that the issuer must make information relating to its treatment of the item available to the holder in a reasonable manner.

Section 1.1275–2T, which is published elsewhere in this issue of the **Federal Register**, provides for an anti-abuse rule. Under the rule, the Commissioner of Internal Revenue, in certain circumstances, can apply or depart from the final regulations in a manner that ensures a reasonable result in light of the purposes of the statutes governing OID.

Section 1.1275–3 OID Information Reporting Requirements

The legending requirements in the final regulations for debt instruments with OID are generally the same as the requirements in the proposed regulations.

Section 1.1275–5 Variable Rate Debt Instruments

In response to comments that the definition of a variable rate debt instrument contained in the proposed

regulations is overly restrictive, the final regulations liberalize the rules in several respects. First, the regulations allow the issue price of a variable rate debt instrument to exceed the total noncontingent principal payments on the instrument, provided that the excess is not greater than a specified amount. Second, the regulations allow a variable rate debt instrument to provide for stated interest at more than two qualified floating rates, at a single fixed rate and one or more qualified floating rates, and at a single fixed rate and an objective rate that is a qualified inverse floating rate. Third, the regulations provide that interest that is stated at an initial fixed rate for a period of not more than one year, followed by a qualified floating rate or an objective rate, is treated as stated at a single qualified floating rate or an objective rate in certain circumstances. This rule applies, for example, if interest for the initial accrual period is set a short time prior to the issue date at a fixed rate chosen to approximate the expected value of the qualified floating rate or objective rate on the issue date. Fourth, the regulations allow certain multiples of a qualified floating rate to be treated as qualified floating rates. Fifth, the regulations expand the definition of an objective rate to include a rate based on the yield of actively traded property, a rate that would be a qualified floating rate if the debt instrument were denominated in a foreign currency, and any combination of objective rates. In addition, the final regulations provide that other rates may be treated as objective rates if designated by revenue ruling or revenue procedure.

In response to a comment, the definition of an objective rate has been narrowed in two respects. While the proposed regulations permit a rate based on the price of actively traded personal property, the final regulations permit only a rate based on the change in the price of actively traded personal property to be an objective rate. In addition, the final regulations provide a more general rule relating to the frontloading or backloading of interest such that a variable rate is not an objective rate if it results in significant frontloading or backloading of interest.

The rules in the proposed regulations relating to permissible objective rates on tax-exempt debt instruments have been changed in the final regulations. Under the revised rules, a variable rate on a tax-exempt debt instrument is an objective rate only if it is a qualified inverse floating rate. In general, an objective rate is a qualified inverse floating rate if the rate is equal to a fixed rate minus a qualified floating rate and the rate varies in a manner that inversely reflects contemporaneous variations in the cost of newly borrowed funds.

The rules in the proposed regulations for determining the accrual of OID and the amount of qualified stated interest on a variable rate debt instrument have been revised and simplified in the final regulations. Under the revised rules, a debt instrument providing for qualified floating rates is converted to an equivalent fixed rate debt instrument by assuming that each qualified floating rate will remain at its value as of the issue date. A debt instrument providing for an objective rate is converted to an equivalent fixed rate debt instrument by assuming that the objective rate will equal a fixed rate that reflects the yield that is reasonably expected for the instrument. The rules applicable to fixed rate debt instruments are then applied to determine the OID accruals and the qualified stated interest payments on the equivalent fixed rate debt instrument. Appropriate adjustments to these amounts are made in each accrual period if the interest actually accrued or paid during the accrual period is greater than or less than the interest assumed to be accrued or paid under the equivalent fixed rate debt instrument.

In response to a comment, the final regulations provide a special rule for certain variable rate debt instruments (such as auction rate or adjustable rate debt instruments) that provide for a fixed rate of interest for an initial period, followed by a period during which the interest is reset to a rate that will enable the instrument to trade at a fixed amount when the reset becomes effective. Under this special rule, the debt instrument is treated as maturing on the date the reset rate becomes effective and reissued on that date for the fixed amount. As a result of this rule, for example, if a debt instrument is issued at a discount (i.e., the issue price of the debt instrument is less than its par value) and is reset to par after an initial period, the discount on the instrument will be accrued entirely in the initial period rather than over the full term of the instrument.

Effective Dates

These regulations apply to debt instruments issued on or after April 4, 1994, and to lending transactions, sales, and exchanges that occur on or after April 4, 1994. However, § 1.1272–3 applies to debt instruments acquired on or after April 4, 1994, and § 1.1275–2(d)(2) applies to qualified reopenings that occur on or after March 25, 1992.

Reliance on Final Regulations

Except for § 1.1272–3, taxpayers may rely on the final regulations for debt instruments issued after December 21, 1992, and for lending transactions, sales, and exchanges that occur after December 21, 1992.

Authority Under Section 6662

Although the final regulations dispose of the underlying proposed regulations (other than § 1.446–2(e)(3)), the IRS will allow taxpayers to treat the proposed regulations as authority under section 6662 of the Code for debt instruments issued after December 21, 1992, and prior to April 4, 1994, and for lending transactions, sales, and exchanges that occurred after December 21, 1992, and prior to April 4, 1994. The IRS also will allow taxpayers to treat the OID regulations that were proposed in 1986 and 1991 as authority under section 6662 for debt instruments issued prior to December 22, 1992, and for lending transactions, sales, and exchanges that occurred prior to December 22, 1992.

Special Analyses

It has been determined that these regulations are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are William E. Blanchard and Andrew C. Kittler of the Office of Assistant Chief Counsel (Financial Institutions and Products), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for "Section 1.1275–3" and adding the following citations in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

§§ 1.483–1 through 1.483–3 also issued under 26 U.S.C. 483(f). * * *

§§ 1.1271–1 through 1.1274–5 also issued under 26 U.S.C. 1275(d).

§ 1.1274A–1 also issued under 26 U.S.C. 1274A(e) and 26 U.S.C. 1275(d).

§§ 1.1275–1 through 1.1275–5 also issued under 26 U.S.C. 1275(d). * * *

Par. 2. Section 1.163–7 is added to read as follows:

§ 1.163–7 Deduction for OID on certain debt instruments.

(a) *General rule.* Except as otherwise provided in paragraph (b) of this section, an issuer (including a transferee) determines the amount of OID that is deductible each year under section 163(e)(1) by using the constant yield method described in § 1.1272–1(b). This determination, however, is made without regard to section 1272(a)(7) (relating to acquisition premium) and § 1.1273–1(d) (relating to de minimis OID). An issuer is permitted a deduction under section 163(e)(1) only to the extent the issuer is primarily liable on the debt instrument. For certain limitations on the deductibility of OID, see sections 163(e) and 1275(b)(2).

(b) *Special rules for de minimis OID*—(1) *Stated interest.* If a debt instrument has a de minimis amount of OID (within the meaning of § 1.1273–1(d)), the issuer treats all stated interest on the debt instrument as qualified stated interest. See §§ 1.446–2(b) and 1.461–1 for the treatment of qualified stated interest.

(2) *Deduction of de minimis OID on other than a constant yield basis.* In lieu of deducting de minimis OID under the general rule of paragraph (a) of this section, an issuer of a debt instrument with a de minimis amount of OID (other than a de minimis amount treated as qualified stated interest under paragraph (b)(1) of this section) may choose to deduct the OID at maturity, on a straight-line basis over the term of the debt instrument, or in proportion to stated interest payments. The issuer makes this choice by reporting the de minimis OID in a manner consistent with the method chosen on the issuer's timely filed Federal income tax return for the taxable year in which the debt instrument is issued.

(c) *Deduction upon repurchase.* Except to the extent disallowed by any other section of the Internal Revenue Code (e.g., section 249) or this paragraph (c), if a debt instrument is repurchased by the issuer for a price in excess of its adjusted issue price (as defined in § 1.1275–1(b)), the excess (repurchase premium) is deductible as interest for the taxable year in which the repurchase occurs. If the issuer repurchases a debt instrument in a debt-for-debt exchange, the repurchase price is the issue price of the newly issued debt instrument (reduced by any unstated interest within the meaning of section 483). However, if the issue price of the newly issued debt instrument is determined under either section 1273(b)(4) or section 1274, any repurchase premium is not deductible in the year of the repurchase, but is amortized over the term of the newly issued debt instrument in the same manner as if it were OID.

(d) *Choice of accrual periods to determine whether a debt instrument is an applicable high yield discount obligation (AHYDO).* Section 163(e)(5) affects an issuer's OID deductions for certain high yield debt instruments that have significant OID. For purposes of section 163(i)(2), which defines significant OID, the issuer's choice of accrual periods to determine OID accruals is used to determine whether a debt instrument has significant OID. See § 1.1275–2(e) for rules relating to the issuer's obligation to disclose certain information to holders.

(e) *Effective date.* This section applies to debt instruments issued on or after April 4, 1994. Taxpayers, however, may rely on this section for debt instruments issued after December 21, 1992, and before April 4, 1994.

§ 1.163–11T [Removed]

Par. 3. Section 1.163–11T is removed as of February 2, 1994.

Par. 4. Section 1.446–2 is added to read as follows:

§ 1.446–2 Method of accounting for interest.

(a) *Applicability*—(1) *In general.* This section provides rules for determining the amount of interest that accrues during an accrual period (other than interest described in paragraph (a)(2) of this section) and for determining the portion of a payment that consists of accrued interest. For purposes of this section, interest includes original issue discount and amounts treated as interest (whether stated or unstated) in any lending or deferred payment transaction. Accrued interest determined under this section is taken into account by a taxpayer under the taxpayer's regular method of accounting (e.g., an accrual method or the cash receipts and disbursements method). Application of an exception described in paragraph (a)(2) of this section to one party to a transaction does not affect the application of this section to any other party to the transaction.

(2) *Exceptions*—(i) *Interest included or deducted under certain other provisions.* This section does not apply to interest that is taken into account under—

(A) Sections 1272(a), 1275, and 163(e) (income and deductions relating to original issue discount);

(B) Section 467(a)(2) (certain payments for the use of property or services);

(C) Sections 1276 through 1278 (market discount);

(D) Sections 1281 through 1283 (discount on certain short-term obligations);

(E) Section 7872(a) (certain loans with below-market interest rates); or

(F) Section 1.1272–3 (an election by a holder to treat all interest on a debt instrument as original issue discount).

(ii) *De minimis original issue discount.* This section does not apply to de minimis original issue discount (other than de minimis original issue discount treated as qualified stated interest) as determined under § 1.1273–1(d). See § 1.163–7 for the treatment of de minimis original issue discount by the issuer and §§ 1.1273–1(d) and 1.1272–3 for the treatment of de minimis original issue discount by the holder.

(b) *Accrual of qualified stated interest.* Qualified stated interest (as defined in § 1.1273–1(c)) accrues ratably over the accrual period (or periods) to which it is attributable and accrues at the stated rate for the period (or periods).

(c) *Accrual of interest other than qualified stated interest.* Subject to the modifications in paragraph (d) of this section, the amount of interest (other than qualified stated interest) that accrues for any accrual period is determined under rules similar to those in the regulations under sections 1272 and 1275 for the accrual of original issue discount. The preceding sentence applies regardless of any contrary formula agreed to by the parties.

(d) *Modifications*—(1) *Issue price.* The issue price of the loan or contract is equal to—

(i) In the case of a contract for the sale or exchange of property to which section 483 applies, the amount described in § 1.483–2(a)(1)(i) or (ii), whichever is applicable;

(ii) In the case of a contract for the sale or exchange of property to which

section 483 does not apply, the stated principal amount; or

(iii) In any other case, the amount loaned.

(2) *Principal payments that are not deferred payments.* In the case of a contract to which section 483 applies, principal payments that are not deferred payments are ignored for purposes of determining yield and adjusted issue price.

(e) *Allocation of interest to payments*—(1) *In general.* Except as provided in paragraphs (e)(2), (e)(3), and (e)(4) of this section, each payment under a loan (other than payments of additional interest or similar charges provided with respect to amounts that are not paid when due) is treated as a payment of interest to the extent of the accrued and unpaid interest determined under paragraphs (b) and (c) of this section as of the date the payment becomes due.

(2) *Special rule for points deductible under section 461(g)(2).* If a payment of points is deductible by the borrower under section 461(g)(2), the payment is treated by the borrower as a payment of interest.

(3) *Allocation respected in certain small transactions.* [Reserved]

(4) *Pro rata prepayments.* Accrued but unpaid interest is allocated to a pro rata prepayment under rules similar to those for allocating accrued but unpaid original issue discount to a pro rata prepayment under § 1.1275–2(f). For purposes of the preceding sentence, a pro rata prepayment is a payment that is made prior to maturity that—

(i) Is not made pursuant to the contract's payment schedule; and

(ii) Results in a substantially pro rata reduction of each payment remaining to be paid on the contract.

(f) *Aggregation rule.* For purposes of this section, all contracts calling for deferred payments arising from the same transaction (or a series of related transactions) are treated as a single contract. This rule, however, generally only applies to contracts involving a single borrower and a single lender.

(g) *Debt instruments denominated in a currency other than the U.S. dollar.* This section applies to a debt instrument that provides for all payments denominated in, or determined by reference to, the functional currency of the taxpayer or qualified business unit of the taxpayer (even if that currency is other than the U.S. dollar). See § 1.988–2(b) to determine interest income or expense for debt instruments that provide for payments denominated in, or determined by reference to, a nonfunctional currency.

(h) *Example.* The following example illustrates the rules of this section.

Example. Allocation of unstated interest to deferred payments—(i) *Facts.* On July 1, 1996, A sells his personal residence to B for a stated purchase price of $1,297,143.66. The property is not personal use property (within the meaning of section 1275(b)(3)) in the hands of B. Under the loan agreement, B is required to make two installment payments of $648,571.83 each, the first due on June 30, 1998, and the second due on June 30, 2000. Both A and B use the cash receipts and disbursements method of accounting and use a calendar year for their taxable year.

(ii) *Amount of unstated interest.* Under section 483, the agreement does not provide for adequate stated interest. Thus, the loan's yield is the test rate of interest determined under § 1.483–3. Assume that both A and B use annual accrual periods and that the test rate of interest is 9.2 percent, compounded annually. Under § 1.483–2, the present value of the deferred payments is $1,000,000. Thus, the agreement has unstated interest of $297,143.66.

(iii) *First two accrual periods.* Under paragraph (d)(1) of this section, the issue price at the beginning of the first accrual period is $1,000,000 (the amount described in § 1.483–2(a)(1)(i)). Under paragraph (c) of this section, the amount of interest that accrues for the first accrual period is $92,000 ($1,000,000×.092) and the amount of interest that accrues for the second accrual period is $100,464 ($1,092,000×.092). Thus, $192,464 of interest has accrued as of the end of the second accrual period. Under paragraph (e)(1) of this section, the $648,571.83 payment made on June 30, 1998, is treated first as a payment of interest to the extent of $192,464. The remainder of the payment ($456,107.83) is treated as a payment of principal. Both A and B take the payment of interest ($192,464) into account in 1998.

(iv) *Second two accrual periods.* The adjusted issue price at the beginning of the third accrual period is $543,892.17 ($1,092,000+$100,464–$648,571.83). The amount of interest that accrues for the third accrual period is $50,038.08 ($543,892.17×.092) and the amount of interest that accrues for the final accrual period is $54,641.58, the excess of the amount payable at maturity ($648,571.83), over the adjusted issue price at the beginning of the accrual period ($593,930.25). As of the date the second payment becomes due, $104,679.66 of interest has accrued. Thus, of the $648,571.83 payment made on June 30, 2000, $104,679.66 is treated as interest and $543,892.17 is treated as principal. Both A and B take the payment of interest ($104,679.66) into account in 2000.

(i) [Reserved]

(j) *Effective date.* This section applies to debt instruments issued on or after April 4, 1994, and to lending transactions, sales, and exchanges that occur on or after April 4, 1994. Taxpayers, however, may rely on this section for debt instruments issued after December 21, 1992, and before April 4, 1994, and for lending transactions, sales, and exchanges that occur after December 21, 1992, and before April 4, 1994.

Par. 5. Sections 1.483–1 and 1.483–2 are revised to read as follows:

§ 1.483–1 Interest on certain deferred payments.

(a) *Amount constituting interest in certain deferred payment transactions*—(1) *In general.* Except as provided in paragraph (c) of this section, section 483 applies to a contract for the sale or exchange of property if the contract provides for one or more payments due more than 1 year after the date of the sale or exchange, and the contract does not provide for adequate stated interest. In general, a contract has adequate stated interest if the contract provides for a stated rate of interest that is at least equal to the test rate (determined under § 1.483–3) and the interest is paid or compounded at least annually. Section 483 may apply to a contract whether the contract is express (written or oral) or implied. For purposes of section 483, a sale or exchange is any transaction treated as a sale or exchange for tax purposes. In addition, for purposes of section 483, property includes debt instruments and investment units, but does not include money, services, or the right to use property. For the treatment of certain obligations given in exchange for services or the use of property, see sections 404 and 467. For purposes of this paragraph (a), money includes functional currency and, in certain circumstances, nonfunctional currency. See § 1.988–2(b)(2) for circumstances when nonfunctional currency is treated as money rather than as property.

(2) *Treatment of contracts to which section 483 applies*—(i) *Treatment of unstated interest.* If section 483 applies to a contract, unstated interest under the contract is treated as interest for tax purposes. Thus, for example, unstated interest is not treated as part of the amount realized from the sale or exchange of property (in the case of the seller), and is not included in the purchaser's basis in the property acquired in the sale or exchange.

(ii) *Method of accounting for interest on contracts subject to section 483.* Any stated or unstated interest on a contract subject to section 483 is taken into account by a taxpayer under the taxpayer's regular method of accounting (e.g., an accrual method or the cash receipts and disbursements method). See §§ 1.446–1, 1.451–1, and 1.461–1. For purposes of the preceding sentence, the amount of interest (including unstated interest) allocable to a payment under a contract to which section 483

applies is determined under § 1.446–2(e).

(b) *Definitions*—(1) *Deferred payments.* For purposes of the regulations under section 483, a deferred payment means any payment that constitutes all or a part of the sales price (as defined in paragraph (b)(2) of this section), and that is due more than 6 months after the date of the sale or exchange. Except as provided in section 483(c)(2) (relating to the treatment of a debt instrument of the purchaser), a payment may be made in the form of cash, stock or securities, or other property.

(2) *Sales price.* For purposes of section 483, the sales price for any sale or exchange is the sum of the amount due under the contract (other than stated interest) and the amount of any liability included in the amount realized from the sale or exchange. See § 1.1001–2. Thus, the sales price for any sale or exchange includes any amount of unstated interest under the contract.

(c) *Exceptions to and limitations on the application of section 483*—(1) *In general.* Sections 483(d), 1274(c)(4), and 1275(b) contain exceptions to and limitations on the application of section 483.

(2) *Sales price of $3,000 or less.* Section 483(d)(2) applies only if it can be determined at the time of the sale or exchange that the sales price cannot exceed $3,000, regardless of whether the sales price eventually paid for the property is less than $3,000.

(3) *Other exceptions and limitations*—(i) *Certain transfers subject to section 1041.* Section 483 does not apply to any transfer of property subject to section 1041 (relating to transfers of property between spouses or incident to divorce).

(ii) *Treatment of certain obligees.* Section 483 does not apply to an obligee under a contract for the sale or exchange of personal use property (within the meaning of section 1275(b)(3)) in the hands of the obligor and that evidences a below-market loan described in section 7872(c)(1).

(iii) *Transactions involving certain demand loans.* Section 483 does not apply to any payment under a contract that evidences a demand loan that is a below-market loan described in section 7872(c)(1).

(iv) *Transactions involving certain annuity contracts.* Section 483 does not apply to any payment under an annuity contract described in section 1275(a)(1)(B) (relating to annuity contracts excluded from the definition of debt instrument).

(v) *Options.* Section 483 does not apply to any payment under an option to buy or sell property.

(d) *Assumptions.* If a debt instrument is assumed, or property is taken subject to a debt instrument, in connection with a sale or exchange of property, the debt instrument is treated for purposes of section 483 in a manner consistent with the rules of § 1.1274–5.

(e) *Aggregation rule.* For purposes of section 483, all sales or exchanges that are part of the same transaction (or a series of related transactions) are treated as a single sale or exchange, and all contracts calling for deferred payments arising from the same transaction (or a series of related transactions) are treated as a single contract. This rule, however, generally only applies to contracts and to sales or exchanges involving a single buyer and a single seller.

(f) *Effective date.* This section applies to sales and exchanges that occur on or after April 4, 1994. Taxpayers, however, may rely on this section for sales and exchanges that occur after December 21, 1992, and before April 4, 1994.

§ 1.483–2 Unstated interest.

(a) *In general*—(1) *Adequate stated interest.* For purposes of section 483, a contract has unstated interest if the contract does not provide for adequate stated interest. A contract does not provide for adequate stated interest if the sum of the deferred payments exceeds—

(i) The sum of the present values of the deferred payments and the present values of any stated interest payments due under the contract; or

(ii) In the case of a cash method debt instrument (within the meaning of section 1274A(c)(2)) received in exchange for property in a potentially abusive situation (as defined in § 1.1274–3), the fair market value of the property reduced by the fair market value of any consideration other than the debt instrument, and reduced by the sum of all principal payments that are not deferred payments.

(2) *Amount of unstated interest.* For purposes of section 483, unstated interest means an amount equal to the excess of the sum of the deferred payments over the amount described in paragraph (a)(1)(i) or (a)(1)(ii) of this section, whichever is applicable.

(b) *Operational rules*—(1) *In general.* For purposes of paragraph (a) of this section, rules similar to those in § 1.1274–2 apply to determine whether a contract has adequate stated interest and the amount of unstated interest, if any, on the contract.

(2) *Present value.* For purposes of paragraph (a) of this section, the present value of any deferred payment or interest payment is determined by discounting the payment from the date it becomes due to the date of the sale or exchange at the test rate of interest applicable to the contract in accordance with § 1.483–3.

(c) *Examples.* The following examples illustrate the rules of this section.

Example 1. Contract that does not have adequate stated interest. On January 1, 1995, A sells B nonpublicly traded property under a contract that calls for a $100,000 payment of principal on January 1, 2005, and 10 annual interest payments of $9,000 on January 1 of each year, beginning on January 1, 1996. Assume that the test rate of interest is 9.2 percent, compounded annually. The contract does not provide for adequate stated interest because it does not provide for interest equal to 9.2 percent, compounded annually. The present value of the deferred payments is $98,727.69. As a result, the contract has unstated interest of $1,272.31 ($100,000 − $98,727.69).

Example 2. Contract that does not have adequate stated interest; no interest for initial short period. On May 1, 1996, A sells B nonpublicly traded property under a contract that calls for B to make a principal payment of $200,000 on December 31, 1998, and semiannual interest payments of $9,000, payable on June 30 and December 31 of each year, beginning on December 31, 1996. Assume that the test rate of interest is 9 percent, compounded semiannually. Even though the contract calls for a stated rate of interest no lower than the test rate of interest, the contract does not provide for adequate stated interest because the stated rate of interest does not apply for the short period from May 1, 1996, through June 30, 1996.

Example 3. Potentially abusive situation—(i) *Facts.* In a potentially abusive situation, a contract for the sale of nonpublicly traded personal property calls for the issuance of a cash method debt instrument (as defined in section 1274A(c)(2)) with a stated principal amount of $700,000, payable in 5 years. No other consideration is given. The debt instrument calls for annual payments of interest over its entire term at a rate of 9.2 percent, compounded annually (the test rate of interest applicable to the debt instrument). Thus, the present value of the deferred payment and the interest payments is $700,000. Assume that the fair market value of the property is $500,000.

(ii) *Amount of unstated interest.* A cash method debt instrument received in exchange for property in a potentially abusive situation provides for adequate stated interest only if the sum of the deferred payments under the instrument does not exceed the fair market value of the property. Because the deferred payment ($700,000) exceeds the fair market value of the property ($500,000), the debt instrument does not provide for adequate stated interest. Therefore, the debt instrument has unstated interest of $200,000.

Example 4. Variable rate debt instrument with adequate stated interest; variable rate as of the issue date greater than the test rate—(i) *Facts.* A contract for the sale of nonpublicly traded property calls for the issuance of a debt instrument in the principal amount of $75,000 due in 10 years. The debt

instrument calls for interest payable semiannually at a rate of 3 percentage points above the yield on 6-month Treasury bills at the mid-point of the semiannual period immediately preceding each interest payment date. Assume that the interest rate is a qualified floating rate and that the debt instrument is a variable rate debt instrument within the meaning of § 1.1275–5.

(ii) *Adequate stated interest.* Under paragraph (b)(1) of this section, rules similar to those in § 1.1274–2(f) apply to determine whether the debt instrument has adequate stated interest. Assume that the test rate of interest applicable to the debt instrument is 9 percent, compounded semiannually. Assume also that the yield on 6-month Treasury bills on the date of the sale is 8.89 percent, which is greater than the yield on 6-month Treasury bills on the first date on which there is a binding written contract that substantially sets forth the terms under which the sale is consummated. Under § 1.1274–2(f), the debt instrument is tested for adequate stated interest as if it provided for a stated rate of interest of 11.89 percent (3 percent plus 8.89 percent), compounded semiannually, payable over its entire term. Because the test rate of interest is 9 percent, compounded semiannually, and the debt instrument is treated as providing for stated interest of 11.89 percent, compounded semiannually, the debt instrument provides for adequate stated interest.

(d) *Effective date.* This section applies to sales and exchanges that occur on or after April 4, 1994. Taxpayers, however, may rely on this section for sales and exchanges that occur after December 21, 1992, and before April 4, 1994.

Par. 6. Section 1.483–3 is added to read as follows:

§ 1.483–3 Test rate of interest applicable to a contract.

(a) *General rule.* For purposes of section 483, the test rate of interest for a contract is the same as the test rate that would apply under § 1.1274–4 if the contract were a debt instrument. Paragraph (b) of this section, however, provides for a lower test rate in the case of certain sales or exchanges of land between related individuals.

(b) *Lower rate for certain sales or exchanges of land between related individuals*—(1) *Test rate.* In the case of a qualified sale or exchange of land between related individuals (described in section 483(e)), the test rate is not greater than 6 percent, compounded semiannually, or an equivalent rate based on an appropriate compounding period.

(2) *Special rules.* The following rules and definitions apply in determining whether a sale or exchange is a qualified sale under section 483(e):

(i) *Definition of family members.* The members of an individual's family are determined as of the date of the sale or exchange. The members of an individual's family include those individuals described in section 267(c)(4) and the spouses of those individuals. In addition, for purposes of section 267(c)(4), full effect is given to a legal adoption, ancestor means parents and grandparents, and lineal descendants means children and grandchildren.

(ii) *$500,000 limitation.* Section 483(e) does not apply to the extent that the stated principal amount of the debt instrument issued in the sale or exchange, when added to the aggregate stated principal amount of any other debt instruments to which section 483(e) applies that were issued in prior qualified sales between the same two individuals during the same calendar year, exceeds $500,000. See *Example 3* of paragraph (b)(3) of this section.

(iii) *Other limitations.* Section 483(e) does not apply if the parties to a contract include persons other than the related individuals and the parties enter into the contract with an intent to circumvent the purposes of section 483(e). In addition, if the property sold or exchanged includes any property other than land, section 483(e) applies only to the extent that the stated principal amount of the debt instrument issued in the sale or exchange is attributable to the land (based on the relative fair market values of the land and the other property).

(3) *Examples.* The following examples illustrate the rules of this paragraph (b).

Example 1. On January 1, 1995, A sells land to B, A's child, for $650,000. The contract for sale calls for B to make a $250,000 down payment and issue a debt instrument with a stated principal amount of $400,000. Because the stated principal amount of the debt instrument is less than $500,000, the sale is a qualified sale and section 483(e) applies to the debt instrument.

Example 2. The facts are the same as in *Example 1* of paragraph (b)(3) of this section, except that on June 1, 1995, A sells additional land to B under a contract that calls for B to issue a debt instrument with a stated principal amount of $100,000. The stated principal amount of this debt instrument ($100,000) when added to the stated principal amount of the prior debt instrument ($400,000) does not exceed $500,000. Thus, section 483(e) applies to both debt instruments.

Example 3. The facts are the same as in *Example 1* of paragraph (b)(3) of this section, except that on June 1, 1995, A sells additional land to B under a contract that calls for B to issue a debt instrument with a stated principal amount of $150,000. The stated principal amount of this debt instrument when added to the stated principal amount of the prior debt instrument ($400,000) exceeds $500,000. Thus, for purposes of section 483(e), the debt instrument issued in the sale of June 1, 1995, is treated as two separate debt instruments: a $100,000 debt instrument (to which section 483(e) applies) and a $50,000 debt instrument (to which section 1274, if otherwise applicable, applies).

(c) *Effective date.* This section applies to sales and exchanges that occur on or after April 4, 1994. Taxpayers, however, may rely on this section for sales and exchanges that occur after December 21, 1992, and before April 4, 1994.

Par. 7. In § 1.1001–1, paragraph (g) is revised to read as follows:

§ 1.1001–1 Computation of gain or loss.

* * * * *

(g) *Debt instruments issued in exchange for property.* If a debt instrument is issued in exchange for property, the amount realized attributable to the debt instrument is the issue price of the debt instrument as determined under § 1.1273–2 or § 1.1274–2(b), whichever is applicable. If, however, the issue price of the debt instrument is determined under section 1273(b)(4), the amount realized attributable to the debt instrument is its stated principal amount reduced by any unstated interest (as determined under section 483). This paragraph (g) applies to sales or exchanges that occur on or after April 4, 1994. Taxpayers, however, may rely on this paragraph (g) for sales and exchanges that occur after December 21, 1992, and before April 4, 1994.

Par. 8. In § 1.1012–1, paragraph (f) is amended by removing the last sentence and paragraph (g) is added to read as follows:

§ 1.1012–1 Basis of property.

* * * * *

(g) *Debt instruments issued in exchange for property.* For purposes of paragraph (a) of this section, if a debt instrument is issued in exchange for property, the cost of the property that is attributable to the debt instrument is the issue price of the debt instrument as determined under § 1.1273–2 or § 1.1274–2(b), whichever is applicable. If, however, the issue price of the debt instrument is determined under section 1273(b)(4), the cost of the property attributable to the debt instrument is its stated principal amount reduced by any unstated interest (as determined under section 483). This paragraph (g) applies to sales or exchanges that occur on or after April 4, 1994. Taxpayers, however, may rely on this paragraph (g) for sales and exchanges that occur after December 21, 1992, and before April 4, 1994.

PAR. 9. Sections 1.1271–0, 1.1271–1, 1.1272–1 through 1.1272–3, 1.1273–1, 1.1273–2, 1.1274–1 through 1.1274–3 are added to read as follows:

§ 1.1271–0 Original issue discount; effective date; table of contents.

(a) *Effective date.* Except as otherwise provided, §§ 1.1271–1 through 1.1275–5 apply to debt instruments issued on or after April 4, 1994. Taxpayers, however, may rely on these sections for debt instruments issued after December 21, 1992, and before April 4, 1994.

(b) *Table of contents.* This section lists captioned paragraphs contained in §§ 1.1271–1 through 1.1275–5.

§ 1.1271–1 Special rules applicable to amounts received on retirement, sale, or exchange of debt instruments.

(a) Intention to call before maturity.
(1) In general.
(2) Exceptions.
(b) Short-term obligations.
(1) In general.
(2) Method of making elections.
(3) Counting conventions.

§ 1.1272–1 Current inclusion of OID in income.

(a) Overview.
(1) In general.
(2) Debt instruments not subject to OID inclusion rules.
(b) Accrual of OID.
(1) Constant yield method.
(2) Exceptions.
(3) Modifications.
(4) Special rules for determining the OID allocable to an accrual period.
(c) Yield and maturity of certain debt instruments subject to contingencies.
(1) Applicability.
(2) General rule.
(3) Contingencies that are likely to occur.
(4) Consistency rule.
(5) Treatment of certain options.
(6) Subsequent adjustments.
(d) Certain debt instruments that provide for principal payments uncertain as to time.
(e) Convertible debt instruments.
(f) Special rules to determine whether a debt instrument is a short-term obligation.
(1) Counting of either the issue date or maturity date.
(2) Coordination with paragraph (c) of this section for certain sections of the Internal Revenue Code.
(g) Basis adjustment.
(h) Debt instruments denominated in a currency other than the U.S. dollar.
(i) [Reserved]
(j) Examples.

§ 1.1272–2 Treatment of debt instruments purchased at a premium.

(a) In general.
(b) Definitions and special rules.
(1) Purchase.
(2) Premium.
(3) Acquisition premium.
(4) Acquisition premium fraction.
(5) Election to accrue discount on a constant yield basis.
(6) Special rules for determining basis.
(c) Examples.

§ 1.1272–3 Election by a holder to treat all interest on a debt instrument as OID.

(a) Election.
(b) Scope of election.
(1) In general.
(2) Exceptions, limitations, and special rules.
(c) Mechanics of the constant yield method.
(1) In general.
(2) Special rules to determine adjusted basis.
(d) Time and manner of making the election.
(e) Revocation of election.
(f) Effective date.

§ 1.1273–1 Definition of OID.

(a) In general.
(b) Stated redemption price at maturity.
(c) Qualified stated interest.
(1) Definition.
(2) Debt instruments subject to contingencies.
(3) Variable rate debt instrument.
(4) Stated interest in excess of qualified stated interest.
(5) Short-term obligations.
(d) De minimis OID.
(1) In general.
(2) De minimis amount.
(3) Installment obligations.
(4) Special rule for interest holidays, teaser rates, and other interest shortfalls.
(5) Treatment of de minimis OID by holders.
(e) Definitions.
(1) Installment obligation.
(2) Self-amortizing installment obligation.
(3) Weighted average maturity.
(f) Examples.

§ 1.1273–2 Determination of issue price and issue date.

(a) Debt instruments issued for money.
(1) Issue price.
(2) Issue date.
(b) Publicly traded debt instruments issued for property.
(1) Issue price.
(2) Issue date.
(c) Debt instruments issued for publicly traded property.
(1) Issue price.
(2) Issue date.
(d) Other debt instruments.
(1) Issue price.
(2) Issue date.
(e) Special rule for certain sales to bond houses, brokers, or similar persons.
(f) Traded on an established market (publicly traded).
(1) In general.
(2) Exchange listed property.
(3) Market traded property.
(4) Property appearing on a quotation medium.
(5) Readily quotable debt instruments.
(6) Effect of certain temporary restrictions on trading.
(7) Convertible debt instruments.
(g) Treatment of certain cash payments incident to lending transactions.
(1) Applicability.
(2) Payments from borrower to lender.
(3) Payments from lender to borrower.
(4) Payments between lender and third party.
(5) Examples.
(h) Investment units.
(1) In general.
(2) Consistent allocation by holders and issuer.
(i) [Reserved]
(j) Convertible debt instruments.
(k) Below-market loans subject to section 7872(b).
(l) [Reserved]
(m) Treatment of amounts representing pre-issuance accrued interest.
(1) Applicability.
(2) Exclusion of pre-issuance accrued interest from issue price.
(3) Example.

§ 1.1274–1 Debt instruments to which section 1274 applies.

(a) In general.
(b) Exceptions.
(1) Debt instrument with adequate stated interest and no OID .
(2) Exceptions under sections 1274(c)(1)(B), 1274(c)(3), 1274A(c), and 1275(b)(1).
(3) Other exceptions to section 1274.
(c) Examples.

§ 1.1274–2 Issue price of debt instruments to which section 1274 applies.

(a) In general.
(b) Issue price.
(1) Debt instruments that provide for adequate stated interest; stated principal amount.
(2) Debt instruments that do not provide for adequate stated interest; imputed principal amount.
(3) Debt instruments issued in a potentially abusive situation; fair market value.
(c) Determination of whether a debt instrument provides for adequate stated interest.
(1) In general.
(2) Determination of present value.
(d) Treatment of certain options.
(e) Mandatory sinking funds.
(f) Treatment of variable rate debt instruments.
(1) Stated interest at a qualified floating rate.
(2) Stated interest at a single objective rate.
(g) Contingent payments. [Reserved]
(h) Examples.

§ 1.1274–3 Potentially abusive situations defined.

(a) In general.
(b) Operating rules.
(1) Debt instrument exchanged for nonrecourse financing.
(2) Nonrecourse debt with substantial down payment.
(3) Clearly excessive interest.
(c) Other situations to be specified by Commissioner.
(d) Consistency rule.

§ 1.1274–4 Test rate.

(a) Determination of test rate of interest.
(1) In general.

(2) Test rate for certain debt instruments.
(b) Applicable Federal rate.
(c) Special rules to determine the term of a debt instrument for purposes of determining the applicable Federal rate.
(1) Installment obligations.
(2) Certain variable rate debt instruments.
(3) Counting of either the issue date or the maturity date.
(4) Certain debt instruments that provide for principal payments uncertain as to time.
(d) Foreign currency loans.
(e) Examples.

§ 1.1274–5 Assumptions.

(a) In general.
(b) Modifications of debt instruments.
(1) In general.
(2) Election to treat buyer as modifying the debt instrument.
(c) Wraparound indebtedness.
(d) Consideration attributable to assumed debt.

§ 1.1274A–1 Special rules for certain transactions where stated principal amount does not exceed $2,800,000.

(a) In general.
(b) Rules for both qualified and cash method debt instruments.
(1) Sale-leaseback transactions.
(2) Debt instruments calling for contingent payments.
(3) Aggregation of transactions.
(4) Inflation adjustment of dollar amounts.
(c) Rules for cash method debt instruments.
(1) Time and manner of making cash method election.
(2) Successors of electing parties.
(3) Modified debt instrument.
(4) Debt incurred or continued to purchase or carry a cash method debt instrument.

§ 1.1275–1 Definitions.

(a) Applicability.
(b) Adjusted issue price.
(1) In general.
(2) Adjusted issue price for subsequent holders.
(c) OID.
(d) Debt instrument.
(e) Tax-exempt obligations.
(f) Issue.
(g) Debt instruments issued by a natural person.
(h) Publicly offered debt instrument.

§ 1.1275–2 Special rules relating to debt instruments.

(a) Payment ordering rule.
(1) In general.
(2) Exceptions.
(b) Debt instruments distributed by corporations with respect to stock.
(1) Treatment of distribution.
(2) Issue date.
(c) Aggregation of debt instruments.
(1) General rule.
(2) Exception if separate issue price established.
(3) Special rule for debt instruments that provide for the issuance of additional debt instruments.
(4) Examples.
(d) Special rules for Treasury securities.
(1) Issue price and issue date.
(2) Reopenings of Treasury securities.
(e) Disclosure of certain information to holders.
(f) Treatment of pro rata prepayments.
(1) Treatment as retirement of separate debt instrument.
(2) Definition of pro rata prepayment.
(g) Anti-abuse rule. [Reserved]

§ 1.1275–2T Special rules relating to debt instruments (temporary).

(a) through (f). [Reserved]
(g) Anti-abuse rule.
(1) In general.
(2) Effective date.

§ 1.1275–3 OID information reporting requirements.

(a) In general.
(b) Information required to be set forth on face of debt instruments that are not publicly offered.
(1) In general.
(2) Time for legending.
(3) Legend must survive reissuance upon transfer.
(4) Exceptions.
(c) Information required to be reported to Secretary upon issuance of publicly offered debt instruments.
(1) In general.
(2) Time for filing information return.
(3) Exceptions.
(d) Application to foreign issuers and U.S. issuers of foreigntargeted debt instruments.
(e) Penalties.
(f) Effective date.

§ 1.1275–5 Variable rate debt instruments.

(a) Applicability.
(1) In general.
(2) Principal payments.
(3) Stated interest.
(4) Current value.
(b) Qualified floating rate.
(1) In general.
(2) Certain rates based on a qualified floating rate.
(3) Restrictions on the stated rate of interest.
(c) Objective rate.
(1) In general.
(2) Other objective rates to be specified by Commissioner.
(3) Qualified inverse floating rate.
(4) Significant front-loading or back-loading of interest.
(5) Tax-exempt debt.
(d) Examples.
(e) Qualified stated interest and OID with respect to a variable rate debt instrument.
(1) In general.
(2) Variable rate debt instrument that provides for annual payments of interest at a single variable rate.
(3) All other variable rate debt instruments except for those that provide for a fixed rate.
(4) Variable rate debt instrument that provides for a single fixed rate.
(f) Special rule for certain reset bonds.

§ 1.1271–1 Special rules applicable to amounts received on retirement, sale, or exchange of debt instruments.

(a) *Intention to call before maturity*—(1) *In general.* For purposes of section 1271(a)(2), all or a portion of gain realized on a sale or exchange of a debt instrument to which section 1271 applies is treated as interest income if there was an intention to call the debt instrument before maturity. An intention to call a debt instrument before maturity means a written or oral agreement or understanding not provided for in the debt instrument between the issuer and the original holder of the debt instrument that the issuer will redeem the debt instrument before maturity. In the case of debt instruments that are part of an issue, the agreement or understanding must be between the issuer and the original holders of a substantial amount of the debt instruments in the issue. An intention to call before maturity can exist even if the intention is conditional (e.g., the issuer's decision to call depends on the financial condition of the issuer on the potential call date) or is not legally binding. For purposes of this section, original holder means the first holder (other than an underwriter or dealer that purchased the debt instrument for resale in the ordinary course of its trade or business).

(2) *Exceptions.* In addition to the exceptions provided in sections 1271(a)(2)(B) and 1271(b), section 1271(a)(2) does not apply to—

(i) A debt instrument that is publicly offered (as defined in § 1.1275–1(h));

(ii) A debt instrument to which section 1272(a)(6) applies (relating to certain interests in or mortgages held by a REMIC, and certain other debt instruments with payments subject to acceleration); or

(iii) A debt instrument sold pursuant to a private placement memorandum that is distributed to more than ten offerees and that is subject to the sanctions of section 12(2) of the Securities Act of 1933 (15 U.S.C. 77l) or the prohibitions of section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78j).

(b) *Short-term obligations*—(1) *In general.* Under sections 1271(a)(3) and (a)(4), all or a portion of the gain realized on the sale or exchange of a short-term government or nongovernment obligation is treated as interest income. Sections 1271(a)(3) and (a)(4), however, do not apply to any short-term obligation subject to section 1281. See § 1.1272–1(f) for rules to determine if an obligation is a short-term obligation.

(2) *Method of making elections.* Elections to accrue on a constant yield basis under sections 1271(a)(3)(E) and (a)(4)(D) are made on an obligation-by-obligation basis by reporting the transaction on the basis of daily compounding on the taxpayer's timely filed Federal income tax return for the year of the sale or exchange. These elections are irrevocable.

(3) *Counting conventions.* In computing the ratable share of acquisition discount under section 1271(a)(3) or OID under section 1271(a)(4), any reasonable counting convention may be used (e.g., 30 days per month/360 days per year).

§ 1.1272–1 Current inclusion of OID in income.

(a) *Overview*—(1) *In general.* Under section 1272(a)(1), a holder of a debt instrument includes accrued OID in gross income (as interest), regardless of the holder's regular method of accounting. A holder includes qualified stated interest (as defined in § 1.1273–1(c)) in income under the holder's regular method of accounting. See §§ 1.446–2 and 1.451–1.

(2) *Debt instruments not subject to OID inclusion rules.* Sections 1272(a)(2) and 1272(c) list exceptions to the general inclusion rule of section 1272(a)(1). For purposes of section 1272(a)(2)(E) (relating to certain loans between natural persons), a loan does not include a stripped bond or stripped coupon within the meaning of section 1286(e), and the rule in section 1272(a)(2)(E)(iii), which treats a husband and wife as 1 person, does not apply to loans made between a husband and wife.

(b) *Accrual of OID*—(1) *Constant yield method.* Except as provided in paragraphs (b)(2) and (b)(3) of this section, the amount of OID includible in the income of a holder of a debt instrument for any taxable year is determined using the constant yield method as described under this paragraph (b)(1).

(i) *Step one: Determine the debt instrument's yield to maturity.* The yield to maturity or yield of a debt instrument is the discount rate that, when used in computing the present value of all principal and interest payments to be made under the debt instrument, produces an amount equal to the issue price of the debt instrument. The yield must be constant over the term of the debt instrument and, when expressed as a percentage, must be calculated to at least two decimal places. See paragraph (c) of this section for rules relating to the yield of certain debt instruments subject to contingencies.

(ii) *Step two: Determine the accrual periods.* An accrual period is an interval of time over which the accrual of OID is measured. Accrual periods may be of any length and may vary in length over the term of the debt instrument, provided that each accrual period is no longer than 1 year and each scheduled payment of principal or interest occurs either on the final day of an accrual period or on the first day of an accrual period. In general, the computation of OID is simplest if accrual periods correspond to the intervals between payment dates provided by the terms of the debt instrument. In computing the length of accrual periods, any reasonable counting convention may be used (e.g., 30 days per month/360 days per year).

(iii) *Step three: Determine the OID allocable to each accrual period.* Except as provided in paragraph (b)(4) of this section, the OID allocable to an accrual period equals the product of the adjusted issue price of the debt instrument (as defined in § 1.1275–1(b)) at the beginning of the accrual period and the yield of the debt instrument, less the amount of any qualified stated interest allocable to the accrual period. In performing this calculation, the yield must be stated appropriately taking into account the length of the particular accrual period. *Example 1* in paragraph (j) of this section provides a formula for converting a yield based upon an accrual period of one length to an equivalent yield based upon an accrual period of a different length.

(iv) *Step four: Determine the daily portions of OID.* The daily portions of OID are determined by allocating to each day in an accrual period the ratable portion of the OID allocable to the accrual period. The holder of the debt instrument includes in income the daily portions of OID for each day during the taxable year on which the holder held the debt instrument.

(2) *Exceptions.* Paragraph (b)(1) of this section does not apply to—

(i) A debt instrument to which section 1272(a)(6) applies (certain interests in or mortgages held by a REMIC, and certain other debt instruments with payments subject to acceleration);

(ii) A debt instrument that provides for contingent payments, except as provided in paragraph (c) of this section or in regulations under section 1275(d); or

(iii) A variable rate debt instrument to which § 1.1275–5 applies, except as provided in § 1.1275–5.

(3) *Modifications.* The amount of OID includible in income by a holder under paragraph (b)(1) of this section is adjusted if—

(i) The holder purchased the debt instrument at a premium or an acquisition premium (within the meaning of § 1.1272–2); or

(ii) The holder made an election for the debt instrument under § 1.1272–3 to treat all interest as OID.

(4) *Special rules for determining the OID allocable to an accrual period.* The following rules apply to determine the OID allocable to an accrual period under paragraph (b)(1)(iii) of this section.

(i) *Unpaid qualified stated interest allocable to an accrual period.* In determining the OID allocable to an accrual period, if an interval between payments of qualified stated interest contains more than 1 accrual period—

(A) The amount of qualified stated interest payable at the end of the interval (including any qualified stated interest that is payable on the first day of the accrual period immediately following the interval) is allocated on a pro rata basis to each accrual period in the interval; and

(B) The adjusted issue price at the beginning of each accrual period in the interval must be increased by the amount of any qualified stated interest that has accrued prior to the first day of the accrual period but that is not payable until the end of the interval. See *Example 2* of paragraph (j) of this section for an example illustrating the rules in this paragraph (b)(4)(i).

(ii) *Final accrual period.* The OID allocable to the final accrual period is the difference between the amount payable at maturity (other than a payment of qualified stated interest) and the adjusted issue price at the beginning of the final accrual period.

(iii) *Initial short accrual period.* If all accrual periods are of equal length, except for either an initial shorter accrual period or an initial and a final shorter accrual period, the amount of OID allocable to the initial accrual period may be computed using any reasonable method. See *Example 3* in paragraph (j) of this section.

(iv) *Payment on first day of an accrual period.* The adjusted issue price at the beginning of an accrual period is reduced by the amount of any payment (other than a payment of qualified stated interest) that is made on the first day of the accrual period.

(c) *Yield and maturity of certain debt instruments subject to contingencies*—(1) *Applicability.* This paragraph (c) provides rules to determine the yield and maturity of a debt instrument that provides for an alternative payment schedule (or schedules) applicable upon the occurrence of a contingency (or contingencies). This paragraph (c) applies, however, only if the timing and

amounts of the payments that comprise each payment schedule are known as of the issue date. A debt instrument does not provide for an alternative payment schedule merely because there is a possibility of impairment of a payment (or payments) by insolvency, default, or similar circumstances. See regulations under section 1275(d) for the treatment of debt instruments with payments that are otherwise contingent as to timing or amount. See § 1.1273–1(c) to determine whether stated interest on a debt instrument subject to this paragraph (c) is qualified stated interest.

(2) *General rule.* In general, the yield and maturity of a debt instrument subject to this paragraph (c) are determined by assuming that the payments will be made according to the instrument's stated payment schedule.

(3) *Contingencies that are likely to occur*—(i) *Contingency taken into account.* Notwithstanding the rule in paragraph (c)(2) of this section, if, based on all the facts and circumstances as of the issue date, it is more likely than not that the debt instrument's stated payment schedule will not occur, then the yield and maturity of the debt instrument are computed based on the payment schedule most likely to occur.

(ii) *Mandatory sinking fund provision.* Paragraph (c)(3)(i) of this section does not apply to a mandatory sinking fund provision if the use and terms of the provision meet reasonable commercial standards. For purposes of the preceding sentence, a mandatory sinking fund provision is a provision that requires the issuer to redeem a certain amount of debt instruments in an issue prior to maturity, provided that the debt instruments actually redeemed are chosen by lot or purchased by the issuer either in the open market or pursuant to an offer made to all holders (with any proration determined by lot), and provided that on the issue date the specific debt instruments that will be redeemed on any date prior to maturity cannot be identified.

(4) *Consistency rule.* The payment schedule determined by the issuer under paragraphs (c)(2) and (c)(3) of this section is binding on all holders of the debt instrument. However, the issuer's determination is not binding on a holder that explicitly discloses that its determination of the yield and maturity of the debt instrument is different from the issuer's determination. Unless otherwise prescribed by the Commissioner, the disclosure must be made on a statement attached to the holder's timely filed Federal income tax return for the taxable year that includes the acquisition date of the debt instrument. See § 1.1275–2(e) for rules relating to the issuer's obligation to disclose certain information to holders.

(5) *Treatment of certain options.* Notwithstanding paragraphs (c)(2) and (c)(3) of this section, the rules of this paragraph (c)(5) determine the yield and maturity of a debt instrument that provides the holder or issuer with an unconditional option or options, exercisable on one or more dates during the term of the debt instrument, that, if exercised, require payments to be made on the debt instrument under an alternative payment schedule or schedules (e.g., an option to extend or an option to call a debt instrument at a fixed premium). Under this paragraph (c)(5), an issuer will be deemed to exercise or not exercise an option or combination of options in a manner that minimizes the yield on the debt instrument, and a holder will be deemed to exercise or not exercise an option or combination of options in a manner that maximizes the yield on the debt instrument. If both the issuer and the holder have options, the rules of this paragraph (c)(5) are applied to the options in the order that they may be exercised. Thus, the deemed exercise of one option may eliminate other options that are later in time. See *Example 5* through *Example 8* in paragraph (j) of this section.

(6) *Subsequent adjustments.* If a contingency described in this paragraph (c) (including the exercise of an option described in paragraph (c)(5) of this section) actually occurs or does not occur, contrary to the assumption made pursuant to this paragraph (c) (a change in circumstances), then, solely for purposes of the accrual of OID, the yield and maturity of the debt instrument are redetermined by treating the debt instrument as reissued on the date of the change in circumstances for an amount equal to its adjusted issue price on that date. See *Example 5* and *Example 7* in paragraph (j) of this section. If, however, the change in circumstances results in a substantially contemporaneous pro rata prepayment as defined in § 1.1275–2(f)(2) (e.g., because a partial put or call option treated under paragraph (c)(5) of this section as not exercised is, in fact, exercised), the pro rata prepayment is treated as a payment in retirement of a portion of the debt instrument, which may result in gain or loss to the holder. See *Example 6* and *Example 8* in paragraph (j) of this section.

(d) *Certain debt instruments that provide for principal payments uncertain as to time.* The yield of a debt instrument with principal payments that are fixed in total amount but that are uncertain as to time (such as a demand loan) is the stated interest rate if the issue price of the instrument is equal to the stated principal amount and interest is paid or compounded at a fixed rate over the entire term of the debt instrument at intervals of 1 year or less.

(e) *Convertible debt instruments.* For purposes of section 1272, an option is ignored if it is an option to convert a debt instrument into the stock of the issuer, into the stock or debt of a related party (within the meaning of section 267(b) or 707(b)(1)), or into cash or other property in an amount equal to the approximate value of such stock or debt.

(f) *Special rules to determine whether a debt instrument is a short-term obligation*—(1) *Counting of either the issue date or maturity date.* For purposes of determining whether a debt instrument is a short-term obligation (i.e., a debt instrument with a fixed maturity date that is not more than 1 year from the date of issue), the term of the debt instrument includes either the issue date or the maturity date, but not both dates.

(2) *Coordination with paragraph (c) of this section for certain sections of the Internal Revenue Code.* Notwithstanding paragraph (c) of this section, solely for purposes of determining whether a debt instrument is a short-term obligation under sections 871(g)(1)(B)(i), 881, 1271(a)(3), 1271(a)(4), 1272(a)(2)(C), and 1283(a)(1), the maturity date of a debt instrument is the last possible date that the instrument could be outstanding under the terms of the instrument.

(g) *Basis adjustment.* The basis of a debt instrument in the hands of the holder is increased by the amount of OID included in the holder's gross income and decreased by the amount of any payment from the issuer to the holder under the debt instrument other than a payment of qualified stated interest. See, however, § 1.1275–2(f) for rules regarding basis adjustments on a pro rata prepayment.

(h) *Debt instruments denominated in a currency other than the U.S. dollar.* Section 1272 and this section apply to a debt instrument that provides for all payments denominated in, or determined by reference to, the functional currency of the taxpayer or qualified business unit of the taxpayer (even if that currency is other than the U.S. dollar). See § 1.988–2(b) to determine interest income or expense for debt instruments that provide for payments denominated in, or determined by reference to, a nonfunctional currency.

(i) [Reserved]

(j) *Examples.* The following examples illustrate the rules of this section. Each

example assumes that all taxpayers use the calendar year as the taxable year. In addition, each example assumes a 30-day month, 360-day year, and that the initial accrual period begins on the issue date and the final accrual period ends on the day before the stated maturity date. Although, for purposes of simplicity, the yield as stated is rounded to two decimal places, the computations do not reflect any such rounding convention.

Example 1. Accrual of OID on zero coupon debt instrument; choice of accrual periods—(i) *Facts.* On July 1, 1994, A purchases at original issue, for $675,564.17, a debt instrument that matures on July 1, 1999, and provides for a single payment of $1,000,000 at maturity.

(ii) *Determination of yield.* Under paragraph (b)(1)(i) of this section, the yield of the debt instrument is 8 percent, compounded semiannually.

(iii) *Determination of accrual period.* Under paragraph (b)(1)(ii) of this section, accrual periods may be of any length, provided that each accrual period is no longer than 1 year and each scheduled payment of principal or interest occurs either on the first or final day of an accrual period. The yield to maturity to be used in computing OID accruals in any accrual period, however, must reflect the length of the accrual period chosen. A yield based on compounding b times per year is equivalent to a yield based on compounding c times per year as indicated by the following formula: $r=c\{(1+i/b)^{b/c}-1\}$

In which:

i=The yield based on compounding b times per year expressed as a decimal
r=The equivalent yield based on compounding c times per year expressed as a decimal
b=The number of compounding periods in a year on which i is based (for example, 12, if i is based on monthly compounding)
c=The number of compounding periods in a year on which r is based

(iv) *Determination of OID allocable to each accrual period.* Assume that A decides to compute OID on the debt instrument using semiannual accrual periods. Under paragraph (b)(1)(iii) of this section, the OID allocable to the first semiannual accrual period is $27,022.56: the product of the issue price ($675,564.17) and the yield properly adjusted for the length of the accrual period (8 percent/2), less qualified stated interest allocable to the accrual period ($0). The daily portion of OID for the first semiannual accrual period is $150.13 ($27,022.56/180).

(v) *Determination of OID if monthly accrual periods are used.* Alternatively, assume that A decides to compute OID on the debt instrument using monthly accrual periods. Using the above formula, the yield on the debt instrument reflecting monthly compounding is 7.87 percent, compounded monthly $(12\{(1+.08/2)^{2/12}-1\})$. Under paragraph (b)(1)(iii) of this section, the OID allocable to the first monthly accrual period is $4,430.48: the product of the issue price ($675,564.17) and the yield properly adjusted for the length of the accrual period (7.87 percent/12), less qualified stated interest allocable to the accrual period ($0). The daily portion of OID for the first monthly accrual period is $147.68 ($4,430.48/30).

Example 2. Accrual of OID on debt instrument with qualified stated interest—(i) *Facts.* On September 1, 1994, A purchases at original issue, for $90,000, B corporation's debt instrument that matures on September 1, 2004, and has a stated principal amount of $100,000, payable on that date. The debt instrument provides for semiannual payments of interest of $3,000, payable on September 1 and March 1 of each year, beginning on March 1, 1995.

(ii) *Determination of yield.* The debt instrument is a 10-year debt instrument with an issue price of $90,000 and a stated redemption price at maturity of $100,000. The semiannual payments of $3,000 are qualified stated interest payments. Under paragraph (b)(1)(i) of this section, the yield is 7.44 percent, compounded semiannually.

(iii) *Accrual of OID if semiannual accrual periods are used.* Assume that A decides to compute OID on the debt instrument using semiannual accrual periods. Under paragraph (b)(1)(iii) of this section, the OID allocable to the first semiannual accrual period equals the product of the issue price ($90,000) and the yield properly adjusted for the length of the accrual period (7.44 percent/2), less qualified stated interest allocable to the accrual period ($3,000). Therefore, the amount of OID for the first semiannual accrual period is $345.78 ($3,345.78–$3,000).

(iv) *Adjustment for accrued but unpaid qualified stated interest if monthly accrual periods are used.* Assume, alternatively, that A decides to compute OID on the debt instrument using monthly accrual periods. The yield, compounded monthly, is 7.32 percent. Under paragraph (b)(1)(iii) of this section, the OID allocable to the first monthly accrual period is the product of the issue price ($90,000) and the yield properly adjusted for the length of the accrual period (7.32 percent/12), less qualified stated interest allocable to the accrual period. Under paragraph (b)(4)(i)(A) of this section, the qualified stated interest allocable to the first monthly accrual period is the pro rata amount of qualified stated interest allocable to the interval between payment dates ($3,000×1/6, or $500). Therefore, the amount of OID for the first monthly accrual period is $49.18 ($549.18–$500). Under paragraph (b)(4)(i)(B) of this section, the adjusted issue price of the debt instrument for purposes of determining the amount of OID for the second monthly accrual period is $90,549.18 ($90,000 + $49.18 + $500). Although the adjusted issue price of the debt instrument for this purpose includes the amount of qualified stated interest allocable to the first monthly accrual period, A includes the qualified stated interest in income based on A's regular method of accounting (e.g., an accrual method or the cash receipts and disbursements method).

Example 3. Accrual of OID for debt instrument with initial short accrual period—(i) *Facts.* On May 1, 1994, G purchases at original issue, for $80,000, H corporation's debt instrument maturing on July 1, 2004. The debt instrument provides for a single payment at maturity of $250,000. G computes its OID using 6-month accrual periods ending on January 1 and July 1 of each year and an initial short 2-month accrual period from May 1, 1994, through June 30, 1994.

(ii) *Determination of yield.* The yield on the debt instrument is 11.53 percent, compounded semiannually.

(iii) *Determination of OID allocable to initial short accrual period.* Under paragraph (b)(4)(iii) of this section, G may use any reasonable method to compute OID for the initial short accrual period. One reasonable method is to calculate the amount of OID pursuant to the following formula:

$OID_{short}=IP\times(i/k)\times f$

In which:

OID_{short}=The amount of OID allocable to the initial short accrual period
IP=The issue price of the debt instrument
i=The yield to maturity expressed as a decimal
k=The number of accrual periods in a year
f=A fraction whose numerator is the number of days in the initial short accrual period, and whose denominator is the number of days in a full accrual period

(iv) *Amount of OID for the initial short accrual period.* Under this method, the amount of OID for the initial short accrual period is $1,537 ($80,000×(11.53 percent/2)×(60/180)).

(v) *Alternative method.* Another reasonable method is to calculate the amount of OID for the initial short accrual period using the yield based on bi-monthly compounding, computed pursuant to the formula set forth in *Example 1* of paragraph (j) of this section. Under this method, the amount of OID for the initial short accrual period is $1,508.38 ($80,000×(11.31 percent/6)).

Example 4. Impermissible accrual of OID using a method other than constant yield method—(i) *Facts.* On July 1, 1994, B purchases at original issue, for $100,000, C corporation's debt instrument that matures on July 1, 1999, and has a stated principal amount of $100,000. The debt instrument provides for a single payment at maturity of $148,024.43. The yield of the debt instrument is 8 percent, compounded semiannually.

(ii) *Determination of yield.* Assume that C uses 6 monthly accrual periods to compute its OID for 1994. The yield must reflect monthly compounding (as determined using the formula described in *Example 1* of paragraph (j) of this section). As a result, the monthly yield of the debt instrument is 7.87 percent, divided by 12. C may not compute its monthly yield for the last 6 months in 1994 by dividing 8 percent by 12.

Example 5. Debt instrument subject to put option—(i) *Facts.* On January 1, 1995, G purchases at original issue, for $70,000, H corporation's debt instrument maturing on January 1, 2010, with a stated principal amount of $100,000, payable at maturity. The debt instrument provides for semiannual payments of interest of $4,000, payable on January 1 and July 1 of each year, beginning on July 1, 1995. The debt instrument gives G an unconditional right to put the bond back to H, exercisable on January 1, 2005, in

return for $85,000 (exclusive of the $4,000 of stated interest payable on that date).

(ii) *Determination of yield and maturity.* Yield determined without regard to the put option is 12.47 percent, compounded semiannually. Yield determined by assuming that the put option is exercised (i.e., by using January 1, 2005, as the maturity date and $85,000 as the stated principal amount payable on that date) is 12.56 percent, compounded semiannually. Thus, under paragraph (c)(5) of this section, it is assumed that G will exercise the put option, because exercise of the option would increase the yield of the debt instrument. Thus, for purposes of calculating OID, the debt instrument is assumed to be a 10-year debt instrument with an issue price of $70,000, a stated redemption price at maturity of $85,000, and a yield of 12.56 percent, compounded semiannually.

(iii) *Consequences if put option is, in fact, not exercised.* If the put option is, in fact, not exercised, then, under paragraph (c)(6) of this section, the debt instrument is treated, solely for purposes of determining yield and maturity, as if it were reissued on January 1, 2005, for an amount equal to its adjusted issue price on that date, $85,000. The new debt instrument matures on January 1, 2010, with a stated principal amount of $100,000 payable on that date and provides for semiannual payments of interest of $4,000. The yield of the new debt instrument is 12.08 percent, compounded semiannually.

Example 6. *Debt instrument subject to partial call option*—(i) *Facts.* On January 1, 1995, H purchases at original issue, for $95,000, J corporation's debt instrument that matures on January 1, 2000, and has a stated principal amount of $100,000, payable on that date. The debt instrument provides for semiannual payments of interest of $4,000, payable on January 1 and July 1 of each year, beginning on July 1, 1995. On January 1, 1998, J has an unconditional right to call 50 percent of the principal amount of the debt instrument for $55,000 (exclusive of the $4,000 of stated interest payable on that date). If the call is exercised, the semiannual payments of interest made after the call date will be reduced to $2,000.

(ii) *Determination of yield and maturity.* Yield determined without regard to the call option is 9.27 percent, compounded semiannually. Yield determined by assuming J exercises its call option is 10.75 percent, compounded semiannually. Thus, under paragraph (c)(5) of this section, it is assumed that J will not exercise the call option because exercise of the option would increase the yield of the debt instrument. Thus, for purposes of calculating OID, the debt instrument is assumed to be a 5-year debt instrument with a single principal payment at maturity of $100,000, and a yield of 9.27 percent, compounded semiannually.

(iii) *Consequences if the call option is, in fact, exercised.* If the call option is, in fact, exercised, then under paragraph (c)(6) of this section, the debt instrument is treated as if the issuer made a pro rata prepayment of $55,000 that is subject to § 1.1275–2(f). Consequently, under § 1.1275–2(f)(1), the instrument is treated as consisting of two debt instruments, one that is retired on the call date and one that remains outstanding after the call date. The adjusted issue price, adjusted basis in the hands of the holder, and accrued OID of the original debt instrument is allocated between the two instruments based on the portion of the original instrument treated as retired. Since each payment remaining to be made after the call date is reduced by one-half, one-half of the adjusted issue price, adjusted basis, and accrued OID is allocated to the debt instrument that is treated as retired. The adjusted issue price of the original debt instrument immediately prior to the call date is $97,725.12, which equals the issue price of the original debt instrument ($95,000) increased by the OID previously includible in gross income ($2,725.12). One-half of this adjusted issue price is allocated to the debt instrument treated as retired, and the other half is allocated to the debt instrument that is treated as remaining outstanding. Thus, the debt instrument treated as remaining outstanding has an adjusted issue price immediately after the call date of $97,725.12/2, or $48,862.56. The yield of this debt instrument continues to be 9.27 percent, compounded semiannually. In addition, the portion of H's adjusted basis allocated to the debt instrument treated as retired is $97,725.12/2 or $48,862.56. Accordingly, under section 1271, H realizes a gain on the deemed retirement equal to $6,137.44 ($55,000 − $48,862.56).

Example 7. Debt instrument issued at par that provides for payment of interest in kind—(i) *Facts.* On January 1, 1995, A purchases at original issue, for $100,000, X corporation's debt instrument maturing on January 1, 2000, at a stated principal amount of $100,000, payable on that date. The debt instrument provides for annual payments of interest of $6,000 on January 1 of each year, beginning on January 1, 1996. The debt instrument gives X the unconditional right to issue, in lieu of the first interest payment, a second debt instrument (PIK instrument) maturing on January 1, 2000, with a stated principal amount of $6,000. The PIK instrument, if issued, would provide for annual payments of interest of $360 on January 1 of each year, beginning on January 1, 1997.

(ii) *Aggregation of PIK instrument with original debt instrument.* Under § 1.1275–2(c)(3), the issuance of the PIK instrument is not considered a payment made on the original debt instrument, and the PIK instrument is aggregated with the original debt instrument. The issue date of the PIK instrument is the same as the original debt instrument.

(iii) *Determination of yield and maturity.* The right to issue the PIK instrument is treated as an option to defer the initial interest payment until maturity. Yield determined without regard to the option is 6 percent, compounded annually. Yield determined by assuming X exercises the option is 6 percent, compounded annually. Thus, under paragraph (c)(5) of this section, it is assumed that X will not exercise the option by issuing the PIK instrument because exercise of the option would not decrease the yield of the debt instrument. For purposes of calculating OID, the debt instrument is assumed to be a 5-year debt instrument with a single principal payment at maturity of $100,000 and ten semiannual interest payments of $6,000, beginning on January 1, 1996. As a result, the debt instrument's yield is 6 percent, compounded annually.

(iv) *Determination of OID.* Under the payment schedule that would result if the option was exercised, none of the interest on the debt instrument would be qualified stated interest. Accordingly, under § 1.1273–1(c)(2), no payments on the debt instrument are qualified stated interest payments. Thus, $6,000 of OID accrues during the first annual accrual period. If the PIK instrument is not issued, $6,000 of OID accrues during each annual accrual period.

(v) *Consequences if the PIK instrument is issued.* Under paragraph (c)(6) of this section, if X issues the PIK instrument on January 1, 1996, the issuance of the PIK instrument is not a payment on the debt instrument. Solely for purposes of determining yield and maturity, the debt instrument is deemed reissued on January 1, 1996, for an issue price of $106,000. The recomputed yield is 6 percent, compounded annually. The OID for the first annual accrual period after the deemed reissuance is $6,360. The adjusted issue price of the debt instrument at the beginning of the next annual accrual period is $106,000 ($106,000 + $6,360 − $6,360). The OID for each of the four remaining annual accrual periods is $6,360.

Example 8. Debt instrument issued at a discount that provides for payment of interest in kind—(i) *Facts.* On January 1, 1995, T purchases at original issue, for $75,500, U corporation's debt instrument maturing on January 1, 2000, at a stated principal amount of $100,000, payable on that date. The debt instrument provides for annual payments of interest of $4,000 on January 1 of each year, beginning on January 1, 1996. The debt instrument gives U the unconditional right to issue, in lieu of the first interest payment, a second debt instrument (PIK instrument) maturing on January 1, 2000, with a stated principal amount of $4,000. The PIK instrument, if issued, would provide for annual payments of interest of $160 on January 1 of each year, beginning on January 1, 1997.

(ii) *Aggregation of PIK instrument with original debt instrument.* Under § 1.1275–2(c)(3), the issuance of the PIK instrument is not considered a payment made on the original debt instrument, and the PIK instrument is aggregated with the original debt instrument. The issue date of the PIK instrument is the same as the original debt instrument.

(iii) *Determination of yield and maturity.* The right to issue the PIK instrument is treated as an option to defer the initial interest payment until maturity. Yield determined without regard to the option is 10.55 percent, compounded annually. Yield determined by assuming U exercises the option is 10.32 percent, compounded annually. Thus, under paragraph (c)(5) of this section, it is assumed that U will exercise the option by issuing the PIK instrument because exercise of the option would decrease the yield of the debt instrument. For purposes of calculating OID, the debt instrument is

assumed to be a 5-year debt instrument with a single principal payment at maturity of $104,000 and four annual interest payments of $4,160, beginning on January 1, 1997. As a result, the yield is 10.32 percent, compounded annually.

(iv) *Consequences if the PIK instrument is not issued.* Assume that T chooses to compute OID accruals on the basis of an annual accrual period. On January 1, 1996, the adjusted issue price of the debt instrument, and T's adjusted basis in the instrument, is $83,295.15. Under paragraph (c)(6) of this section, if U actually makes the $4,000 interest payment on January 1, 1996, the debt instrument is treated as if U made a pro rata prepayment (within the meaning of § 1.1275–2(f)(2)) of $4,000, which reduces the amount of each payment remaining on the instrument by a factor of 4/104, or 1/26. Thus, under § 1.1275–2(f)(1) and section 1271, T realizes a gain of $796.34 ($4,000 − ($83,295.15/26)). The adjusted issue price of the debt instrument and T's adjusted basis immediately after the payment is $80,091.49 ($83,295.15 × 25/26) and the yield continues to be 10.32 percent, compounded annually.

Example 9. Debt instrument with stepped interest rate—(i) *Facts.* On July 1, 1994, G purchases at original issue, for $85,000, H corporation's debt instrument maturing on July 1, 2004. The debt instrument has a stated principal amount of $100,000, payable on the maturity date and provides for semiannual interest payments on January 1 and July 1 of each year, beginning on January 1, 1995. The amount of each payment is $2,000 for the first 5 years and $5,000 for the final 5 years.

(ii) *Determination of OID.* Assume that G computes its OID using 6-month accrual periods ending on January 1 and July 1 of each year. The yield of the debt instrument, determined under paragraph (b)(1)(i) of this section, is 8.65 percent, compounded semiannually. Interest is unconditionally payable at a fixed rate of at least 4 percent, compounded semiannually, for the entire term of the debt instrument. Consequently, under § 1.1273–1(c)(1), the semiannual payments are qualified stated interest payments to the extent of $2,000. The amount of OID for the first 6-month accrual period is $1,674.34 (the issue price of the debt instrument ($85,000) times the yield of the debt instrument for that accrual period (.0865/2) less the amount of any qualified stated interest allocable to that accrual period ($2,000)).

Example 10. Debt instrument payable on demand that provides for interest at a constant rate—(i) *Facts.* On January 1, 1995, V purchases at original issue, for $100,000, W corporation's debt instrument. The debt instrument calls for interest to accrue at a rate of 9 percent, compounded annually. The debt instrument is redeemable at any time at the option of V for an amount equal to $100,000, plus accrued interest. V uses annual accrual periods to accrue OID on the debt instrument.

(ii) *Amount of OID.* Pursuant to paragraph (d) of this section, the yield of the debt instrument is 9 percent, compounded annually. If the debt instrument is not redeemed during 1995, the amount of OID allocable to the year is $9,000.

§ 1.1272–2 Treatment of debt instruments purchased at a premium.

(a) *In general.* Under section 1272(c)(1), if a holder purchases a debt instrument at a premium, the holder does not include any OID in gross income. Under section 1272(a)(7), if a holder purchases a debt instrument at an acquisition premium, the holder reduces the amount of OID includible in gross income by the fraction determined under paragraph (b)(4) of this section.

(b) *Definitions and special rules*—(1) *Purchase.* For purposes of section 1272 and this section, purchase means any acquisition of a debt instrument, including the acquisition of a newly issued debt instrument in a debt-for-debt exchange or the acquisition of a debt instrument from a donor.

(2) *Premium.* A debt instrument is purchased at a premium if its adjusted basis, immediately after its purchase by the holder (including a purchase at original issue), exceeds the sum of all amounts payable on the instrument after the purchase date other than payments of qualified stated interest (as defined in § 1.1273–1(c)).

(3) *Acquisition premium.* A debt instrument is purchased at an acquisition premium if its adjusted basis, immediately after its purchase (including a purchase at original issue), is—

(i) Less than or equal to the sum of all amounts payable on the instrument after the purchase date other than payments of qualified stated interest (as defined in § 1.1273–1(c)); and

(ii) Greater than the instrument's adjusted issue price (as defined in § 1.1275–1(b)).

(4) *Acquisition premium fraction.* In applying section 1272(a)(7), the cost of a debt instrument is its adjusted basis immediately after its acquisition by the purchaser. Thus, the numerator of the fraction determined under section 1272(a)(7)(B) is the excess of the adjusted basis of the debt instrument immediately after its acquisition by the purchaser over the adjusted issue price of the debt instrument. The denominator of the fraction determined under section 1272(a)(7)(B) is the excess of the sum of all amounts payable on the debt instrument after the purchase date, other than payments of qualified stated interest, over the instrument's adjusted issue price.

(5) *Election to accrue discount on a constant yield basis.* Rather than applying the acquisition premium fraction, a holder of a debt instrument purchased at an acquisition premium may elect under § 1.1272–3 to compute OID accruals by treating the purchase as a purchase at original issuance and applying the mechanics of the constant yield method.

(6) *Special rules for determining basis*—(i) *Debt instruments acquired in exchange for other property.* For purposes of section 1272(a)(7), section 1272(c)(1), and this section, if a debt instrument is acquired in an exchange for other property (other than in a reorganization defined in section 368) and the basis of the debt instrument is determined, in whole or in part, by reference to the basis of the other property, the basis of the debt instrument may not exceed its fair market value immediately after the exchange. For example, if a debt instrument is distributed by a partnership to a partner in a liquidating distribution and the partner's basis in the debt instrument would otherwise be determined under section 732, the partner's basis in the debt instrument may not exceed its fair market value for purposes of this section.

(ii) *Acquisition by gift.* For purposes of this section, a donee's adjusted basis in a debt instrument is the donee's basis for determining gain under section 1015(a).

(c) *Examples.* The following examples illustrate the rules of this section.

Example 1. Debt instrument purchased at an acquisition premium—(i) *Facts.* On July 1, 1994, A purchased at original issue, for $500, a debt instrument issued by Corporation X. The debt instrument matures on July 1, 1999, and calls for a single payment at maturity of $1,000. Under section 1273(a), the debt instrument has a stated redemption price at maturity of $1,000 and, thus, OID of $500. On July 1, 1996, when the debt instrument's adjusted issue price is $659.75, A sells the debt instrument to B for $750 in cash.

(ii) *Acquisition premium fraction.* Because the cost to B of the debt instrument is less than the amount payable on the debt instrument after the purchase date, but is greater than the debt instrument's adjusted issue price, B has paid an acquisition premium for the debt instrument. Accordingly, the daily portion of OID for any day that B holds the debt instrument is reduced by a fraction, the numerator of which is $90.25 (the excess of the cost of the debt instrument over its adjusted issue price) and the denominator of which is $340.25 (the excess of the sum of all payments after the purchase date over its adjusted issue price).

Example 2. Debt-for-debt exchange where holder is considered to purchase new debt instrument at a premium—(i) *Facts.* On January 1, 1995, H purchases at original issue, for $1,000, a debt instrument issued by Corporation X. On July 1, 1997, when H's adjusted basis in the debt instrument is $1,000, Corporation X issues a new debt instrument with a stated redemption price at maturity of $750 to H in exchange for the old debt instrument. Assume that the issue price of the new debt instrument is $600. Thus, under section 1273(a), the debt instrument

has OID of $150. The exchange qualifies as a recapitalization under section 368(a)(1)(E), with the consequence that, under sections 354 and 358, H recognizes no loss on the exchange and has an adjusted basis in the new debt instrument of $1,000.

(ii) *Application of section 1272(c)(1).* Under paragraphs (b)(1) and (b)(2) of this section, H purchases the new debt instrument at a premium of $250. Accordingly, under section 1272(c)(1), H is not required to include OID in income with respect to the new debt instrument.

Example 3. Debt-for-debt exchange where holder is considered to purchase new debt instrument at an acquisition premium—(i) *Facts.* The facts are the same as in *Example 2* of paragraph (c) of this section, except that H purchases the old debt instrument from another holder on July 1, 1995, and on July 1, 1997, H's adjusted basis in the old debt instrument is $700. Under section 1273(a), the new debt instrument is issued with OID of $150.

(ii) *Application of section 1272(a)(7).* Under paragraphs (b)(1) and (b)(3) of this section, H purchases the new debt instrument at an acquisition premium of $100. Accordingly, the daily portion of OID that is includible in H's income is reduced by the fraction determined under section 1272(a)(7).

Example 4. Treatment of acquisition premium for debt instrument acquired by gift—(i) *Facts.* On July 1, 1994, D receives as a gift a debt instrument with a stated redemption price at maturity of $1,000 and an adjusted issue price of $800. On that date, the fair market value of the debt instrument is $900 and the donor's adjusted basis in the debt instrument is $950.

(ii) *Application of section 1272(a)(7).* Under paragraphs (b)(1), (b)(3), and (b)(6)(ii) of this section, D is considered to have purchased the debt instrument at an acquisition premium of $150. Accordingly, the daily portion of OID that is includible in D's income is reduced by the fraction determined under section 1272(a)(7).

§ 1.1272–3 Election by a holder to treat all interest on a debt instrument as OID.

(a) *Election.* A holder of a debt instrument may elect to include in gross income all interest that accrues on the instrument by using the constant yield method described in paragraph (c) of this section. For purposes of this election, interest includes stated interest, acquisition discount, OID, de minimis OID, market discount, de minimis market discount, and unstated interest, as adjusted by any amortizable bond premium or acquisition premium.

(b) *Scope of election*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, a holder may make the election for any debt instrument.

(2) *Exceptions, limitations, and special rules*—(i) *Debt instrument with amortizable bond premium (as determined under section 171).* (A) A holder may make the election for a debt instrument with amortizable bond premium only if the instrument qualifies as a bond under section 171(d).

(B) If a holder makes the election under this section for a debt instrument with amortizable bond premium, the holder is deemed to have made the election under section 171(c)(2) for the taxable year in which the instrument was acquired. If the holder has previously made the election under section 171(c)(2), the requirements of that election with respect to any debt instrument are satisfied by electing to amortize the bond premium under the rules provided by this section.

(ii) *Debt instrument with market discount.* (A) A holder may make the election under this section for a debt instrument with market discount only if the holder is eligible to make an election under section 1278(b).

(B) If a holder makes the election under this section for a debt instrument with market discount, the holder is deemed to have made both the election under section 1276(b)(2) for that instrument and the election under section 1278(b) for the taxable year in which the instrument was acquired. If the holder has previously made the election under section 1278(b), the requirements of that election with respect to any debt instrument are satisfied by electing to include the market discount in income in accordance with the rules provided by this section.

(iii) *Tax-exempt debt instrument.* A holder may not make the election for a tax-exempt obligation as defined in section 1275(a)(3).

(c) *Mechanics of the constant yield method*—(1) *In general.* For purposes of this section, the amount of interest that accrues during an accrual period is determined under rules similar to those under section 1272 (the constant yield method). In applying the constant yield method, however, a debt instrument subject to the election is treated as if—

(i) The instrument is issued for the holder's adjusted basis immediately after its acquisition by the holder;

(ii) The instrument is issued on the holder's acquisition date; and

(iii) None of the interest payments provided for in the instrument are qualified stated interest payments.

(2) *Special rules to determine adjusted basis.* For purposes of paragraph (c)(1)(i) of this section—

(i) If the debt instrument is acquired in an exchange for other property (other than in a reorganization defined in section 368) and the basis of the debt instrument is determined, in whole or in part, by reference to the basis of the other property, the adjusted basis of the debt instrument may not exceed its fair market value immediately after the exchange; and

(ii) If the debt instrument was acquired with amortizable bond premium (as determined under section 171), the adjusted basis of the debt instrument is reduced by an amount equal to the value attributable to any conversion feature.

(d) *Time and manner of making the election.* The election must be made for the taxable year in which the holder acquires the debt instrument. A holder makes the election by attaching to the holder's timely filed Federal income tax return a statement that the holder is making an election under this section and that identifies the debt instruments subject to the election. A holder may make the election for a class or group of debt instruments by attaching a statement describing the type or types of debt instruments being designated for the election.

(e) *Revocation of election.* The election may not be revoked unless approved by the Commissioner.

(f) *Effective date.* This section applies to debt instruments acquired on or after April 4, 1994.

§ 1.1273–1 Definition of OID.

(a) *In general.* Section 1273(a)(1) defines OID as the excess of a debt instrument's stated redemption price at maturity over its issue price. Section 1.1273–2 defines issue price, and paragraph (b) of this section defines stated redemption price at maturity. Paragraph (d) of this section provides rules for de minimis amounts of OID. Although the total amount of OID for a debt instrument may be indeterminate, § 1.1272–1(d) provides a rule to determine OID accruals on certain debt instruments that provide for principal payments uncertain as to time. See *Example 10* in § 1.1272–1(j).

(b) *Stated redemption price at maturity.* A debt instrument's stated redemption price at maturity is the sum of all payments provided by the debt instrument other than qualified stated interest payments. If the payment schedule of a debt instrument is determined under § 1.1272–1(c) (relating to certain debt instruments subject to contingencies), that payment schedule is used to determine the instrument's stated redemption price at maturity.

(c) *Qualified stated interest*—(1) *Definition*—(i) *In general.* Qualified stated interest is stated interest that is unconditionally payable in cash or in property (other than debt instruments of the issuer), or that will be constructively received under section 451, at least annually at a single fixed rate (within

the meaning of paragraph (c)(1)(iii) of this section).

(ii) *Unconditionally payable.* Interest is unconditionally payable only if late payment (other than a late payment that occurs within a reasonable grace period) or nonpayment is expected to be penalized or reasonable remedies exist to compel payment. Notwithstanding the preceding sentence, interest is not unconditionally payable if the lending transaction does not reflect arm's length dealing and the holder does not intend to enforce such remedies. For purposes of determining whether interest is unconditionally payable, the possibility of nonpayment due to default, insolvency, or similar circumstances, or due to the exercise of a conversion right described in § 1.1272–1(e) is ignored.

(iii) *Single fixed rate*—(A) *In general.* Interest is payable at a single fixed rate only if the rate appropriately takes into account the length of the interval between payments. Thus, if the interval between payments varies during the term of the debt instrument, the value of the fixed rate on which a payment is based generally must be adjusted to reflect a compounding assumption that is consistent with the length of the interval preceding the payment. See *Example 1* in paragraph (f) of this section.

(B) *Special rule for certain first and final payment intervals.* Notwithstanding paragraph (c)(1)(iii)(A) of this section, if a debt instrument provides for payment intervals that are equal in length throughout the term of the instrument, except that the first or final payment interval differs in length from the other payment intervals, the first or final interest payment is considered to be made at a fixed rate if the value of the rate on which the payment is based is adjusted in any reasonable manner to take into account the length of the interval. See *Example 2* of paragraph (f) of this section. The rule in this paragraph (c)(1)(iii)(B) also applies if the lengths of both the first and final payment intervals differ from the length of the other payment intervals.

(2) *Debt instruments subject to contingencies.* The determination of whether a debt instrument described in § 1.1272–1(c) (a debt instrument providing for an alternative payment schedule (or schedules) upon the occurrence of one or more contingencies) provides for qualified stated interest is made by analyzing each alternative payment schedule (including the stated payment schedule) as if it were the debt instrument's sole payment schedule. Under this analysis, the debt instrument provides for qualified stated interest to the extent of the lowest fixed rate at which qualified stated interest would be payable under any payment schedule. See *Example (4)* of paragraph (f) of this section.

(3) *Variable rate debt instrument.* In the case of a variable rate debt instrument, qualified stated interest is determined under § 1.1275–5(e).

(4) *Stated interest in excess of qualified stated interest.* To the extent that stated interest payable under a debt instrument exceeds qualified stated interest, the excess is included in the debt instrument's stated redemption price at maturity.

(5) *Short-term obligations.* In the case of a debt instrument with a term that is not more than 1 year from the date of issue, no payments of interest are treated as qualified stated interest payments.

(d) *De minimis OID*—(1) *In general.* If the amount of OID with respect to a debt instrument is less than the de minimis amount, the amount of OID is treated as zero, and all stated interest (including stated interest that would otherwise be characterized as OID) is treated as qualified stated interest.

(2) *De minimis amount.* The de minimis amount is an amount equal to 0.0025 multiplied by the product of the stated redemption price at maturity and the number of complete years to maturity from the issue date.

(3) *Installment obligations.* In the case of an installment obligation (as defined in paragraph (e)(1) of this section), paragraph (d)(2) of this section is applied by substituting for the number of complete years to maturity the weighted average maturity (as defined in paragraph (e)(3) of this section). Alternatively, in the case of a debt instrument that provides for payments of principal no more rapidly than a self-amortizing installment obligation (as defined in paragraph (e)(2) of this section), the de minimis amount defined in paragraph (d)(2) of this section may be calculated by substituting 0.00167 for 0.0025.

(4) *Special rule for interest holidays, teaser rates, and other interest shortfalls*—(i) *In general.* This paragraph (d)(4) provides a special rule to determine whether a debt instrument with a teaser rate (or rates), an interest holiday, or any other interest shortfall has de minimis OID. This rule applies if—

(A) The amount of OID on the debt instrument is more than the de minimis amount as otherwise determined under paragraph (d) of this section; and

(B) All stated interest provided for in the debt instrument would be qualified stated interest under paragraph (c) of this section except that for 1 or more accrual periods the interest rate is below the rate applicable for the remainder of the instrument's term (e.g., if as a result of an interest holiday, none of the stated interest is qualified stated interest).

(ii) *Redetermination of OID for purposes of the de minimis test.* For purposes of determining whether a debt instrument described in paragraph (d)(4)(i) of this section has de minimis OID, the instrument's stated redemption price at maturity is treated as equal to the instrument's issue price plus the greater of the amount of foregone interest or the excess (if any) of the instrument's stated principal amount over its issue price. The amount of foregone interest is the amount of additional stated interest that would be required to be payable on the debt instrument during the period of the teaser rate, holiday, or shortfall so that all stated interest would be qualified stated interest under paragraph (c) of this section. See *Example 5* and *Example 6* of paragraph (f) of this section. In addition, for purposes of computing the de minimis amount of OID, the weighted average maturity of the debt instrument is determined by treating all stated interest payments as qualified stated interest payments.

(5) *Treatment of de minimis OID by holders*—(i) *Allocation of de minimis OID to principal payments.* The holder of a debt instrument includes any de minimis OID (other than de minimis OID treated as qualified stated interest under paragraph (d)(1) of this section, such as de minimis OID attributable to a teaser rate or interest holiday) in income as stated principal payments are made. The amount includible in income with respect to each principal payment equals the product of the total amount of de minimis OID on the debt instrument and a fraction, the numerator of which is the amount of the principal payment made and the denominator of which is the stated principal amount of the instrument.

(ii) *Character of de minimis OID*—(A) *De minimis OID treated as gain recognized on retirement.* Any amount of de minimis OID includible in income under this paragraph (d)(5) is treated as gain recognized on retirement of the debt instrument. See section 1271 to determine whether a retirement is treated as an exchange of the debt instrument.

(B) *Treatment of de minimis OID on sale or exchange.* Any gain attributable to de minimis OID that is recognized on the sale or exchange of a debt instrument is capital gain if the debt instrument is a capital asset in the hands of the seller.

(iii) *Treatment of subsequent holders.* If a subsequent holder purchases a debt instrument issued with de minimis OID at a premium (as defined in § 1.1272–2(b)(2)), the subsequent holder does not include the de minimis OID in income. Otherwise, a subsequent holder includes any discount in income under the market discount rules (sections 1276 through 1278) rather than under the rules of this paragraph (d)(5).

(iv) *Cross-reference.* See § 1.1272–3 for an election by a holder to treat de minimis OID as OID.

(e) *Definitions*—(1) *Installment obligation.* An installment obligation is a debt instrument that provides for the payment of any amount other than qualified stated interest before maturity.

(2) *Self-amortizing installment obligation.* A self-amortizing installment obligation is an obligation that provides for equal payments composed of principal and qualified stated interest that are unconditionally payable at least annually during the entire term of the debt instrument with no significant additional payment required at maturity.

(3) *Weighted average maturity.* The weighted average maturity of a debt instrument is the sum of the following amounts determined for each payment under the instrument (other than a payment of qualified stated interest)—

(i) The number of complete years from the issue date until the payment is made; multiplied by

(ii) A fraction, the numerator of which is the amount of the payment and the denominator of which is the debt instrument's stated redemption price at maturity.

(f) *Examples.* The following examples illustrate the rules of this section.

Example 1. Qualified stated interest—(i) *Facts.* On January 1, 1995, A purchases at original issue, for $100,000, a debt instrument that matures on January 1, 1999, and has a stated principal amount of $100,000, payable at maturity. The debt instrument provides for interest payments of $8,000 on January 1, 1996, and January 1, 1997, and quarterly interest payments of $1,942.65, beginning on April 1, 1997.

(ii) *Amount of qualified stated interest.* The annual payments of $8,000 and the quarterly payments of $1,942.65 are payable at a single fixed rate because 8 percent, compounded annually, is equivalent to 7.77 percent, compounded quarterly. Consequently, all stated interest payments under the debt instrument are qualified stated interest payments.

Example 2. Qualified stated interest with short initial payment interval. On October 1, 1994, A purchases at original issue, for $100,000, a debt instrument that matures on January 1, 1998, and has a stated principal amount of $100,000, payable at maturity. The debt instrument provides for an interest payment of $2,000 on January 1, 1995, and interest payments of $8,000 on January 1, 1996, January 1, 1997, and January 1, 1998. Under paragraph (c)(1)(iii)(B) of this section, all stated interest payments on the debt instrument are computed at a single fixed rate and are qualified stated interest payments.

Example 3. Stated interest in excess of qualified stated interest—(i) *Facts.* On January 1, 1995, B purchases at original issue, for $100,000, C corporation's 5-year debt instrument. The debt instrument provides for a principal payment of $100,000, payable at maturity, and calls for annual interest payments of $10,000 for the first 3 years and annual interest payments of $10,600 for the last 2 years.

(ii) *Payments in excess of qualified stated interest.* All of the first three interest payments and $10,000 of each of the last two interest payments are qualified stated interest payments within the meaning of paragraph (c)(1) of this section. Under paragraph (c)(4) of this section, the remaining $600 of each of the last two interest payments is included in the stated redemption price at maturity, so that the stated redemption price at maturity is $101,200. Pursuant to paragraph (e)(3) of this section, the weighted average maturity of the debt instrument is 4.994 years [(4 years×$600/$101,200)+(5 years×$100,600/$101,200)]. The de minimis amount, or one-fourth of 1 percent of the stated redemption price at maturity multiplied by the weighted average maturity, is $1,263.50. Because the actual amount of discount, $1,200, is less than the de minimis amount, the instrument is treated as having no OID, and, under paragraph (d)(1) of this section, all of the interest payments are treated as qualified stated interest payments.

Example 4. Qualified stated interest on a debt instrument that is subject to a contingency—(i) *Facts.* On January 1, 1995, A issues, for $100,000, a 10-year debt instrument that provides for a $100,000 principal payment at maturity and for annual interest payments of $10,000. Under the terms of the debt instrument, however, the interest payments for each of the final five years will be reduced to $5,000 if a specified annual level of earnings is not attained by A by the end of year five.

(ii) *Amount of qualified stated interest.* If the payment schedule determined by assuming that the specified earnings level will be attained is treated as the debt instrument's sole payment schedule, the instrument would provide for annual qualified stated interest payments of $10,000. If the payment schedule determined by assuming that the specified earnings level will not be attained is treated as the instrument's sole payment schedule, however, only $5,000 of each annual interest payment would constitute qualified stated interest. Accordingly, under paragraph (c)(2) of this section, only $5,000 of each annual interest payment constitutes qualified stated interest. Any excess of each annual interest payment over $5,000 is included in the debt instrument's stated redemption price at maturity.

Example 5. De minimis OID; interest holiday—(i) *Facts.* On January 1, 1995, C purchases at original issue, for $97,561, a debt instrument that matures on January 1, 2007, and has a stated principal amount of $100,000, payable at maturity. The debt instrument provides for an initial interest holiday of 1 quarter and quarterly interest payments of $2,500 thereafter (beginning on July 1, 1995). The issue price of the debt instrument is $97,561. C chooses to accrue OID based on quarterly accrual periods.

(ii) *De minimis amount of OID.* But for the interest holiday, all stated interest on the debt instrument would be qualified stated interest. Under paragraph (d)(4) of this section, for purposes of determining whether the debt instrument has de minimis OID, the stated redemption price at maturity of the instrument is $100,061 ($97,561 (issue price) plus $2,500 (the greater of the amount of foregone interest ($2,500) and the amount equal to the excess of the instrument's stated principal amount over its issue price ($2,439)). Thus, the debt instrument is treated as having OID of $2,500 ($100,061 minus $97,561). Because this amount is less than the de minimis amount of $3,001.83 (0.0025 multiplied by $100,061 multiplied by 12 complete years to maturity), the debt instrument is treated as having no OID, and all stated interest is treated as qualified stated interest.

Example 6. De minimis OID; teaser rate—(i) *Facts.* The facts are the same as in *Example 5* of this paragraph (f) except that C uses an initial semiannual accrual period rather than an initial quarterly accrual period.

(ii) *De minimis amount of OID.* The debt instrument provides for an initial teaser rate because the interest rate for the semiannual accrual period is less than the interest rate applicable to the subsequent quarterly accrual periods. But for the initial teaser rate, all stated interest on the debt instrument would be qualified stated interest. Under paragraph (d)(4) of this section, for purposes of determining whether the debt instrument has de minimis OID, the stated redemption price at maturity of the instrument is $100,123.50 ($97,561 (issue price) plus $2,562.50 (the greater of the amount of foregone interest ($2,562.50) and the amount equal to the excess of the instrument's stated principal amount over its issue price ($2,439)). Thus, the debt instrument is treated as having OID of $2,562.50 ($100,123.50 minus $97,561). Because this amount is less than the de minimis amount of $3,003.71 (0.0025 multiplied by $100,123.50 multiplied by 12 complete years to maturity), the debt instrument is treated as having no OID, and all stated interest is treated as qualified stated interest.

§ 1.1273–2 Determination of issue price and issue date.

(a) *Debt instruments issued for money*—(1) *Issue price.* If a substantial amount of the debt instruments in an issue is issued for money, the issue price of each debt instrument in the issue is the first price at which a substantial amount of the debt instruments is sold for money. Thus, if an issue consists of a single debt

instrument that is issued for money, the issue price of the debt instrument is the amount paid for the instrument. For example, in the case of a debt instrument evidencing a loan to a natural person, the issue price of the instrument is the amount loaned. See § 1.1275–2(d) for rules regarding Treasury securities. For purposes of this paragraph (a), money includes functional currency and, in certain circumstances, nonfunctional currency. See § 1.988–2(b)(2) for circumstances when nonfunctional currency is treated as money rather than as property.

(2) *Issue date.* The issue date of an issue described in paragraph (a)(1) of this section is the first settlement date or closing date, whichever is applicable, on which a substantial amount of the debt instruments in the issue is sold for money.

(b) *Publicly traded debt instruments issued for property*—(1) *Issue price.* If a substantial amount of the debt instruments in an issue is traded on an established market (within the meaning of paragraph (f) of this section) and the issue is not described in paragraph (a)(1) of this section, the issue price of each debt instrument in the issue is the fair market value of the debt instrument, determined as of the issue date (as defined in paragraph (b)(2) of this section).

(2) *Issue date.* The issue date of an issue described in paragraph (b)(1) of this section is the first date on which a substantial amount of the traded debt instruments in the issue is issued.

(c) *Debt instruments issued for publicly traded property*—(1) *Issue price.* If a substantial amount of the debt instruments in an issue is issued for property that is traded on an established market (within the meaning of paragraph (f) of this section) and the issue is not described in paragraph (a)(1) or (b)(1) of this section, the issue price of each debt instrument in the issue is the fair market value of the property, determined as of the issue date (as defined in paragraph (c)(2) of this section). For purposes of the preceding sentence, property means a debt instrument, stock, security, contract, commodity, or nonfunctional currency. But see § 1.988–2(b)(2) for circumstances when nonfunctional currency is treated as money rather than as property.

(2) *Issue date.* The issue date of an issue described in paragraph (c)(1) of this section is the first date on which a substantial amount of the debt instruments in the issue is issued for traded property.

(d) *Other debt instruments*—(1) *Issue price.* If an issue of debt instruments is not described in paragraph (a)(1), (b)(1), or (c)(1) of this section, the issue price of each debt instrument in the issue is determined as if the debt instrument were a separate issue. If the issue price of a debt instrument that is treated as a separate issue under the preceding sentence is not determined under paragraph (a)(1), (b)(1), or (c)(1) of this section, and if section 1274 applies to the debt instrument, the issue price of the instrument is determined under section 1274. Otherwise, the issue price of the debt instrument is its stated redemption price at maturity under section 1273(b)(4). See section 1274(c) and § 1.1274–1 to determine if section 1274 applies to a debt instrument.

(2) *Issue date.* The issue date of an issue described in paragraph (d)(1) of this section is the date on which the debt instrument is issued for money or in a sale or exchange.

(e) *Special rule for certain sales to bond houses, brokers, or similar persons.* For purposes of determining the issue price and issue date of a debt instrument under this section, sales to bond houses, brokers, or similar persons or organizations acting in the capacity of underwriters, placement agents, or wholesalers are ignored.

(f) *Traded on an established market (publicly traded)*—(1) *In general.* Property (including a debt instrument described in paragraph (b)(1) of this section) is traded on an established market for purposes of this section if, at any time during the 60-day period ending 30 days after the issue date, the property is described in paragraph (f)(2), (f)(3), (f)(4), or (f)(5) of this section.

(2) *Exchange listed property.* Property is described in this paragraph (f)(2) if it is listed on—

(i) A national securities exchange registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f);

(ii) An interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3); or

(iii) The International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited, the Frankfurt Stock Exchange, the Tokyo Stock Exchange, or any other foreign exchange or board of trade that is designated by the Commissioner in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter).

(3) *Market traded property.* Property is described in this paragraph (f)(3) if it is property of a kind that is traded either on a board of trade designated as a contract market by the Commodities Futures Trading Commission or on an interbank market.

(4) *Property appearing on a quotation medium.* Property is described in this paragraph (f)(4) if it appears on a system of general circulation (including a computer listing disseminated to subscribing brokers, dealers, or traders) that provides a reasonable basis to determine fair market value by disseminating either recent price quotations (including rates, yields, or other pricing information) of one or more identified brokers, dealers, or traders or actual prices (including rates, yields, or other pricing information) of recent sales transactions (a quotation medium). A quotation medium does not include a directory or listing of brokers, dealers, or traders for specific securities, such as yellow sheets, that provides neither price quotations nor actual prices of recent sales transactions.

(5) *Readily quotable debt instruments*—(i) *In general.* A debt instrument is described in this paragraph (f)(5) if price quotations are readily available from dealers, brokers, or traders.

(ii) *Safe harbors.* A debt instrument is not considered to be described in paragraph (f)(5)(i) of this section if—

(A) No other outstanding debt instrument of the issuer (or of any person who guarantees the debt instrument) is described in paragraph (f)(2), (f)(3), or (f)(4) of this section (other traded debt);

(B) The original stated principal amount of the issue that includes the debt instrument does not exceed $25 million;

(C) The conditions and covenants relating to the issuer's performance with respect to the debt instrument are materially less restrictive than the conditions and covenants included in all of the issuer's other traded debt (e.g., the debt instrument is subject to an economically significant subordination provision whereas the issuer's other traded debt is senior); or

(D) The maturity date of the debt instrument is more than 3 years after the latest maturity date of the issuer's other traded debt.

(6) *Effect of certain temporary restrictions on trading.* If there is any temporary restriction on trading a purpose of which is to avoid the characterization of the property as one that is traded on an established market for Federal income tax purposes, then the property is treated as traded on an established market. For purposes of the preceding sentence, a temporary restriction on trading need not be imposed by the issuer.

(7) *Convertible debt instruments.* A debt instrument is not treated as traded on an established market solely because the debt instrument is convertible into property that is so traded.

(g) *Treatment of certain cash payments incident to lending transactions*—(1) *Applicability.* The provisions of this paragraph (g) apply to cash payments made incident to private lending transactions (including seller financing).

(2) *Payments from borrower to lender*—(i) *Money lending transaction.* In a lending transaction to which section 1273(b)(2) applies, a payment from the borrower to the lender (other than a payment for property or for services provided by the lender, such as commitment fees or loan processing costs) reduces the issue price of the debt instrument evidencing the loan. However, solely for purposes of determining the tax consequences to the borrower, the issue price is not reduced if the payment is deductible under section 461(g)(2).

(ii) *Section 1274 transaction.* In a lending transaction to which section 1274 applies, a payment from the buyer-borrower to the seller-lender that is designated as interest or points reduces the stated principal amount of the debt instrument evidencing the loan, but is included in the purchase price of the property. If the payment is deductible under section 461(g)(2), however, the issue price of the debt instrument (as otherwise determined under section 1274 and the rule in the preceding sentence) is increased by the amount of the payment to compute the buyer-borrower's interest deductions under section 163.

(3) *Payments from lender to borrower.* A payment from the lender to the borrower in a lending transaction is treated as an amount loaned.

(4) *Payments between lender and third party.* If, as part of a lending transaction, a party other than the borrower (the third party) makes a payment to the lender, that payment is treated in appropriate circumstances as made from the third party to the borrower followed by a payment in the same amount from the borrower to the lender and governed by the provisions of paragraph (g)(2) of this section. If, as part of a lending transaction, the lender makes a payment to a third party, that payment is treated in appropriate circumstances as an additional amount loaned to the borrower and then paid by the borrower to the third party. The character of the deemed payment between the borrower and the third party depends on the substance of the transaction.

(5) *Examples.* The following examples illustrate the rules of this paragraph (g).

Example 1. Payments from borrower to lender in a cash transaction—(i) *Facts.* A lends $100,000 to B for a term of 10 years. At the time the loan is made, B pays $4,000 in points to A. Assume that the points are not deductible by B under section 461(g)(2) and that the stated redemption price at maturity of the debt instrument is $100,000.

(ii) *Payment results in OID.* Under paragraph (g)(2)(i) of this section, the issue price of B's debt instrument evidencing the loan is $96,000. Because the amount of OID on the debt instrument ($4,000) is more than a de minimis amount of OID, A accounts for the OID under § 1.1272–1. B accounts for the OID under § 1.163–7.

Example 2. Payments from borrower to lender in a section 1274 transaction—(i) *Facts.* A sells property to B for $1,000,000 in a transaction that is not a potentially abusive situation (within the meaning of § 1.1274–3). In consideration for the property, B gives A $300,000 and issues a 5-year debt instrument that has a stated principal amount of $700,000, payable at maturity, and that calls for semiannual payments of interest at a rate of 8.5 percent. In addition to the cash downpayment, B pays A $14,000 designated as points on the loan. Assume that the points are not deductible under section 461(g)(2).

(ii) *Issue price.* Under paragraph (g)(2)(ii) of this section, the stated principal amount of B's debt instrument is −$686,000 ($700,000 minus $14,000). Assuming a test rate of 9 percent, compounded semiannually, the imputed principal amount of B's debt instrument under § 1.1274–2(c)(1) is $686,153. Under § 1.1274–2(b)(1), the issue price of B's debt instrument is the stated principal amount of $686,000. Because the amount of OID on the debt instrument ($700,000 − $686,000, or $14,000) is more than a de minimis amount of OID, A accounts for the OID under § 1.1272–1 and B accounts for the OID under § 1.163–7. B's basis in the property purchased is $1,000,000 ($686,000 debt instrument plus $314,000 cash payments).

Example 3. Payments between lender and third party (seller-paid points)—(i) *Facts.* A sells real property to B for $500,000 in a transaction that is not a potentially abusive situation (within the meaning of § 1.1274–3). B makes a cash down payment of $100,000 and borrows $400,000 of the purchase price from a lender, L, repayable in annual installments over a term of 15 years calling for interest at a rate of 9 percent, compounded annually. As part of the transaction, A makes a payment of $8,000 to L to facilitate the loan to B.

(ii) *Payment results in a de minimis amount of OID.* Under the provisions of paragraphs (g)(2)(i) and (g)(4) of this section, B is treated as having made an $8,000 payment directly to L and a payment of only $492,000 to A for the property. Thus, B's basis in the property is $492,000. The payment to L reduces the issue price of B's debt instrument to $392,000, resulting in $8,000 of OID ($400,000 − $392,000). Because the amount of OID is de minimis under § 1.1273–1(d), L accounts for the de minimis OID under § 1.1273–1(d)(5). But see § 1.1272–3 (election to treat de minimis OID as OID). B accounts for the de minimis OID under § 1.163–7.

(h) *Investment units*—(1) *In general.* Under section 1273(c)(2), an investment unit is treated as if the investment unit were a debt instrument. The issue price of the investment unit is determined under paragraph (a)(1), (b)(1), or (c)(1) of this section, if applicable. The issue price of the investment unit is then allocated between the debt instrument and the property right (or rights) that comprise the unit based on their relative fair market values. If paragraphs (a)(1), (b)(1), and (c)(1) of this section are not applicable, however, the issue price of the debt instrument that is part of the investment unit is determined under section 1273(b)(4) or 1274, whichever is applicable.

(2) *Consistent allocation by holders and issuer.* The issuer's allocation of the issue price of the investment unit is binding on all holders of the investment unit. However, the issuer's determination is not binding on a holder that explicitly discloses that its allocation is different from the issuer's allocation. Unless otherwise provided by the Commissioner, the disclosure must be made on a statement attached to the holder's timely filed Federal income tax return for the taxable year that includes the acquisition date of the investment unit. See § 1.1275–2(e) for rules relating to the issuer's obligation to disclose certain information to holders.

(i) [Reserved]

(j) *Convertible debt instruments.* The issue price of a debt instrument includes any amount paid for an option to convert the instrument into stock (or another debt instrument) of either the issuer or a related party (within the meaning of section 267(b) or 707(b)(1)) or into cash or other property in an amount equal to the approximate value of such stock (or debt instrument).

(k) *Below-market loans subject to section 7872(b).* The issue price of a below-market loan subject to section 7872(b) (a term loan other than a gift loan) is the issue price determined under this section, reduced by the excess amount determined under section 7872(b)(1).

(l) [Reserved]

(m) *Treatment of amounts representing pre-issuance accrued interest*—(1) *Applicability.* Paragraph (m)(2) of this section provides an alternative to the general rule of this section for determining the issue price of a debt instrument if—

(i) A portion of the initial purchase price of the instrument is allocable to interest that has accrued prior to the

issue date (pre-issuance accrued interest); and

(ii) The instrument provides for a payment of stated interest on the first payment date within 1 year of the issue date that equals or exceeds the amount of the pre-issuance accrued interest.

(2) *Exclusion of pre-issuance accrued interest from issue price.* If a debt instrument meets the requirements of paragraph (m)(1) of this section, the instrument's issue price may be computed by subtracting from the issue price (as otherwise computed under this section) the amount of pre-issuance accrued interest. If the issue price of the debt instrument is computed in this manner, a portion of the stated interest payable on the first payment date must be treated as a return of the excluded pre-issuance accrued interest, rather than as an amount payable on the instrument.

(3) *Example.* The following example illustrates the rule of paragraph (m) of this section.

Example. (i) *Facts.* On January 15, 1995, A purchases at original issue, for $1,005, B corporation's debt instrument. The debt instrument provides for a payment of principal of $1,000 on January 1, 2005, and provides for semiannual interest payments of $60 on January 1 and July 1 of each year, beginning on July 1, 1995.

(ii) *Determination of pre-issuance accrued interest.* Under paragraphs (m)(1) and (m)(2) of this section, $5 of the $1,005 initial purchase price of the debt instrument is allocable to pre-issuance accrued interest. Accordingly, the debt instrument's issue price may be computed by subtracting the amount of pre-issuance accrued interest ($5) from the issue price otherwise computed under this section ($1,005), resulting in an issue price of $1,000. If the issue price is computed in this manner, $5 of the $60 payment made on July 1, 1995, must be treated as a repayment by B of the pre-issuance accrued interest.

§ 1.1274–1 Debt instruments to which section 1274 applies.

(a) *In general.* Subject to the exceptions and limitations in paragraph (b) of this section, section 1274 and this section apply to any debt instrument issued in consideration for the sale or exchange of property. For purposes of section 1274, property includes debt instruments and investment units, but does not include money, services, or the right to use property. For the treatment of certain obligations given in exchange for services or the use of property, see sections 404 and 467. For purposes of this paragraph (a), money includes functional currency and, in certain circumstances, nonfunctional currency. See § 1.988–2(b)(2) for circumstances when nonfunctional currency is treated as money rather than as property.

(b) *Exceptions*—(1) *Debt instrument with adequate stated interest and no OID.* Section 1274 does not apply to a debt instrument if—

(i) All interest payable on the instrument is qualified stated interest;

(ii) The stated rate of interest is at least equal to the test rate of interest (as defined in § 1.1274–4);

(iii) The debt instrument is not issued in a potentially abusive situation (as defined in § 1.1274–3); and

(iv) No payment from the buyer-borrower to the seller-lender designated as points or interest is made at the time of issuance of the debt instrument.

(2) *Exceptions under sections 1274(c)(1)(B), 1274(c)(3), 1274A(c), and 1275(b)(1)*—(i) *In general.* Sections 1274(c)(1)(B), 1274(c)(3), 1274A(c), and 1275(b)(1) describe certain transactions to which section 1274 does not apply. This paragraph (b)(2) provides certain rules to be used in applying those exceptions.

(ii) *Special rules for certain exceptions under section 1274(c)(3)*—(A) *Determination of sales price for certain sales of farms.* For purposes of section 1274(c)(3)(A), the determination as to whether the sales price cannot exceed $1,000,000 is made without regard to any other exception to, or limitation on, the applicability of section 1274 (e.g., without regard to the special rules regarding sales of principal residences and land transfers between related persons). In addition, the sales price is determined without regard to section 1274 and without regard to any stated interest. The sales price includes the amount of any liability included in the amount realized from the sale or exchange. See § 1.1001–2.

(B) *Sales involving total payments of $250,000 or less.* Under section 1274(c)(3)(C), the determination of the amount of payments due under all debt instruments and the amount of other consideration to be received is made as of the date of the sale or exchange or, if earlier, the contract date. If the precise amount due under any debt instrument or the precise amount of any other consideration to be received cannot be determined as of that date, section 1274(c)(3)(C) applies only if it can be determined that the maximum of the aggregate amount of payments due under the debt instruments and other consideration to be received cannot exceed $250,000. For purposes of section 1274(c)(3)(C), if a liability is assumed or property is taken subject to a liability, the aggregate amount of payments due includes the outstanding principal balance or adjusted issue price (in the case of an obligation originally issued at a discount) of the obligation.

(C) *Coordination with section 1273 and § 1.1273–2.* In accordance with section 1274(c)(3)(D), section 1274 and this section do not apply if the issue price of a debt instrument issued in consideration for the sale or exchange of property is determined under paragraph (a)(1), (b)(1), or (c)(1) of § 1.1273–2.

(3) *Other exceptions to section 1274*—(i) *Holders of certain below-market instruments.* Section 1274 does not apply to any holder of a debt instrument that is issued in consideration for the sale or exchange of personal use property (within the meaning of section 1275(b)(3)) in the hands of the issuer and that evidences a below-market loan described in section 7872(c)(1).

(ii) *Transactions involving certain demand loans.* Section 1274 does not apply to any debt instrument that evidences a demand loan that is a below-market loan described in section 7872(c)(1).

(iii) *Certain transfers subject to section 1041.* Section 1274 does not apply to any debt instrument issued in consideration for a transfer of property subject to section 1041 (relating to transfers of property between spouses or incident to divorce).

(c) *Examples.* The following examples illustrate the rules of this section.

Example 1. Single stated rate paid semiannually. A debt instrument issued in consideration for the sale of nonpublicly traded property in a transaction that is not a potentially abusive situation calls for the payment of a principal amount of $1,000,000 at the end of a 10-year term and 20 semiannual interest payments of $60,000. Assume that the test rate of interest is 12 percent, compounded semiannually. The debt instrument is not subject to section 1274 because it provides for interest equal to the test rate and all interest payable on the instrument is qualified stated interest.

Example 2. Sale of farm for debt instrument with contingent interest—(i) *Facts.* On July 1, 1995, A, an individual, sells to B land used as a farm within the meaning of section 6420(c)(2). As partial consideration for the sale, B issues a debt instrument calling for a single $500,000 payment due in 10 years unless profits from the land in each of the 10 years preceding maturity of the debt instrument exceed a specified amount, in which case B is to make a payment of $1,200,000. The debt instrument does not provide for interest.

(ii) *Total payments may exceed $1,000,000.* Even though the total payments ultimately payable under the contract may be less than $1,000,000, at the time of the sale or exchange it cannot be determined that the sales price cannot exceed $1,000,000. Thus, the sale of the land used as a farm is not an excepted transaction described in section 1274(c)(3)(A).

Example 3. Sale between related parties subject to section 483(e)—(i) *Facts.* On July 1, 1995, A, an individual, sells land (not used

as a farm within the meaning of section 6420(c)(2)) to A's child B for $650,000. In consideration for the sale, B issues a 10-year debt instrument to A that calls for a payment of $650,000. No other consideration is given. The debt instrument does not provide for interest.

(ii) *Treatment of debt instrument.* For purposes of section 483(e), the $650,000 debt instrument is treated as two separate debt instruments: a $500,000 debt instrument and a $150,000 debt instrument. The $500,000 debt instrument is subject to section 483(e), and accordingly is covered by the exception from section 1274 described in section 1274(c)(3)(F). Because the amount of the payments due as consideration for the sale exceeds $250,000, however, the $150,000 debt instrument is subject to section 1274.

§ 1.1274–2 Issue price of debt instruments to which section 1274 applies.

(a) *In general.* If section 1274 applies to a debt instrument, section 1274 and this section determine the issue price of the debt instrument. For rules relating to the determination of the amount and timing of OID to be included in income, see section 1272 and the regulations thereunder.

(b) *Issue price*—(1) *Debt instruments that provide for adequate stated interest; stated principal amount.* The issue price of a debt instrument that provides for adequate stated interest is the stated principal amount of the debt instrument. For purposes of section 1274, the stated principal amount of a debt instrument is the aggregate amount of all payments due under the debt instrument, excluding any amount of stated interest. Under § 1.1273–2(g)(2)(ii), however, the stated principal amount of a debt instrument is reduced by any payment from the buyer-borrower to the seller-lender that is designated as interest or points. See *Example 2* of § 1.1273–2(g)(5).

(2) *Debt instruments that do not provide for adequate stated interest; imputed principal amount.* The issue price of a debt instrument that does not provide for adequate stated interest is the imputed principal amount of the debt instrument.

(3) *Debt instruments issued in a potentially abusive situation; fair market value.* Notwithstanding paragraphs (b)(1) and (b)(2) of this section, in the case of a debt instrument issued in a potentially abusive situation (as defined in § 1.1274–3), the issue price of the debt instrument is the fair market value of the property received in exchange for the debt instrument, reduced by the fair market value of any consideration other than the debt instrument issued in consideration for the sale or exchange.

(c) *Determination of whether a debt instrument provides for adequate stated interest*—(1) *In general.* A debt instrument provides for adequate stated interest if its stated principal amount is less than or equal to its imputed principal amount. Imputed principal amount means the sum of the present values, as of the issue date, of all payments, including payments of stated interest, due under the debt instrument (determined by using a discount rate equal to the test rate of interest as determined under § 1.1274–4). If a debt instrument has a single fixed rate of interest that is paid or compounded at least annually, and that rate is equal to or greater than the test rate, the debt instrument has adequate stated interest.

(2) *Determination of present value.* The present value of a payment is determined by discounting the payment from the date it becomes due to the date of the sale or exchange at the test rate of interest. To determine present value, a compounding period must be selected, and the test rate must be based on the same compounding period.

(d) *Treatment of certain options.* This paragraph (d) provides rules for determining the issue price of a debt instrument to which section 1274 applies (other than a debt instrument issued in a potentially abusive situation) that is subject to one or more options described in both paragraphs (c)(1) and (c)(5) of § 1.1272–1. Under this paragraph (d), an issuer will be deemed to exercise or not exercise an option or combination of options in a manner that minimizes the instrument's imputed principal amount, and a holder will be deemed to exercise or not exercise an option or combination of options in a manner that maximizes the instrument's imputed principal amount. If both the issuer and the holder have options, the rules of this paragraph (d) are applied to the options in the order that they may be exercised. Thus, the deemed exercise of one option may eliminate other options that are later in time. See § 1.1272–1(c)(5) to determine the debt instrument's yield and maturity for purposes of determining the accrual of OID with respect to the instrument.

(e) *Mandatory sinking funds.* In determining the issue price of a debt instrument to which section 1274 applies (other than a debt instrument issued in a potentially abusive situation) and that is subject to a mandatory sinking fund provision described in § 1.1272–1(c)(3)(ii), the mandatory sinking fund provision is ignored.

(f) *Treatment of variable rate debt instruments*—(1) *Stated interest at a qualified floating rate*—(i) *In general.* For purposes of paragraph (c) of this section, the imputed principal amount of a variable rate debt instrument (within the meaning of § 1.1275–5(a)) that provides for stated interest at a qualified floating rate (or rates) is determined by assuming that the instrument provides for a fixed rate of interest for each accrual period to which a qualified floating rate applies. For purposes of the preceding sentence, the assumed fixed rate in each accrual period is the greater of—

(A) The value of the applicable qualified floating rate as of the first date on which there is a binding written contract that substantially sets forth the terms under which the sale or exchange is ultimately consummated; or

(B) The value of the applicable qualified floating rate as of the date on which the sale or exchange occurs.

(ii) *Interest rate restrictions.* Notwithstanding paragraph (f)(1)(i) of this section, if, as a result of interest rate restrictions (such as an interest rate cap), the expected yield of the debt instrument taking the restrictions into account is significantly less than the expected yield of the debt instrument without regard to the restrictions, the interest payments on the debt instrument (other than any fixed interest payments) are treated as contingent payments. Reasonably symmetric interest rate caps and floors, or reasonably symmetric governors, that are fixed throughout the term of the debt instrument do not result in the debt instrument being subject to this rule.

(2) *Stated interest at a single objective rate.* For purposes of paragraph (c) of this section, the imputed principal amount of a variable rate debt instrument (within the meaning of § 1.1275–5(a)) that provides for stated interest at a single objective rate is determined by treating the interest payments as contingent payments.

(g) *Contingent payments.* [Reserved]

(h) *Examples.* The following examples illustrate the rules of this section. Each example assumes a 30-day month, 360-day year. In addition, each example assumes that the debt instrument is not a qualified debt instrument (as defined in section 1274A(b)) and is not issued in a potentially abusive situation.

Example 1. Debt instrument without a fixed rate over its entire term—(i) *Facts.* On January 1, 1995, A sells nonpublicly traded property to B for a stated purchase price of $3,500,000. In consideration for the sale, B makes a down payment of $500,000 and issues a 10-year debt instrument with a stated principal amount of $3,000,000, payable at maturity. The debt instrument calls for no interest in the first 2 years and interest at a rate of 15 percent payable annually over the remaining 8 years of the debt instrument. The first interest payment of $450,000 is due on December 31, 1997, and the last interest payment is due on December 31, 2004.

together with the $3,000,000 payment of principal. Assume that the test rate of interest applicable to the debt instrument is 10.5 percent, compounded annually.

(ii) *Applicability of section 1274.* Because the debt instrument does not provide for any interest during the first 2 years, none of the interest on the debt instrument is qualified stated interest. Therefore, the issue price of the debt instrument is determined under section 1274. See § 1.1274–1(b)(1). If the debt instrument has adequate stated interest, the issue price of the instrument is its stated principal amount. Otherwise, the issue price of the debt instrument is its imputed principal amount. The debt instrument has adequate stated interest only if the stated principal amount is less than or equal to the imputed principal amount.

(iii) *Determination of imputed principal amount.* To compute the imputed principal amount of the debt instrument, all payments due under the debt instrument are discounted back to the issue date at 10.5 percent, compounded annually, as follows:

(A) The present value of the $3,000,000 principal payment payable on December 31, 2004, is $1,105,346.59, determined as follows:

$$\$1{,}105{,}346.59 = \frac{\$3{,}000{,}000}{(1+.105/1)^{10}}$$

(B) The present value of the eight interest payments of $450,000 as of January 1, 1997, is $2,357,634.55, determined as follows:

$$\$2{,}357{,}634.55 = \$450{,}000 \times \frac{1-(1+.105/1)^{-8}}{(.105/1)}$$

(C) The present value of this interim amount as of January 1, 1995, is $1,930,865.09, determined as follows:

$$\$1{,}930{,}865.09 = \frac{\$2{,}357{,}634.55}{(1+.105/1)^{2}}$$

(iv) *Determination of issue price.* The debt instrument's imputed principal amount (that is, the present value of all payments due under the debt instrument) is $3,036,211.68 ($1,105,346.59+$1,930,865.09). Because the stated principal amount ($3,000,000) is less than the imputed principal amount, the debt instrument provides for adequate stated interest. Therefore, the issue price of the debt instrument is its stated principal amount ($3,000,000).

Example 2. Debt instrument subject to issuer call option—(i) *Facts.* On January 1, 1995, in partial consideration for the sale of nonpublicly traded property, H corporation issues to G a 10-year debt instrument, maturing on January 1, 2005, with a stated principal amount of $10,000,000, payable on that date. The debt instrument provides for annual payments of interest of 8 percent for the first 5 years and 14 percent for the final 5 years, payable on January 1 of each year, beginning on January 1, 1996. In addition the debt instrument provides H with the unconditional option to call (prepay) the debt instrument at the end of 5 years for its stated principal amount of $10,000,000. Assume that the Federal mid-term and long-term rates applicable to the sale based on annual compounding are 9 percent and 10 percent, respectively.

(ii) *Option presumed exercised.* Assuming exercise of the call option, the imputed principal amount as determined under paragraph (d) of this section is $9,611,034.87 (the present value of all of the payments due within a 5-year term discounted at a test rate of 9 percent, compounded annually). Assuming nonexercise of the call option, the imputed principal amount is $10,183,354.78 (the present value of all of the payments due within a 10-year term discounted at a test rate of 10 percent, compounded annually). For purposes of determining the imputed principal amount, the option is presumed exercised because the imputed principal amount, assuming exercise of the option, is less than the imputed principal amount, assuming the option is not exercised. Because the option is presumed exercised, the debt instrument fails to provide for adequate stated interest because the imputed principal amount ($9,611,034.87) is less than the stated principal amount ($10,000,000). Thus, the issue price of the debt instrument is $9,611,034.87.

Example 3. Variable rate debt instrument with a single rate over its entire term—(i) *Facts.* On January 1, 1995, A sells B nonpublicly traded property. In partial consideration for the sale, B issues a debt instrument in the principal amount of $1,000,000, payable in 5 years. The debt instrument calls for interest payable monthly at a rate of 1 percentage point above the average prime lending rate of a major bank for the month preceding the month of the interest payment. Assume that the test rate of interest applicable to the debt instrument is 10.5 percent, compounded monthly. Assume also that 1 percentage point above the prime lending rate of the designated bank on the date of the sale is 12.5 percent, compounded monthly, which is greater than 1 percentage point above the prime lending rate of the designated bank on the first date on which there is a binding written contract that substantially sets forth the terms under which the sale is consummated.

(ii) *Debt instrument has adequate stated interest.* The debt instrument is a variable rate debt instrument (within the meaning of § 1.1275–5) that provides for stated interest at a qualified floating rate. Under paragraph (f)(1)(i) of this section, the debt instrument is treated as if it provided for a fixed rate of interest equal to 12.5 percent, compounded monthly. Because the test rate of interest is 10.5 percent, compounded monthly, the debt instrument provides for adequate stated interest.

Example 4. Debt instrument with a capped variable rate. On July 1, 1995, A sells nonpublicly traded property to B in return for a debt instrument with a stated principal amount of $10,000,000, payable on July 1, 2005. Interest is payable on July 1 of each year, beginning on July 1, 1996, at the Federal short-term rate for June of the same year. The debt instrument provides, however, that the interest rate cannot rise above 8.5 percent, compounded annually. Assume that, as of the date the test rate of interest for the debt instrument is determined, the Federal short-term rate is 8 percent, compounded annually. Assume further that, as a result of the interest rate cap of 8.5 percent, compounded annually, the expected yield of the debt instrument is significantly less than the expected yield of the debt instrument if it did not include the interest rate cap. Under paragraph (f)(1)(ii) of this section, the variable payments are treated as contingent payments for purposes of this section.

§ 1.1274–3 Potentially abusive situations defined.

(a) *In general.* For purposes of section 1274, a potentially abusive situation means—

(1) A tax shelter (as defined in section 6662(d)(2)(C)(ii)); or

(2) Any other situation involving—

(i) A recent sales transaction;

(ii) Nonrecourse financing;

(iii) Financing with a term in excess of the useful life of the property; or

(iv) A debt instrument with clearly excessive interest.

(b) *Operating rules*—(1) *Debt instrument exchanged for nonrecourse financing.* Nonrecourse financing does not include an exchange of a nonrecourse debt instrument for an outstanding recourse or nonrecourse debt instrument.

(2) *Nonrecourse debt with substantial down payment.* Nonrecourse financing does not include a sale or exchange of a real property interest financed by a nonrecourse debt instrument if, in addition to the nonrecourse debt instrument, the purchaser makes a down payment in money that equals or exceeds 20 percent of the total stated purchase price of the real property interest. For purposes of the preceding sentence, a real property interest means any interest, other than an interest solely as a creditor, in real property.

(3) *Clearly excessive interest.* Interest on a debt instrument is clearly excessive if the interest, in light of the terms of the debt instrument and the creditworthiness of the borrower, is clearly greater than the arm's length amount of interest that would have been charged in a cash lending transaction between the same two parties.

(c) *Other situations to be specified by Commissioner.* The Commissioner may designate in the Internal Revenue Bulletin situations that, although described in paragraph (a)(2) of this section, will not be treated as potentially abusive because they do not have the effect of significantly misstating basis or amount realized (see § 601.601(d)(2)(ii) of this chapter).

(d) *Consistency rule.* The issuer's determination that the debt instrument is or is not issued in a potentially abusive situation is binding on all holders of the debt instrument.

However, the issuer's determination is not binding on a holder who explicitly discloses a position that is inconsistent with the issuer's determination. Unless otherwise prescribed by the Commissioner, the disclosure must be made on a statement attached to the holder's timely filed Federal income tax return for the taxable year that includes the acquisition date of the debt instrument. See § 1.1275–2(e) for rules relating to the issuer's obligation to disclose certain information to holders.

§§ 1.1274–3T and 1.1274–6T [Removed]

Par. 10. Sections 1.1274–3T and 1.1274–6T are removed as of April 4, 1994.

Par. 11. Sections 1.1274–4 and 1.1274–5 are added to read as follows:

§ 1.1274–4 Test rate.

(a) *Determination of test rate of interest*—(1) *In general*—(i) *Test rate is the 3-month rate.* Except as provided in paragraph (a)(2) of this section, the test rate of interest for a debt instrument issued in consideration for the sale or exchange of property is the 3-month rate.

(ii) *The 3-month rate.* Except as provided in paragraph (a)(1)(iii) of this section, the 3-month rate is the lower of—

(A) The lowest applicable Federal rate (based on the appropriate compounding period) in effect during the 3-month period ending with the first month in which there is a binding written contract that substantially sets forth the terms under which the sale or exchange is ultimately consummated; or

(B) The lowest applicable Federal rate (based on the appropriate compounding period) in effect during the 3-month period ending with the month in which the sale or exchange occurs.

(iii) *Special rule if there is no binding written contract.* If there is no binding written contract that substantially sets forth the terms under which the sale or exchange is ultimately consummated, the 3-month rate is the lowest applicable Federal rate (based on the appropriate compounding period) in effect during the 3-month period ending with the month in which the sale or exchange occurs.

(2) *Test rate for certain debt instruments*—(i) *Sale-leaseback transactions.* Under section 1274(e) (relating to certain sale-leaseback transactions), the test rate is 110 percent of the 3-month rate determined under paragraph (a)(1) of this section. For purposes of section 1274(e)(3), related party means a person related to the transferor within the meaning of section 267(b) or 707(b)(1).

(ii) *Qualified debt instrument.* Under section 1274A(a), the test rate for a qualified debt instrument is no greater than 9 percent, compounded semiannually, or an equivalent rate based on an appropriate compounding period.

(iii) *Alternative test rate for short-term obligations*—(A) *Requirements.* This paragraph (a)(2)(iii)(A) provides an alternative test rate under section 1274(d)(1)(D) for a debt instrument with a maturity of 1 year or less. This alternative test rate applies, however, only if the debt instrument provides for adequate stated interest using the alternative test rate, the issuer provides on the face of the debt instrument that the instrument qualifies as having adequate stated interest under section 1274(d)(1)(D), and the issuer and holder treat or agree to treat the instrument as having adequate stated interest.

(B) *Alternative test rate.* For purposes of paragraph (a)(2)(iii)(A), the alternative test rate is the market yield on U.S. Treasury bills with the same maturity date as the debt instrument. If the same maturity date is not available, the market yield on U.S. Treasury bills that mature in the same week or month as the debt instrument is used. The alternative test rate is determined as of the date on which there is a binding written contract that substantially sets forth the terms under which the sale or exchange is ultimately consummated or as of the date of the sale or exchange, whichever date results in a lower rate. If there is no binding written contract, however, the alternative test rate is determined as of the date of the sale or exchange.

(b) *Applicable Federal rate.* Except as otherwise provided in this section, the applicable Federal rate for a debt instrument is based on the term of the instrument (i.e., short-term, mid-term, or long-term). See section 1274(d)(1). The Internal Revenue Service publishes the applicable Federal rates for each month in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter). The applicable Federal rates are based on the yield to maturity of outstanding marketable obligations of the United States of similar maturities during the one month period ending on the 14th day of the month preceding the month for which the rates are applicable.

(c) *Special rules to determine the term of a debt instrument for purposes of determining the applicable Federal rate*—(1) *Installment obligation.* If a debt instrument is an installment obligation (as defined in § 1.1273–1(e)(1)), the term of the instrument is the instrument's weighted average maturity (as defined in § 1.1273–1(e)(3)).

(2) *Certain variable rate debt instruments*—(i) *In general.* Except as otherwise provided in paragraph (c)(2)(ii) of this section, if a variable rate debt instrument (as defined in § 1.1275–5(a)) provides for stated interest at a qualified floating rate (or rates), the term of the instrument is determined by reference to the longest interval between interest adjustment dates, or, if the variable rate debt instrument provides for a fixed rate, the interval between the issue date and the last day on which the fixed rate applies, if this interval is longer.

(ii) *Restrictions on adjustments.* If, due to significant restrictions on variations in a qualified floating rate or the use of certain formulae pursuant to § 1.1275–5(b)(2) (e.g., 15 percent of 1-year LIBOR, plus 800 basis points), the rate in substance resembles a fixed rate, the applicable Federal rate is determined by reference to the term of the debt instrument.

(3) *Counting of either the issue date or the maturity date.* The term of a debt instrument includes either the issue date or the maturity date, but not both dates.

(4) *Certain debt instruments that provide for principal payments uncertain as to time.* If a debt instrument provides for principal payments that are fixed in total amount but uncertain as to time, the term of the instrument is determined by reference to the latest possible date on which a principal payment can be made or, in the case of an installment obligation, by reference to the longest weighted average maturity under any possible payment schedule.

(d) *Foreign currency loans.* If all of the payments of a debt instrument are denominated in, or determined by reference to, a currency other than the U.S. dollar, the applicable Federal rate for the debt instrument is a foreign currency rate of interest that is analogous to the applicable Federal rate described in this section. For this purpose, an analogous rate of interest is a rate based on yields (with the appropriate compounding period) of the highest grade of outstanding marketable obligations denominated in such currency (excluding any obligations that benefit from special tax exemptions or preferential tax rates not available to debt instruments generally) with due consideration given to the maturities of the obligations.

(e) *Examples.* The following examples illustrate the rules of this section.

Example 1. Variable rate debt instrument that limits the amount of increase and decrease in the rate—(i) *Facts.* On July 1, 1996, A sells nonpublicly traded property to

B in return for a 5-year debt instrument that provides for interest to be paid on July 1 of each year, beginning on July 1, 1997, based on the prime rate of a local bank on that date. However, the interest rate cannot increase or decrease from one year to the next by more than .25 percentage points (25 basis points).

(ii) *Significant restriction.* The debt instrument is a variable rate debt instrument (as defined in § 1.1275–5) that provides for stated interest at a qualified floating rate. Assume that based on all the facts and circumstances, the restriction is a significant restriction on the variations in the rate of interest. Under paragraph (c)(2)(ii) of this section, the applicable Federal rate is determined by reference to the term of the debt instrument, and the applicable Federal rate is the Federal mid-term rate.

Example 2. Installment obligation—(i) *Facts.* On January 1, 1996, A sells nonpublicly traded property to B in exchange for a debt instrument that calls for a payment of $500,000 on January 1, 2001, and a payment of $1,000,000 on January 1, 2006. The debt instrument does not provide for any stated interest.

(ii) *Determination of term.* The debt instrument is an installment obligation. Under paragraph (c)(1) of this section, the term of the debt instrument is its weighted average maturity (as defined in § 1.1273–1(e)(3)). The debt instrument's weighted average maturity is 8.33 years, which is the sum of (A) the ratio of the first payment to total payments (500,000/1,500,000), multiplied by the number of complete years from the issue date until the payment is due (5 years), and (B) the ratio of the second payment to total payments (1,000,000/1,500,000), multiplied by the number of complete years from the issue date until the second payment is due (10 years).

(iii) *Applicable Federal rate.* Based on the calculation in paragraph (ii) of this example, the term of the debt instrument is treated as 8.33 years. Consequently, the applicable Federal rate is the Federal mid-term rate.

§ 1.1274–5 Assumptions.

(a) *In general.* Section 1274 does not apply to a debt instrument if the debt instrument is assumed, or property is taken subject to the debt instrument, in connection with a sale or exchange of property, unless the terms of the debt instrument, as part of the sale or exchange, are modified in a manner that would constitute an exchange under section 1001.

(b) *Modifications of debt instruments*—(1) *In general.* Except as provided in paragraph (b)(2) of this section, if a debt instrument is assumed, or property is taken subject to a debt instrument, in connection with a sale or exchange of property, the terms of the debt instrument are modified as part of the sale or exchange, and the modification triggers an exchange under section 1001, the modification is treated as a separate transaction taking place immediately before the sale or exchange and is attributed to the seller of the property. For purposes of this paragraph (b), a debt instrument is not considered to be modified as part of the sale or exchange unless the seller knew or had reason to know about the modification.

(2) *Election to treat buyer as modifying the debt instrument*—(i) *In general.* Rather than having the rules in paragraph (b)(1) of this section apply, the seller and buyer may jointly elect to treat the transaction as one in which the buyer first assumed the original (unmodified) debt instrument and then subsequently modified the debt instrument. For this purpose, the modification is treated as a separate transaction taking place immediately after the sale or exchange.

(ii) *Time and manner of making the election.* The buyer and seller make the election under paragraph (b)(2)(i) of this section by jointly signing a statement that includes the names, addresses, and taxpayer identification numbers of the seller and buyer, and a clear indication that the election is being made under paragraph (b)(2)(i) of this section. Both the buyer and the seller must sign this statement not later than the earlier of the last day (including extensions) for filing the Federal income tax return of the buyer or seller for the taxable year in which the sale or exchange of the property occurs. The buyer and seller should attach this signed statement (or a copy thereof) to their timely filed Federal income tax returns.

(c) *Wraparound indebtedness.* For purposes of paragraph (a) of this section, the issuance of wraparound indebtedness is not considered an assumption.

(d) *Consideration attributable to assumed debt.* If, as part of the consideration for the sale or exchange of property, the buyer assumes, or takes the property subject to, an indebtedness that was issued with OID (including a debt instrument issued in a prior sale or exchange to which section 1274 applied), the portion of the buyer's basis in the property and the seller's amount realized attributable to the debt instrument equals the adjusted issue price of the debt instrument as of the date of the sale or exchange.

Par. 12. Sections 1.1274A–1, 1.1275–1 and 1.1275–2 are added to read as follows:

§ 1.1274A–1 Special rules for certain transactions where stated principal amount does not exceed $2,800,000.

(a) *In general.* Section 1274A allows the use of a lower test rate for purposes of sections 483 and 1274 in the case of a qualified debt instrument (as defined in section 1274A(b)) and, if elected by the borrower and the lender, the use of the cash receipts and disbursements method of accounting for interest on a cash method debt instrument (as defined in section 1274A(c)(2)). This section provides special rules for qualified debt instruments and cash method debt instruments.

(b) *Rules for both qualified and cash method debt instruments*—(1) *Sale-leaseback transactions.* A debt instrument issued in a sale-leaseback transaction (within the meaning of section 1274(e)) cannot be either a qualified debt instrument or a cash method debt instrument.

(2) *Debt instruments calling for contingent payments.* A debt instrument that provides for contingent payments cannot be a qualified debt instrument unless it can be determined at the time of the sale or exchange that the maximum stated principal amount due under the debt instrument cannot exceed the amount specified in section 1274A(b). Similarly, a debt instrument that provides for contingent payments cannot be a cash method debt instrument unless it can be determined at the time of the sale or exchange that the maximum stated principal amount due under the debt instrument cannot exceed the amount specified in section 1274A(c)(2)(A).

(3) *Aggregation of transactions*—(i) *General rule.* The aggregation rules of section 1274A(d)(1) are applied using a facts and circumstances test.

(ii) *Examples.* The following examples illustrate the application of section 1274A(d)(1) and paragraph (b)(3)(i) of this section.

Example 1. Aggregation of two sales to a single person. In two transactions evidenced by separate sales agreements, A sells undivided half interests in Blackacre to B. The sales are pursuant to a plan for the sale of a 100 percent interest in Blackacre to B. These sales or exchanges are part of a series of related transactions and, thus, are treated as a single sale for purposes of section 1274A.

Example 2. Aggregation of two purchases by unrelated individuals. Pursuant to a plan, unrelated individuals X and Y purchase undivided half interests in Blackacre from A and subsequently contribute these interests to a partnership in exchange for equal interests in the partnership. These purchases are treated as part of the same transaction and, thus, are treated as a single sale for purposes of section 1274A.

Example 3. Aggregation of sales made pursuant to a tender offer. Fifteen unrelated individuals own all of the stock of X Corporation. Y Corporation makes a tender offer to these 15 shareholders. The terms offered to each shareholder are identical. Shareholders holding a majority of the shares of X Corporation elect to tender their shares pursuant to Y Corporation's offer. These sales are part of the same transaction and, thus, are

treated as a single sale for purposes of section 1274A.

Example 4. No aggregation for separate sales of similar property to unrelated persons. Pursuant to a newspaper advertisement, X Corporation offers for sale similar condominiums in a single building. The prices of the units vary due to a variety of factors, but the financing terms offered by X Corporation to all buyers are identical. The units are purchased by unrelated buyers who decided whether to purchase units in the building at the price and on the terms offered by X Corporation, without regard to the actions of other buyers. Because each buyer acts individually, the sales are not part of the same transaction or a series of related transactions and, thus, are treated as separate sales.

(4) *Inflation adjustment of dollar amounts.* Under section 1274A(d)(2), the dollar amounts specified in sections 1274A(b) and 1274A(c)(2)(A) are adjusted for inflation. The dollar amounts, adjusted for inflation, are published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii) of this chapter).

(c) *Rules for cash method debt instruments*—(1) *Time and manner of making cash method election.* The borrower and lender make the election described in section 1274A(c)(2)(D) by jointly signing a statement that includes the names, addresses, and taxpayer identification numbers of the borrower and lender, a clear indication that an election is being made under section 1274A(c)(2), and a declaration that the debt instrument with respect to which the election is being made fulfills the requirements of a cash method debt instrument. Both the borrower and the lender must sign this statement not later than the earlier of the last day (including extensions) for filing the Federal income tax return of the borrower or lender for the taxable year in which the debt instrument is issued. The borrower and lender should attach this signed statement (or a copy thereof) to their timely filed Federal income tax returns.

(2) *Successors of electing parties.* Except as otherwise provided in this paragraph (c)(2), the cash method election under section 1274A(c) applies to any successor of the electing lender or borrower. Thus, for any period after the transfer of a cash method debt instrument, the successor takes into account the interest (including unstated interest) on the instrument under the cash receipts and disbursements method of accounting. Nevertheless, if the lender (or any successor thereof) transfers the cash method debt instrument to a taxpayer who uses an accrual method of accounting, section 1272 rather than section 1274A(c) applies to the successor of the lender with respect to the debt instrument for any period after the date of the transfer. The borrower (or any successor thereof), however, remains on the cash receipts and disbursements method of accounting with respect to the cash method debt instrument.

(3) *Modified debt instrument.* In the case of a debt instrument issued in a debt-for-debt exchange that qualifies as an exchange under section 1001, the debt instrument is eligible for the election to be a cash method debt instrument if the other prerequisites to making the election in section 1274A(c) are met. However, if a principal purpose of the modification is to defer interest income or deductions through the use of the election, then the debt instrument is not eligible for the election.

(4) *Debt incurred or continued to purchase or carry a cash method debt instrument.* If a debt instrument is incurred or continued to purchase or carry a cash method debt instrument, rules similar to those under section 1277 apply to determine the timing of the interest deductions for the debt instrument. For purposes of the preceding sentence, rules similar to those under section 265(a)(2) apply to determine whether a debt instrument is incurred or continued to purchase or carry a cash method debt instrument.

§ 1.1275–1 Definitions.

(a) *Applicability.* The definitions contained in this section apply for purposes of sections 163(e) and 1271 through 1275 and the regulations thereunder.

(b) *Adjusted issue price*—(1) *In general.* The adjusted issue price of a debt instrument at the beginning of the first accrual period is the issue price. Thereafter, the adjusted issue price of the debt instrument is the issue price of the debt instrument—

(i) Increased by the amount of OID previously includible in the gross income of any holder (determined without regard to section 1272(a)(7) and section 1272(c)(1)); and

(ii) Decreased by the amount of any payment previously made on the debt instrument other than a payment of qualified stated interest. See § 1.1275–2(f) for rules regarding adjustments to adjusted issue price on a pro rata prepayment.

(2) *Adjusted issue price for subsequent holders.* For purposes of calculating OID accruals, acquisition premium, or market discount, a holder (other than a purchaser at original issuance) determines adjusted issue price in any manner consistent with the regulations under sections 1271 through 1275.

(c) *OID.* OID means original issue discount (as defined in section 1273(a) and § 1.1273–1).

(d) *Debt instrument.* Except as provided in section 1275(a)(1)(B) (relating to certain annuity contracts), debt instrument means any instrument or contractual arrangement that constitutes indebtedness under general principles of Federal income tax law (including, for example, a certificate of deposit or a loan). Nothing in the regulations under sections 163(e), 483, and 1271 through 1275, however, shall influence whether an instrument constitutes indebtedness for Federal income tax purposes.

(e) *Tax-exempt obligations.* For purposes of section 1275(a)(3)(B), exempt from tax means exempt from Federal income tax.

(f) *Issue.* Two or more debt instruments are part of the same issue if they have the same credit and payment terms and are sold reasonably close in time either pursuant to a common plan or as part of a single transaction or a series of related transactions. See § 1.1275–2(d)(2) for special rules relating to reopenings of Treasury securities.

(g) *Debt instruments issued by a natural person.* If an entity is a primary obligor under a debt instrument, the debt instrument is considered to be issued by the entity and not by a natural person even if a natural person is a co-maker and is jointly liable for the debt instrument's repayment. A debt instrument issued by a partnership is considered to be issued by the partnership as an entity even if the partnership is composed entirely of natural persons.

(h) *Publicly offered debt instrument.* A debt instrument is publicly offered if it is part of an issue of debt instruments the initial offering of which—

(1) Is registered with the Securities and Exchange Commission; or

(2) Would be required to be registered under the Securities Act of 1933 (15 U.S.C. 77a et seq.) but for an exemption from registration—

(i) Under section 3 of the Securities Act of 1933 (relating to exempted securities);

(ii) Under any law (other than the Securities Act of 1933) because of the identity of the issuer or the nature of the security; or

(iii) Because the issue is intended for distribution to persons who are not United States persons.

§ 1.1275–2 Special rules relating to debt instruments.

(a) *Payment ordering rule*—(1) *In general.* Except as provided in paragraph (a)(2) of this section, each payment under a debt instrument is treated first as a payment of OID to the extent of the OID that has accrued as of the date the payment is due and has not been allocated to prior payments, and second as a payment of principal. Thus, no portion of any payment is treated as prepaid interest.

(2) *Exceptions.* The rule in paragraph (a)(1) of this section does not apply to—

(i) A payment of qualified stated interest;

(ii) A payment of points deductible under section 461(g)(2), in the case of the issuer;

(iii) A pro rata prepayment described in paragraph (f)(2) of this section; or

(iv) A payment of additional interest or a similar charge provided with respect to amounts that are not paid when due.

(b) *Debt instruments distributed by corporations with respect to stock*—(1) *Treatment of distribution.* For purposes of determining the issue price of a debt instrument distributed by a corporation with respect to its stock, the instrument is treated as issued by the corporation for property. See section 1275(a)(4). Thus, under section 1273(b)(3), the issue price of a distributed debt instrument that is traded on an established market is its fair market value. The issue price of a distributed debt instrument that is not traded on an established market is determined under section 1274 or section 1273(b)(4).

(2) *Issue date.* The issue date of a debt instrument distributed by a corporation with respect to its stock is the date of the distribution.

(c) *Aggregation of debt instruments*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, debt instruments issued in connection with the same transaction or related transactions (determined based on all the facts and circumstances) are treated as a single debt instrument for purposes of sections 1271 through 1275 and the regulations thereunder. This rule ordinarily applies only to debt instruments of a single issuer that are issued to a single holder. The Commissioner may, however, aggregate debt instruments that are issued by more than one issuer or that are issued to more than one holder if the debt instruments are issued in an arrangement that is designed to avoid the aggregation rule (e.g., debt instruments issued by or to related parties or debt instruments originally issued to different holders with the understanding that the debt instruments will be transferred to a single holder).

(2) *Exception if separate issue price established.* Paragraph (c)(1) of this section does not apply to a debt instrument if—

(i) The debt instrument is part of an issue a substantial portion of which is traded on an established market within the meaning of § 1.1273–2(f); or

(ii) The debt instrument is part of an issue a substantial portion of which is issued for money (or for property traded on an established market within the meaning of § 1.1273–2(f)) to parties who are not related to the issuer or holder and who do not purchase other debt instruments of the same issuer in connection with the same transaction or related transactions.

(3) *Special rule for debt instruments that provide for the issuance of additional debt instruments.* If, under the terms of a debt instrument (the original debt instrument), the holder may receive one or more additional debt instruments of the issuer, the additional debt instrument or instruments are aggregated with the original debt instrument. Thus, the payments made pursuant to an additional debt instrument are treated as made on the original debt instrument, and the distribution by the issuer of the additional debt instrument is not considered to be a payment made on the original debt instrument. This paragraph (c)(3) applies regardless of whether the right to receive an additional debt instrument is fixed as of the issue date or is contingent upon subsequent events. See § 1.1272–1(c) for the treatment of certain rights to issue additional debt instruments in lieu of cash payments.

(4) *Examples.* The following examples illustrate the rules set forth in paragraphs (c)(1) and (c)(2) of this section.

Example 1. Exception for debt instruments issued separately to other purchasers. On January 1, 1995, Corporation M issues two series of bonds, Series A and Series B. The two series are sold for cash and have different terms. Although some holders purchase bonds from both series, a substantial portion of the bonds is issued to different holders. H purchases bonds from both series. Under the exception in paragraph (c)(2)(ii) of this section, the Series A and Series B bonds purchased by H are not aggregated.

Example 2. Tiered REMICs. Z forms a dual tier real estate mortgage investment conduit (REMIC). In the dual tier structure, Z forms REMIC A to acquire a pool of real estate mortgages and to issue a residual interest and several classes of regular interests. Contemporaneously, Z forms REMIC B to acquire as qualified mortgages all of the regular interests in REMIC A. REMIC B issues several classes of regular interests and a residual interest, and Z sells all of those interests to unrelated parties in a public offering. Under the general rule set out in paragraph (c)(1) of this section, all of the regular interests issued by REMIC A and held by REMIC B are treated as a single debt instrument for purposes of sections 1271 through 1275.

(d) *Special rules for Treasury securities*—(1) *Issue price and issue date.* The issue price of an issue of Treasury securities is the average price of the debt instruments sold. The issue date of an issue of Treasury securities is the first settlement date on which a substantial amount of the securities in the issue is sold.

(2) *Reopenings of Treasury securities*—(i) *Treatment of additional Treasury securities.* Additional Treasury securities issued in a qualified reopening are part of the same issue as the original Treasury securities and have the same issue date as the original Treasury securities. The issue price of both the original Treasury securities and the additional Treasury securities is the average price at which the original Treasury securities were sold. This paragraph (d)(2) applies to qualified reopenings that occur on or after March 25, 1992.

(ii) *Definitions*—(A) *Additional Treasury securities.* Additional Treasury securities are Treasury securities with terms that are in all respects identical to the terms of the original Treasury securities and that are issued (without regard to paragraph (d)(2)(i) of this section) not more than 12 months after the original Treasury securities were first issued to the public.

(B) *Original Treasury securities.* Original Treasury securities are securities comprising any issue of outstanding Treasury securities.

(C) *Qualified reopening.* A qualified reopening is a reopening of Treasury securities intended to alleviate an acute, protracted shortage of the original Treasury securities.

(e) *Disclosure of certain information to holders.* Certain provisions of the regulations under section 163(e) and sections 1271 through 1275 provide that the issuer's determination of an item controls the holder's treatment of the item. In such a case, the issuer must provide the relevant information to the holder in a reasonable manner. For example, the issuer may provide the name or title and either the address or telephone number of a representative of the issuer who will make available to holders upon request the information required for holders to comply with these provisions of the regulations.

(f) *Treatment of pro rata prepayments*—(1) *Treatment as retirement of separate debt instrument.* A pro rata prepayment is treated as a payment in retirement of a portion of a debt instrument, which may result in a gain or loss to the holder. Generally, the gain or loss is calculated by assuming that the original debt instrument consists of two instruments, one that is retired and one that remains outstanding. The adjusted issue price, holder's adjusted basis, and accrued but unpaid OID of the original debt instrument, determined immediately before the pro rata prepayment, are allocated between these two instruments based on the portion of the instrument that is treated as retired by the pro rata prepayment.

(2) *Definition of pro rata prepayment.* For purposes of paragraph (f)(1) of this section, a pro rata prepayment is a payment on a debt instrument made prior to maturity that—

(i) Is not made pursuant to the instrument's payment schedule (including a payment schedule determined under § 1.1272–1(c)); and

(ii) Results in a substantially pro rata reduction of each payment remaining to be paid on the instrument.

(g) *Anti-abuse rule.* [Reserved]

Par. 13. In § 1.1275–3, the section heading and paragraphs (a) and (b) are revised to read as follows:

§ 1.1275–3 OID information reporting requirements.

(a) *In general.* This section provides legending and information reporting requirements intended to facilitate the reporting of OID.

(b) *Information required to be set forth on face of debt instruments that are not publicly offered*—(1) *In general.* Except as provided in paragraph (b)(4) or paragraph (d) of this section, this paragraph (b) applies to any debt instrument that is not publicly offered (within the meaning of § 1.1275–1(h)), is issued in physical form, and has OID. The issuer of any such debt instrument must legend the instrument by stating on the face of the instrument that the debt instrument was issued with OID. In addition, the issuer must either—

(i) Set forth on the face of the debt instrument the issue price, the amount of OID, the issue date, and the yield to maturity; or

(ii) Provide the name or title and either the address or telephone number of a representative of the issuer who will, beginning no later than 10 days after the issue date, promptly make available to holders upon request the information described in paragraph (b)(1)(i) of this section.

(2) *Time for legending.* An issuer may satisfy the requirements of this paragraph (b) by legending the debt instrument when it is first issued in physical form. Legending is not required, however, before the first holder of the debt instrument disposes of the instrument.

(3) *Legend must survive reissuance upon transfer.* Any new physical security that is issued (for example, upon registration of transfer of ownership) must contain any required legend.

(4) *Exceptions.* Paragraph (b)(1) of this section does not apply to debt instruments described in section 1272(a)(2) (relating to debt instruments not subject to the periodic OID inclusion rules), debt instruments issued by natural persons (as defined in § 1.6049–4(f)(2)), REMIC regular interests or other debt instruments subject to section 1272(a)(6), or stripped bonds and coupons within the meaning of section 1286.

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§ 1.1275–3T [Removed]

Par. 14. Section 1.1275–3T is removed as of February 2, 1994.

Par. 15. Section 1.1275–5 is added to read as follows:

§ 1.1275–5 Variable rate debt instruments.

(a) *Applicability*—(1) *In general.* This section provides rules for variable rate debt instruments. For purposes of section 163(e) and sections 1271 through 1275, a variable rate debt instrument is a debt instrument that meets the conditions described in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Principal payments.* The issue price of the debt instrument must not exceed the total noncontingent principal payments by more than an amount equal to the lesser of—

(i) .015 multiplied by the product of the total noncontingent principal payments and the number of complete years to maturity from the issue date (or, in the case of an installment obligation, the weighted average maturity as defined in § 1.1273–1(e)(3)); or

(ii) 15 percent of the total noncontingent principal payments.

(3) *Stated interest*—(i) *General rule.* The debt instrument must provide for stated interest (compounded or paid at least annually) at—

(A) One or more qualified floating rates;

(B) A single fixed rate and one or more qualified floating rates;

(C) A single objective rate; or

(D) A single fixed rate and a single objective rate that is a qualified inverse floating rate.

(ii) *Certain debt instruments bearing interest at a fixed rate for an initial period.* If interest on a debt instrument is stated at a fixed rate for an initial period of less than 1 year followed by a variable rate that is either a qualified floating rate or an objective rate for a subsequent period, and the value of the variable rate on the issue date is intended to approximate the fixed rate, the fixed rate and the variable rate together constitute a single qualified floating rate or objective rate. A fixed rate and a variable rate will be conclusively presumed to meet the requirements of the preceding sentence if the value of the variable rate on the issue date does not differ from the value of the fixed rate by more than .25 percentage points (25 basis points).

(4) *Current value.* The debt instrument must provide that a qualified floating rate or objective rate in effect at any time during the term of the instrument is set at a current value of that rate. A current value is the value of the rate on any day that is no earlier than 3 months prior to the first day on which that value is in effect and no later than 1 year following that first day.

(b) *Qualified floating rate*—(1) *In general.* A variable rate is a qualified floating rate if variations in the value of the rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds in the currency in which the debt instrument is denominated. The rate may measure contemporaneous variations in borrowing costs for the issuer of the debt instrument or for issuers in general. Except as provided in paragraph (b)(2) of this section, a multiple of a qualified floating rate is not a qualified floating rate. If a debt instrument provides for two or more qualified floating rates that can reasonably be expected to have approximately the same values throughout the term of the instrument, the qualified floating rates together constitute a single qualified floating rate. Two or more qualified floating rates will be conclusively presumed to meet the requirements of the preceding sentence if the values of all rates on the issue date are within .25 percentage points (25 basis points) of each other.

(2) *Certain rates based on a qualified floating rate.* A variable rate is a qualified floating rate if it is equal to either—

(i) The product of a qualified floating rate described in paragraph (b)(1) of this section and a fixed multiple that is greater than zero but not more than 1.35; or

(ii) The product of a qualified floating rate described in paragraph (b)(1) of this section and a fixed multiple that is

greater than zero but not more than 1.35, increased or decreased by a fixed rate.

(3) *Restrictions on the stated rate of interest.* A variable rate is not a qualified floating rate if it is subject to a restriction or restrictions on the maximum stated interest rate (cap), a restriction or restrictions on the minimum stated interest rate (floor), a restriction or restrictions on the amount of increase or decrease in the stated interest rate (governor), or other similar restrictions. Notwithstanding the preceding sentence, the following restrictions will not cause a variable rate to fail to be a qualified floating rate—

(i) A cap, floor, or governor that is fixed throughout the term of the debt instrument;

(ii) A cap or similar restriction that is not reasonably expected as of the issue date to cause the yield on the debt instrument to be significantly less than the expected yield determined without the cap;

(iii) A floor or similar restriction that is not reasonably expected as of the issue date to cause the yield on the debt instrument to be significantly more than the expected yield determined without the floor; or

(iv) A governor or similar restriction that is not reasonably expected as of the issue date to cause the yield on the debt instrument to be significantly more or significantly less than the expected yield determined without the governor.

(c) *Objective rate*—(1) *In general.* An objective rate is a rate (other than a qualified floating rate) that is determined using a single fixed formula and that is based on—

(i) One or more qualified floating rates;

(ii) One or more rates where each rate would be a qualified floating rate for a debt instrument denominated in a currency other than the currency in which the debt instrument is denominated;

(iii) The yield or changes in the price of one or more items of personal property (other than stock or debt of the issuer or a related party within the meaning of section 267(b) or 707(b)(1)), provided each item of property is actively traded within the meaning of section 1092(d)(1) (determined without regard to section 1092(d)(3)); or

(iv) A combination of rates described in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this section.

(2) *Other objective rates to be specified by Commissioner.* The Commissioner may designate in the Internal Revenue Bulletin variable rates other than those described in paragraph (c)(1) of this section that will be treated as objective rates (see § 601.601(d)(2)(ii) of this chapter).

(3) *Qualified inverse floating rate.* An objective rate described in paragraph (c)(1) of this section is a qualified inverse floating rate if—

(i) The rate is equal to a fixed rate minus a qualified floating rate; and

(ii) The variations in the rate can reasonably be expected to inversely reflect contemporaneous variations in the cost of newly borrowed funds (disregarding any restrictions on the rate that are described in paragraphs (b)(3)(i), (b)(3)(ii), (b)(3)(iii), and (b)(3)(iv) of this section).

(4) *Significant front-loading or back-loading of interest.* Notwithstanding paragraph (c)(1) of this section, a variable rate of interest on a debt instrument is not an objective rate if it is reasonably expected that the average value of the rate during the first half of the instrument's term will be either significantly less than or significantly greater than the average value of the rate during the final half of the instrument's term.

(5) *Tax-exempt debt.* Notwithstanding paragraph (c)(1) of this section, in the case of any tax-exempt obligation (within the meaning of section 1275(a)(3)), a variable rate is an objective rate only if it is a qualified inverse floating rate.

(d) *Examples.* The following examples illustrate the rules of paragraphs (b) and (c) of this section. For purposes of these examples, assume that paragraphs (c)(4) and (c)(5) of this section do not apply.

Example 1. Rate based on LIBOR. X issues a debt instrument that provides for annual payments of interest at a rate equal to the value of the 1-year London Interbank Offered Rate (LIBOR) at the end of each year. Variations in the value of 1-year LIBOR over the term of the debt instrument can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds over that term. Accordingly, the rate is a qualified floating rate.

Example 2. Rate increased by a fixed amount. X issues a debt instrument that provides for annual payments of interest at a rate equal to 200 basis points (2 percent) plus the current value, at the end of each year, of the average yield on 1-year Treasury securities as published in Federal Reserve bulletins. Variations in the value of this interest rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds. Accordingly, the rate is a qualified floating rate.

Example 3. Rate based on commercial paper rate. X issues a debt instrument that provides for a rate of interest that is periodically adjusted to equal the current interest rate of Bank's commercial paper. Variations in the value of this interest rate can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds. Accordingly, the rate is a qualified floating rate.

Example 4. Rate based on changes in the value of a commodity index. X issues a debt instrument that provides for annual interest payments at the end of each year at a rate equal to the percentage increase, if any, in the value of an index for the year immediately preceding the payment. The index is based on the prices of several actively traded commodities. Variations in the value of this interest rate cannot reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds. Accordingly, the rate is not a qualified floating rate. However, because the rate is based on changes in the prices of actively traded property, the rate is an objective rate.

Example 5. Rate based on a percentage of S&P 500 Index. X issues a debt instrument that provides for annual interest payments at the end of each year based on a fixed percentage of the value of the S&P 500 Index. Variations in the value of this interest rate cannot reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds and, therefore, the rate is not a qualified floating rate. In addition, because the interest rate is based on the value of the S&P 500 Index rather than on changes in that value, the rate is not an objective rate.

Example 6. Rate based on issuer's profits. Z issues a debt instrument that provides for annual interest payments equal to 20 percent of Z's net profits earned during the year immediately preceding the payment. Variations in the value of this interest rate cannot reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds. Accordingly, the rate is not a qualified floating rate. In addition, because the stated rate is neither based on the yield or changes in the price of actively traded property nor based on a qualified floating rate, the rate is not an objective rate.

Example 7. Rate based on a multiple of an interest index. Z issues a debt instrument with annual interest payments at a rate equal to two times the value of 1-year LIBOR as of the payment date. Because the rate is a multiple greater than 1.35 times a qualified floating rate, the rate is not a qualified floating rate. However, because the stated rate is based on a qualified floating rate using a single fixed formula, the rate is an objective rate.

Example 8. Variable rate based on the cost of borrowed funds in a foreign currency. Y issues a 5-year dollar denominated debt instrument that provides for annual interest payments at a rate equal to the value of 1-year French franc LIBOR as of the payment date. Variations in the value of French franc LIBOR do not measure contemporaneous changes in the cost of newly borrowed funds in dollars. As a result, the rate is not a qualified floating rate for an instrument denominated in dollars. However, because French franc LIBOR is a qualified floating rate for a debt instrument denominated in French francs, the rate is an objective rate.

Example 9. Qualified inverse floating rate. X issues a debt instrument that provides for

annual interest payments at the end of each year at a rate equal to 12 percent minus the value of 1-year LIBOR as of the payment date. On the issue date, the value of 1-year LIBOR is 6 percent. Because the rate can reasonably be expected to inversely reflect contemporaneous variations in the cost of newly borrowed funds, it is a qualified inverse floating rate. However, if the value of 1-year LIBOR on the issue date was 11 percent rather than 6 percent, the rate would not be a qualified inverse floating rate because the rate could not reasonably be expected to inversely reflect contemporaneous variations in the cost of newly borrowed funds.

(e) *Qualified stated interest and OID with respect to a variable rate debt instrument*—(1) *In general.* This paragraph (e) provides rules to determine the amount and accrual of OID and qualified stated interest on a variable rate debt instrument. In general, the rules convert the debt instrument into a fixed rate debt instrument and then apply the general OID rules to the debt instrument. The issue price of a variable rate debt instrument, however, is not determined under this paragraph (e). See §§ 1.1273–2 and 1.1274–2 to determine the issue price of a variable rate debt instrument.

(2) *Variable rate debt instrument that provides for annual payments of interest at a single variable rate.* If a variable rate debt instrument provides for stated interest at a single qualified floating rate or objective rate that is unconditionally payable in cash or in property (other than debt instruments of the issuer), or that will be constructively received under section 451, at least annually—

(i) All stated interest with respect to the debt instrument is qualified stated interest; and

(ii) The amount of OID, if any, is determined under the rules applicable to fixed rate debt instruments by assuming that the variable rate is a fixed rate equal to—

(A) In the case of a qualified floating rate or qualified inverse floating rate, the value, as of the issue date, of the qualified floating rate or qualified inverse floating rate; or

(B) In the case of an objective rate (other than a qualified inverse floating rate), a fixed rate that reflects the yield that is reasonably expected for the debt instrument.

(3) *All other variable rate debt instruments except for those that provide for a fixed rate.* If a variable rate debt instrument is not described in paragraph (e)(2) of this section and does not provide for interest payable at a fixed rate (other than an initial fixed rate described in paragraph (a)(3)(ii) of this section), the amount of interest and OID accruals for the instrument are determined under this paragraph (e)(3).

(i) *Step one: Determine the fixed rate substitute for each variable rate provided under the debt instrument*—(A) *Qualified floating rate.* The fixed rate substitute for each qualified floating rate provided for in the debt instrument is the value of each rate as of the issue date. If, however, a variable rate debt instrument provides for two or more qualified floating rates with different intervals between interest adjustment dates, the fixed rate substitutes for the rates must be based on intervals that are equal in length. For example, if a 4-year debt instrument provides for 24 monthly interest payments based on the value of the 30-day commercial paper rate on each payment date followed by 8 quarterly interest payments based on the value of quarterly LIBOR on each payment date, the fixed rate substitutes may be based on the values, as of the issue date, of the 90-day commercial paper rate and quarterly LIBOR. Alternatively, the fixed rate substitutes may be based on the values, as of the issue date, of the 30-day commercial paper rate and monthly LIBOR.

(B) *Qualified inverse floating rate.* The fixed rate substitute for a qualified inverse floating rate is the value of the qualified inverse floating rate as of the issue date.

(C) *Objective rate.* The fixed rate substitute for an objective rate (other than a qualified inverse floating rate) is a fixed rate that reflects the yield that is reasonably expected for the debt instrument.

(ii) *Step two: Construct the equivalent fixed rate debt instrument.* The equivalent fixed rate debt instrument has terms that are identical to those provided under the variable rate debt instrument, except that the equivalent fixed rate debt instrument provides for the fixed rate substitutes (determined in paragraph (e)(3)(i) of this section) in lieu of the qualified floating rates or objective rate provided under the variable rate debt instrument.

(iii) *Step three: Determine the amount of qualified stated interest and OID with respect to the equivalent fixed rate debt instrument.* The amount of qualified stated interest and OID, if any, are determined for the equivalent fixed rate debt instrument under the rules applicable to fixed rate debt instruments and are taken into account as if the holder held the equivalent fixed rate debt instrument.

(iv) *Step four: Make appropriate adjustments for actual variable rates.* Qualified stated interest or OID allocable to an accrual period must be increased (or decreased) if the interest actually accrued or paid during an accrual period exceeds (or is less than) the interest assumed to be accrued or paid during the accrual period under the equivalent fixed rate debt instrument. This increase or decrease is an adjustment to qualified stated interest for the accrual period if the equivalent fixed rate debt instrument (as determined under paragraph (e)(3)(ii) of this section) provides for qualified stated interest and the increase or decrease is reflected in the amount actually paid during the accrual period. Otherwise, this increase or decrease is an adjustment to OID for the accrual period.

(v) *Examples.* The following examples illustrate the rules in paragraph (e)(3) of this section.

Example 1. Equivalent fixed rate debt instrument—(i) *Facts.* X purchases at original issue a 6-year variable rate debt instrument that provides for semiannual payments of interest. For the first 3 years, the rate of interest is the value of 6-month LIBOR on the payment date. For the final 3 years, the rate is the value of the 6-month T-bill rate on the payment date. On the issue date, the value of 6-month LIBOR is 3 percent, compounded semiannually, and the 6-month T-bill rate is 2 percent, compounded semiannually.

(ii) *Determination of equivalent fixed rate debt instrument.* Under paragraph (e)(3)(i) of this section, the fixed rate substitute for 6-month LIBOR is 3 percent, compounded semiannually, and the fixed rate substitute for the 6-month T-bill rate is 2 percent, compounded semiannually. Under paragraph (e)(3)(ii) of this section, the equivalent fixed rate debt instrument is a 6-year debt instrument that provides for semiannual payments of interest at 3 percent, compounded semiannually, for the first 3 years followed by 2 percent, compounded semiannually, for the final 3 years.

Example 2. Equivalent fixed rate debt instrument with de minimis OID—(i) *Facts.* Y purchases at original issue, for $100,000, a 4-year variable rate debt instrument that has a stated principal amount of $100,000, payable at maturity. The debt instrument provides for monthly payments of interest at the end of each month. For the first year, the interest rate is the monthly commercial paper rate and for the last 3 years, the interest rate is the monthly commercial paper rate plus 100 basis points. On the issue date, the monthly commercial paper rate is 3 percent, compounded monthly.

(ii) *Equivalent fixed rate debt instrument.* Under paragraph (e)(3)(ii) of this section, the equivalent fixed rate debt instrument for the variable rate debt instrument is a 4-year debt instrument that has an issue price and stated principal amount of $100,000. The equivalent fixed rate debt instrument provides for monthly payments of interest at 3 percent, compounded monthly, for the first year ($250 per month) and monthly payments of interest at 4 percent, compounded monthly, for the last 3 years ($333.33 per month).

(iii) *De minimis OID.* Under § 1.1273–1(a), because a portion (100 basis points) of each interest payment in the final 3 years is not a qualified stated interest payment, the equivalent fixed rate debt instrument has OID of $2,999.88 ($102,999.88 − $100,000). However, under § 1.1273–1(d)(4) (the de minimis rule relating to teaser rates and interest holidays), the stated redemption price at maturity of the equivalent fixed rate debt instrument is $100,999.96 ($100,000 (issue price) plus $999.96 (the greater of the amount of foregone interest ($999.96) and the amount equal to the excess of the instrument's stated principal amount over its issue price ($0)). Thus, the equivalent fixed rate debt instrument is treated as having OID of $999.96 ($100,999.96 − $100,000). Because this amount is less than the de minimis amount of $1,010 (0.0025 multiplied by $100,999.96 multiplied by 4 complete years to maturity), the equivalent fixed rate debt instrument has de minimis OID. Therefore, the variable rate debt instrument has zero OID and all stated interest payments are qualified stated interest payments.

Example 3. Adjustment to qualified stated interest for actual payment of interest—(i) *Facts.* On January 1, 1995, Z purchases at original issue, for $90,000, a variable rate debt instrument that matures on January 1, 1997, and has a stated principal amount of $100,000, payable at maturity. The debt instrument provides for annual payments of interest on January 1 of each year, beginning on January 1, 1996. The amount of interest payable is the value of annual LIBOR on the payment date. The value of annual LIBOR on January 1, 1995, and January 1, 1996, is 5 percent, compounded annually. The value of annual LIBOR on January 1, 1997, is 7 percent, compounded annually.

(ii) *Equivalent fixed rate debt instrument.* Under paragraph (e)(3)(ii) of this section, the equivalent fixed rate debt instrument for the variable rate debt instrument is a 2-year debt instrument that has an issue price of $90,000 and a stated principal amount of $100,000. The equivalent fixed rate debt instrument provides for interest payments of $5,000 at the end of each year.

(iii) *Accrual of OID and qualified stated interest.* Under § 1.1273–1, the equivalent fixed rate debt instrument has $10,000 of OID and the annual interest payments of $5,000 are qualified stated interest payments. Under § 1.1272–1, the equivalent fixed rate debt instrument has a yield of 10.82 percent, compounded annually. The amount of OID allocable to the first annual accrual period (assuming Z uses annual accrual periods) is $4,743.25 (($90,000 × .1082) − $5,000), and the amount of OID allocable to the second annual accrual period is $5,256.75 ($100,000 − $94,743.25). Under paragraph (e)(3)(iv) of this section, the $2,000 difference between the $7,000 interest payment actually made at maturity and the $5,000 interest payment assumed to be made at maturity under the equivalent fixed rate debt instrument is treated as additional qualified stated interest for the period.

(4) *Variable rate debt instrument that provides for a single fixed rate*—(i) *General rule.* If a variable rate debt instrument provides for stated interest either at one or more qualified floating rates or at a qualified inverse floating rate and in addition provides for stated interest at a single fixed rate (other than an initial fixed rate described in paragraph (a)(3)(ii) of this section), the amount of interest and OID are determined using the method of paragraph (e)(3) of this section, as modified by this paragraph (e)(4). For purposes of paragraphs (e)(3)(i) through (e)(3)(iii) of this section, the variable rate debt instrument is treated as if it provided for a qualified floating rate (or a qualified inverse floating rate, if the debt instrument provides for a qualified inverse floating rate), rather than the fixed rate. The qualified floating rate (or qualified inverse floating rate) replacing the fixed rate must be such that the fair market value of the variable rate debt instrument as of the issue date would be approximately the same as the fair market value of an otherwise identical debt instrument that provides for the qualified floating rate (or qualified inverse floating rate) rather than the fixed rate.

(ii) *Example.* The following example illustrates the rule in paragraph (e)(4)(i) of this section.

Example. Variable rate debt instrument that provides for a single fixed rate—(i) *Facts.* On January 1, 1995, X purchases at original issue, for $100,000, a variable rate debt instrument that matures on January 1, 2001, and that has a stated principal amount of $100,000. The debt instrument provides for payments of interest on January 1 of each year, beginning on January 1, 1996. For the first 4 years, the interest rate is 4 percent, compounded annually, and for the last 2 years the interest rate is the value of 1-year LIBOR, as of the payment date, plus 200 basis points. On January 1, 1995, the value of 1-year LIBOR is 2 percent, compounded annually. In addition, assume that on January 1, 1995, the variable rate debt instrument has approximately the same fair market value as an otherwise identical debt instrument that provides for an interest rate equal to the value of 1-year LIBOR, as of the payment date, for the first 4 years.

(ii) *Equivalent fixed rate debt instrument.* Under paragraph (e)(4)(i) of this section, for purposes of paragraphs (e)(3)(i) through (e)(3)(iii) of this section, the variable rate debt instrument is treated as if it provided for an interest rate equal to the value of 1-year LIBOR, as of the payment date, for the first 4 years. Under paragraph (e)(3)(ii) of this section, the equivalent fixed rate debt instrument for the variable rate debt instrument is a 6-year debt instrument that has an issue price and stated principal amount of $100,000. The equivalent fixed rate debt instrument provides for interest payments of $2,000 for the first 4 years and $4,000 for the last 2 years.

(iii) *Accrual of OID and qualified stated interest.* Under § 1.1273–1, the equivalent fixed rate debt instrument has OID of $4,000 because a portion (200 basis points) of each interest payment in the last 2 years is not a qualified stated interest payment. The $4,000 of OID is allocable over the 6-year term of the debt instrument under § 1.1272–1. Under paragraph (e)(3)(iv) of this section, the difference between the $4,000 payment made in the first 4 years and the $2,000 payment assumed to be made on the equivalent fixed rate debt instrument in those years is an adjustment to qualified stated interest. In addition, any difference between the amount actually paid in each of the last 2 years and the $4,000 payment assumed to be made on the equivalent fixed rate debt instrument is an adjustment to qualified stated interest.

(f) *Special rule for certain reset bonds.* Notwithstanding paragraph (e) of this section, this paragraph (f) provides a special rule for a variable rate debt instrument that provides for stated interest at a fixed rate for an initial interval, and provides that on the date immediately following the end of the initial interval (the effective date) the stated interest rate will be a rate determined under a procedure (such as an auction procedure) so that the fair market value of the instrument on the effective date will be a fixed amount (the reset value). Solely for purposes of calculating the accrual of OID, the variable rate debt instrument is treated as—

(i) Maturing on the date immediately preceding the effective date for an amount equal to the reset value; and

(ii) Reissued on the effective date for an amount equal to the reset value.

§ 1.1275–6T [Removed]

Par. 16. Section 1.1275–6T is removed as of February 2, 1994.

§ 1.6050H–2T [Removed]

Par. 17. Section 1.6050H–2T is removed as of February 2, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 18. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 19. Section 602.101(c) is amended as follows:

1. Removing the following entries from the table:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control number
* * * * *	
1.1274–3T	1545–0887

CFR part or section where identified and described	Current OMB control number
1.1275–3	1545–0887
1.1275–3T	1545–0887

2. Adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

(c) * * *

CFR part or section where identified and described	Current OMB control number
1.1272–1(c)(4)	1545–1353
1.1272–3	1545–1353
1.1273–2(h)(2)	1545–1353
1.1274–3(d)	1545–1353
1.1274–5(b)	1545–1353
1.1274A–1(c)	1545–1353
1.1275–3(b)	1545–1353
1.1275–3(c)	1545–0887

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: January 14, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–2073 Filed 1–27–94; 11:10 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8518]

RIN 1545–AS36

Debt Instruments with Original Issue Discount; Anti-Abuse Rule

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains a temporary regulation that adds an anti-abuse rule to the final regulations relating to the tax treatment of debt instruments with original issue discount. The rule allows the Commissioner of Internal Revenue, in certain circumstances, to apply or depart from the final regulations in a manner that ensures a reasonable result in light of the purposes of the statutes governing original issue discount. The text of this temporary regulation also serves as the text of the proposed regulation set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: This temporary regulation is effective April 4, 1994.

This temporary regulation applies to debt instruments issued on or after April 4, 1994, and to lending transactions, sales, and exchanges that occur on or after April 4, 1994.

FOR FURTHER INFORMATION CONTACT: Andrew C. Kittler at (202) 622–3940 or William E. Blanchard at (202) 622–3950 (not toll-free calls).

SUPPLEMENTARY INFORMATION

Background

Elsewhere in this issue of the **Federal Register**, the IRS published final regulations relating to original issue discount (OID) and other related matters under sections 163(e), 446, 483, 1001, 1012, and sections 1271 through 1275 of the Internal Revenue Code. In general, the regulations finalize the proposed regulations that were published in the **Federal Register** on December 22, 1992 (57 FR 60750).

Explanation of provision

The final regulations provide rules for the computation of OID and other related matters. In many cases, the final regulations provide bright-line or mechanical rules to simplify computations and to permit flexibility in structuring debt instruments.

The Service and Treasury believe that the rules in the final regulations work appropriately in most situations. Nonetheless, it may be possible to structure debt instruments or transactions, or to apply the bright-line or mechanical rules of the regulations, in a way that produces an unreasonable result. The purpose of the temporary regulation is to allow the Commissioner to apply or depart from the final regulations where necessary or appropriate to ensure that the tax result is reasonable in light of the purposes of the applicable statutes.

Under the temporary regulation, if a principal purpose in structuring a debt instrument, engaging in a transaction, or applying the final regulations is to achieve a result that is unreasonable in light of the purposes of the applicable statutes, then the Commissioner can apply or depart from the regulations as necessary or appropriate to achieve a reasonable result. A result will not be considered unreasonable, however, in the absence of a substantial effect on the present value of a taxpayer's tax liability.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to this regulation, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

List of Subjects in 26 CFR part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * * § 1.1275–2T also issued under 26 U.S.C. 1275(d).

Par. 2. Section 1.1275–2T is added to read as follows:

§ 1.1275–2T Special rules relating to debt instruments (temporary).

(a) through (f) [Reserved]

(g) *Anti-abuse rule*—(1) *In general.* If a principal purpose in structuring a debt instrument, engaging in a transaction, or applying the regulations under section 163(e) or sections 1271 through 1275 is to achieve a result that is unreasonable in light of the purposes of the applicable statutes, then the Commissioner can apply or depart from the regulations as necessary or appropriate to achieve a reasonable result. Whether a result is unreasonable is determined based on all the facts and circumstances. A result will not be considered unreasonable, however, in the absence of a substantial effect on the present value of a taxpayer's tax liability. For example, if a principal purpose of including an early call option that is not expected to be exercised by the issuer in the terms of a current-pay, increasing-rate note is to protect the holder from taxable income in excess of the interest payments by virtue of the option rules of § 1.1272–1(c)(5), and if the effect would be to substantially reduce the present value of a holder's tax liability arising from the note, the Commissioner

can apply the regulations (in whole or in part) without regard to the rules of § 1.1272–1(c)(5). On the other hand, it generally would be reasonable for a corporation to issue convertible bonds, rather than investment units consisting of bonds and warrants, to reduce or eliminate the amount of taxable OID on the bonds. See § 1.1272–1(e).

(2) *Effective date.* Paragraph (g) of this section applies to debt instruments issued on or after April 4, 1994, and to lending transactions, sales, and exchanges that occur on or after April 4, 1994.

Approved: January 14, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–2075 Filed 1–27–94; 11:10 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

Illinois Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment, with one condition, to the Illinois permanent regulatory program (hereinafter referred to as the Illinois program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment was initiated by Illinois to revise the Illinois program to address statutory changes to the Surface Coal Mining Land Conservation and Reclamation Act (State Act). The amendment is intended to make the requirements of the Illinois program no less effective than the Federal program.

EFFECTIVE DATE: February 2, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Fulton, Director, Springfield Field Office, Office of Surface Mining Reclamation and Enforcement, 511 West Capitol Avenue, suite 202, Springfield, Illinois 62704, Telephone: (217) 492–4495.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Program
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Illinois Program

On June 1, 1982, the Secretary of the Interior conditionally approved the Illinois program. Information pertinent to the general background of the Illinois submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the June 1, 1982, **Federal Register** (47 FR 23883). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 913.15, 913.16, and 913.17.

II. Submission of Amendment

Pursuant to 30 CFR 732.17(b)(3), the Illinois regulatory authority notified OSM by letter dated August 17, 1993 (Administrative Record No. IL–1500), of a proposed amendment to the Illinois program to incorporate statutory changes to the State Act at 225 ILCS 720/2.11 and 6.01. The statutory changes were enacted through Public Act 88–63 (HB 2183) and Public Act 88–185 (SB 632) and signed into law on July 7, 1993, and August 4, 1993, respectively.

By letter dated November 22, 1993, in response to an issue letter prepared by OSM on November 5, 1993, Illinois clarified certain provisions of the proposed amendment (Administrative Record No. IL–1516).

OSM announced receipt of the proposed amendment in the September 8, 1993, **Federal Register** (58 FR 47237) and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 8, 1993.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment to the Illinois program submitted on August 17, 1993. Revisions not addressed below involve nonsubstantive working changes.

1. 225 ILCS 720/2.11—Procedures for Approval

(a) Illinois is proposing to make minor, non-substantive language changes at sections 2.11(a), (b), (c), and (g) to clarify the provisions of these sections. The Director finds that the proposed revisions are in accordance with section 514 of SMCRA.

(b) At section 2.11(c), Illinois is also proposing to prohibit any party to a formal adjudicatory hearing under this subsection from seeking judicial review of the Department's final decision on the permit application until after the issuance of the hearing officer's written decision granting or denying the permit. Additionally, notices of permit decision hearings must be published seven to fourteen days before the hearing and comply with certain size and placement requirements.

In a letter to OSM dated November 22, 1993 (Administrative Record No. IL–1516), Illinois clarified that: (a) A permit applicant must seek administrative review prior to seeking judicial review under the provisions of section 2.11(f); (b) the provisions in section 2.11(c) pertaining to exhaustion of administrative remedies would not apply to the hearing officer's final written decision for temporary relief under section 2.11(e); and (c) if the hearing officer fails to act within prescribed time frames, judicial review of his failure to act is required per the implementing provisions of 62 Ill. Admin. Code 1847.3(1)(2).

Although section 514(f) of SMCRA does not contain the provision proposed at section 2.11(c) pertaining to judicial review, the Federal regulations at 30 CFR 775.13(a)(2) provide for judicial review if a hearing or regulatory authority fails to render a decision within the specified time limits. The Director finds that the proposed revision when read in conjunction with 62 Illinois Administrative Code 1847.3(1)(2) is consistent with the Federal regulations at 30 CFR 775.13(a)(2).

Section 514(c) of SMCRA does not contain the provision proposed at section 2.11(c) pertaining to notices of permit decision hearings. However, the Director finds the proposed revision in accordance with the requirements of section 514(c) of SMCRA.

2. 225ILCS 720/6.01—Requirement of a Bond

Illinois is proposing to add a provision at section 6.01(b) to permit the Department to accept the bond of the applicant, without separate surety, when the applicant demonstrates to the Department's satisfaction the existence of a suitable agent to receive service of process, a history of financial solvency and continuous operation, and a current financial soundness sufficient for authorization to self-insure or bond the required amount.

The Director finds that the new section 6.01(b) is not less stringent than the provisions of section 509(c) of SMCRA to the extent that states are provided with the authority to establish

self-bonding systems. However, prior to implementation of this statutory amendment, the Director is requiring that Illinois submit and receive the approval by OSM of supporting regulations to implement the self-bonding provisions of the statute.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the September 8, 1993, **Federal Register** (58 FR 47237) ended on October 8, 1993. No comments were received and the scheduled public hearing was not held since no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Illinois program. None were received.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). Although the Director has determined that this amendment contains no provisions in these categories, the EPA concurred with the proposed amendment.

V. Director's Decision

Based on the above findings, the Director is approving the amendment to the Illinois regulatory program submitted on August 17, 1993, with one condition specified in Finding 2.

The Federal rules at 30 CFR part 913 concerning the Illinois program are being amended to implement the Director's decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs to the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Effect of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Illinois program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Illinois of such provisions.

VI. Procedural Determinations

Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews 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 SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 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 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 26, 1994.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In section 913.15, a new paragraph (p) is added to read as follows:

§ 913.15 Approval of regulatory program amendments.

* * * * *

(p) The following amendment, as submitted to OSM on August 17, 1993, is approved effective February 2, 1994. The amendment consists of the following modifications to the Illinois program:

1. Revisions of the following statutes of the Illinois Surface Coal Mining Land Conservation and Reclamation Act:

225 ILCS 720 Section 2.11 (a), (b), (c), (g)—Procedures for Approval

225 ILCS 720 Section 6.01(b)—Requirement of a Bond

2. In section 913.16, a new paragraph (v) is added to read as follows:

§ 913.16 Required program amendments.

* * * * *

(v) Prior to implementing the self-bonding statute at 225 ILCS 720/6.01(b), Illinois shall submit and receive

approval by OSM of implementing regulations for the self-bonding provisions.

[FR Doc. 94–2337 Filed 2–1–94; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180 and 186

[PP 9F3743 and FAP 1H5614/R2035; FRL–4747–9]

RIN 2070–AB78

Pesticide Tolerances and Feed Additive Regulations for Clethodim

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes permanent tolerances for residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) in or on various raw agricultural commodities and feed additive commodities. These regulations were requested by Valent USA Corp. and establish maximum permissible levels for residues of the herbicide in or on the commodities.

EFFECTIVE DATE: This regulation becomes effective February 2, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 9F3743 and FAP 1H5614/R2035], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM 23), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-7830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 24, 1993 (58 FR 62075), EPA issued a proposed rule to establish permanent tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a), for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on various raw agricultural commodities (40 CFR 180.458) and in or on various feed additive commodities (40 CFR 186.1075). Interim tolerances had been established in the **Federal Register** of January 29, 1992 (57 FR 3296). These tolerances were requested by Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, Walnut Creek, CA 95496, and establish the maximum permissible level for residues of the herbicide on these commodities.

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

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

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

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

Pursuant to the terms of the Executive Order, EPA has determined that these rules are not "significant" and are therefore not subject to OMB review.

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

List of Subjects in 40 CFR Parts 180 and 186

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

Dated: January 12, 1994.

Stephanie R. Irene,
Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR parts 180 and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

b. By revising § 180.458, to read as follows:

§ 180.458 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

Tolerances are established for the combined residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the following raw agricultural commodities.

Commodity	Parts per million
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, mbyp	0.2
Cottonseed	1.0
Eggs	0.2
Goats, fat	0.2
Goats, meat	0.2
Goats, mbyp	0.2
Hogs, fat	0.2
Hogs, meat	0.2
Hogs, mbyp	0.2
Horses, fat	0.2
Horses, meat	0.2
Horses, mbyp	0.2
Milk	0.05
Poultry, fat	0.2
Poultry, meat	0.2
Poultry, mbyp	0.2
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, mbyp	0.2
Soybeans	10.0

PART 186—[AMENDED]

1. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 346.

b. By revising § 186.1075, to read as follows:

§ 186.1075 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

Tolerances are established for residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the following feeds.

Feed	Parts per million
Cottonseed meal	2.0
Soybean soapstock	15.0

[FR Doc. 94–2280 Filed 2–1–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 233

RIN 0970–AA70

Aid to Families With Dependent Children and Adult Assistance Programs Income and Resources Disregards

AGENCY: Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: These final rules update the statutory disregards in regulations for the Aid to Families with Dependent Children (AFDC) program, and the adult assistance programs in Guam, Puerto Rico and the Virgin Islands by adding the income and resources disregards provided under several public laws. The disregards are: (1) Section 479B of the Higher Education Act of 1965, as amended by Public Law 102–325, the Higher Education Amendments of 1992, which provides that student financial assistance received under the programs in title IV of the Higher Education Act, or under Bureau of Indian Affairs student assistance programs, will not be taken into account in determining need or amount of benefits; (2) section 501(c) of Public Law 101–392, the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, which provides that student financial assistance made for attendance costs will not be counted as income or resources; (3) section 105 of Public Law 100–383, the Civil Liberties Act of 1988, which provides that restitution made to individuals of Japanese ancestry who were interned during World War II will not be counted as income or resources, and section 206 of Public Law 100–383, the Aleutian and Pribilof Islands Restitution Act, which provides that restitution made to Aleuts who were relocated by the United States government during World War II will not be counted as income or resources; (4) section 105 of Public Law 100–707, the Disaster Relief and Emergency Assistance Amendments of 1988, which provides that major disaster and emergency assistance will not be counted as income or resources; (5) section 1(a) of Public Law 101–201 and section 10405 of Public Law 101–239, the Omnibus Budget Reconciliation Act of 1989, which both provide that Agent Orange payments will not be counted as income or resources; and (6) section 6(h)(2) of Public Law 101–426, the Radiation Exposure Compensation Act, which provides that amounts paid pursuant to this Act will not be counted as income and resources.

These final rules also amend the existing regulations to provide that bona fide loans will not be counted as income or resources.

EFFECTIVE DATE: February 2, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Mack A. Storrs, Administration for Children and Families, Office of Family Assistance, Fifth Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–9289.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

On July 15, 1991, we published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** relating to updating the statutory disregards in regulations for the AFDC program, and adult assistance programs in Guam, Puerto Rico and the Virgin Islands.

Discussion of Regulatory Provisions and Responses to Comments

The final rules implement the disregard provisions of several public laws and revise existing regulations to require the disregard of bona fide loans as discussed below:

Disregard of Student Financial Assistance Provided Under the Higher Education Amendments of 1992 and the Carl D. Perkins Vocational and Applied Technology Education Act

Higher Education Amendments of 1992

Public Law 102–325, the Higher Education Amendments of 1992, enacted July 23, 1992, amends the Higher Education Act of 1965. Effective July 1, 1993, section 471(a) of Public Law 102–325 revises section 479B to provide that any student financial assistance received under programs in title IV of the Higher Education Act, or under Bureau of Indian Affairs student assistance programs, shall be disregarded in determining the need or

eligibility of any person for benefits or assistance, or the amount of such benefits or assistance, under any Federal, State, or local programs financed in whole or in part with Federal funds.

Some examples of student financial assistance authorized by title IV of the Higher Education Act are: the Pell Grant Program, the Supplemental Educational Opportunity Grant (SEOG) Program, the National Direct Student Loan (NDSL) Program, the PLUS Program, the Byrd Honor Scholarship Programs and the College Work Study Program.

We are adding a new § 233.20(a)(4)(ii)(*p*) to implement Public Law 102–325.

Since the regulatory changes related to section 479B of the Higher Education Act do not involve administrative discretion, but simply implement statutory requirements, we believe that, under 5 U.S.C. 553(b)(3)(B), good cause exists for waiver of a notice of proposed rulemaking on the grounds that it is not necessary.

In the NPRM, we proposed to include in regulations the disregard authorized by the former section 479B, as added by section 14(27) of Public Law 100–50. The former section 479B limited the disregard to student financial assistance made available for the attendance costs defined in that section. Child care and living expenses were not defined as attendance costs. Therefore, we proposed that assistance for such costs would not be disregarded under this regulation unless the educational institution provided for them as part of miscellaneous personal expenses.

We received comments from three State agencies, one County agency, and one legal advocacy group on the proposed rule. The comments are discussed below:

Comment: The commenters recommended that we disregard all of the educational assistance, including amounts provided for child care and living expenses, because counting any part of the educational assistance may inflate State error rates and may be a severe disincentive to the continuation of post-secondary education.

Response: Effective July 1, 1993, a new statutory amendment eliminated the limitations on the disregard. Therefore, we have changed the regulation to implement the new statutory requirement that all student financial assistance received under programs in title IV of the Higher Education Act or under Bureau of Indian Affairs educational assistance programs will be disregarded as income and resources.

Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990

Public Law 101–392, the Carl D. Perkins Vocational and Applied Technology Education Act Amendments of 1990, enacted September 25, 1990, substantially amended the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*) by authorizing grants to States and Indian Tribes to carry out various vocational education assistance programs. Section 221(a)(1) authorizes the use of certain funds to provide, subsidize, reimburse, or pay for preparatory services, including instruction in basic academic and occupational skills, necessary educational materials, and career guidance and counseling services, in preparation for vocational education and training that will furnish single parents, displaced homemakers, and single pregnant women with marketable skills.

Section 507(a) of the Carl D. Perkins Vocational and Applied Technology Education Act specifies that the portion of any student financial assistance received under this Act that is made available for attendance costs defined in section 507(b) of the Act shall not be considered as income or resources in determining eligibility for assistance under any other program funded in whole or in part with Federal funds.

Under section 507(b), attendance costs are defined as:

(1) Tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase or any equipment, materials, or supplies required of all students in the same course of study; and

(2) An allowance for books, supplies, transportation, dependent care and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

Living expenses are not designated as attendance costs under section 507(b). Therefore, such expenses will be disregarded only when they are provided as part of miscellaneous personal expenses.

Further, section 507 of Public Law 90–575, the Higher Education Amendments of 1968, and implementing regulations at § 233.20(a)(4)(ii)(*d*) require that any grant or loan to an undergraduate student for educational purposes made or insured under any program administered by the Department of Education will be disregarded as income and resources in programs under titles I, IV, X, XIV, XVI(AABD), or XIX of the Social Security Act.

The combined effect of section 507 of the Carl D. Perkins Vocational and Applied Technology Education Act and section 507 of the Higher Education Amendments of 1968 is as follows:

(1) Educational loans and grants provided to undergraduate students under any programs administered by the Department of Education, except those in the Carl D. Perkins Vocational and Applied Technology Education Act, will not be counted as income or resources for purposes of the AFDC and adult assistance programs; and

(2) Educational assistance provided for attendance costs under programs in the Carl D. Perkins Vocational and Applied Technology Education Act will not be counted as income or resources for purposes of the AFDC and adult assistance programs.

We are revising the regulations at § 233.20(a)(4)(ii)(*d*) and adding a new § 233.20(a)(4)(ii)(*t*) to implement section 501(c) of Public Law 101–392. In this connection, it should be noted that these regulations do not preclude the disregard of educational assistance under any other applicable disregard, e.g., the disregard of bona fide loans or complementary assistance.

Since the regulatory changes related to section 501(c) of the Carl D. Perkins Vocational and Applied Technology Education Act do not involve administrative discretion, but simply implement statutory requirements, we believe that, under 5 U.S.C. 553(b)(3)(B), good cause exists for waiver of a notice of proposed rulemaking on the grounds that it is no necessary.

Disregard of Payments Provided Under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act

Civil Liberties Act of 1988

Title I of Public Law 100–383, the Civil Liberties Act of 1988, provides that restitution shall be made to the United States citizens and permanent resident aliens of Japanese ancestry who were interned during World War II.

Section 105 of Public Law 100–383 provides that the Attorney General shall pay to each eligible individual the sum of $20,000. If the eligible individual is deceased, the payment will be made to the eligible individual's spouse, children or parents. Section 105(f)(2) provides that the amount of such payments shall not be counted as income or resources for purposes of determining eligibility to receive

benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

Aleutian and Pribilof Islands Restitution Act

Title II of Public Law 100–383, the Aleutian and Pribilof Islands Restitution Act, provides that restitution shall be made to any Aleut living on the date of the enactment of Public Law 100–383 (August 10, 1988) who, as a civilian, was relocated by authority of the United States from his or her home village on the Pribilof Islands or the Aleutian Islands west of Unimak Island to an internment camp, or other temporary facility or location during World War II, or who was born while his or her natural mother was subject to such relocation.

Section 206 of Public Law 100–383 provides that the Secretary of the Interior shall pay to each eligible Aleut the sum of $12,000. Section 206(d)(2) of Public Law 100–383 provides that the amount of such payments shall not be counted as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

Section 3803(c)(2)(C) of title 31, United States Code, contains a list of various Federal and federally-assisted programs, including, among others, the AFDC program. However, the list does not include the adult assistance programs under titles I, X, XIV, and XVI (AABD) of the Social Security Act. Therefore, the disregards required by sections 105(f)(2) and 206(d)(2) of Public Law 100–383 do not apply to the adult assistance programs administered in Guam, Puerto Rico and the Virgin Islands.

There were no comments on these provisions. Thus, a new § 233.20(a)(4)(ii)(g) implements the provisions as proposed.

Disregard of Major Disaster and Emergency Assistance

Title I of Public Law 100–707, the Disaster Relief and Emergency Assistance Amendments of 1988, enacted November 23, 1988, amended the Disaster Relief Act of 1974 (42 U.S.C. §§ 5121–5202) to provide for more effective assistance in response to major disasters and emergencies.

Section 105 of Public Law 100–707 provides that Federal major disaster and emergency assistance provided to individuals and families under this Act, and comparable disaster assistance provided by States, local governments, and disaster assistance organizations, shall not be considered as income or resources when determining eligibility for or benefit levels under federally funded income assistance or resource-tested benefit programs.

Section 103 of Public Law 100–707 defines an emergency to mean any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

Section 103 defines a major disaster to mean any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under the Disaster Relief Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship or suffering caused thereby.

There were no comments on the proposed rule. Thus, a new § 233.20(a)(4)(ii)(r) implements the provision as proposed.

Disregard of Agent Orange Payments

In the In Re Agent Orange product liability case, M.D.L. No. 381 (E.D.N.Y.), several corporations which manufactured the chemical Agent Orange agreed to pay $180 million into a settlement fund. Under the settlement, military personnel who were exposed to the chemical Agent Orange while in Vietnam and who now suffer from total disabilities caused by any disease, and survivors of deceased veterans who were exposed to Agent Orange, are eligible for settlement payments.

Section 1 of Public Law 101–201, enacted December 6, 1989, specifies that, effective January 1, 1989, the payments made from the Agent Orange Settlement Fund or any other fund pursuant to the settlement in connection with the case In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.), shall not be considered income or resources in determining eligibility for or the amount of benefits under any Federal or federally assisted programs.

Section 10405 of Public Law 101–239, enacted December 19, 1989, also specifies that, effective January 1, 1989, payments from the Agent Orange settlement fund or any other fund established pursuant to the settlement shall not be considered income or resources in determining eligibility for or the amount of benefits under certain specified Federal or federally assisted programs including, among others, AFDC (title IV–A of the Social Security Act) and the adult assistance programs (titles I, X, XIV, and XVI (AABD) of the Act).

There were no comments on the proposed rule. Thus, a new § 233.20(a)(4)(ii)(s) implements these provisions as proposed.

Disregard of Payments Made Under the Radiation Exposure Compensation Act

Public Law 101–426, the Radiation Exposure Compensation Act, enacted October 15, 1990, establishes a program to compensate individuals for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining.

The law authorizes a $100 million trust fund from which payments will be made. Payments may be made until the earlier of the date on which the $100 million, and any income earned on this amount, is expended or 22 years after the law was enacted.

Individuals who were injured due to exposure to radiation from nuclear testing will receive $50,000 each. Individuals who were injured due to exposure to radiation while employed as uranium miners will receive $100,000 each. When the affected individual is deceased, payments will be made to the surviving spouse, children, parents, grandchildren or grandparents.

Section 6(h)(2) of the Radiation Exposure Compensation Act provides that amounts paid to an individual pursuant to this law will not be included as income or resources for purposes of determining eligibility to receive benefits described in section 3803(c)(2)(C) of title 31, United States Code, or the amount of such benefits.

Section 3803(c)(2)(C) of title 31, United States Code contains a list of various Federal and federally-assisted programs including, among others, the AFDC program. However, the list does not include the adult assistance programs under titles I, X, XIV, and XVI (AABD) of the Social Security Act. Therefore, the disregards required by section 6(h)(2) of Public Law 101–426 do not apply to the adult assistance programs administered in Guam, Puerto Rico, and the Virgin Islands. Action Transmittal FSA–AT–91–5, dated February 25, 1991, notified the States of the requirements of Public Law 101–426 to disregard, for purposes of the AFDC program, compensation received by

individuals, or upon death by the spouse, children, parents, grandchildren, or grandparents, for injuries sustained by such individuals due to the exposure to radiation from nuclear testing or uranium mining.

We are adding a new § 233.20(a)(4)(ii)(*u*) to implement this provision.

Since the regulatory changes related to section 6(h)(2) of the Radiation Exposure Compensation Act, Public Law 101–426, do not involve administrative discretion, but simply implement the statutory requirements, we believe that, under 5 U.S.C. 553(b)(3)(B) good cause exists for waiver of a notice of proposed rulemaking on the grounds that it is not necessary.

Disregard of Bona Fide Loans

Section 223.20(a)(3)(iv)(B) of the existing regulations states that, in determining the availability of income and resources, loans which are obtained and used under conditions that preclude their use to meet current living costs will not be counted as income. Under this regulation, loans that are available to meet current living expenses are considered countable income.

However, because of an adverse court decision in the case of *Mangrum* v. *Griepentrog* v. *Bowen*, 702 F. Supp. 813 (D. Nev. 1988), the Department of Health and Human Services issued Information Memorandum FSA–IM–89–1, dated January 3, 1989. The Information Memorandum permits States the option to disregard bona fide loans as income and resources. Between January and June 1989, 45 States implemented the option.

These final regulations amend the policy on treatment of loans to require that States disregard bona fide loans from any source and for any purpose as income and resources in the determination of eligibility and the amount of benefits under the AFDC and adult assistance programs.

The amendment is based on the principles discussed in the Mangrum court decision. The court stated, with respect to counting loans as income, that the essential characteristic of a loan is that it must be repaid. This duty to repay distinguishes loans from wages, personal injury awards, gifts, child support payments and all other forms of income. Since the borrower must repay the loan principal in its entirety (and possibly with interest), the loan principal may not be income for AFDC purposes.

Although the issue in Mangrum was counting loans as income, the court also addressed treatment of loans as resources. The court cited the decision in *National Welfare Rights Organization* v. *Mathews*, 533 F. 2d. 637 (DC Cir. 1976), and interpreted that decision to mean that the actual value of an item, whether it is a financial instrument or personal property, is its fair market value, less its encumbrances, that is, its equity value. The court stated that since loans must be repaid, they are totally encumbered and have no equity value. Accordingly, it is also not appropriate to treat the loan principal as a resource under the AFDC program.

The proposed rule stated that funds would be considered a bona fide loan when an applicant or recipient submits to the State agency one of several types of documents to verify that funds were provided with the expectation of repayment so that a legal debt exists.

We received comments on this provision from six State agencies and two legal advocacy groups. The comments are discussed below:

Comment: All the commenters expressed support for the disregard of bona fide loans as income and resources. However, most of the commenters recommended that we expand the definition of a bona fide loan to include oral contracts because oral contracts are recognized as valid under Federal and State law. The commenters also recommended that we remove specific language requiring a written document and allow States to use a process which will exempt loans if there is an understanding that the money will be repaid and the borrower can reasonably explain how the loan will be repaid.

Response: In view of the comments, we have decided to allow each State to determine what constitutes a bona fide loan. This approach will provide the recommended flexibility for States to establish objective and reasonable criteria for determining that a bona fide loan exists. Therefore, the final regulation will require that each State include in its State plan criteria for identifying a bona fide loan.

Comment: Two commenters stated that the income of a self-employed person consists of the total profit—defined as the comparison of gross receipts with business expenses. The commenters recommended that we amend the regulations at 45 CFR 233.20(a)(6)(v)(B) to define payments on business loans as business expenses for the purposes of determining the profit from a business. They also suggested that we amend the regulations to disregard any profits derived from loans on a business enterprise which are kept in a separate account that is used for the business.

Response: This comment is outside the scope of this rulemaking. Therefore, we are not addressing it as part of this final regulation.

Comment: Two commenters requested that we amend the regulations to clarify that only the principal of a loan can be disregarded, and the disregard does not extend to interest earned on a loan or purchases made with the proceeds of a loan.

Response: We agree. To clarify that only the principal of a loan can be disregarded, the final regulation provides that the disregard does not extend to interest earned on a loan while held by the borrower, or purchases made with the proceeds of a loan. Consistent with the general AFDC policy for the treatment of interest earned on bank accounts, the final rule also provides that interest earned on the proceeds of a loan while held in a savings account, checking account or other financial instrument will be counted as unearned income in the month received and as a resource thereafter.

Accordingly, we have revised the regulation at § 233.20(a)(3)(iv)(B) and added a new § 233.20(a)(3)(xxi) to implement this policy.

Regulatory Procedures

Executive Order 12291

These regulations have been reviewed under Executive Order 12291 and do not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because these regulations will not: (1) Have an annual effect on the economy of $100 million or more; (2) impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This rule does not require any information collection activities and, therefore, no approvals are necessary under the Paperwork Reduction Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these final rules is on State governments and individuals.

Therefore, we certify that these regulations will not have a significant impact on a substantial number of small entities because they primarily affect individuals and States. Thus, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Programs 93.560, Assistance Payments-Maintenance Assistance)

List of Subjects in 45 CFR Part 233

Aliens, Grant programs—social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: November 6, 1993.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: January 24, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set forth in the preamble, part 233 of chapter I, title 45, Code of Federal Regulations is amended as set forth below:

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for part 233 is revised to read as follows:

Authority: 42 U.S.C. 301, 602, 602 (note), 606, 607, 1202, 1302, 1352, and 1382 (note); and sec. 6 of Pub. L. 94–114, 89 Stat. 579; Pub. L. 99–603, 100 Stat. 3359; sec. 4 of Pub. L. 97–458, 96 Stat. 2513; sec. 2 of Pub. L. 98–64, 97 Stat. 365; sec. 1883 of Pub. L. 99–514, 100 Stat. 2916; sec. 15 of Pub. L. 100–241, 101 Stat. 1812; sec. 105(f) of Pub. L. 100–383, 102 Stat. 908; sec. 206(d) of Pub. L. 100–383, 102 Stat. 914; sec. 105(i) of Pub. L. 100–707, 102 Stat. 4693; sec. 1(a) of Pub. L. 101–201, 103 Stat. 1795; sec. 10405 of Pub. L. 101–239, 103 Stat. 2489; sec. 501(c) of Pub. L. 101–392, 104 Stat. 831; sec. 6(h)(2) of Pub. L. 101–426, 104 Stat. 925; and sec. 471(a) of Pub. L. 102–325, 106 Stat. 606.

2. Section 233.20 is amended by revising paragraph (a)(3)(iv)(B), adding paragraph (a)(3)(xxi), revising paragraph (a)(4)(ii)(*d*) and adding paragraphs (a)(4)(ii)(*p*), (a)(4)(ii)(*q*), (a)(4)(ii)(*r*), (a)(4)(ii)(*s*), (a)(4)(ii)(*t*), and (a)(4)(ii)(*u*) to read as follows:

§ 233.20 Need and amount of assistance.

(a) Requirements for State Plans.

* * *

(3) Income and Resources * * *

(iv) * * *

(B) Grants, such as scholarships, obtained and used under conditions that preclude their use for current living costs; * * *

(xxi) Provide that the principal of a bona fide loan will not be counted as income or resources in the determination of eligibility and the amount of assistance. Interest earned on a loan is counted as unearned income in the month received and as resources thereafter and purchases made with a loan are counted as resources. For purposes of this paragraph, a loan is considered bona fide when it meets objective and reasonable criteria included in the State plan.

* * * * *

(4) Disregard of income in OAA, AFDC, AB, APTD, or AABD.* * *

(ii) * * *

(*d*) Grants or loans to any undergraduate student for educational purposes made or insured under any programs administered by the Secretary of Education except the programs under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*). Student financial assistance provided under the Carl D. Perkins Vocational and Applied Technology Education Act will be disregarded in accordance with paragraph (a)(4)(ii)(*t*) of this section.

* * * * *

(*p*) any student financial assistance provided under programs in title IV of the Higher Education Act of 1965, as amended, and under Bureau of Indian Affairs education assistance programs.

(*q*) For AFDC, any payments made as restitution to an individual under title I of Public Law 100–383 (the Civil Liberties Act of 1988) or under title II of Public Law 100–383 (the Aleutian and Pribilof Islands Restitution Act).

(*r*) Any Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, as amended by Public Law 100–707 (the Disaster Relief and Emergency Assistance Amendments of 1988) and comparable disaster assistance provided by States, local governments and disaster assistance organizations.

(*s*) Any payments made pursuant to the settlement in the In Re Agent Orange Product liability litigation, M.D.L. No. 381 (E.D.N.Y.).

(*t*) Student financial assistance made available for the attendance costs defined in this paragraph under programs in the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. 2301 *et seq.*). Attendance costs are: tuition and fees normally assessed a student carrying the same academic workload as determined by the institution, and including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies, transportation, dependent care and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution.

(*u*) For AFDC, any payments made pursuant to section 6(h)(2) of Public Law 101–426, the Radiation Exposure Compensation Act.

* * * * *

[FR Doc. 94–2256 Filed 2–1–94; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 15

[CGD 84–060]

RIN 2115–AB67

Licensing of Pilots; Manning of Vessels by Pilots

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is amending the regulations concerning the licensing of pilots and the manning of vessels by pilots. This interim final rule: Defines "coastwise seagoing vessel" for pilotage purposes; describes first class pilotage areas where local pilotage expertise is warranted; allows licensed individuals to serve as pilots in areas not identified as first class pilotage areas on vessels that they are otherwise qualified to control; requires a Federal pilot for vessels in excess of 1,600 gross tons, propelled by machinery and subject to inspection under 46 U.S.C. chapter 33, that are not authorized by their Certificate of Inspection to proceed beyond the Boundary Line; and provides quick reference tables for Federal pilotage requirements. These changes are necessary to eliminate confusion over where and on what vessels pilotage expertise is required.

DATES: This interim final rule is effective on March 4, 1994. Comments on this interim final rule must be received on or before March 21, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 84–060), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for

inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: Mr. John Hartke, Merchant Vessel Personnel Division (G–MVP/12), room 1210, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, telephone (202) 267–6102.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 84–060) and the specific section of this interim final rule to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this interim final rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in drafting this rule are: Mr. John J. Hartke, Project Manager, Merchant Vessel Personnel Division, Office of Marine Safety, Security and Environmental Protection, and, Mr. Nicholas Grasselli, Project Counsel, Office of Chief Counsel.

Background and Purpose

Normally, foreign vessels and U.S. vessels operating on registry endorsement are under State pilotage authority, and U.S. vessels operating on coastwise endorsement are under Federal pilotage authority. The regulations addressed in this rulemaking deal only with Federal pilotage.

A notice of proposed rulemaking (NPRM) was published June 24, 1985 (50 FR 26117), addressing unresolved pilotage issues. The comment period was originally scheduled to end on September 23, 1985, however, a notice of extension of comment period (50 FR 38557), published in the **Federal Register** on September 23, 1985, extended the comment period to December 22, 1985. In response to this notice, the Coast Guard received 172 written comments, and held two public meetings. One public meeting was held in New York, hosted by the Maritime Association of New York, on November 12, 1985. The second was a meeting of the Towing Safety Advisory Committee Subcommittee on Personnel Manning and Licensing, which was held at Coast Guard Headquarters in Washington, DC, on December 12, 1985. On June 6, 1988, the Coast Guard published a supplemental notice of proposed rulemaking (SNPRM) (53 FR 20654) addressing the comments received in response to the NPRM and public meetings. The comment period for the SNPRM ended September 6, 1988. Sixteen written comments were received regarding the 1988 SNPRM. These comments included several recommendations by the Towing Safety Advisory Committee (TSAC).

The length of time between the publication of the SNPRM and this rule has been unusually long because of developments associated with the grounding of the M/V EXXON VALDEZ and the subsequent enactment of the Oil Pollution Act of 1990.

Therefore, the Coast Guard is publishing this rule as an interim final rule as opposed to a final rule in order to provide the public another opportunity to comment.

As a result of the derailment of the Amtrak Sunset Limited passenger train at Big Bayou Canot, Alabama on September 22, 1993, the Coast Guard established a task force to review, among other issues, the adequacy and effectiveness of the licensing requirements for operators of uninspected towing vessels. There is no statutory or regulatory pilotage requirement for the particular tug and barge combination that may have collided with the bridge prior to the derailment, and neither the proposed rules nor this interim rule have any applicability to these vessels. The proximate cause of the incident is yet undetermined and is being investigated by the National Transportation Safety Board (NTSB). The NTSB is expected to make recommendations as a result of their investigation but these recommendations are not expected to have any impact on this rule.

Discussion of Comments and Changes

The vast majority of the comments received in response to the 1988 SNPRM dealt with two issues: (1) The grandfathering provision for individuals with prior towing experience; and (2) the definition of a "coastwise seagoing vessel."

Regarding the grandfathering provision, the 1988 SNPRM proposed permitting individuals "with 5 years service on towing vessel combinations of at least 5,000 gross tons while acting under the authority of a license as master, mate, or operator of uninspected towing vessels, with a minimum of 2 of the 5 years having been on towing vessel combinations of at least 10,000 gross tons, to obtain without a written examination, an endorsement as first class pilot, restricted to tug and barge combinations, for those routes over which they have made the required number of round trips." The intent of this proposal was to allow those who have demonstrated their abilities to pilot tug and barge combinations to obtain a restricted endorsement as first class pilot without completing a written examination.

The Coast Guard received a number of comments supporting this proposal. However, the Coast Guard also received comments in opposition to this grandfathering provision, indicating that the Coast Guard should not issue a pilot's license to an individual unless that individual passed the written examination.

A number of significant events have occurred since the 1988 SNPRM. There have been several major vessel casualties, the most notable of which was the EXXON VALDEZ. Pilotage issues and requirements played a prominent part in the EXXON VALDEZ investigation. Following the EXXON VALDEZ casualty in 1989, Congress enacted the Oil Pollution Act of 1990 (OPA 90), which includes provisions regarding pilotage.

As a result of these events, the Coast Guard believes that it is inappropriate and not in the best interest of navigational safety to issue a first class pilot's license or endorsement without requiring a written examination, including a chart sketch. Therefore, the grandfathering provision is not adopted in this interim final rule.

The other major issue in the 1988 SNPRM which received comments was the definition of a "coastwise seagoing vessel" contained in 46 U.S.C. 8502. The SNPRM definition of the term "coastwise seagoing vessel" made the

distinction between a vessel authorized by its Certificate of Inspection to make voyages only on U.S. internal waters and a vessel authorized by its Certificate of Inspection to make voyages beyond the Boundary Line.

The 1988 SNPRM considered a coastwise seagoing vessel as a vessel that is authorized by its Certificate of Inspection to proceed beyond the Boundary Line. Some comments supported this definition. However, other comments and recommendations from TSAC did not support this definition, suggesting that pilotage requirements for coastwise seagoing vessels should be at least partially tied to the voyage on which the vessel is engaged. Those comments and recommendations urged the following definition: "A coastwise seagoing vessel, for purposes of the manning of vessels by pilots or for individuals acting as pilots, means a vessel authorized by its Certificate of Inspection to proceed beyond the Boundary Line, and whose movement in pilotage waters relates to a voyage in which the vessel has or will cross the Boundary Line."

The Coast Guard is adopting the proposal published in the June 6, 1988 SNPRM, i.e., that a coastwise seagoing vessel for pilotage purposes is one that is authorized by its Coast Guard issued Certificate of Inspection to proceed beyond the Boundary Line. The Coast Guard did not adopt the alternative proposal because that definition would have enabled coastwise seagoing vessels to make voyages without a pilot within the internal waters of the United States, including those waters where most hazards to navigation are encountered. Adopting the alternative proposal would have reduced pilotage requirements by requiring fewer vessels to use a pilot, permitting more vessels to make extensive movements within harbors or between ports without the services of a pilot in the exact waters where pilotage can be most beneficial.

Besides the "grandfathering provision," and the definition of a "coastwise seagoing vessel," the other changes which were proposed in the 1988 SNPRM did not receive any substantial comments or criticisms. Therefore, the other changes proposed in the 1988 SNPRM are adopted in this rule. These other changes include: (1) Describing first class pilotage areas where local pilotage expertise is warranted; (2) allowing licensed individuals to serve as pilots in areas not identified as first class pilotage areas on vessels that they are otherwise qualified to control; and (3) requiring a Federal pilot for vessels in excess of 1,600 gross tons, propelled by machinery and subject to inspection under 46 U.S.C. chapter 33, that are not authorized by their Certificate of Inspection to proceed beyond the Boundary Line. In addition, quick reference tables for Federal pilotage requirements are also being adopted.

Regulatory Evaluation

This interim final rule is a significant regulatory action under Executive Order 12866 and is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). However, the Coast Guard expects the economic impact of this interim final rule to be so minimal that further Regulatory Evaluation is unnecessary.

This rule defines "coastwise seagoing vessel" for pilotage purposes, describes first class pilotage areas where local pilotage expertise is warranted, and provides quick reference tables for pilotage requirements. Additionally, this rule clarifies that a Federal pilot is required for vessels in excess of 1,600 gross tons, propelled by machinery and subject to inspection under 46 U.S.C. chapter 33, that are not authorized by their Certificate of Inspection to proceed beyond the Boundary Line.

This rule codifies current practices. The Coast Guard anticipates that the rule will not increase crew size or require increased use of pilots since, for the most part, vessels affected by this rule are presently required by their Certificate of Inspection to use a Federal pilot. Thus, the Coast Guard believes that further evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this interim final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). The small entities that could be affected by this interim final rule are primarily independent operators of tank barges and self-propelled vessels. Since this rule, for the most part, adopts current practices, the Coast Guard believes that there will be no significant economic impact on "small entities." Therefore, because it expects the economic impact of this interim final rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this interim final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this interim final rule under the principles and criteria contained in Executive Order 12612, and has determined that this interim final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This rule does not affect existing State pilotage requirements, but instead clarifies the Federal pilotage requirements for those vessels which, under 46 U.S.C. 8502, are exclusively subject to Federal pilotage.

Environment

The Coast Guard considered the environmental impact of this interim final rule and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. The rule, which clarifies Federal pilotage requirements, is administrative in nature since, by codifying existing practices, it permits vessels to continue to operate according to current industry practice. Therefore, this is included in the categorical exclusion in subsection 2.B.2.1, "Administrative actions or procedural regulations and policies which clearly do not have any environmental impact." A Categorical Exclusion Determination has been placed in the docket.

List of Subjects in 46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons set out in the preamble, the Coast Guard amends part 15 of title 46 of the Code of Federal Regulations.

PART 15—MANNING REQUIREMENTS

1. The authority citation for part 15 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3703, 8101, 8502, 8901, 8902, 8903, 8904, 9102; 50 U.S.C. 198, and 49 CFR 1.46.

2. Section 15.301 is amended by adding new definitions for "Coastwise seagoing vessel" and "Designated areas" to read as follows:

§ 15.301 Definition of terms used in this part.

* * * * *

Coastwise seagoing vessel means a vessel that is authorized by its Certificate of Inspection to proceed beyond the Boundary Line established in part 7 of this chapter.

* * * * *

Designated areas means those areas within the navigable waters of the United States for which first class pilotage endorsements are issued under part 10, subpart G, of this chapter, by the Officer in Charge, Marine Inspection (OCMI). The areas for which first class pilotage endorsements are issued within a particular Marine Inspection Zone and the specific requirements for an endorsement may be obtained from the OCMI concerned.

* * * * *

3. Section 15.812 is revised to read as follows:

§ 15.812 Pilots

(a) Except as specified in paragraph (f) of this section, the following vessels, not sailing on register, when underway on the navigable waters of the United States, must be under the direction and control of an individual qualified to serve as pilot under paragraph (b) or (c) of this section as appropriate:

(1) Coastwise seagoing vessels propelled by machinery and subject to inspection under 46 U.S.C. chapter 33, and tank barges subject to inspection under 46 U.S.C. chapter 37;

(2) Vessels that are not authorized by their Certificate of Inspection to proceed beyond the Boundary Line established in part 7 of this Chapter which are in excess of 1,600 gross tons, propelled by machinery, and subject to inspection under 46 U.S.C. chapter 33; and

(3) Vessels operating on the Great Lakes that are propelled by machinery and subject to inspection under 46 U.S.C. chapter 33, or are tank barges subject to inspection under 46 U.S.C. chapter 37.

(b) The following individuals may serve as a pilot for a vessel subject to paragraph (a) of this section, when underway on the navigable waters of the United States that are designated areas.

(1) An individual holding a valid first class pilot's license issued by the Coast Guard, operating within the restrictions of his or her license, may serve as pilot on any vessel to which this section applies.

(2) An individual holding a valid license issued by the Coast Guard as master or mate, employed aboard a vessel within the restrictions of his or her license, may serve as pilot on a vessel of not more than 1,600 gross tons propelled by machinery, described in paragraphs (a)(1) and (a)(3) of this section, provided he or she:

(i) Is at least 21 years old;

(ii) Complies with the currency of knowledge provisions of § 10.713 of this chapter; and

(iii) Has completed a minimum of four round trips over the route to be traversed while in the wheelhouse as watchstander or observer. At least one of the round trips must be made during the hours of darkness if the route is to be traversed during darkness.

(3) An individual holding a valid license issued by the Coast Guard as master, mate, or operator employed aboard a vessel within the restrictions of his or her license, may serve as pilot on a tank barge or tank barges totalling not more than 10,000 gross tons, described in paragraphs (a)(1) and (a)(3) of this section, provided he or she:

(i) Is at least 21 years old;

(ii) Complies with the currency of knowledge provisions of § 10.713 of this chapter;

(iii) Has a current physical examination in accordance with the provisions of § 10.709 of this chapter;

(iv) Has at least six months service in the deck department on towing vessels engaged in towing operations; and

(v) Has completed a minimum of twelve round trips over the route to be traversed, as an observer or under instruction in the wheelhouse. At least three of the round trips must be made during the hours of darkness if the route is to be traversed during darkness.

(c) An individual holding a valid license issued by the Coast Guard as master, mate, or operator, employed aboard a vessel within the restrictions of his or her license, may serve as a pilot for a vessel subject to paragraph (a)(1) and (a)(2) of this section, when underway on the navigable waters of the United States that are not designated as first class pilotage areas, provided he or she:

(1) Is at least 21 years old;

(2) Complies with the currency of knowledge provisions of § 10.713 of this chapter; and

(3) Has a current physical examination in accordance with the provisions of § 10.709 of this chapter.

(d) In any instance when the qualifications of a person satisfying the requirements for pilotage through the provisions of this Subpart are questioned by the Coast Guard, the individual shall, within a reasonable time, provide the Coast Guard with documentation proving compliance with the applicable portion(s) of paragraphs (b) and (c) of this section.

(e) Federal pilotage requirements contained in the above paragraphs are summarized in two quick reference tables.

(1) Table 15.812(e)(1) provides a guide to the pilotage requirements for inspected, self-propelled vessels.

TABLE 15.812(e)(1).—QUICK REFERENCE TABLE FOR FEDERAL PILOTAGE REQUIREMENTS FOR INSPECTED, SELF-PROPELLED VESSELS

	Navigable waters of the U.S. designated as first class pilotage waters (routes for which First Class Pilot's licenses are issued)[1].	Navigable waters of the U.S. not designated as first class pilotage waters (between the three mile line and the start of traditional pilotage routes).
Inspected self-propelled vessels greater than 1,600 GT, authorized by their Certificate of Inspection (COI) to proceed beyond the Boundary Line, or operating on the Great Lakes.	First Class Pilot	Master or Mate may serve as pilot if the individual: 1. Is at least 21 years old. 2. Has an annual physical exam. 3. Maintains current knowledge of the waters to be navigated.
Inspected self-propelled vessels not more than 1,600 GT, authorized by their Certificate of Inspection to proceed beyond the Boundary Line, or operating on the Great Lakes.	First Class Pilot, *or* Master or Mate may serve as pilot if the individual:. 1.Is a least 21 years old. ..... 2. Maintains current knowledge of the waters to be navigated.. 3. Has 4 round trips over the route	Master or Mate may serve as pilot if the individual: 1. Is at least 21 years old. 2. Maintains current knowledge of the waters to be navigated.

TABLE 15.812(e)(1).—QUICK REFERENCE TABLE FOR FEDERAL PILOTAGE REQUIREMENTS FOR INSPECTED, SELF-PROPELLED VESSELS—Continued

Inspected self-propelled vessels greater than 1,600 GT, not authorized by their COI to proceed beyond the Boundary Line (Inland route vessels); other than vessels operating on the Great Lakes.	First Class Pilot	Master or Mate may serve as pilot if the individual: 1. Is at least 21 years old. 2. Has an annual physical exam. 3. Maintains current knowledge of the waters to be navigated.
Inspected self-propelled vessels not more than 1,600 GT, not authorized by their COI to proceed beyond the Boundary Line (Inland route vessels); other than vessels operating on the Great Lakes.	No pilotage requirement	No pilotage requirement.

[1] Navigable waters of the U.S. for pilotage purposes include all inland waters and offshore waters to a distance of 3 nautical miles from the baseline from which the Territorial Sea is measured.

(2) Table 15.812(e)(2) provides a guide to the pilotage requirements for tank barges.

TABLE 15.812(e)(2).—QUICK REFERENCE TABLE FOR FEDERAL PILOTAGE REQUIREMENTS FOR TANK BARGES

	Navigable waters of the U.S. designated as first class pilotage waters (routes for which First Class Pilot's licenses are issued).[1]	Navigable waters of the U.S. not designated as first class pilotage waters (between the three mile line and the start of traditional pilotage routes).
Tank Barges greater than 10,000 GT, authorized by their Certificate of Inspection to proceed beyond the Boundary Line, or operating on the Great Lakes.	First Class Pilot	Master, Mate, or Operator may serve as pilot if the individual: 1. Is at least 21 years old. 2. Has an annual physical exam. 3. Maintains current knowledge of the waters to be navigated. 4. Has at least 6 months' service in the deck department on towing vessels engaged in towing.
Tank Barges 10,000 GT or less, authorized by their Certificate of Inspection to proceed beyond the Boundary Line, or operating on the Great Lakes.	First Class Pilot or Master, Mate, or Operator may serve as pilot if the individual:. 1. Is at least 21 years old. 2. Has an annual physical exam.[2] 3. Maintains current knowledge of the waters to be navigated (one round trip within the past 60 months). 4. Has at least 6 months' service in the deck department on towing vessels engaged in towing operations. 5. Has 12 round trips over the route.	Master, Mate, or Operator may serve as pilot if the individual: 1. Is at least 21 years old. 2. Has an annual physical exam[2] 3. Maintains current knowledge of the waters to be navigated (one round trip within the past 60 months) 4. Has at least 6 months' service in the deck department on towing vessels engaged in towing operations.
Tank Barges authorized by their Certificate of Inspection for Inland routes only (Lakes, Bays, and Sounds/Rivers); other than vessels operating on the Great Lakes.	No pilotage requirement	No pilotage requirement.

[1] Navigable waters of the U.S. for pilotage purposes include all inland waters and offshore waters to a distance of 3 nautical miles from the baseline from which the Territorial Sea is measured.
[2] Annual physical exam does not apply to an individual who will serve as a pilot of a Tank Barge of less than 1,600 gross tons.

Dated: January 20, 1994.

J.W. Kime,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 94–2218 Filed 2–1–94; 8:45 am]

BILLING CODE 4910–14–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002 and 1312

[Ex Parte No. MC–213]

Range Tariffs—Fax Filing

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Final Rules.

SUMMARY: The ICC is issuing final rules permitting carriers to effectuate range tariffs by filing by fax the actual rates applicable to identified shipments prior to transport of those shipments. Section 5(b) of the Negotiated Rates Act of 1993 requires that, as of June 1, 1994, range tariffs must identify the specific rate or discount (from among the range of available rates or discounts) which applies to each specific shipment, or must contain an objective means for determining that rate. Faxed rates, which are intended for use only where carriers must respond rapidly to changing market demands in the spot market, will have an effective period of only 7 days.

EFFECTIVE DATE: These regulations are effective on March 4, 1994, and carriers may begin to use the fax filing process for spot market shipments on that date.

FOR FURTHER INFORMATION CONTACT: Charles Langyher (202) 927–5160; [TDD for hearing impaired: (202) 927–5721].

SUPPLEMENTARY INFORMATION: The Commission issued a Notice of Proposed Rules on August 9, 1993 at 58 FR 42276. Additional information concerning the final rules that are adopted is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Regulatory Flexibility Certification

No one has challenged our initial conclusion that this action will not have a significant economic impact on a substantial number of small entities. We reaffirm this conclusion for the reasons previously cited, i.e., that the economic impact will be minimal because the regulation merely provides for another means by which carriers may submit to the agency certain materials already required by statute to be filed with the agency. Thus, the economic impact is unlikely to be significant within the meaning of the Regulatory Flexibility Act.

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

49 CFR Part 1312

Motor carriers, Moving of household goods, Pipelines, Tariffs.

For the reasons set forth in the preamble, the Commission amends Chapter X of Title 49 of the Code of Federal Regulations, Parts 1002 and 1312, as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

2. In § 1002.2(f), in the table, No. 74 is revised to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

Type of proceeding	Fees
(74)(i) The filing of tariffs (except for fax transmitted tariffs), rate schedules and contracts including supplements.	10 per series transmitted.
(ii) Tariffs transmitted by fax ...	1 per page.

* * * *

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

3. The authority citation for part 1312 is revised to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 10762, and 10767.

§ 1312.14 [Amended]

4. The heading for § 1312.14 is revised to read as follows:

§ 1312.14 Statement of rates and fares (see also § 1312.41).

5. A new § 1312.41 is added to read as follows:

§ 1312.41 Range tariffs.

(a) A range tariff presents a series of rates or discounts with each rate or discount potentially applicable to any given shipment; the particular rate or discount made applicable to particular shipment(s) is given effect by the filing of a second tariff. Under these circumstances the rate or discount made applicable by the filing of the second tariff takes precedence over other filed tariffs otherwise applicable to the shipment(s).

(b) To *initiate* range tariff pricing, a carrier or agent shall:

(1) File with the Commission a tariff setting forth the series (range) of rates or discounts potentially applicable to shipments moving on, or subsequent to, the effective date of the tariff. The tariff shall show on its title page the term INITIATING RANGE TARIFF;

(2) Provide an explanation of the application of the tariff, including any conditions, limitations or restrictions that attend use of the tariff; the explanation shall be contained in an Item 150 designated "Application of Tariff";

(3) File not more than one initiating range tariff to be in effect at any one time; however, different ranges of rates or discounts may be established within the one tariff provided the application of the different ranges is clearly explained to avoid ambiguity of applicability;

(4) File initiating range tariffs with the Commission in the manner required by § 1312.3 and § 1312.4(a) and (b) of this part; and

(5) Establish and maintain with the Commission a tariff filing fee account pursuant to the provisions of § 1002.2(a)(1)(ii) of this chapter, for use in making activating range tariff filings under paragraph (c) of this section.

(c) To activate for particular shipment(s) a particular rate or discount (from among the range of rates or discounts provided in the initiating range tariff established under paragraph (b) of this section), a carrier or agent shall:

(1) Prior to transporting a specifically identified shipment(s), file a tariff with the Commission stating the actual rate or discount that applies to the shipment(s). The tariff shall show on its title page the term ACTIVATING RANGE TARIFF and shall refer to the initiating range tariff (previously established under paragraph (b) of this section) as a control tariff;

(2) Publish activating rates or discounts in a tariff in the carrier's own name or in a tariff filed in the name of a duly authorized agent, immediately followed by the carrier's or agent's code and the characters "6R"; immediately under this designation shall be shown the actual date of filing with the Commission, which shall serve as the date on which the tariff becomes applicable for traffic moving subsequent to the filing.

Example: ICC ABCD 6R
Filed: 7/1/93

Each page of the activating range tariff shall show this same information. Each page shall be sequentially numbered with the final page stating "end" following the last page number;

(3) Show on the title page of each activating range tariff a specific date of expiration that shall not exceed 7 days from the date of the tariff's filing. In the event an expiration date is not designated, the tariff shall expire 7 days from the date of filing;

(4) Identify the specific traffic to be accorded service under the stated rate or discount with whatever information is needed to identify specifically the intended shipments, but in any event, at a minimum, identify either the shipper's name or the commodity description and origin and destination points; and

(5) File with the Commission:

(i) One copy of each activating tariff submitted by fax transmission to (202) 927–5888; to avoid the necessity of

filing a separate transmittal letter (see § 1312.4(b) of this part), the title page of every activating range tariff shall provide the name, title and phone number of the party authorized to submit the publication for filing with the Commission, and the fee account number established for the filing carrier or agent; or

(ii) Two copies of each activating tariff transmitted by hand in accordance with the requirements of § 1312.3 and 1312.4(a) and (b) of this part.

(d) Except as expressly provided in this section, range tariffs are subject to the provisions of §§ 1312.1 through 1312.40 of this part.

Decided: January 10, 1994.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, and Philbin. Commissioner Phillips concurred in part and dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–2358 Filed 2–1–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AA95

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Least Bell's Vireo

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) designates critical habitat for the least Bell's vireo (Vireo bellii pusillus), an endangered species, pursuant to the Endangered Species Act of 1973, as amended (Act). This designation encompasses a total of about 38,000 acres at 10 localities in portions of 6 counties in southern California. This designation results in additional protection requirements under section 7 of the Act for activities that are funded, authorized, or carried out by a Federal agency. The Service has considered economic and other relevant impacts in making a final decision on the size and scope of critical habitat.

EFFECTIVE DATE: March 4, 1994.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008.

FOR FURTHER INFORMATION CONTACT: Larry Salata or Loren Hays, Fish and Wildlife Biologists, (see **ADDRESSES** section) at 619/431–9440.

SUPPLEMENTARY INFORMATION:

Background

Introduction

The Act requires the Service to designate critical habitat to the maximum extent prudent and determinable concurrently with listing a species as endangered or threatened. On November 8, 1979, the Service received a petition from James M. Greaves to list the Arizona (*V. b. arizonae*) and least Bell's vireos as endangered. A notice of acceptance of the petition and status review was published on February 6, 1980 (45 FR 8030). Based on the best scientific and commercial data available and comments submitted during the status review, the Service found that the petitioned action was warranted for the least Bell's vireo on October 13, 1983 (49 FR 2485, January 20, 1984); however, a listing action was precluded by other pending listing actions of higher priority, in accordance with section 4(b)(3)(C)(i) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). Section 4(b)(3)(C)(i) recycles such petitions, resulting in a new finding deadline of October 13, 1984. A finding was made on October 12, 1984, that this action was still warranted but precluded. The Service published a proposed rule to determine the least Bell's vireo to be an endangered species, and to designate critical habitat for the species on May 3, 1985 (50 FR 18968). This proposed rule constituted the next finding required under section 4(b)(3)(B)(ii) of the Act. A correction to some of the legal descriptions of the proposed critical habitat was published in the June 4, 1985, Federal Register (50 FR 23458). Rather than delay protected status for the vireo while the economic analysis that must accompany the final rule designating critical habitat was being prepared, the Service decided to make final only the listing portion of the rule to provide the Act's protection to the least Bell's vireo. Section 4(b)(6)(c)(ii) of the Act allows the Service to postpone designation of critical habitat for up to 12 months. On May 2, 1986, the vireo was listed as endangered and the comment period on proposed designation of critical habitat was reopened for an additional 90 days (51 FR 16483). A further extension of the comment period to January 1, 1987, was published on July 31, 1986 (51 FR 27429). A revised proposed rule was published on August 7, 1992 (57 FR 34892) at which time the public comment period was reopened for 90 days.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as: (i) The specific areas within the geographical area occupied by a species on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon determination that such areas are essential for the conservation of the species. Section 3(5)(C) further indicates that in most cases, critical habitat should not encompass the entire geographical area that can be occupied by the species.

Role in Species Conservation

The term "conservation," as defined in section 3 of the Act, means to use and the use of all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary (i.e., the species has recovered).

The definition of critical habitat, while explicitly mentioning the features essential to conservation of a species, implicitly requires that the areas themselves be essential to the species' survival and recovery. Not all areas containing those features of a listed species' habitat are necessarily essential to its conservation. Conversely, areas not currently containing all of the essential features, but with the capability to do so in the future, may be designated as critical habitat. However, areas not included in critical habitat that contain one or more of the essential features are also important to the species' conservation and would be addressed under other facets of the Act and other conservation laws and regulations.

Relationship to Recovery

Section 2(c)(1) of the Act declares that all Federal departments and agencies shall seek to conserve endangered and threatened species and shall utilize their authorities in furtherance of the purposes of the Act. Section 3(3) of the Act defines conservation to include all measures needed to recover the species and justify its removal from the list of endangered and threatened wildlife and plants. The Act mandates the

conservation of listed species through different mechanisms, such as: Section 7 (requiring Federal agencies to further the purposes of the Act by carrying out conservation programs and insuring that Federal actions will not likely jeopardize the continued existence of the listed species or result in the destruction or adverse modification of designated critical habitat); section 9 (prohibition of taking of listed animal species); section 10 (wildlife research permits and conservation planning on State and private lands); section 6 (cooperative State and Federal grants); land acquisition; and research.

Recovery planning under section 4(f) of the Act is the "umbrella" that eventually guides all of these activities and promotes a species' conservation and eventual delisting. Recovery plans provide guidance, which may include population goals and identification of areas in need of protection or special management, so that a species can be removed from the list of endangered and threatened wildlife and plants. Recovery plans usually include management recommendations for areas proposed or designated as critical habitat.

The Service considers the conservation of a species in its designation of critical habitat. The designation of critical habitat will not, in itself, lead to the recovery of the species, but is one of several measures available to contribute to the conservation of a species. Critical habitat helps focus conservation activities by identifying areas that contain essential habitat features (primary constituent elements) that may require special management. The protection given critical habitat under section 7 also immediately increases the protection given to these primary constituent elements and essential areas and preserves options for the long-term conservation of the species. The protection of these areas may also shorten the time needed to achieve recovery.

Designating critical habitat does not create a management plan; it does not establish numerical population goals; it does not prescribe specific management actions (inside or outside of critical habitat); and it has no direct effect on areas not designated. Specific management recommendations for critical habitat are more appropriately addressed in recovery plans and in section 7 consultation. Areas outside of critical habitat also have an important role in the conservation of a listed species that is not addressed through designation of critical habitat.

The designation of critical habitat may be reevaluated and revised at any time that new information indicates that changes are warranted. The Service will reassess proposals for designation of critical habitat if land management plans, recovery plans, or other conservation strategies are developed and fully implemented that may reduce the need for the additional protection provided by any critical habitat designation.

Primary Constituent Elements

The Service is required to base critical habitat designations on the best scientific data available (50 CFR 424.12). In determining what areas are to be designated as critical habitat, the Service considers those physical and biological attributes that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements, as stated in 50 CFR 424.12, include, but are not limited to, the following:

- Space for individual and population growth, and for normal behavior;
- Food, water, or other nutritional or physiological requirements;
- Cover or shelter;
- Sites for breeding, reproduction, rearing of offspring; and generally; and
- Habitats that are protected from disturbance or are representative of the historic geographical and ecological distribution of a species.

The Service has determined that the physical and biological habitat features (referred to as the primary constituent elements) that support feeding, nesting, roosting and sheltering are essential to the conservation of the least Bell's vireo. These habitat features can be described as riparian woodland vegetation that generally contains both canopy and shrub layers, and includes some associated upland habitats. Vireos meet their survival and reproductive needs (food, cover, nest sites, nestling and fledgling protection) within the riparian zone in most areas. In some areas they also forage in adjacent upland habitats.

Ecological Considerations

The least Bell's vireo is a small gray migratory songbird that has declined dramatically in both numbers and distribution. This subspecies was once widespread and abundant throughout the Central Valley and other low elevation riverine areas of California. Least Bell's vireos historically bred in riparian woodlands from the interior of northern California (near Red Bluff, Tehama County) to northwestern Baja California, Mexico. Its current breeding distribution is restricted to a few localities in southern California and northwestern Baja California, Mexico (Franzreb 1989).

Least Bell's vireos nest primarily in willows (*Salix* spp.) but also use a variety of other shrub and tree species for nest placement (Gray and Greaves 1984, Salata 1987). Least Bell's vireos forage in riparian and adjoining upland habitats (Salata 1983, Kus and Miner 1987). Preliminary studies of vireo foraging behavior along the Santa Ynez River and within the Mono Creek Basin (Santa Barbara County) indicated that a large percentage of their foraging may occur in the adjacent chaparral community up to 300 or more yards from the nest (Tom Keeney, biologist, U.S. Army Corps of Engineers, July 31, 1985).

The reduction of least Bell's vireo numbers and distribution is associated with widespread loss of riparian habitats and brood parasitism by the brown-headed cowbird (*Molothrus ater*). Destruction or significant alteration of riparian woodlands may have rendered the least Bell's vireo population incapable of withstanding the increase in brown-headed cowbird numbers that began in the 1920's (Grinnell and Miller 1944, Gaines 1974).

The population decline of the vireo has been well documented. In 1973, no least Bell's vireos were found during an intensive search in nearly all remaining riparian habitat between Red Bluff, Tehama County, and Stockton, San Joaquin County (Gaines 1974). In 1977, the Service reviewed the literature, examined museum material, and contacted numerous National Audubon Society chapters and knowledgeable field observers for information on the status of the least Bell's vireo (Wilbur 1980). Since then, several intensive surveys of virtually all potential breeding habitat in California have been conducted (Gaines 1977, Goldwasser 1978, Goldwasser *et al.* 1980, RECON 1989, unpublished data on file with the Fish and Wildlife Service). Least Bell's vireos remain at only about 40 of over 150 historically occupied sites (some localities cover many miles of a water course) surveyed in the United States from 1977 through 1991. Most of these locations contain fewer than five pairs of vireos. About 76 percent of the U.S. population is found at just five localities. The current breeding population of the least Bell's vireo in California consists of approximately 500 pairs. Fewer than several hundred pairs are estimated to occur in Mexico.

Consideration of New Information

The final rule is based on new biological and economic data, and material received during the comment period for the proposed rule and revised proposed rule.

Total Acres Included in Critical Habitat

The Service is designating critical habitat for the least Bell's vireo at 10 areas encompassing approximately 38,000 acres (15,200 ha) in Santa Barbara, Ventura, Los Angeles, San Bernardino, Riverside, and San Diego Counties, California. About 49 percent of the vireo population in the United States occurs within these 10 areas. Critical habitat for the vireo occurs on the Santa Ynez River (Santa Barbara County), Santa Clara River (Ventura and Los Angeles Counties), Santa Ana River (Riverside and San Bernardino Counties), and Santa Margarita River, San Luis Rey River, Sweetwater River, San Diego River, Tijuana River, Coyote Creek, and Jamul-Dulzura Creeks (San Diego County).

Federal land within the critical habitat consists of approximately 10,979 acres (4,392 ha) including approximately 7,600 acres (3,040 ha) in Santa Barbara County under the jurisdiction of the Forest Service, 3,338 acres (1,335 ha) in Riverside and San Bernardino Counties under the jurisdiction of the Corps of Engineers, and 53 acres (21 ha) in San Diego County under the jurisdiction of the International Boundary and Water Commission. The remainder of the critical habitat is in State, county, city, Indian Tribe, or private ownership.

Differences From Proposed Rule and Revised Proposed Rule and Final Rule

The May 3, 1985, proposed rule identified approximately 43,000 acres for designation as critical habitat. In preparing the revised proposed rule, it was discovered that the 43,000-acre critical habitat figure was in error and should have been reported as approximately 45,805 acres. Therefore, this final rule and associated documents refer to the 45,805-acre figure as the correct acreage figure from the May 3, 1985, proposed designation.

The area encompassed by the 10 critical habitat areas has been adjusted from approximately 45,805 acres (18,322 ha) in the original proposed rule to 48,025 acres (19,210 ha) in the revised proposed rule to about 38,000 acres (15,200 ha) in the final rule. In adjusting the boundaries, 1,400 acres (560 ha) were deleted from critical habitat on the Santa Ynez River and 3,620 acres (1,448 ha) were added, resulting in a net increase of 2,220 acres (888 ha). This adjustment was recommended by the Forest Service and was based on the results of additional field research on the status, distribution, and behavior of the least Bell's vireo on the Santa Ynez River during the 1986 breeding season. An additional 120 acres (48 ha), adjacent to the northern border of Gibraltar Reservoir, were also recommended for deletion by the Forest Service but the Service does not believe that this change is warranted because this area contains potential nesting habitat. All the land suggested for either withdrawal or addition to the Santa Ynez River critical habitat is under the jurisdiction of the Forest Service. The additional 3,620 acres (1,448 ha) that were added are under Federal jurisdiction, withdrawn from mineral entry, and without any private or commercial interests.

Two adjustments have been made in the Santa Margarita River critical habitat area. About 420 acres (168 ha) of upland private property were removed based on a refinement in the legal description. This adjustment did not exclude any vireo habitat. About 9,600 acres (3,840 ha) on Camp Pendleton Marine Corps Base were removed based on the finding that an existing Memorandum of Understanding (MOU) between the Service and the Marine Corps for vireo management is providing an adequate level of protection to the vireo and its habitat. Although this area is essential to the conservation of the species, the Service finds that a formal critical habitat designation is unnecessary because the MOU contains provisions for section 7 consultation for proposed actions that may destroy or adversely modify vireo habitat. The Service also finds that a level of protection equivalent to or greater than that provided by a critical habitat designation can be achieved for the vireo on this portion of the Santa Margarita River through cooperation with the Marine Corps under the MOU. The management actions implemented under this agreement have significantly benefitted the vireo population at this locality. It has increased from 98 territorial males in 1986 when the MOU was established to 212 territorial males in 1991. However, the Service will reconsider its position to designate critical habitat on the Camp Pendleton reach of the Santa Margarita River if conditions warrant. The Service will use its authority under sections 7 and 9 of the Act to insure compliance with the prohibitions on unauthorized take.

One adjustment has been made in the San Luis Rey River critical habitat area: About 80 acres (32 ha) of upland private property were removed based on a refinement in the legal description. This adjustment did not exclude any vireo habitat.

Available Conservation Measures

Section 7 Consultation

Section 4(b)(8) of the Act requires, for any proposed or final regulation that designates critical habitat, a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. Regulations found at 50 CFR 402.02 define destruction or adverse modification of critical habitat as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.

Once critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility accompanies, and is in addition to, the requirement in section 7(a)(2) of the Act that Federal agencies insure that their actions are not likely to jeopardize the continued existence of any listed species. As required by 50 CFR 402.14, a Federal agency must consult with the Service if it determines an action may affect a listed species or its designated critical habitat. Thus, the requirement to consider adverse modification of critical habitat is an incremental section 7 consideration above and beyond section 7 review to evaluate jeopardy and incidental take. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Basis for Analysis

The evaluation of actions that may adversely modify least Bell's vireo critical habitat should consider a number of factors such as the present condition of the habitat, the number of current pairs, the reproductive success of breeding pairs, the expected time to regenerate sufficient habitat to support an effective population at a particular site, and local and regional problems. Although the Service considered the entire range of the least Bell's vireo in determining an approach to critical habitat designation, its section 7 analysis of actions that may adversely affect vireo critical habitat will consider the significance of impacts at individual critical habitat areas as well as the entire range. All proposed actions should be viewed as to their impacts on all four constituent elements relative to the

potential for adverse modification on individual critical habitat areas.

Examples of Actions Affecting Critical Habitat

Activities that disturb or remove the primary constituent elements within proposed critical habitat areas may constitute destruction or adverse modification of critical habitat. In the case of the vireo, these activities include: (1) Removal or destruction of riparian vegetation, (2) thinning of riparian growth, particularly near ground level, (3) removal or destruction of adjacent chaparral or other upland habitats used for foraging, and (4) increases in human-associated or human-induced disturbance. Specific actions that could adversely affect vireo critical habitat include stream channelization, water impoundment or extraction, water diversion, livestock grazing, intensive recreation, and conversion of presently existing riparian or adjacent upland areas to residential, agricultural, or commercial use. Complete or major destruction of riparian vegetation would result in the extirpation of the least Bell's vireo from the affected area, which could further endanger the species throughout the remainder of its range and preclude opportunities for recovery. Thinning or selectively removing components of riparian vegetation could cause vireos to abandon an area because suitable nesting and foraging sites are scarce or absent or could result in lowered reproductive success because of diminished habitat quality. Increases in recreation could cause actual destruction of nests or could disrupt nesting activities which in turn could cause nest abandonment, lowered hatching success, increased rates of cowbird parasitism and depredation events, and a decrease in the number of fledged young.

Other Conservation Measures: Non-Federal Lands

Section 9 of the Act prohibits intentional and unintentional "take" of listed species and applies to all landowners regardless of whether or not their lands are within critical habitat (see 16 U.S.C. 1538(a)(1), 1532(1a) and 50 CFR 17.3). Section 10(a)(1)(B) authorizes the Service to issue permits for the taking of listed species incidental to otherwise lawful activities such as agriculture, sand and gravel mining, and urban development. Incidental take permits must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to implement to conserve the species, usually on the permittee's lands. A key element of the Service's review of an HCP is a determination of the plan's effect upon the long-term conservation of the species. The Service would approve an HCP, and issue a section 10(a)(1)(B) permit if the plan would minimize and mitigate the impacts of the taking and would not appreciably reduce the likelihood of the survival and recovery of that species in the wild.

The San Diego Association of Governments (SANDAG) is coordinating the development of HCPs for the San Diego River and Sweetwater River critical habitat areas. This effort also included the development of draft plans for the Santa Ana River and San Luis Rey River critical habitat areas, but these plans are no longer under consideration. The intent of these plans is to address land use conflicts and to conserve the vireo and its habitat. The Service will issue section 10(a)(1)(B) permits, if the HCPs are acceptable. In November 1991, the Service received two permit applications and final draft HCPs from SANDAG for the incidental take of vireos on the San Diego and Sweetwater Rivers. SANDAG is currently finalizing the HCPs and a draft Environmental Assessment is under preparation. Based on the review of drafts of these plans, the Service anticipates that they will be compatible with the designation of critical habitat.

Summary of Economic Analysis

Section 4(b)(2) of the Act requires the Service to designate critical habitat on the basis of the best scientific data available and to consider the economic impact and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusions outweigh the benefits of specifying such area as part of the critical habitat, unless it is determined, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat would result in the extinction of the species concerned. The Act thus requires the Service to evaluate those economic and other effects likely to take place due to the designation of critical habitat, and to consider whether to exclude some critical habitat.

The economic effects of designating critical habitat for the least Bell's vireo are the project-related costs of habitat mitigation within the 10 areas designated as critical habitat over and above those costs incurred as a result of listing the vireo as an endangered species in May 1986 and as a result of compliance with the Federal Clean Water Act for those activities involving the placement of fill into waters of the United States.

Affected Agencies

The Service assumes in the economic analysis that the impacts to Federal agencies are related to activities that physically alter critical habitat. The Forest Service, Corps of Engineers (Corps), Federal Highway Administration, and International Boundary and Water Commission are the agencies most likely to be affected by the critical habitat designation.

Economic Effects

Activities that may be affected include construction and maintenance of dams, water control and transport, fire suppression, recreation, oil and gas production and transport, sand-mining, residential and commercial development and related facilities, agriculture, and highway and bridge construction.

Private lands within critical habitat (15,961 acres) are currently used primarily for agricultural purposes and are not expected to be economically affected. There are no known proposals with Federal involvement.

Numerous Federal, State, and local agencies have jurisdiction over the affected activities. Several informed the Service that critical habitat designation is consistent or compatible with their management objectives. Although a number of agencies expressed concern that the designation of critical habitat would affect proposed or future projects and asked to have various project areas removed, the economic costs attributable to critical habitat for those projects are expected to be insignificant.

Federal agencies expected to incur economic costs attributable to designation of critical habitat include the Forest Service, Corps of Engineers, and the International Boundary and Water Commission. The Forest Service anticipates an increased cost of $2,000 per year for additional fire suppression activities and $1,000 per year for additional ranger patrols to protect vireo habitat in the Santa Ynez River critical habitat area. It may become necessary for the Corps of Engineers to initiate patrols of its land in the Santa Ana River critical habitat area to control trespassing, at an anticipated cost of $20,000 a year. The Service believes that the International Boundary and Water Commission flood control activities in the Tijuana River area will incur no significant economic costs.

Construction of the Hamner Avenue Bridge in the Santa Ana River area was completed in 1985. The project

included a compensation package for adverse effects to wildlife and wetlands that cost a total of $462,000, of which $113,400 was for cowbird control and nest monitoring to compensate for impacts to vireo habitat. The annualized value of the critical habitat effect is $8,000 per year.

A number of projects may incur economic costs because critical habitat designation is expected in some cases to require habitat mitigation or compensation that goes beyond current requirements. Under current procedures, whenever proposed projects affect wetlands, the proposing agency is required to replace habitat values either concurrently (up to 5 acres replaced for every 1 acre lost) or prior to their destruction (1 acre replaced for every 1 acre lost). In most cases, the agencies have chosen to replace the habitat values concurrently in order to avoid expensive project delays. With critical habitat designation, the Service expects in some cases to require replacement of habitat values prior to implementation of the action. The Service anticipates that the maximum additional cost would be $75,000 per acre for replacement of vireo habitat values prior to their destruction rather than concurrently. The incremental cost is due primarily to the need for additional landscaping and revegetation to create fully functional vireo habitat in a 2 to 3-year period. The cost of land acquired for mitigation purposes in such cases is attributable to the provisions of the Clean Water Act, or other laws and regulations protecting the environment. In some cases where land values are high, the total cost per acre of habitat destroyed may be less for prior replacement than for concurrent replacement.

A proposed road crossing of the San Diego River associated with the Mission Trails Regional Park could adversely affect critical habitat. The project is still in the planning stage and the exact amount of habitat that would be affected is not known. The Service estimates that up to 5 acres of habitat may need to be replaced. At $75,000 per acre, an additional cost of $375,000 would be required for prior replacement of lost vireo habitat values. The annualized equivalent of the $375,000 one-time cost is $27,000 per year.

The Home Capital Development Group's planned Rancho San Diego project may adversely affect critical habitat in the Sweetwater River area. The Service estimates that up to 3 acres of habitat may need to be replaced prior to project initiation at an additional cost of $225,000. The annualized equivalent of the $225,000 one-time cost is $16,000 per year.

The Corps of Engineers authorizes a number of activities in the Prado Basin of the Santa Ana River critical habitat area. Future changes in some of these existing activities could affect critical habitat, and proponents may incur additional costs as a result. However, because project proposals were not identified during the public comment period of the proposed rule, the Service is unable to provide an estimate of any economic impact due to critical habitat considerations.

Sand and gravel mining activities that are regulated under the Clean Water Act could affect critical habitat, especially along the San Luis Rey River. Although there are no specific project proposals, the Service anticipates that the maximum additional cost would be $75,000 per acre of habitat destroyed.

SANDAG is coordinating the development of HCPs under section 10 of the Endangered Species Act for the San Diego River and Sweetwater River critical habitat areas. This effort also included the development of draft plans for the Santa Ana River and San Luis Rey River critical habitat areas but these sites are no longer under consideration. The habitat conservation planning process is being used to address land use conflicts and to conserve the least Bell's vireo. The Service will issue section 10(a) permits if these plans are acceptable. Based on Service review of drafts of these plans, it is anticipated that they will be compatible with the designation of critical habitat, and no additional economic costs are expected.

The total cost attributable to the designation of critical habitat for projects with supporting data is approximately $74,000 per year. Projects expected to be affected by critical habitat designation for which adequate cost data are not available would not add substantially to that total. Impacts on regional employment, household income, and tax revenues are expected to be insignificant.

Summary of Comments and Recommendations

In the proposed rule published May 3, 1985, the revised proposed rule published on August 7, 1992, and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule for the vireo or its critical habitat. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A correction to some of the legal descriptions of the proposed critical habitat was published in the June 4, 1985, **Federal Register** (50 FR 23458). Newspaper notices were published by June 7, 1985, in the Blade Tribune, Enterprise, Los Angeles Times, News Press, Riverside Press, San Bernardino Sun, San Diego Transcript, San Diego Tribune, and San Diego Union, all of which invited general public comment. Notification of public hearings and an extension of the comment period to August 30, 1985, was published on July 9, 1985 (50 FR 27992). Public hearings were conducted in San Diego on July 30, 1985, in Oxnard on July 31, 1985, and in Anaheim, California, on August 1, 1985.

An additional notification extending the comment period to December 2, 1985, was published on October 3, 1985 (50 FR 40424). These two additional notifications were also published in the aforementioned nine newspapers in July and October, respectively. On May 2, 1986, the least Bell's vireo was listed as endangered, and the public comment period on proposed critical habitat was reopened for an additional 90 days (51 FR 16483). A further extension of the comment period to January 1, 1987, was published on July 31, 1986 (51 FR 27429). Approximately 120 interested parties were notified regarding this extension of the comment period.

The public comment period was again reopened for 90 days subsequent to the publication of the revised proposed rule on August 7, 1992 (57 FR 34298). Two additional public hearings were also scheduled by the Service. A legal notice announcing the hearings and inviting general public comment on the revised proposal was published in the San Diego Union-Tribune on August 17, 1992. About 200 potentially affected or interested parties were notified regarding this revised proposed action. Public hearings were held in Garden Grove, California, on October 20, 1992, and in San Diego on October 22, 1992. A total of about 30 individuals attended these hearings.

Multiple comments whether written or oral from the same interested party are regarded as one comment. Written comments and oral statements questioning or opposing critical habitat designation as originally proposed were grouped into 24 issues and discussed in the revised proposed rule (57 FR 34892).

Of the 87 comments received on the revised proposal to designate critical habitat, 24 (28 percent) supported the designation, 3 (3 percent) opposed the designation, 51 (59 percent) recommended that the Service change the boundaries or delay the designation, and 9 (10 percent) were non-committal.

The Service has identified 25 issues associated with these 87 comments that reflect a questioning of, or opposition to, critical habitat designation and are discussed below.

Issue 1: Certain areas should be excluded from critical habitat because the habitat is already degraded, or proposed plans will indirectly degrade the habitat. Along the Santa Clara River, for example, cowbirds are numerous within the habitat and make it less suitable for vireos. Also, reclaimed sewage water flows through the Santa Clara River, and treatment chemicals may affect the vireo. At expected build-out conditions, the noise generated by traffic along such areas as Jamul Creek and the San Luis Rey River may render the habitat unsuitable for vireos.

Service Response: As long as the constituent elements of critical habitat are present, the factors leading to the degradation of such habitat are not considered in the designation process. Noise, cowbird parasitism, pollution, and other factors contribute incremental impacts upon the vireo, but management of critical habitat areas may reduce or eliminate these impacts. Extensive unmitigated habitat loss may preclude the ability of a listed species to recover. Critical habitat designation should reduce the chances of this occurring with respect to the least Bell's vireo.

The Act also specifies that certain management considerations may be necessary in critical habitat areas. Cowbirds are common in riparian habitat throughout the range of the least Bell's vireo. The judicious trapping of cowbirds and monitoring of vireo nests has significantly reduced the detrimental effects of cowbird parasitism on the vireo at several localities.

Issue 2: Critical habitat should be modified to more accurately reflect the location of nesting and foraging habitat. Urban developments, agricultural lands, industrial operations, recreational facilities, highways, railroads, etc., are included within the boundaries of critical habitat designation.

The Service has exceeded its authority under the Act by including in the critical habitat area, land which it knows does not meet the Act's definition of critical habitat. The regulations state that "critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area" [50 CFR 424.12(c)]. The Service should choose reference points that are more precise than section lines, and less ephemeral than trees and sandbars.

Service Response: The suggestion to designate more precise boundaries may be possible in some cases. No specifics on suggested boundaries were provided. Attempting to redefine the critical habitat by another means would unduly delay a final decision on this matter.

The Service is required to use existing, readily recognizable boundaries in the development of legal descriptions for critical habitat. The Service cannot use ephemeral features such as vegetation for boundaries. In cases where areas designated as critical habitat do not contain the primary constituent elements, impacts occurring within this area will not result in a finding of adverse modification by the Service. Thus, designation of critical habitat will not effect those areas within the legal critical habitat boundaries that do not contain vireo nesting or foraging habitat.

Issue 3: The Service has not clarified the potential effects of critical habitat designation on private landowners. For example, Service responses to Issues 7 and 18 in the revised proposed rule (50 FR 34892) appear contradictory. The response to Issue 7 states that most activities potentially taking place within critical habitat will require Federal approval, and therefore be subject to the requirements of section 7 consultation. The discussion of Issue 18, however, implies that Federal involvement in projects on private land would be unusual.

Federal case law indicates that designation of critical habitat will, contrary to the Service's representations, affect activities on State and private property even if there is no Federal involvement. For example, in *Palila* v. *Hawaii*, 639 F. 2d 495 (9th Cir. 1981), the court held that the state of Hawaii's maintenance of sheep and goats within Palila (*Loxioides bailleui*) critical habitat constituted a take, even though there was no Federal involvement.

Service Response: Section 7 of the Act applies only to Federal agencies, directing them to ensure that their actions do not jeopardize the continued existence of listed species or adversely modify critical habitat. The Service maintains that a project potentially affecting a federally listed species will only require section 7 consultation when Federal funding, approval, permitting, licensing, or other discretionary authority is involved. Because the least Bell's vireo critical habitat is primarily wetland, it is anticipated that the Army Corps of Engineers will be involved in projects affecting this habitat, through the section 404 permitting process of the Clean Water Act. A section 404 permit is required for projects involving dredge or fill of jurisdictional wetlands or waters of the United States. For projects on private property, where wetland within critical habitat is neither dredged nor filled, Federal involvement under section 7 is not anticipated.

By contrast, section 9, which prohibits the unpermitted "take" of endangered species, applies to all "persons" (as defined in the Act) within the jurisdiction of the United States. Pursuant to section 9 of the Act and the regulations and statutes pertaining thereto, "take" means to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct" [16 U.S.C. 1532(19)]. In the case of *Palila* v. *Hawaii*, the Court rendered an opinion on the legal definition of "take." The Court ruled in *Palila* v. *Hawaii* that habitat destruction harms a species by indirectly causing a decline in the population, and precluding recovery of the species. Therefore, the court's ruling in this case pertained to the legal definition of "take" and not the designation or function of critical habitat. A landowner destroying vireo habitat might be involved in a section 9 taking, but would have no incremental legal exposure as a result of critical habitat designation.

Issue 4: The revised proposed rule uses an improper incremental approach to the economic analysis required by the Act. In the revised proposed rule, the Service stated that the economic analysis should only apply to project-related costs of mitigation within critical habitat designation over and above those costs that would be incurred as a result of listing the vireo. The Service thereby eliminated the restraints imposed through the balancing process set forth in section 4 of the Act.

Service Response: The effects of critical habitat designation are incremental, and represent only a portion of the total cost of a species' conservation. A high level of protection is already afforded to least Bell's vireo habitat by the Clean Water Act and Federal wetlands policy. An additional layer of protection has been added to this by the listing of the vireo, which prohibits jeopardy and take of the species. Even without designation of critical habitat, modification of occupied vireo habitat can constitute jeopardy or take. Federal agencies cannot adversely modify designated critical habitat. As discussed above under "Available Conservation Measures," that is in addition to the requirement to avoid jeopardizing the

continued existence of a federally listed species. Furthermore, if a Federal agency may affect critical habitat, that agency must consult with the Service even if the habitat happens to be unoccupied. These added section 7 requirements were considered in the development of the economic analysis.

In the 1982 amendments to section 4 of the Act, Congress added the word "solely" to the statutory directive that the Secretary base listing on the best scientific and commercial data available. A House of Representatives report states:

The addition of the word "solely" is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. The committee strongly believes that economic considerations have no relevance to determinations regarding the status of species* * *. Applying economic criteria to the analysis of these alternatives and to any phase of the species listing process is applying economics to the determinations made under section 4 of the Act and is specifically rejected by the inclusion of the word "solely" in this legislation. [H.R. Rep. No. 97–304; see 16 U.S.C. 1533(b)(1)(A)]

The Joint Regulations on Endangered Species also state that the Secretary may make a determination of listing "solely on the basis of the best available scientific and commercial information regarding a species' status, without reference to possible economic or other impacts to such determination" (50 CFR § 424.11(b)). In 1978, Congress amended section 4 of the Act to require the Secretary to take into consideration "the economic impact, and any other relevant impact, of specifying any particular area as critical habitat" (16 U.S.C. 1532(5)(A)(i)). Federal regulations on implementation of the Act state that "A final designation of critical habitat shall be made on the basis of the best scientific information available, after taking into consideration the probable economic and other impacts of making such a designation in accordance with § 424.19" (50 CFR § 424.12(a)). The Service interprets the history of the Act and Federal regulations to clearly indicate that the economic analysis should only take into account the effects of designating critical habitat, and not those of listing the species.

Issue 5: Some individuals wanted to know if critical habitat designation would result in the need for additional mitigation for projects with ongoing management or conservation plans designed to mitigate impacts to vireos.

Service Response: For projects that have completed the section 7 consultation process to develop mitigation measures for direct and indirect impacts to the least Bell's vireo and vireo habitat, it is highly unlikely that additional measures will be required as a result of the critical habitat designation.

For example, two California Department of Transportation (CALTRANS) projects in San Diego County and an Orange County Water District water conservation project in the Prado Basin that involve Federal funds, permits, or authorizations prompted formal section 7 consultations because of proposed impacts to vireos and/or vireo habitat irrespective (and in advance) of critical habitat designation. In each case, the overall project-related impacts to the vireo were evaluated and disclosed, and mitigation was proposed in the required environmental documentation. Mitigation was appropriately developed in each instance that compensates, to the extent deemed reasonable and prudent, for unavoidable direct and indirect impacts to the vireo, vireo habitat, and public fish and wildlife resources in general. Therefore, the Service fully anticipates, in these instances, that no additional mitigation would be required, prudent, or even possible as a result of the designation of critical habitat. In this regard, the Service cannot summarily dismiss the Orange County Water District's (District) position that "barring unforeseen circumstances, the mitigation and conservation measures that have been implemented and proposed for implementation" as a result of a current section 7 consultation will fully mitigate for impacts associated with the District's water conservation project.

Issue 6: Since conversion of land to residential or commercial development would adversely affect critical habitat, property owners would lose beneficial use of their land. Critical habitat designation within certain areas, such as the San Luis Rey Municipal Water District, would thus constitute a regulatory taking of property.

Service Response: Property owners within the critical habitat boundaries are not expected to lose beneficial use of their land as a result of critical habitat designation itself. In evaluating proposed projects within critical habitat boundaries, under section 7 of the Act, the Service would first determine if the specific area contained foraging or nesting habitat for least Bell's vireos. The designation of critical habitat would only affect those areas that contained elements of nesting or foraging habitat. Areas that lack foraging or nesting habitat would not be affected by the designation. Furthermore, within critical habitat, only those activities with Federal involvement would be subject to section 7 consultation. Such involvement is most likely to occur when a project involves dredge or fill of waters of the United States. In cases where section 7 consultation is required, reasonable and prudent alternatives or measures are likely to be developed that do not preclude the development of private property. Given the pertinent data pertaining to past section 7 consultations involving the vireo or other listed species in southern California, it is extremely unlikely that any project would be effectively stopped or significantly modified because of the section 7 process. In fact, a World Wildlife Fund study, using 12 years of data from the entire United States, concluded that "The vast majority of federal activities subject to consultation successfully proceeded to completion while accommodating the needs of endangered and threatened species." Less than 1 percent of the actions that were the subject of formal consultation during this study were "blocked" because of section 7 (Barry *et al.* 1992).

In the rare cases when the Service issues jeopardy opinions without acceptable reasonable and prudent alternatives, the action agency may take the project to an exemption committee and ask that its projects be exempted from the requirements of the Act. The Service anticipates that few, if any, opinions would not contain acceptable reasonable and prudent alternatives.

Issue 7: If it is found that water extraction is damaging to least Bell's vireo critical habitat, then restrictions on water extraction would impinge on the rights of landowners and have a large economic impact on agriculture. Such restrictions would also threaten the supply of domestic water necessary to meet the water demands for certain communities.

Service Response: As discussed in the response to Issue 3 above, only those projects with Federal involvement would be directly affected by critical habitat designation. The Service does not anticipate any circumstances in which there would be Federal involvement in water extraction processes on private property within any of the critical habitat areas. Water extraction rights on private property could not be negated because of critical habitat designation.

Issue 8: The benefits of designating certain areas such as Newhall property on the Santa Clara River do not exceed the economic costs of such designation.

Current and potential revenues from agriculture, housing development, and filming activities on Newhall property, within proposed critical habitat, exceed $200 million, and revenues from adjacent Newhall activities potentially impacted by the designation exceed $160 million. In addition to Newhall, other property owners have expressed concerns over the costs of mitigation requirements that would be generated by the critical habitat designation on their lands.

Service Response: Newhall's analysis (Newhall Land and Farming Company 1992) and comments submitted by other landowners are based on the assumption that designation of critical habitat would prohibit or substantially modify all activities within the designated boundaries. The response to Issue 6 above indicates that the Service anticipates very few, if any, projects to be stopped or significantly modified due to critical habitat designation itself. Any impact on these projects would be through section 9 prohibitions on taking.

In addition, habitat occupied by vireos is already protected because of its status as a federally-listed species. The Clean Water Act, National Environmental Policy Act, Fish and Wildlife Coordination Act, Federal wetland policy, sections 1601 and 1603 of the California Fish and Game Code, and the California Environmental Quality Act also provide various degrees of consideration or protection for these areas. The requirements of these statutes overlap considerably, and ascribing costs incurred for mitigation or compensation to each of these statutes separately is problematical.

If occupied vireo habitat, jurisdictional wetlands or waters of the United States are to be affected by a Federal agency or project proponent, that agency or project proponent is presently required (in the absence of critical habitat designation) to replace those values with from 1 to 5 acres of appropriate habitat created for every acre lost. However, this replacement is generally mandated at the Federal level only if the impact exceeds 1 acre under the Corps' Nationwide Permit Program implementing, in part, section 404 of the Clean Water Act or if vireos would be affected by the project pursuant to section 7 of the Act and the implementing regulations pertaining thereto.

With critical habitat designation, the essential elements of suitable, but unoccupied, habitat must be preserved through project design or mitigation. Thus, designation of critical habitat generally would have an incremental economic effect only on federally involved projects that are less than an acre in size or that require mitigation measures above and beyond what is currently being negotiated or required given the vireo's status as a listed species and the regulatory authority of the Corps of Engineers and California Department of Fish and Game to require the minimization or mitigation of impacts to jurisdictional wetlands or waters. Therefore, those mitigation measures attributable solely to critical habitat designation (e.g., the replacement or rehabilitation of small amounts of habitat, contributions to habitat or species management funds) are expected to be relatively infrequent and add only incrementally to project costs. Costs associated with wetland creation are discussed under the response to Issue 3 in the revised proposed rule (57 FR 34892).

In any case, the National Environmental Policy Act and the Endangered Species Act state that costs associated with mitigation or compensation are part of the project costs. Because the least Bell's vireo is essentially an obligate wetland species, the costs associated with impacts to unoccupied vireo habitat would be borne by the project applicant whether or not critical habitat was designated. However, the Service believes that no mitigation costs will be attributable to the designation of critical habitat for projects on private lands that are outside the jurisdiction of Federal regulatory agencies.

Issue 9: The designation of critical habitat may impact flood control projects. If periodic removal of riparian vegetation from flood control channels is restricted, the impacts will involve not only losses of water and uncontrolled flooding, but also costs in terms of human life.

Service Response: The response to Issue 6 above states that projects are rarely blocked, since reasonable and prudent alternatives or measures are usually developed that allow the project to proceed in a timely manner. The response to Issue 8 above addresses the potential increase in regulation due to critical habitat designation. A high level of protection is afforded to wetlands by the Clean Water Act and Federal wetland policy. Regulations to avoid, minimize, or compensate for impacts to wetlands in general, and vireo habitat in particular, would be incurred even if critical habitat was not designated. The layer of regulation added through critical habitat designation is not expected to preempt public health and safety. Although the Service encourages long-range planning of all projects that adversely affect the vireo or vireo habitat, it recognizes that emergencies (e.g., fires) develop that necessitate accelerated consultations or the assessment of impacts and development of appropriate mitigation measures after-the-fact.

Issue 10: Utility corridors and access roads should not be included as critical habitat. Both routine and emergency maintenance are necessary to maintain public safety and service.

Service Response: Utility corridors exist within least Bell's vireo critical habitat; however, no biological evidence or other basis justifies the exclusion of such corridors from a critical habitat designation. The Service will address each project on a case-by-case basis and assist the Federal action agency in avoiding, minimizing, and mitigating for impacts to the vireo and its critical habitat. In addition, agencies are generally encouraged to request formal consultation on programmatic activities. Such consultations would facilitate long range planning efforts. The Service is unaware of any instances where the maintenance of utility structures or facilities was precluded by the listing of the vireo; it is anticipated that the designation of critical habitat similarly will not impinge on necessary operations. Furthermore, as was explained in the response to Issue 9 above, pertinent regulations and Service policy provide for the resolution of impacts to listed species and their critical habitat that result from corrective actions taken in true emergency situations.

Issue 11: Designation of critical habitat requires an Environmental Impact Statement (EIS) pursuant to the requirement for Federal agencies to comply with the National Environmental Policy Act (NEPA).

Service Response: For the reasons cited in the NEPA section of this rule, the Service has determined that rules issued pursuant to section 4(a) of the Endangered Species Act do not require the preparation of an EIS.

Issue 12: Prior replacement of habitat should only be required when it can be conclusively determined that existing habitat is being used at its full potential. Several commenters also expressed the opinion that the mandated replacement of vireo habitat prior to project commencement would be an unreasonable and excessive requirement.

Service Response: In the vast majority of section 7 consultations on potential impacts to the vireo, the Service has recommmended prior replacement of vireo habitat, and does not anticipate changing this pattern with designation

of critical habitat. Only in cases involving a relatively large acreage of unoccupied vireo habitat would such a requirement result from critical habitat designation. Because requirements for habitat replacement in advance have invariably been prompted by projects with substantial impacts to vireos or significant portions of occupied vireo habitat, it is anticipated that prior habitat replacement would be necessary in those circumstances regardless of whether critical habitat has been designated. In some cases, especially where land costs are high, project proponents have chosen to mitigate project-related impacts in advance to increase the likelihood of "no net loss" of wetland or vireo habitat values. This approach has also been used as a means to minimize the required amount of habitat compensation.

Issue 13: Several commenters suggested that the Service should specify the criteria used to distinguish vireo quality habitat within the designated boundaries. Some suggested that the Service should have designated boundaries to more accurately reflect the actual habitat boundaries.

Service Response: In establishing the approximate limits of actual critical habitat within the designated critical habitat area boundaries, the Service utilized National Wetland Inventory maps. Because the large majority of vireo habitat consists of mixed woodland or willow woodland habitats that are contained within jurisdictional wetlands and waters of the United States, these maps fairly accurately designate the extent of actual or potential habitat at a designated locale.

Issue 14: The Service has not addressed the biological implications of artificially sustaining riparian habitat in the successional stage appropriate to support least Bell's vireos. What associated habitats and species will suffer from receiving a lower level of protection as a direct or indirect effect of the designation?

Service Response: The Service is not advocating artificial maintenance of riparian habitat at a particular successional stage. Rather, the Service is advocating maintenance of natural systems under conditions that will be conducive to supporting vireo populations. Since the vireo was first listed by the state of California in 1980, it has not been necessary to artificially maintain vireo habitat at a given successional stage.

Issue 15: Designation of critical habitat should be postponed until ongoing conservation plans to mitigate negative impacts to the vireo are in place and evaluated, or until further studies are completed and we know exactly why the vireo has declined.

Service Response: On the basis of past experience with other listed species and critical habitat designations, the Service believes that the designation of critical habitat will not be incompatible with existing conservation or management plans. Current drafts of habitat conservation plans for the San Diego and Sweetwater Rivers are considered by the Service to be compatible with critical habitat designation. The designation of critical habitat may, in fact, simplify the creation and funding of area or drainage-specific management plans.

Based on the demonstrated, relative success of several vireo management plans and other conservation efforts within its range and the endangered status of this species, the Service cannot justify the postponement of critical habitat designation until all management plans are evaluated or in place. Such a postponement could reduce the chances for the survival or recovery of the species.

Issue 16: The Orange County Water District requested the exclusion of all lands below the 505-foot elevation in the Prado Basin from critical habitat designation because of its commitment to mitigate impacts to vireos and vireo habitat below that elevational contour.

Service Response: The Corps' Draft EIS for the Orange County Water District's water conservation project indicates that implementation of the District's project will be phased. The level of the water conservation pool will be incrementally raised: (1) Once habitat above the 505-foot elevation is rehabilitated, restored, or created to replace occupied and presently unoccupied vireo habitat below 505-ft that is destroyed or degraded because of the project, and (2) it is demonstrated that the vireo population is not adversely impacted by their displacement or the destruction or degradation of preferred habitat. For these reasons, the Service did not remove lands from critical habitat designation within the Prado Basin that currently accommodate a majority of the nesting pairs representing the second largest vireo population in the United States.

Issue 17: Several commenters noted that the Service should also list critical habitat for other areas (e.g., the lower Santa Ynez River in Santa Barbara County) or for all areas with populations of more than 10 pairs of vireos.

Service Response: The Service retains the option to consider the designation of additional critical habitat. Designation of more critical habitat would be the subject of a new proposed rule that would solicit public comments and provide for a public hearing, if so requested.

Issue 18: Given the high levels of cowbird nest parasitism and habitat loss, it may already be too late to save the vireo even if habitat is preserved.

Service Response: The stability or instability of populations is not one of the criteria used to determine the appropriateness of designating critical habitat. The Act requires the Service to designate critical habitat for a listed species in areas that are essential to the conservation of the species, unless it is not prudent to do so. The Act would require the designation of critical habitat even if little could be done to minimize most threats facing the species. Fortunately, however, the vireo has responded favorably to management in a number of locations throughout its range. Therefore, it seems reasonable to conclude that the designation of critical habitat will provide additional protection to the vireo and increase the likelihood of its recovery.

Issue 19: Certain areas should not be designated as critical habitat because they do not "* * * require special management considerations or protections," as prescribed by section 3(5)(A)(i)(II) of the Act. This comment was usually followed by a belief about which type of regulations already provide "special management considerations or protections."

The Service should not designate critical habitat because other regulations and levels of government already protect the habitat sufficiently. For example, local and/or State governments can manage habitat and prevent private landowners from clearing riparian vegetation. Projects altering a stream course are subject to review under section 1601 or 1603 of the California Fish and Game Code.

Federal regulations also protect proposed critical habitat. Designation of critical habitat is not necessary for areas in which activities are planned that will require National Environmental Policy Act (NEPA) review and compliance. Nor is it necessary to designate critical habitat on the Santa Ynez River because this area is already protected under the jurisdiction of the Forest Service. All these regulations and management practices preclude the need for designating critical habitat.

Service Response: Local governments have not prevented habitat loss for the least Bell's vireo under existing regulatory mechanisms. Areas under Federal jurisdiction may require special management considerations or protection that would not be afforded

without critical habitat designation. For these reasons, the Service believes that inclusion of areas already subject to local, State, or Federal regulations is consistent with the definition of critical habitat cited under section 3(5)(A)(i)(II) of the Act.

Issue 20: Critical habitat designation in the Prado Basin of the Santa Ana River would force the Corps of Engineers to release storm water quickly (to minimize the adverse effects of standing water on vireo habitat) and at too great a velocity for the local water district to divert it into their percolation (spreading) basins for water conservation.

Service Response: The Service has been working with the Corps of Engineers, Orange County Water District, and The Nature Conservancy to resolve conflicts between vireo conservation and flood control/water conservation activities in the Prado Basin. Based on the distribution and abundance of the vireo within the Prado Basin relative to the reservoir pool inundation zone, these water management activities may affect a listed species. On that basis, the Corps initiated formal consultation with the Service on October 16, 1992. The Corps has included a thorough compensation package as part of the project description. The proposed compensation measures very likely adequately provide for impacts to the vireo and its habitat. For this reason, the Service believes that a critical habitat designation is not likely to impose any additional costs for avoiding, minimizing, or mitigating impacts to the vireo.

Issue 21: The cost of mitigation as a result of critical habitat designation would place an unreasonable financial risk on the project proponent. For example, one commenter estimated it would cost about $4–10 million to create habitat to compensate for the habitat that would be destroyed by raising the height of Gibraltar Dam. Since riparian habitat creation is expensive and the results are unpredictable, the project proponents may spend a great deal of money with no return if the mitigation program should fail.

Service Response: As stated in the response to Issue 12 above, designation of critical habitat could, in a few cases, require prior habitat replacement of applicants for projects in areas that contain suitable, but unoccupied, vireo habitat.

Wetland compensatory mitigation can be a costly, time-consuming, and difficult endeavor with an uncertain probability of success. However, in the 6 years since the vireo was listed, two agencies have constructed projects that have been subject to this prior replacement requirement, and both have successfully created habitat that now supports vireos. As restoration techniques are further refined, it is likely that revegetation projects will become more successful in shorter time frames. The requirement to create vireo habitat before existing habitat is destroyed ensures that this federally listed species would not sustain a loss of habitat, even temporarily. In some cases, the temporary loss of habitat may have a significant adverse impact on the vireo. Given the uncertainty of wetland creation or restoration, it is unlikely that the Service would support a project proposal that would result in the destruction of large areas of riparian habitat without first providing adequate replacement habitat for the least Bell's vireos in the area.

Under section 4(b)(2) of the Act, the Secretary has the authority to exclude an area from critical habitat designation "* * * if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species concerned." The Gibraltar Reservoir population of the vireo represents the northern edge of its current range, and therefore is most likely to be the source of recolonization to the north or to the Central Valley. Because of this geographical significance, the designation of this area as critical habitat is appropriate.

In any case, the proposed project to raise the height of Gibraltar Dam is not currently being considered, since the city of Santa Barbara is using economically feasible alternative water sources.

Issue 22: Critical habitat should not be designated because of project delays due to lengthy permitting processes and the time required to offset negative impacts before a project could be constructed.

Service Response: For projects where unavoidable impacts to unoccupied vireo habitat would occur, compensatory mitigation in the form of habitat creation may have to be completed prior to the destruction of existing habitat so that the vireo would not sustain a net loss of available nesting or foraging habitat.

The amount of time for successful habitat creation would vary depending on the methods used and could take several years. The action agency or permit applicant would need to initiate the restoration activities early enough to allow sufficient time for vireo habitat to develop. Most major projects are in the planning stages long enough to provide adequate time for advance habitat creation if the compensation efforts are done expeditiously. Proper planning would reduce the likelihood of a project delay.

Section 7 regulations require the Service to complete formal consultation within 90 days of initiation and issue a biological opinion within an additional 45 days. By policy and in practice, the Service usually completes formal consultation within 90 days.

Issue 23: Designation of critical habitat is unnecessary because nest parasitism by cowbirds and predation are responsible for the decline of the vireo, rather than habitat loss. One commenter stated that vireo habitat is plentiful, and efforts to conserve the species should focus on other aspects of its ecology.

Service Response: Two major factors have been identified as being responsible for the relatively recent, dramatic decline of the least Bell's vireo: (1) Widespread habitat destruction, and (2) high rates of nest parasitism by cowbirds (Goldwasser *et al.* 1980). The synergistic effects of these two factors may have further exacerbated the situation. Although cowbird removal programs have effectively solved the problem of excessive parasitism at a number of locales, habitat conservation and creation programs have not achieved the same level of success. These programs eventually must be successful if conservation and recovery of the vireo is to be achieved. To that end, the designation of critical habitat affords a higher level of protection to riparian woodland habitats that currently (or potentially could) support nesting pairs of vireos. The Service considers this action particularly appropriate in light of the inability of existing regulatory mechanisms (e.g., the Clean Water Act, local regulations) to adequately protect vireo habitat.

Issue 24: The critical habitat designation would result in more stringent local permitting and approval processes.

Service Response: The Service has no authority to require local agencies to implement land use restrictions consistent with the regulations protecting designated critical habitat although the Service would support such actions. The commenters who raised this issue are land owners in San Diego County. The Service contacted the San Diego County Department of Planning and Land Use (DPLU) with

respect to this issue and was informed that the DPLU does not anticipate any changes in local ordinances as a result of critical habitat designation (T. Oberbauer, County of San Diego, Department of Planning and Land Use, pers. comm.).

Issue 25: The Service should not designate critical habitat on Camp Pendleton Marine Corps Base because the Service and the Marine Corps have signed a Memorandum of Understanding (MOU) that was designed to accomplish the same degree of habitat protection as critical habitat would provide. The management program for the least Bell's vireo on Camp Pendleton eliminates the need for special management considerations, and therefore, designation of critical habitat is unnecessary.

Service Response: The Service believes that the MOU is providing an adequate level of protection to the vireo and its habitat on Camp Pendleton. Under the MOU, the Service agreed to offer technical assistance and to consult under section 7 of the Act when requested. The Marine Corps agreed to consult under section 7 of the Act on activities that may affect the least Bell's vireo, to request formal consultation on various programmatic issues such as road maintenance and fire control, to maintain 1,200 acres (480 ha) of vireo quality habitat along the Santa Margarita River, and to continue cowbird trapping efforts (which were initiated in 1983) and nest monitoring activities (which were initiated in 1981) as long as funding was available.

The Santa Margarita River supported 1,200 acres of quality vireo habitat and 98 territorial male least Bells' vireos when the MOU was signed in 1986. Since 1986, the Marine Corps has continued cowbird trapping efforts, and until 1991 carried out a thorough monitoring program. The vireo population along the Santa Margarita River on Camp Pendleton has increased from 98 to 212 territorial males from 1986 to 1991.

Although this area is essential to the conservation of the species, the Service finds that a formal critical habitat designation is unnecessary because the MOU contains provisions for section 7 consultation for proposed actions that may destroy or adversely modify vireo habitat. The Service also finds that a level of protection equivalent to or greater than that provided by a critical habitat designation can be achieved for the vireo on this portion of the Santa Margarita River through cooperation with the Marine Corps under the MOU. However, the Service will reconsider its position to designate critical habitat at this locality if conditions warrant. The Service will use its authority under sections 7 and 9 of the Act to insure compliance with the prohibitions on unauthorized take. For these reasons, the Service has removed about 9,600 acres (3,840 ha) on Camp Pendleton from the critical habitat designation.

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 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).

Regulatory Flexibility Act and Executive Order 12866

This rule has been reviewed under Executive Order 12866. The Department of the Interior has determined that this designation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within the critical habitat areas, it is not expected that significant economic impacts will result from the critical habitat designation. In addition, there are a limited number of actions on private land that have Federal involvement through funds or permits that would affect or be affected by the critical habitat designation; the potential economic impact of the critical habitat designation on these actions will be minor. Also, no direct costs, enforcement costs, or information collection or recordkeeping requirements are imposed on small entities by this designation. This action does not impose any recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

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Salata, L. 1987. The status of the least Bell's vireo at Camp Pendleton, California in 1987. Unpubl. rep. U.S. Marine Corps, Camp Pendleton, California. 43 pp.

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Wilbur, S. 1980. Status report on least Bell's vireo. Unpubl. rep. U.S. Fish and Wildlife Service, Portland, Oregon. 46 pp.

Authors

This rule was prepared by Service staff from the Carlsbad Field Office, 2730 Loker Avenue West, Carlsbad, California 92008 (telephone: 619/431–9440) and the Region 1 Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503/231–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

§ 17.11 [Amended]

2. Amend § 17.11(h) by revising the "Critical habitat" entry for "Vireo, least Bell's," under BIRDS to read "17.95(b)".

3. Amend § 17.95(b) by adding critical habitat for the least Bell's vireo in the same alphabetical order as the species occurs in § 17.11(h).

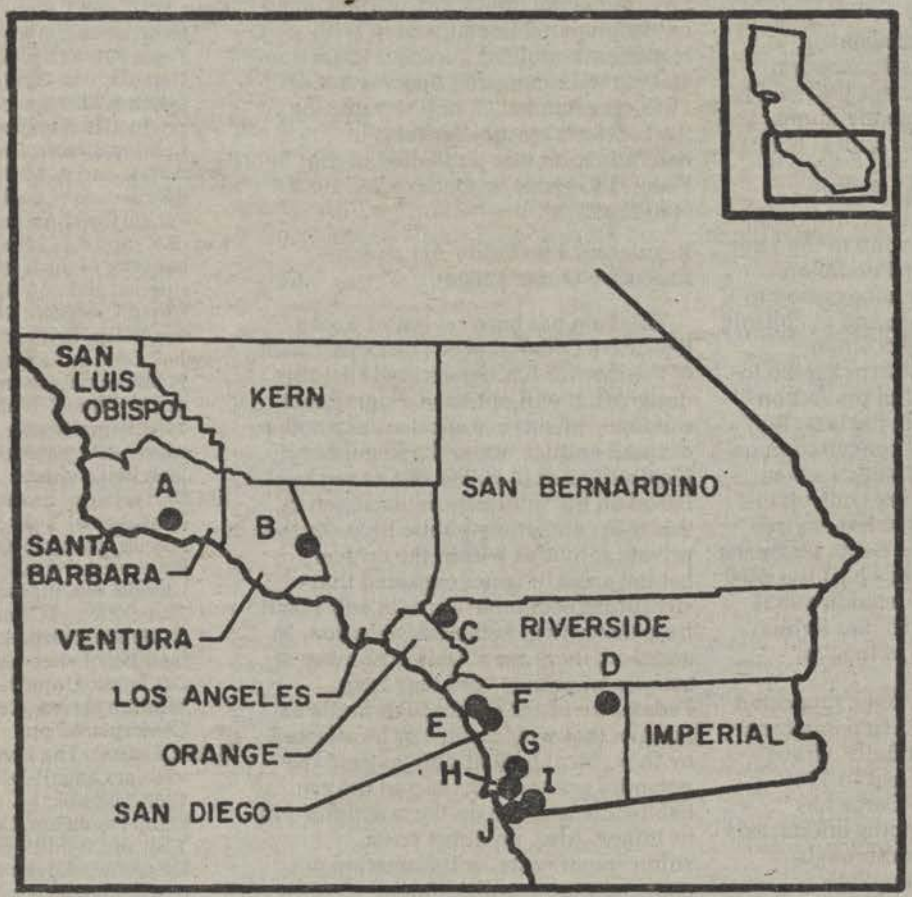
§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) * * *

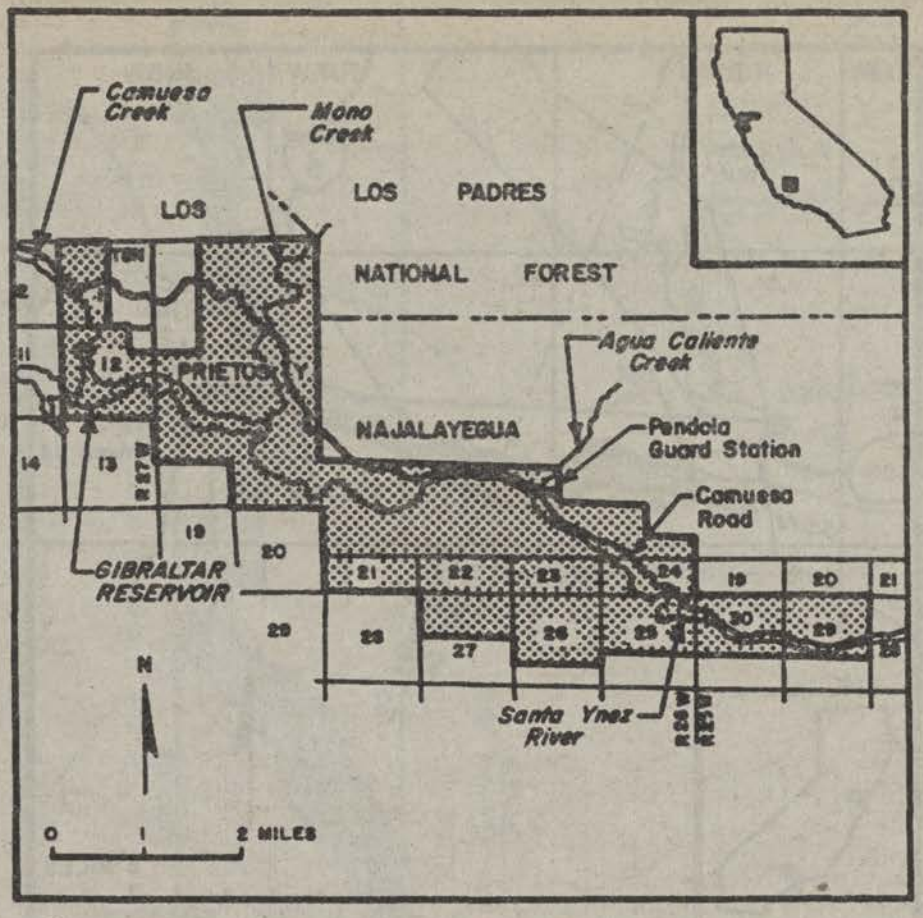
LEAST BELL'S VIREO (*Vireo bellii pusillus*)

California: Areas of land and water as follows:



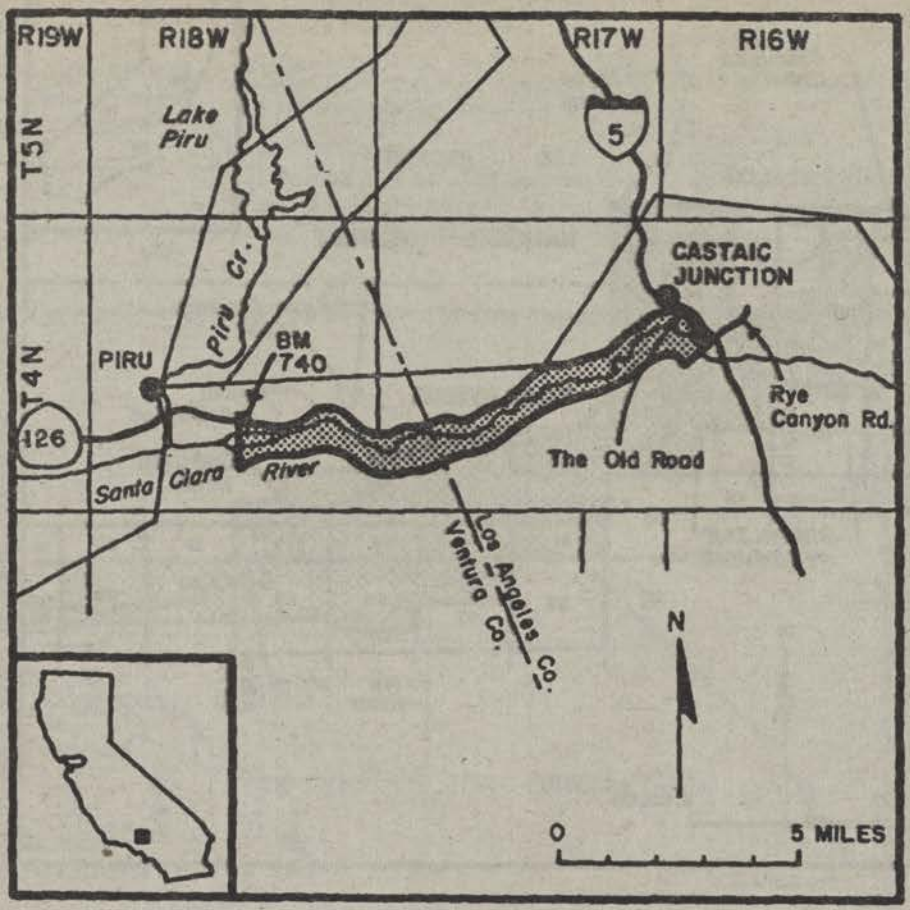
1. Santa Ynez River, Santa Barbara County (Index map location A).

T. 5 N., R. 27 W.: secs. 1, W½, and 12, all except NE¼. In addition, all adjacent lands within the following circumscribed area: beginning at a point 0.25 mi south of the northeast corner of sec. 12, T. 5 N., R. 27 W.; thence east about 0.5 mi; thence north about 1.25 mi; thence east approximately 1.3 mi to the intersection of Mono Creek and the Los Prietos Y Najalayegua land grant boundary; thence south about 2.5 mi; thence east approximately 2.6 mi to Agua Caliente Creek (at a point about 0.4 mi north and 0.1 mi east of the Pendola Guard Station); thence south about 0.5 mi; thence east about 1.0 mi; thence south about 0.25 mi; thence east about 0.5 mi; thence south about 0.75 mi to the southwest corner of T. 5 N., R. 25 W., sec. 19; thence east to the southeast corner of T. 5 N., R. 25 W., sec 20; thence south about 0.63 mi; thence west to western boundary of T. 5 N., R. 26 W., sec. 25; thence south about 0.16 mi; thence west to eastern boundary of T. 5 N., R. 26 W., sec. 27; thence north about 0.25 mi; thence west to western boundary of T. 5 N., R. 26 W., sec. 27; thence north to the northeastern corner of T. 5 N., R. 26 W., sec. 27; thence north to the northeastern corner of T. 5 N., R. 26 W., sec. 28; thence west to the northwest corner of T. 5 N., R. 26 W., sec. 28; thence north to the northeast corner of T 5 N., R. 26 W., partially unsurveyed sec. 20 thence west to the northeast corner of T. 5 N., R. 26 W., unsurveyed sec. 19; thence north about 0.5 mi; thence west to the southeast corner of T. 5 N., R. 27 W., sec. 13 NE¼; and thence north to the southeast corner of T. 5 N., R. 27 W., sec. 12.



2. Santa Clara River, Los Angeles and Ventura Counties (Index map location B).

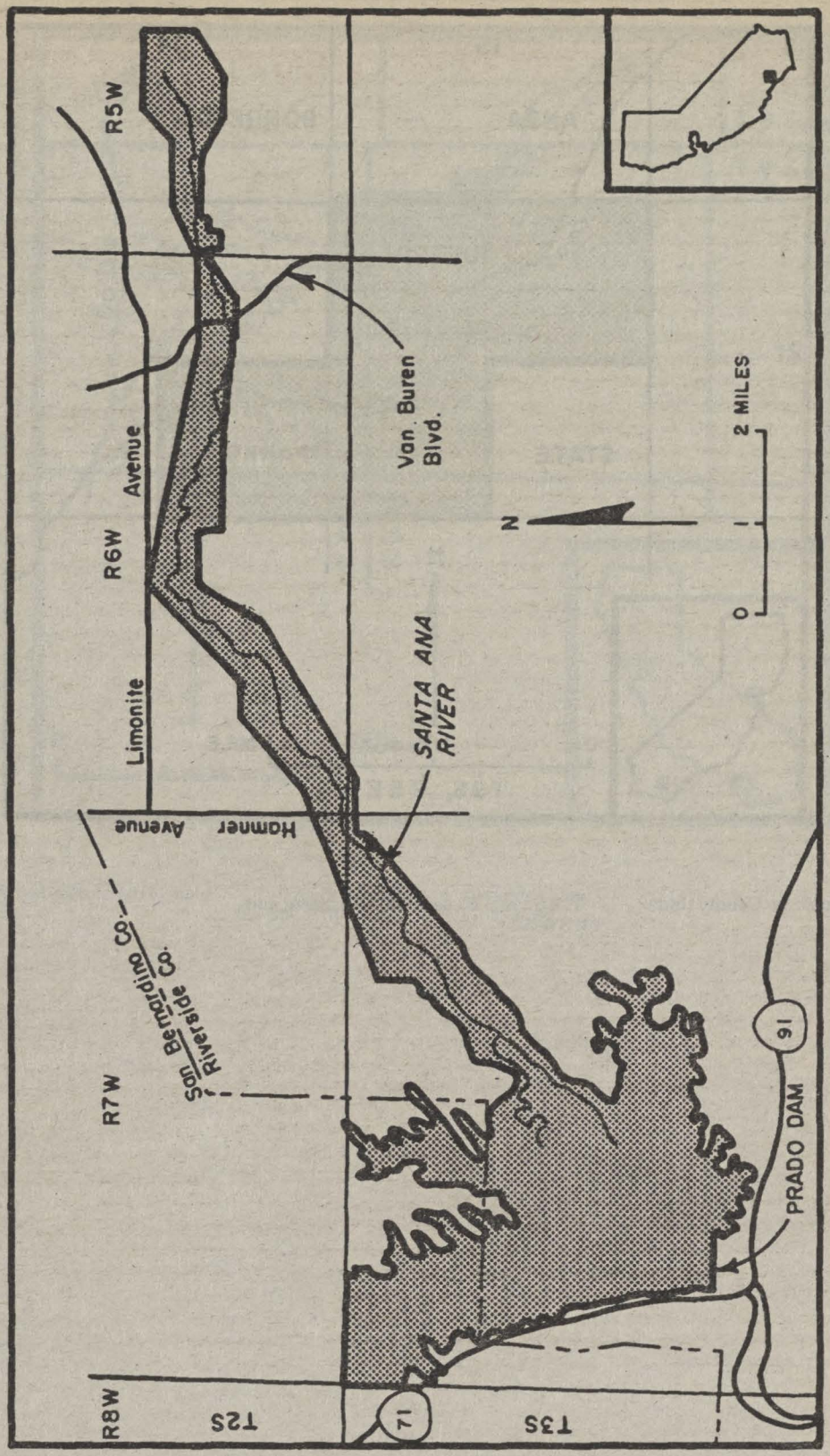
T. 4 N., Rs. 17 and 18 W.: all land within 3,500 feet perpendicularly and generally southward or westward of a line commencing at a point 100 yards west of BM 740 (a point about 2.3 mi east of the intersection of Main Street and State Highway 126 in Piru); thence east along State Highway 126 to its intersection with The Old Road at Castaic Junction; and thence eastward and southward along The Old Road to its intersection with Rye Canyon Road.



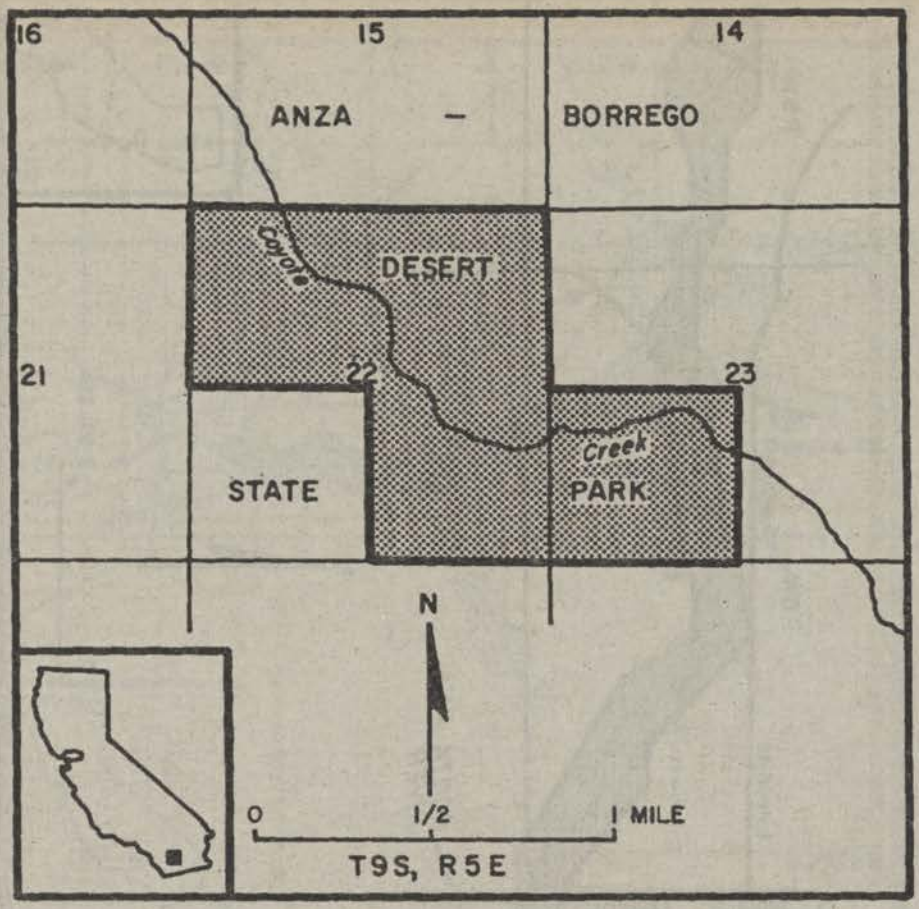
3. Santa Ana River, Riverside and San Bernardino Counties (Index map location C).

All lands below the 543-foot contour in partially surveyed T. 3 S., R. 7 W., within the Prado Flood Control Basin (upstream from Prado Dam). In addition, the following adjacent lands above the 543-foot contour in the Santa Ana River bottom and within the following boundaries: commencing at a point 0.1 mi east and 0.2 mi north of the southwest corner of sec. 2, T. 3 S., R. 7 W.; thence north about 0.4 mi; thence to a point 0.25 mi east and 0.4 mi north of southwest corner of sec. 31, T. 2 S., R. 6 W.; thence to the northeast corner of sec. 31, T. 2 S., R. 6 W.; thence east 0.35 mi; thence to midpoint of southern section line of sec. 21, T. 2 S., R. 6 W.; thence to a point 0.6 mi south of the northwest corner of sec. 25, T. 2 S., R. 6 W.; thence east about 0.6 mi; thence to a point 0.2 mi north of the center of sec. 30, T. 2 S., R. 5 W.; thence east about 0.7 mi; thence to a point 0.6 mi east of the southwest corner of sec. 20, T. 2 S., R. 5 W.; thence east about 0.8 mi; thence 0.6 mi south; thence to a point 0.3 mi north of the southwest corner of sec. 28, T. 2 S., R. 5 W.; thence to a point 0.45 mi north of the southwest corner of sec. 29, T. 2 S., R. 5 W.; thence generally westward and southward along the Riverside Corporation Boundary (as shown on USGS Riverside Quadrangle 1980) to its intersection with Van Buren Blvd.; thence to a point 0.2 mi east and 0.75 mi south of the northwest corner of sec. 27, T. 2 S., R. 6 W.; thence 0.25 mi north; thence 0.7 mi west; thence to a point 0.85 mi north of the southwest corner of sec. 32, T. 2 S., R. 6 W.; thence to a point 0.75 mi west and 0.1 mi south of the northeast corner of sec. 6, T. 3 S., R. 6 W.; thence 0.5 mi west; and thence to the 543-foot contour at a point 0.3 mi west of the southeast corner of sec. 2, T. 3 S., R. 7 W.

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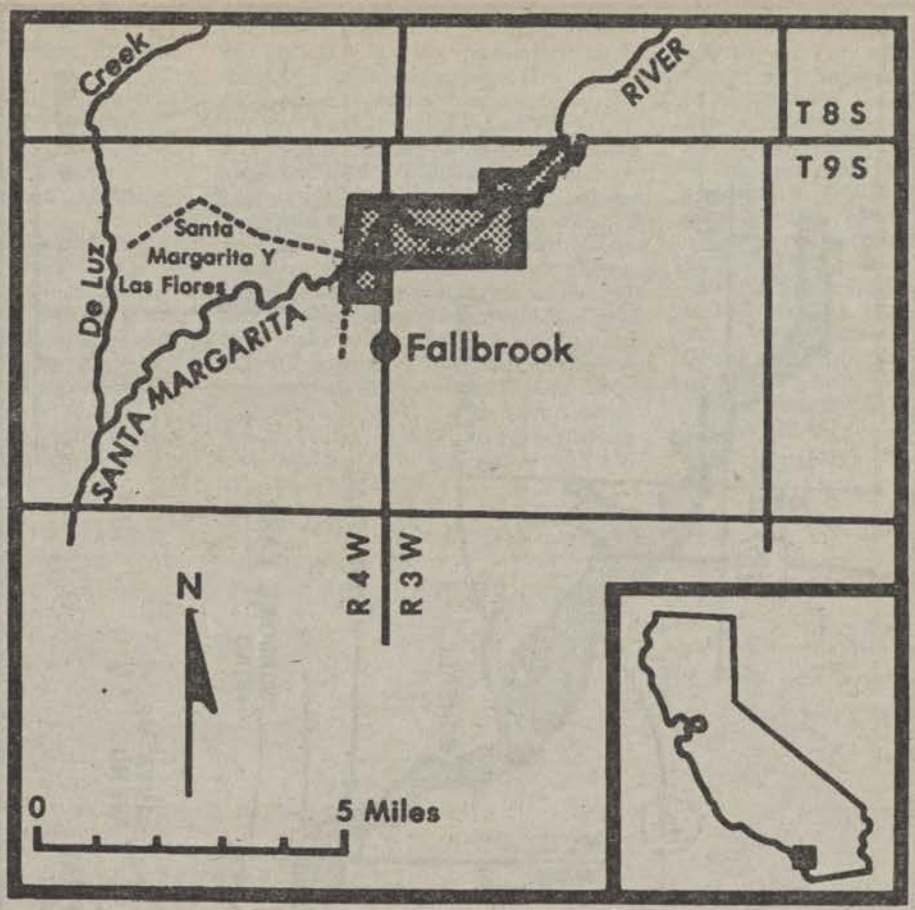


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4. Coyote Creek, San Diego County (Index map location D).

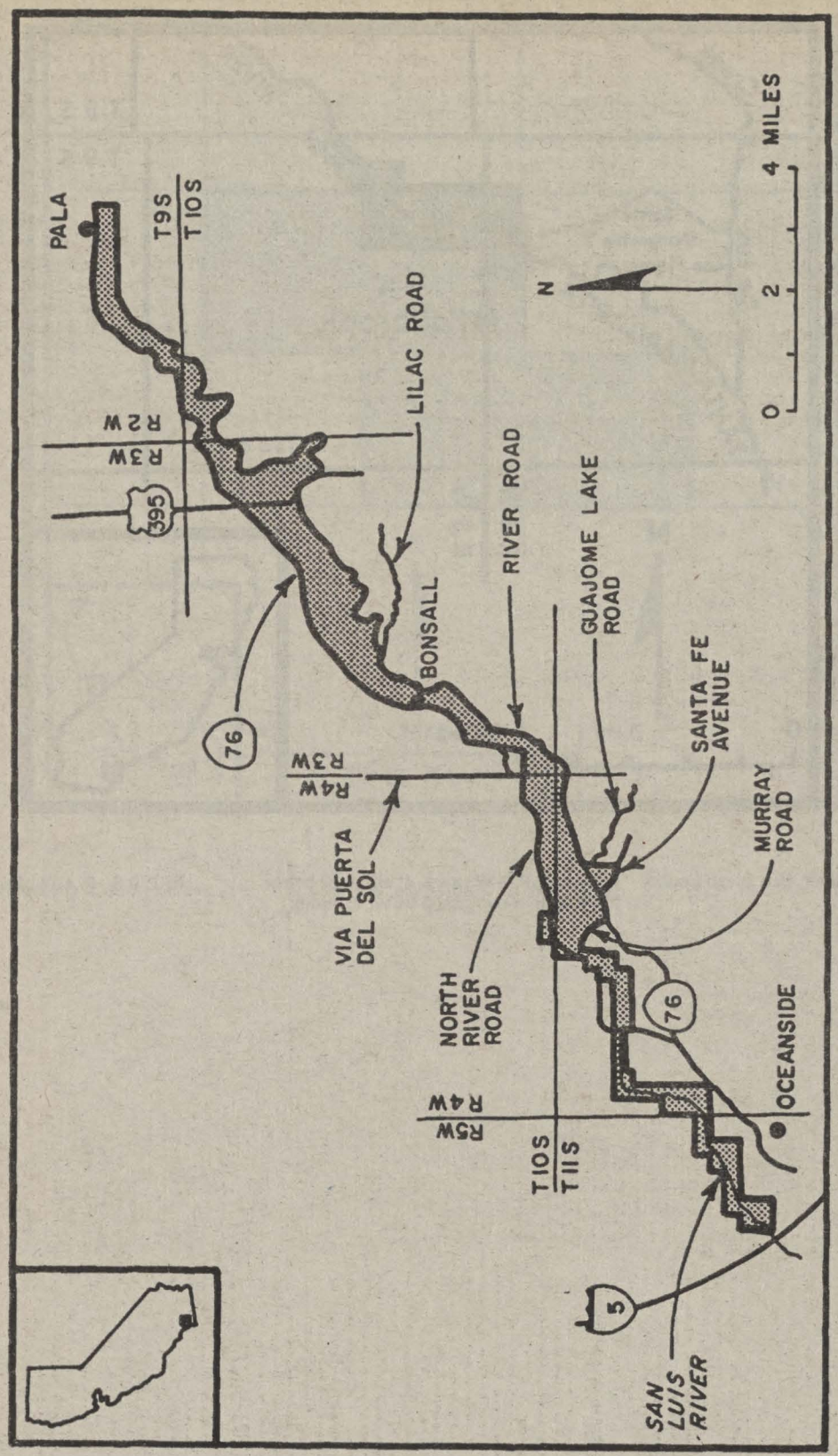
T. 9 S., R. 5 E.: secs. 22, N½, SE¼; and 23, SW¼.



5. Santa Margarita River, San Diego County (Index map location E).

T. 9 S., R. 3 W.: secs. 4, all lands below the 600-foot contour; 5 SE¼; 7; and 8.

In T. 9 S., R. 4 W., Sec. 12 E½; 13 NE¼.


PALA
T9S
T10S
R2W
R3W
395
LILAC ROAD
BONSALL
RIVER ROAD
GUAJOME LAKE ROAD
SANTA FE AVENUE
MURRAY ROAD
76
R3W
R4W
VIA PUERTA DEL SOL
NORTH RIVER ROAD
R4W
R5W
T10S
T11S
OCEANSIDE
5
SAN LUIS RIVER
N
0
2
4 MILES

6. San Luis Rey River, San Diego County (Index map location F).

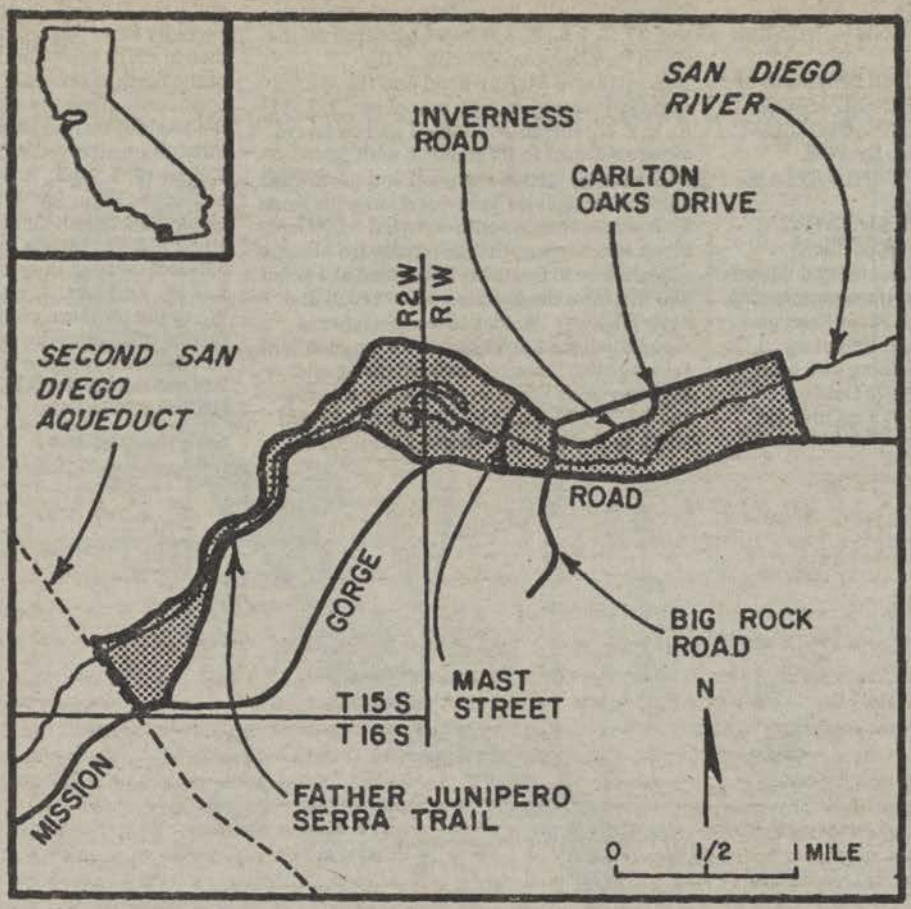
T. 11 S., R. 5 W.: secs. 13, S½NE¼, SE¼NW¼, SW¼; 14, SE¼SW¼, S12SE¼; and 23, NW¼.

T. 11 S., R. 4 W.; secs. 3, all land north of Murray Road; 4, E½NE¼, E½SE¼SW¼, W½NE¼SE¼, E½NW¼SE¼, SW¼SE¼; 7, N½NE¼NE¼, NW¼NE¼, E½W½, SW¼SW¼; 8, N½NE¼, N½N½NW¼; 9, N½NW¼; and 18, NW¼.

T. 10 S., R. 4 W.: sec. 34, S1/2SW¼.

Surveyed and unsurveyed portions according to the following metes and bounds: bordered on the north by a line commencing at the intersection of North River Road and the surveyed eastern section line of sec. 3, T. 11 S., R. 4 W.; thence east along said road to its junction with Via Puerta Del Sol; thence east approximately 0.5 mi to State Highway 76 nearest the midpoint of sec. 31, T. 10 S., R. 3 W.; thence northward and eastward along said highway to its intersection with the eastern section line of sec. 27, T. 9 S., R. 2 W.; and bordered on the south by a line commencing at the intersection of Murray Road and the surveyed eastern section line of sec. 3, T. 11 S., R. 4 W.; thence southward and eastward along said road to its junction with State Highway 76; thence eastward and northward along said highway to its junction with Santa Fe Avenue; thence southeastward 3,000 feet along said avenue; thence northward along a straight line to Guajome Lake Road at a point 800 feet from the junction of said road and State Highway 76; thence northwestward along Guajome Lake Road to its junction with said highway; thence eastward along said highway to its junction with River Road in sec. 31, T. 10 S., R. 3 W.; thence northward along said road to its intersection with the surveyed eastern section line of sec. 20, T. 10 S., R. 3 W.; thence north to and northeasterly along the 250-foot contour in sec. 21 through partially surveyed sec. 15, T. 10 S., R. 3 W.; thence north to a point about 0.2 mi south of the northwest corner of sec. 14 and continuing along the 300-foot contour from the western section line of sec. 14 eastward through unsurveyed sec. 11, surveyed secs. 13 and 12, T. 10 S., R. 3 W.; and surveyed sec. 18, T. 10 S., R. 2 W.; thence east to and along the 325-foot contour through sec. 1, T. 10 S., R. 3 W.; thence south to and along the 350-foot contour in secs. 6 and 5, T. 10 S., R. 2 W., and secs. 32 and 33, T. 9 S., R. 2 W., to the northern section line of sec. 33; thence east approximately 1.5 mi to the southeastern corner of sec. 27, T. 9 S., R. 2 W.; and thence north about 0.4 mi to State Highway 76 in Pala.

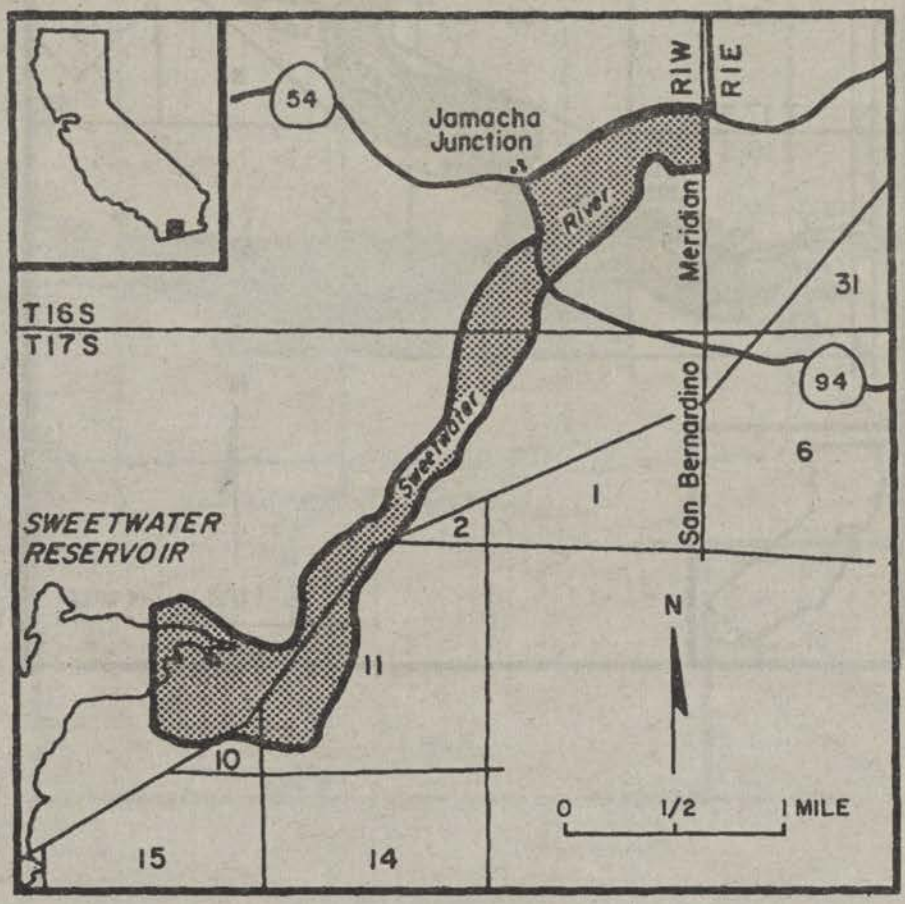
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7. San Diego River, San Diego County (Index map location G).

T. 15 S., Rs. 1 and 2 W.: commencing at the intersection of the Second San Diego Aqueduct and Mission Gorge Road; thence eastward along said road to the western-most intersection with Father Junipero Serra Trail; thence northward and eastward along said trail to the eastern-most intersection of said trail and said road; thence eastward along Mission Gorge Road to its intersection with Carlton Hills Blvd.; thence northward to its intersection with Carlton Oaks Drive; thence westward along said drive to its eastern-most intersection with Inverness Road; thence westward along said road to its intersection with Carlton Oaks Drive; thence westward along said drive to its intersection with Mast Street; thence westward and southward along the 320-foot contour to its intersection with the Second San Diego Aqueduct on the north side of the San Diego River; thence southeastward along said aqueduct to its intersection with Mission Gorge Road.



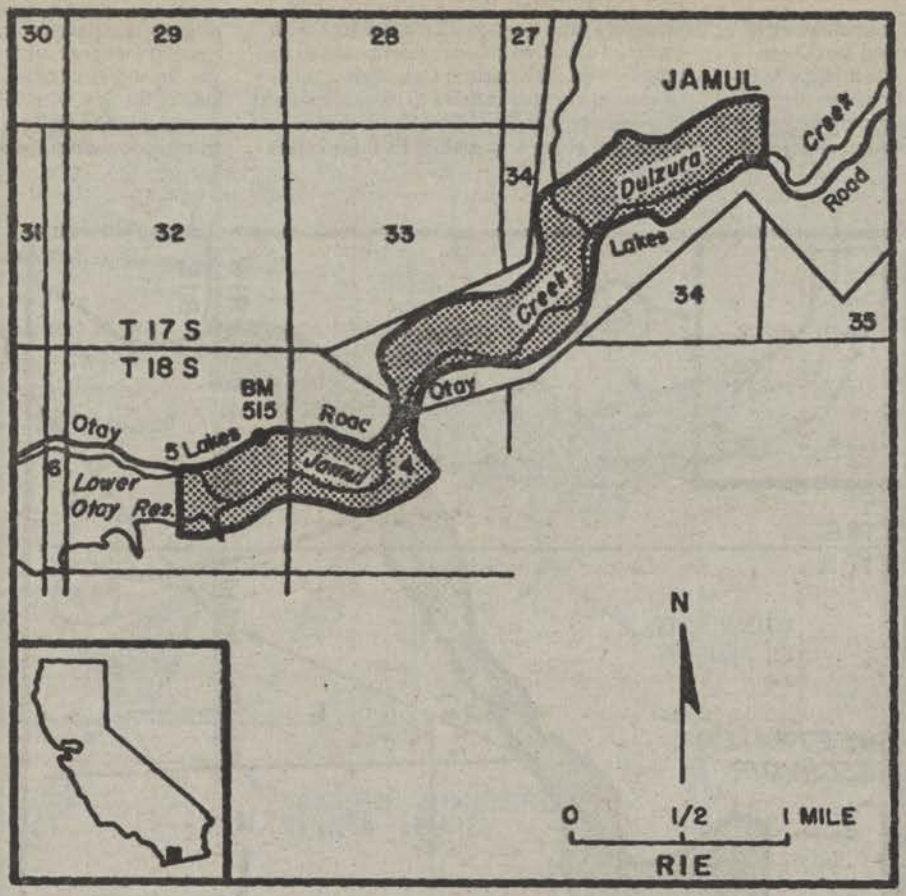
8. Sweetwater River, San Diego County (Index map location H).

T. 16 and 17 S., R. 1 W.: commencing at the intersection of the 320-foot contour and 116o58°14″ W longitude immediately north of the confluence of Sweetwater River and Sweetwater Reservoir; thence eastward along the contour to the intersection of said contour with State Highway 94; thence northward along said highway to its intersection with State Highway 54; thence northeastward along said highway to the San Bernardino Meridian; thence south approximately 1,500 feet to the intersection with the 340-foot contour; thence westward and southward along said contour to the south end of the Steele Canyon Bridge on State Highway 94; thence south approximately 900 feet to the 340-foot contour; thence southwesterly along said contour to its intersection with 116°58°14″ W longitude; thence north to starting point.

[Insert Map # 9 here]

9. Jamul-Dulzura Creeks, San Diego County (Index map location I).

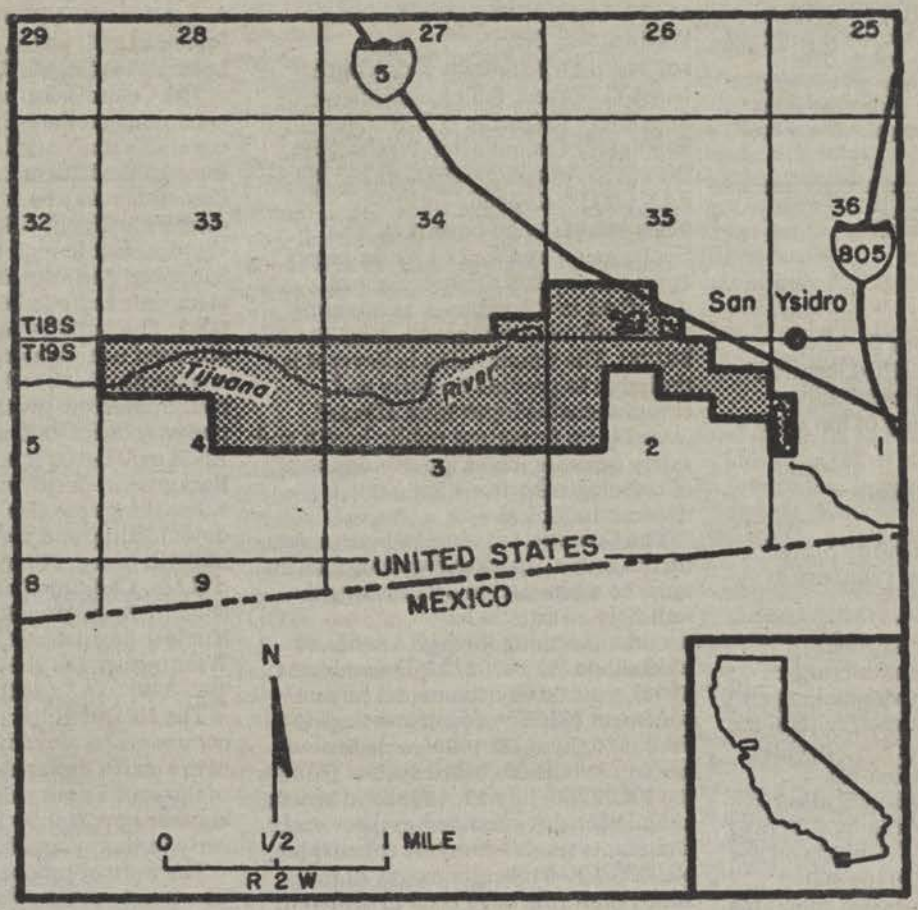
T. 17 and 18 S., R. 1 E.: commencing from a point approximately 2,200 feet west of BM 515 along Otay Lakes Road, in sec. 5, T. 18 S., R. 1 E.; thence east approximately one mile to the crossing of said road at a bridge over Jamul Creek, including all land within 1,500 feet southward of Otay Lakes Road as measured perpendicularly from the road; thence eastward for about 2.4 mi along said road and including all lands within 1,500 feet northward of said road as measured perpendicularly from the road, and including all lands within 500 feet of said bridge not otherwise included above.


30
29
28
27
JAMUL
Creek
Dulzura
Road
34
31
32
33
Lakes
Creek
34
35
T 17 S
T 18 S
BM
515
Otay
Otay
5 Lakes
Road
6
Lower
Otay Res.
Jamul
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N
0
1/2
1 MILE
RIE

10. Tijuana River, San Diego County (Index map location J).

T. 18 S., R. 2 W.: secs. 34, S½SE¼SE¼; and 35, S½SW¼, SW¼SW¼SE¼.

T. 19 S., R. 2 W.: secs. 1, W½SW¼NW¼; 2, S½NE¼NE¼, NW¼NE¼, N½SE¼NE¼, N½NE¼NW¼, W½NW¼; 3, N½; and 4, NE¼, N½NW¼.



Primary constituent elements: riverine and floodplain habitats (particularly willow-dominated riparian woodland with dense understory vegetation maintained, in part, in a non-climax stage by periodic floods or other agents) and adjacent coastal sage scrub, chaparral, or other upland plant communities.

Dated: October 12, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–2304 Filed 2–1–94; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 59, No. 22
Wednesday, February 2, 1994

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Radiological Criteria for Decommissioning of NRC-Licensed Facilities; Enhanced Participatory Rulemaking, Availability of the Staff's Draft of the Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of staff's draft proposed rule and summary of comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is conducting an enhanced participatory rulemaking on establishing the radiological criteria for the decommissioning of NRC-licensed facilities. The Commission has enhanced the participation of affected interests in the rulemaking by soliciting commentary from these interests on the rulemaking issues before the staff developed the draft proposed rule. This document announces the availability of the staff's draft proposed rule as well as a summary of the comments provided to the NRC in response to its enhancement efforts.

DATES: The comment period expires March 11, 1994. Comments received after this date will be considered if it is practical to do so but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: The Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Comments electronically transmitted through the BBS will automatically be forwarded to the Secretary of the Commission.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. Federal workdays.

Examine copies of comments received at: The NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: James C. Malaro, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3764. FAX (301) 492–3866.

SUPPLEMENTARY INFORMATION: The Commission's enhanced participatory approach for this rulemaking was described in the notice of workshops published on December 11, 1992 (57 FR 58727). The Commission believes it is desirable to provide for early and comprehensive input from affected interests on important public health and safety issues, such as the development of radiological criteria for decommissioning.

The Commission obtained comments on the scope, issues and approaches that must be addressed in establishing the radiological criteria for decommissioning through a series of workshops (57 FR 58727; December 11, 1992), generic environmental impact statement (GEIS) scoping meetings (58 FR 33570; June 18, 1993), a dedicated electronic bulletin board system (BBS) (58 FR 37760; July 13, 1993) and written submissions. A summary of these early comments received on this rulemaking, NUREG/CR–6156, and a copy of the staff's draft rule have been provided to NRC Agreement States, workshop participants, and other interested parties upon publication of this notice of availability. Interested parties may obtain single copies of NUREG/CR–6156 and the staff's draft rule by any of the three following methods:

1. Downloading the files from the BBS;

2. Requesting a copy from Ms. Roberta Gordon, Mail Stop NLS/139, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3746; FAX (301) 492–3866; or

3. Inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Copies of NUREG/CR–6156 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

The Commission will accept comments on the NUREG/CR–6156 and the staff's draft rule in electronic format through the BBS or in written format. Comments may be submitted electronically, in either ASCII text or Wordperfect format, by calling the NRC enhanced participatory rulemaking electronic bulletin board at (800) 880–6091. The bulletin board can be accessed using generally available communications software, with communication protocol setting of no parity, 8 data bits, 1 stop bit (N,8,1) and ANSI or VT–100 terminal emulation. Background documents on the rulemakings are also available for downloading and viewing on the bulletin board. For more information call Ms. Christine Daily, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3999; FAX (301) 492–3866.

The NRC staff has considered the comments received in the development of the staff's draft rule. The availability of the staff's draft rule provides yet another opportunity for public comment early in this rulemaking.

The normal process for conducting Commission rulemakings is the following sequence: NRC staff development of a draft proposed rule for Commission review and approval; publication of the proposed rule for public comment; consideration of the comments by the NRC staff; and preparation of a draft final rule for Commission approval. In this enhanced participatory rulemaking, not only have comments been solicited before the NRC staff prepared the draft proposed rule and the NRC staff discussed the issues with affected interests at public meetings, but an additional opportunity for public comment is being solicited during the preparation of the draft proposed rule. The preliminary views expressed in the staff's draft rule may change in light of comments received. In any case, there will be an opportunity for additional public comment in connection with any proposed rule that may be developed by the Commission. After the Commission review and approval of the draft proposed rule that is developed using the comments provided, the general process of issuing

the proposed rule for public comment, NRC staff evaluation of comments, and preparation of a draft final rule for Commission approval, will occur.

Dated at Rockville, Maryland, this 27th day of January, 1994.

For the Nuclear Regulatory Commission.

Bill M. Morris,

Director, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 94-2367 Filed 2-1-94; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94-NM-08-AD]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Industrie Model A320 series airplanes, that currently requires modification of the belly fairing structure. This action would revise the compliance time for accomplishment of the modification. All other parts of the rule would remain unchanged. The actions specified by the proposed AD are intended to ensure that the structural integrity of the belly fairing structure is maintained.

DATES: Comments must be received by March 21, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-08-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2797; fax (206) 227-1320.

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 shall 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 94-NM-08-AD." 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, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-08-AD, 1601 Lind Avenue SW., Renton, Washington 98055-4056.

Discussion

On December 6, 1993, the FAA issued AD 93-24-11, Amendment 39-8760 (58 FR 64875, December 10, 1993), applicable to certain Airbus Industrie Model A320 series airplanes, to require modification of the belly fairing structure. That action was prompted by results of fatigue testing, which revealed that rivet heads were sheared off and fatigue cracks were present in the angles at the angle attachment between the keelbeam and the belly fairing support frames. The requirements of that AD are intended to prevent reduced structural integrity of the belly fairing structure.

Since the issuance of that AD, the FAA has become aware that the compliance time specified in paragraph (a) of AD 93-24-11 for accomplishment of the modification could allow certain operators to accomplish the modification at a time considerably later than that intended. Paragraph (a) of that AD currently requires that the modification be accomplished prior to the accumulation of 12,000 total landings after January 10, 1994 (the effective date of AD 93-24-11, Amendment 39-8760), or within 300 days after that date, whichever occurs later. However, the FAA's intent is that the modification be accomplished prior to the accumulation of 12,000 total landings on the airplane, or within 300 days after the effective date of the AD, whichever occurs later. The FAA has determined that AD 93-24-11 must be superseded to revise the compliance time in order to ensure that the structural integrity of the belly fairing structure is maintained in a timely manner. All other parts of the rule would remain as published originally.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. The FAA has determined that AD action is necessary for products of this type design that are certificated in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 93-24-11 to continue to require modification of the belly fairing structure. This proposed AD would revise the compliance time to require accomplishment of that modification prior to the accumulation of 12,000 total landings on the airplane, or within 300 days after January 10, 1994, whichever occurs later. The actions would continue to be required to be accomplished in accordance with Airbus Industrie Service Bulletin A320-53-1014, dated June 25, 1992, or Revision 1, dated May 26, 1993.

The FAA estimates that 20 airplanes of U.S. registry were affected by AD 93-24-11, and would continue to be affected by this proposed supersedure of that AD. It takes approximately 288 work hours per airplane to accomplish the actions currently required by AD 93-24-11, and the average labor rate is $55 per work hour. Required parts cost approximately $1,045 per airplane. Based on these figures, the current cost impact of AD 93-24-11 on U.S. operators is estimated to be $337,700, or $16,885 per airplane.

The total cost figure indicated above is presented as if no operator has yet

accomplished the requirements of AD 93–24–11 (or this proposed supersedure of that AD). There are no foreseeable additional costs that would be imposed by this proposed supersedure of AD 93–24–11.

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 "significant regulatory action" under Executive Order 12866; (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 removing amendment 39–8760 (58 FR 64875, December 10, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 94–NM–08–AD. Supersedes AD 93–24–11, Amendment 39–8760.

Applicability: Model A320 series airplanes, MSN 003 through 092 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the belly fairing structure, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings on the airplane, or within 300 days after January 10, 1994 (the effective date of AD 93–24–11, Amendment 39–8760), whichever occurs later: Modify the belly fairing structure in accordance with Airbus Industrie Service Bulletin A320–53–1014, dated June 25, 1992, or Revision 1, dated May 26, 1993.

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

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

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

Issued in Renton, Washington, on January 27, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–2332 Filed 2–1–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–178–AD]

Airworthiness Directives; Boeing Model 767 Series Airplanes Equipped With Pratt and Whitney JT9D–7R4 or General Electric CF6–80A Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that currently requires inspections, adjustments, and functional checks of the thrust reverser system. This action would add a requirement for installation of an additional thrust reverser system locking feature, periodic functional tests of that locking feature following its installation, and repair of any discrepancy found. This proposal is prompted by the identification of a modification that ensures that the level of safety inherent in the original type design of the thrust reverser system is further enhanced. The actions specified by the proposed AD are intended to prevent possible discrepancies in the thrust reverser control system that can result in the inadvertent deployment of a thrust reverser during flight.

DATES: Comments must be received by March 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–178–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Richard Simonson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2683; fax (206) 227–1181.

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 shall 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–NM–178–AD." 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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–178–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On January 7, 1992, the FAA issued AD 92–03–03, Amendment 39–8157 (57 FR 3004, January 27, 1992), applicable to certain Boeing Model 767 series airplanes, to require inspections, adjustments, and functional checks of the thrust reverser system. That action was prompted by an ongoing design review, resulting from an accident investigation from which it has been determined that, prior to the accident, the airplane apparently experienced an uncommanded in-flight deployment of a thrust reverser. Deployment of a thrust reverser during flight could result in reduced controllability of the airplane. The requirements of that AD are intended to ensure the integrity of the fail safe features of the thrust reverser system by preventing the possible discrepancies in the thrust reverser control system that can result in the inadvertent deployment of a thrust reverser during flight.

Since the issuance of that AD, Boeing has developed a modification for Model 767 series airplanes equipped with Pratt and Whitney JT9D–7R4 or General Electric CF6–80A series engines, which, when accomplished, will ensure that the level of safety inherent in the original type design of the thrust reverser system is further enhanced. The FAA has determined that the installation of these additional features will further reduce the likelihood of an in-flight thrust reverser deployment.

The FAA has reviewed and approved Boeing Service Bulletin 767–78–0060, Revision 2, dated August 19, 1993 (for Model 767 series airplanes equipped with General Electric CF6–80A series engines), and Boeing Service Bulletin 767–78–0061, Revision 1, dated August 5, 1993 (for Model 767 series airplanes equipped with Pratt and Whitney JT9D–7R4 series engines). These service bulletins describe procedures for installation of an additional thrust reverser system locking feature (denoted as a "synch-lock"), which will reduce the possibility of an uncommanded in-flight deployment of the thrust reversers. Accomplishment of that installation includes revising certain wiring, replacing selected circuit breakers, changing the microswitch pack, and adding electrical components. The synch-lock is controlled independently of the existing electro-mechanical safety features of the thrust reverser system. This additional locking feature has been certified by the FAA. The FAA has determined that installation of the synch-lock in accordance with the applicable service bulletin is necessary in order to positively address the identified unsafe condition with regard to these airplanes.

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 supersede AD 92–03–03 to continue to require repetitive inspections, adjustments, and functional checks of the thrust reverser system. This action would add a requirement for installation of an additional thrust reverser system locking feature (synch-lock). Installation of the synch-lock would terminate the requirement for repetitive inspections, adjustments, and functional checks of the thrust reverser system. The synch-lock installation would be required to be accomplished in accordance with the service bulletin described previously.

This AD would also add periodic functional tests of the synch-lock following its installation, and repair of any discrepancy found. The FAA has determined that these tests are necessary to ensure the integrity of the synch-lock installation and that it is effective in preventing the identified unsafe condition. This determination is based on the fact that the synch-lock is a new design and its reliability has not been adequately proven through service experience. Boeing has submitted to the FAA procedures for accomplishment of the synch-lock integrity test described in the airplane maintenance manual. These procedures are accomplished independently of other thrust reverser system tests.

Since only limited information is available currently to substantiate the in-service reliability of the synch-lock device, the FAA has established an appropriate functional test interval of 1,000 hours time-in-service.

There are approximately 119 Model 767 series airplanes equipped with General Electric CF6–80A series engines of the affected design in the worldwide fleet. The FAA estimates that 69 of these airplanes of U.S. registry would be affected by this proposed AD. The inspections, adjustments, and functional checks required currently by AD 92–03–03 require approximately 16 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of that action on U.S. operators of Model 767 series airplanes equipped with General Electric CF6–80A series engines is estimated to be $60,720, or $880 per airplane.

For U.S. operators of Model 767 series airplanes equipped with General Electric CF6–80A series engines, the FAA estimates that it would take approximately 786 work hours per airplane to accomplish the modification proposed by this AD, and 1 work hour to accomplish the proposed functional tests, at an average labor rate of $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators of Model 767 series airplanes equipped with General Electric CF6–80A series engines is estimated to be $2,986,665, or $43,285 per airplane.

There are approximately 95 Model 767 series airplanes equipped with Pratt and Whitney JT9D–7R4 series engines of the affected design in the worldwide fleet. The FAA estimates that 30 of these airplanes of U.S. registry would be affected by this proposed AD. The inspections, adjustments, and functional checks required currently by AD 92–03–03 require approximately 16 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of that action on U.S. operators of Model 767 series airplanes equipped with Pratt and Whitney JT9D–7R4 series engines is estimated to be $26,400, or $880 per airplane.

For U.S. operators of Model 767 series airplanes equipped with Pratt and Whitney JT9D–7R4 series engines, the FAA estimates that it would take approximately 812 work hours per airplane to accomplish the proposed modification, and 1 work hour to accomplish the proposed functional tests, at an average labor rate of $55 per work hour. Required parts would be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators of Model 767 series airplanes equipped with Pratt and Whitney JT9D–7R4 series engines is estimated to be $1,341,450, or $44,715 per airplane.

These total cost figures assume that no operator has yet accomplished the proposed requirements of this AD action.

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

The FAA recognizes that the proposed modification would require a large number of work hours to accomplish. However, the 5-year compliance time specified in paragraph (d) of this proposed AD should allow ample time for the synch-lock installation to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling.

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 "significant regulatory action" under Executive Order 12866; (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 removing amendment 39–8157 (57 FR 3004, January 27, 1992), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 93–NM–178–AD. Supersedes AD 92–03–03, Amendment 39–8157.

Applicability: Model 767 series airplanes equipped with Pratt and Whitney JT9D–7R4 or General Electric CF6–80A series engines; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To ensure the integrity of the fail safe features of the thrust reverser system, accomplish the following:

Restatement of Actions Required by AD 92–03–03:

(a) For airplanes equipped with Pratt and Whitney JT9D–7R4 series engines: Within 60 days after the effective date of this AD, and thereafter at intervals not to exceed 3,000 flight hours, perform the tests, inspections, and adjustments described in Boeing Service Bulletin 767–78–0054, dated December 13, 1991.

(1) Following any maintenance action that could affect the thrust reverser system: Repeat the tests, inspections, and adjustments required by paragraph (a) of this AD on the affected engine, prior to further flight, in accordance with the service bulletin.

(2) Thereafter, following any maintenance action, continue to perform the repetitive tests, inspections, and adjustments required by paragraph (a) of this AD on the affected engine at intervals not to exceed 3,000 flight hours.

(b) For airplanes equipped with General Electric CF6–80A series engines: Within 60 days after the effective date of this AD, and thereafter at intervals not to exceed 3,000 flight hours, perform the tests, inspections, and adjustments described in Boeing Service Bulletin 767–78–0053, dated December 13, 1991.

(1) Following any maintenance action that could affect the thrust reverser system, repeat the tests, inspections, and adjustments required by paragraph (b) of this AD on the affected engine, prior to further flight, in accordance with the service bulletin.

(2) Thereafter, following any maintenance action, continue to perform the repetitive tests, inspections, and adjustments required by paragraph (b) of this AD on the affected engine at intervals not to exceed 3,000 flight hours.

(c) If any test, inspection, and/or adjustment required by paragraph (a) or (b) of this AD cannot be successfully performed, or if any test, inspection, and/or adjustment results in findings that are unacceptable in accordance with Boeing Service Bulletin 767–78–0054, dated December 13, 1991, or Boeing Service Bulletin 767–78–0053, dated December 13, 1991, as applicable, accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Prior to further flight, deactivate the associated thrust reverser in accordance with Section 78–31–1 of Boeing Document D630T002, "Boeing 767 Dispatch Deviation Guide," Revision 9, dated May 1, 1991. No more than one thrust reverser on any airplane may be deactivated under the provisions of this paragraph.

(2) Within 10 days after deactivation of any thrust reverser in accordance with this paragraph, the thrust reverser must be repaired in accordance with Boeing Service Bulletin 767–78–0054, dated December 13, 1991, or Boeing Service Bulletin 767–78–0053, dated December 13, 1991, as applicable; the tests and/or inspections required by paragraph (a) or (b) of this AD must be successfully accomplished; and the thrust reverser must then be reactivated.

New Actions Required by This AD:

(d) Within 5 years after the effective date of this AD, install an additional thrust reverser system locking feature (synch-lock installation) in accordance with Boeing Service Bulletin 767–78–0060, Revision 2, dated August 19, 1993 (for Model 767 series airplanes equipped with General Electric CF6–80A series engines), or Boeing Service Bulletin 767–78–0061, Revision 2, dated August 5, 1993 (for Model 767 series airplanes equipped with Pratt and Whitney JT9D–7R4 series engines), as applicable. Installation of the additional thrust reverser system locking feature, as required by this paragraph, constitutes terminating action for the requirements of paragraphs (a) through (c) of this AD.

(e) Within 1,000 hours time-in-service after installing the synch-lock required by paragraph (d) of this AD (either in production or by retrofit), or within 1,000 hours time-in-service after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 1,000 hours time-in-service: Perform functional tests of the synch-lock in accordance with the "Thrust Reverser Synch-Lock Test" procedures specified below. If any discrepancy is found during any test, prior to further flight, correct it in accordance with procedures described in the Boeing 767 Maintenance Manual.

Thrust Reverser Synch-Lock Test

1. General

A. There are two thrust reverser synch-locks on each engine. The thrust reverser synch-locks are installed on the lower non-locking hydraulic actuator of each thrust reverser sleeve.

B. This task has two parts that must be accomplished:

(1) The first part does a test of the electrical circuit which controls the operation of each thrust reverser synch-lock.

(2) The second part does a test of the mechanical condition of each thrust reverser synch-lock.

C. The thrust reverser synch-lock is referred to as the "synch-lock" in this procedure.

2. Thrust Reverser Synch-Lock Integrity Test

A. Equipment

(1) Multi-meter, Simpson 260 or equivalent—commercially available.

B. Prepare to do the integrity test for the synch-locks.

(1) Supply electrical power.

(2) For the left engine, make sure these circuit breakers on the overhead circuit breaker panel, P11, are closed:

(a) L ENG T/R CONT

(b) L ENG T/R IND

(c) L ENG T/R SSL CONT

(3) For the right engine, make sure these circuit breakers on the overhead circuit breaker panel, P11, are closed:

(a) R ENG T/R CONT

(b) R ENG T/R IND

(c) R ENG T/R SSL CONT

(d) AIRPLANES WITH HYDRAULIC MOTOR-DRIVEN GENERATORS (ETOPS): R ENG T/R CONT ALTN

(e) AIRPLANES WITH HYDRAULIC MOTOR-DRIVEN GENERATORS (ETOPS): R ENG T/R IND ALTN

(4) Open the fan cowl panels.

C. Do the electrical test for the synch-locks.

(1) Do these steps to make sure there are no "hot" short circuits in the electrical system which can accidentally supply power to the synch-locks:

(a) Remove the applicable L(R) electrical connectors, D20194(D20196), from the L(R) synch-locks, V170(V171).

Note: You can find the synch-locks attached to the lower non-locking hydraulic actuators on the applicable thrust reverser sleeves.

(b) Use a multi-meter on the plug end of the applicable electrical connector to make sure that these conditions are correct:

From equipment	To equipment	Condition
D20194 PIN 1.	D20194 PIN 2.	−3 to +1 VDC and continuity (less than 5 ohms).
D20196 PIN 1.	D20196 PIN 2.	−3 to +1 VDC and continuity (less than 5 ohms).

(c) If you did not find these conditions to be correct, you must do these steps:

(1) Make a careful visual inspection of all the electrical wires and connectors between the synch-lock and its applicable power circuit breaker.

(2) Repair all the unserviceable electrical wire and connectors that you find.

(3) Use the multi-meter again to make sure there are no "hot" short circuits in the electrical system which can accidentally supply power to the synch-locks.

(d) If you find the correct conditions when you use the multi-meter, continue on and do the mechanical test of the synch-locks.

Note: Make sure the circuit breakers shown above continue to be set to the closed position. Do not install the electrical connectors on the synch-locks at this time.

D. Do the mechanical test for the synch-locks.

(1) Supply hydraulic power.

Warning: Make sure all persons and equipment are clear of the area behind each thrust reverser. If you do not obey this instruction, injuries to persons or damage to equipment can occur if the synch-locks do not operate correctly and the thrust reverser extends.

(2) Move the reverse thrust levers for the two engines to try to extend the thrust reversers with hydraulic power.

Note: If the thrust reversers do not extend, the synch-locks are serviceable. If the thrust reversers extend, the applicable synch-locks did not operate correctly.

(3) Replace the applicable synch-locks on the thrust reverser that extended when you moved the reverse thrust levers.

(4) Make sure the reverse thrust levers are in the fully stowed position.

(5) Install the applicable L(R) electrical connectors, D20194(D20196), on the L(R) synch-locks, V170(V171).

Warning: Make sure all persons and equipment are clear of the area behind the thrust reversers. If you do not obey this instruction, injuries to persons or damage to equipment can occur when the thrust reversers are extended.

(6) Move the reverser thrust levers for the two engines to extend the thrust reversers with hydraulic power.

Note: If the thrust reversers extend, the synch-locks are serviceable. If the thrust reversers do not extend, the applicable synch-locks did not operate correctly.

(7) Replace the applicable synch-locks on the thrust reverser that did not extend when you moved the reverse thrust levers.

E. Put the airplane back to its usual condition.

(1) Move the reverse thrust levers to fully retract the thrust reversers on the two engines with hydraulic power.

(2) Remove the hydraulic power if it is not necessary.

(3) Remove the electrical power if it is not necessary.

(4) Close the fan cowl panels.

(f) 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, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

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

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

Issued in Renton, Washington, on January 27, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–2334 Filed 2–1–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–203–AD]

Airworthiness Directives; de Havilland Model DHC–8–301 Airplanes

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 certain de Havilland Model DHC–8–301 airplanes. This proposal would require modification of the sidewall panels in the passenger cabin. This proposal is prompted by a report that inadequate venting between the cabin and the compartments beneath the floor could occur during rapid fuselage decompression. The actions specified by the proposed AD are intended to prevent collapse of the floor and subsequent injury to passengers.

DATES: Comments must be received by March 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–203–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Jon Hjelm, Aerospace Engineer, Airframe Branch, ANE–172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

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 shall 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–NM–203–AD." 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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–203–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain de Havilland Model DHC–8–301 airplanes. Transport Canada Aviation advises that, during a post-certification review of the design for cabin venting between compartments, the manufacturer discovered that the cabin and the compartments beneath the floor could be inadequately vented during rapid fuselage decompression of these airplanes. This condition is the result of movement of the sidewall panels in the passenger cabin, which may partially block the vents along the bottom edges of the panels. This condition, if not corrected, could result in collapse of the floor and subsequent injury to passengers.

De Havilland has issued Service Bulletin No. 8–25–53, dated August 4, 1989, that describes procedures for modification of the sidewall panels in the passenger cabin (Modification No. 8/1339). The modification entails bonding spacers along the lower edge of the cabin sidewall panels to provide support. Installation of the spacers will ensure that intercompartmental venting is maintained in the event of rapid fuselage decompression. Transport Canada Aviation classified this service bulletin as mandatory and issued Canadian Airworthiness Directive No. CF–90–26, dated November 29, 1990, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require modification of the sidewall panels in the passenger cabin. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 23 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 32 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $40,480, or $1,760 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 "significant regulatory action" under Executive Order 12866; (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:

De Havilland, Inc: Docket 93–NM–203–AD.

Applicability: Model DHC–8–301 airplanes; serial numbers 116 through 185 inclusive, 187, and 188; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent collapse of the floor and subsequent injury to passengers, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the sidewall panels in the passenger cabin (Modification No. 8/1339) in accordance with de Havilland Service Bulletin No. 8–25–53, dated August 4, 1989.

(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, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance

Inspector, who may add comments and then send it to the Manager, New York ACO.

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

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

Issued in Renton, Washington, on January 27, 1994.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–2333 Filed 2–1–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 93–NM–193–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

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 certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require inspections to detect corrosion in the wheel axles of the main landing gear (MLG) sliding members; and, if any corrosion is found, rework of corroded areas and an inspection to detect cracks in the wheel axles; and, if any crack is found, replacement of the cracked sliding member. This proposal is prompted by a report that a MLG wheel axle failed during push back of an in-service airplane from the terminal. The actions specified by the proposed AD are intended to prevent failure of the MLG wheel axle due to the problems associated with corrosion and cracking.

DATES: Comments must be received by March 29, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–193–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

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 shall 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–NM–193–AD." 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, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–193–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that an operator of Model F28 Mark 0100 series airplanes reported the failure of a main landing gear (MLG) wheel axle during push back of an in-service airplane from the terminal. Subsequent non-destructive testing (NDT) inspection of the operator's fleet of Model F28 Mark 0100 series airplanes revealed that corrosion was present on most MLG wheel axles examined. Although no cracks were found during this inspection, preliminary findings indicate that the crack which led to the failed axle had initiated from a corrosion pit located on the radius of the brake abutment flange on the axle. Corrosion and cracking in a MLG wheel axle, if not detected and corrected in a timely manner, could result in failure of the MLG wheel axle.

Fokker has issued Service Bulletin SBF100–32–079, Revision 1, dated October 4, 1993, that describes procedures for removal of the MLG wheels and brakes, inspections of the wheel axles, and reinstallation of MLG wheels and brakes. The Fokker service bulletin references Dowty Aerospace Service Bulletin F100–32–63, Revision 2, dated September 23, 1993, as the appropriate source of service information for the wheel axle inspection. The Dowty Aerospace service bulletin describes procedures for a visual inspection to detect corrosion in the wheel axles of the MLG sliding members; and, if any corrosion is found, rework of corroded areas and an NDT inspection to detect cracks in the wheel axles; and, if any crack is found, replacement of the cracked sliding member.

Fokker Service Bulletin SBF100–32–080, dated October 4, 1993, and Dowty Aerospace Service Bulletin F100–32–64, dated September 23, 1993, describe procedures for accomplishing the corresponding repetitive actions described in the service bulletins discussed previously. The RLD classified these service bulletins as mandatory and issued Netherlands Airworthiness Directive BLA 93–108/2 (A), dated November 1, 1993, in order to assure the continued airworthiness of these airplanes in the Netherlands.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive visual inspections to detect corrosion in the wheel axles of the MLG sliding members; and, if any corrosion is found, rework of corroded areas and an NDT inspection to detect cracks in the wheel axles; and, if any crack is found, replacement of the cracked sliding member. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 100 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the recurring cost impact of the proposed AD on U.S. operators (for four inspections per year) is estimated to be $308,000 per year, or $3,080 per airplane per year. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

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 "significant regulatory action" under Executive Order 12866; (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:

FOKKER: Docket 93–NM–193–AD.

Applicability: Model F28 Mark 0100 series airplanes equipped with Dowty Aerospace main landing gear (MLG) part number 201072011, 201072012, 201072013, 201072014, 201072015, or 201072016; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the MLG wheel axle, accomplish the following:

(a) Within 30 days after the effective date of this AD, remove the MLG wheels and brakes and perform a visual inspection to detect corrosion in the wheel axles of the MLG sliding members in accordance with Fokker Service Bulletin F100–32–079, Revision 1, dated October 4, 1993, and paragraph 2.A. of the Accomplishment Instructions of Dowty Aerospace Service Bulletin F100–32–63, Revision 2, dated September 23, 1993.

(b) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3 months in accordance with Fokker Service Bulletin SBF100–32–080, dated October 4, 1993, and Dowty Aerospace Service Bulletin F100–32–64, dated September 23, 1993.

(c) If any corrosion is found during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, rework the affected area and perform a non-destructive testing (NDT) inspection to detect cracks in the MLG wheel axles, in accordance with Appendix A of Dowty Aerospace Service Bulletin F100–32–63, Revision 2, dated September 23, 1993 (if corrosion is found during the initial inspection required by this AD); or Dowty Aerospace Service Bulletin F100–32–64, dated September 23, 1993 (if corrosion is found during a repetitive inspection required by this AD); as applicable. After rework, continue to perform repetitive inspections of the affected area in accordance with paragraph (b) of this AD.

(d) If any crack is found during the inspections required by paragraph (c) of this AD, prior to further flight, replace the affected sliding member with a serviceable sliding member in accordance with Dowty Aerospace Service Bulletin F100–32–63, Revision 2, dated September 23, 1993 (if any crack is found during the initial inspection required by this AD); or Dowty Aerospace Service Bulletin F100–32–64, dated September 23, 1993 (if any crack is found during a repetitive inspection required by this AD); as applicable. After replacement of the affected sliding member, continue to perform the repetitive inspections in accordance with paragraph (b) of this AD.

(e) As of the effective date of this AD, no person shall install a Dowty Aerospace MLG, part number 201072011, 201072012, 201072013, 201072014, 201072015, or 201072016, on any airplane unless the requirements of this AD have been accomplished on that MLG. Following its installation, the repetitive inspections required by paragraph (b) of this AD shall be accomplished on that MLG.

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

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

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

Issued in Renton, Washington, on January 27, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–2335 Filed 2–1–94; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IL–21–91]

RIN 1545–AS24

Imposition of Accuracy-Related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that provide guidance on the imposition of the accuracy-related penalty under Internal Revenue Code sections 6662(e) and (h) and section 6664(c) for transactions between

persons described in Internal Revenue Code section 482 and net section 482 transfer price adjustments. The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Comments and requests for a public hearing must be received within June 2, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (IL–21–91), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (IL–21–91), Internal Revenue Service, room 5228, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Thomas L. Ralph at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer PC:FP, Washington, DC 20224.

The collection of information in this notice of proposed rulemaking is in §§ 1.6662–6T(d)(2)(iii) and (d)(3)(iii). This information is required by the IRS to implement section 6662(e)(3)(B) of the Internal Revenue Code. This information will be used to determine whether the taxpayer reasonably concluded that the transfer prices charged in related party transactions were consistent with the arm's length standard. The likely recordkeepers are business or other for-profit institutions and small businesses or organizations.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the IRS. Individual recordkeepers may require greater or less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 20,000 hours. The estimated annual burden per recordkeeper varies from 5 hours to 15 hours, depending on individual circumstances, with an estimated average of 10 hours.

Estimated number of recordkeepers: 2000.

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** contain amendments to the Income Tax Regulations under sections 6662(e) and (h) and section 6664(c) relating to the imposition of accuracy-related penalties. The final regulations that will result from the regulations proposed in this notice would be based on the text of the temporary regulations and would provide rules relating to the imposition of accuracy-related penalties under those sections for transactions between persons described in section 482 and net section 482 transfer price adjustments.

The text of these temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains these proposed regulations.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing may be scheduled and held upon written request by any person who timely submits written comments on the proposed rules. Notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Thomas L. Ralph of the Office of the Associate Chief Counsel (International), Internal Revenue Service. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
§§ 1.6625–5 and 1.6625–6T also issued under 26 U.S.C. 6662. * * *

Par. 2. Section 1.6662–0 is amended by adding entries to the table to read as follows:

§ 1.6662–0 Table of contents.

[The text of the proposed amendments to this section is the same as the text of the amendments to § 1.6662–0 published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.6662–5 is amended by revising paragraph (e) and adding the text of paragraph (j) to read as follows:

§ 1.6662–5 Substantial and gross valuation misstatements under chapter 1.

[The text of proposed paragraphs (e) and (j) of this section are the same as the text of paragraphs (e) and (j) of § 1.6662–5T published elsewhere in this issue of the **Federal Register**.]

Par. 4. Section 1.6662–6 is added to read as follows:

§ 1.6662–6 Transactions between persons described in section 482 and net section 482 transfer price adjustments.

[The text of this proposed section is the same as the text of § 1.6662–6T published elsewhere in this issue of the **Federal Register**.]

Par. 5. Section 1.6664–0 is amended by adding an entry to read as follows:

§ 1.6664–0 Table of contents.

[The text of the proposed amendment to this section is the same as the text of the amendment to § 1.6664–0 published elsewhere in this issue of the **Federal Register**.]

Par. 6. Section 1.6664–4, the text of paragraph (d) is added to read as follows:

§ 1.6664–4 Reasonable cause and good faith exception to section 6662 penalties.

[The text of this proposed paragraph (d) is the same as the text of paragraph (d)

in § 1.6664–4T published elsewhere in this issue of the **Federal Register**.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–2076 Filed 1–27–94; 11:10 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[FI–189–84; FI–64–89; FI–5–94]

RIN 1545–AH46; 1545–AO03; 1545–AS35

Debt Instruments With Original Issue Discount; Anti-Abuse Rule; Price Level Adjusted Mortgages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and withdrawal of notices of proposed rulemaking.

SUMMARY: In the rules and regulations section of this issue of the **Federal Register**, the IRS is issuing a temporary regulation that adds an anti-abuse rule to the final regulations relating to the tax treatment of debt instruments with original issue discount. The rule allows the Commissioner of Internal Revenue, in certain circumstances, to apply or depart from the final regulations in a manner that ensures a reasonable result in light of the purposes of the statutes governing original issue discount. The text of the temporary regulation also serves as the text of this proposed regulation. This document also withdraws the proposed regulations relating to the tax treatment of price level adjusted mortgages and the portion of the 1992 proposed regulations relating to the treatment of a debt instrument that provides for contingent payments.

DATES: Written comments and requests for a public hearing must be received by April 4, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (FI–5–94), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (FI–5–94), Internal Revenue Service, room 5228, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Andrew C. Kittler at (202) 622-3940 or William E. Blanchard at (202) 622–3950 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

A temporary regulation in the Rules and Regulations portion of this issue of the **Federal Register** amends the Income Tax Regulations (26 CFR part 1) relating to section 1275 by adding § 1.1275–2T. The text of that temporary regulation also serves as the text of this proposed regulation. The preamble to the temporary regulation explains the temporary regulation.

This document also withdraws the portion of the 1992 proposed regulations relating to the treatment of a debt instrument under section 1274 of the Internal Revenue Code if the debt instrument provides for contingent payments. In addition, this document withdraws the proposed regulations relating to the tax treatment of price level adjusted mortgages.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before the proposed regulation relating to the anti-abuse rule is adopted as a final regulation, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled and held upon written request by any person who submits written comments on the proposed regulation. Notice of the time and place for the hearing will be published in the **Federal Register**.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

§ 1.1275–2T also issued under 26 U.S.C. 1275(d).

Par. 2. Section 1.163–11, as proposed on January 9, 1990 (55 FR 739), is withdrawn as of February 2, 1994.

Par. 3. Paragraph (e) of § 1.1274–2, as proposed on December 22, 1992 (57 FR 60770), is withdrawn as of February 2, 1994.

Par. 4. Section 1.1275–2T is added to read as follows:

§ 1.1275–2T Special rules relating to debt instruments.

[The text of this proposed section is the same as the text of § 1.1275–2T published elsewhere in this issue of the **Federal Register**.]

Par. 5. Section 1.1275–6, as proposed on January 9, 1990 (55 FR 739), is withdrawn as of February 2, 1994.

Par. 6. Section 6050H–2, as proposed on January 9, 1990 (55 FR 739), is withdrawn as of February 2, 1994.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–2074 Filed 1–27–94; 11:10 am]

BILLING CODE 4830–01–U

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26 CFR Part 1

[IL–21–91]

RIN 1545–AQ45

Imposition of Accuracy-Related Penalty

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the proposed regulations relating to the imposition of accuracy-related penalty under Internal Revenue Code sections 6662(e) and (h) and section 6664(c) for transactions between persons described in Internal Revenue Code section 482 and net section 482 transfer price adjustments that was published in the **Federal Register** on January 21, 1993.

EFFECTIVE DATE: The withdrawal of this notice of proposed rulemaking is effective February 2, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas L. Ralph at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 21, 1993, the IRS published a notice of proposed rulemaking (IL–21–91) in the **Federal Register** (58 FR 5304) that proposed amendments to the Income Tax Regulations under sections 6662(e) and

(h) and section 6664(c) of the Internal Revenue Code of 1986. The proposed regulations implemented section 11312 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, 104 Stat. 1388.

In view of the enactment of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, section 13236, 107 Stat. 312 (codified at I.R.C. 6662(e) and (h)), which further amended those sections, proposed regulations § 1.6662–5 (e) and (j) and § 1.6664–4(d) are hereby withdrawn.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, proposed regulations § 1.6662–5(e) and (j) and § 1.6664–4(d) published in the **Federal Register** on January 21, 1993 (58 FR 5304), are withdrawn.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–2077 Filed 1–27–94; 11:10 am]

BILLING CODE 4830–01–U

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest System Timber; Downpayment

AGENCY: Forest Service, USDA.

ACTION: Advance notice of proposed rulemaking; request for comment.

SUMMARY: The Forest Service hereby gives notice of its intent to develop a proposed rule and related policy to address a number of financial security provisions related to National Forest System (NFS) timber sale contracts. Specifically, the proposals will address the following: Transfer or refund of the downpayment made pursuant to timber sale contract special provision *C(T)4.220#—DOWNPAYMENT*; criteria which the Chief will use for determining speculative bidding; and the need for reduction of the performance bond amount before all volume is removed. The proposed policy is needed to ensure that the government has an adequate level of financial security, to assure the timely completion of timber sale contracts by avoiding contract defaults resulting from speculative bidding, and to maintain competition between qualified bidders by monitoring for speculative bidding.

DATES: Comments regarding this advance notice must be received in writing by March 4, 1994.

ADDRESSES: Send written comments to Director, Timber Management Staff (2400), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090. The public may inspect comments received on this policy in the office of the Director, Timber Management Staff, Third Floor, Northwest Wing, Auditors Building, 201 14th Street, SW. To facilitate entrance into the building, visitors are encouraged to call ahead (205–0893).

FOR FURTHER INFORMATION CONTACT: Fred O. Walk, Timber Management Staff, (202) 205–0858.

SUPPLEMENTARY INFORMATION: The General Accounting Office (GAO), in testimony before the House Appropriations Subcommittee on Interior and Related Agencies on April 24, 1991, testified that the Forest Service's key contracting measures such as downpayments, periodic payments, performance bonds, and calculations of damages were similar to those of other timber sellers, with the exception that the Forest Service returns or credits the downpayment before the contract is substantially complete. GAO testified that, by crediting or returning the downpayment, the Forest Service has less security to protect the government's financial interest, in terms of access to funds in the event of a default. GAO's testimony included a recommendation that the Secretary of Agriculture direct the Chief of the Forest Service to retain the downpayment until the contract is substantially complete.

The Department of Agriculture published a final rule in the **Federal Register** on July 31, 1991 (56 FR 36099), that implemented the downpayment requirements of Section 2(d) of the Federal Timber Contract Payment Modification Act of October 16, 1984 (98 Stat, 2213; 16 U.S.C. 618(d)). In the final rule, the Secretary of Agriculture directed the Forest Service to develop and publish for comment a proposed rule that would eliminate transfer or refund of the downpayment and that would respond to GAO's concern that the downpayment be retained until the contract is substantially complete.

Further, the Department, in responding to public comment in the July 31, 1991, final rule (56 FR 36100) agreed that additional and specific criteria are needed for determining speculative bidding and indicated that the Forest Service would develop proposed criteria and publish them in the **Federal Register** for public comment prior to adoption of any criteria.

The timber sale contract requires a performance bond equal to 10 percent of the total bid value of the timber sale. The current timber sale contract language, in Standard Provision B9.11 Bond Reduction, prohibition reduction of the performance bond until a purchaser has completed removal of timber, other than substandard timber form the sale area, under Standard Provision B2.12. However, retaining the full amount of the performance bond until all volume has been removed may result in the Government having an excessive amount of financial security. The agency is considering a revision of this provision to avoid retention of excessive security.

The Forest Service invites comments on how the agency can best address the concerns of GAO, establish criteria which the Chief can use in determining speculative bidding, and avoid having an excessive amount of financial security when the performance bond is retained until all volume is removed. Comments received will be considered in the development of a proposed rule on downpayment and associated proposed policy related to performance bonds and speculative bidding criteria. The proposed rule and policies will be published in the **Federal Register** for comment.

Dated: December 28, 1993.

David M. Unger,

Associate Chef.

[FR Doc. 94–2301 Filed 2–1–94; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 63 and 430

[FRL–4832–6]

Public Hearing and Public Meeting on the Rulemaking for the Pulp, Paper, and Paperboard Industry

AGENCY: Environmental Protection Agency.

ACTION: Announcement of public hearing and public meeting.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a public hearing and a public meeting regarding proposed regulations for the pulp, paper, and paperboard industry that were published on December 17, 1993, at 58 FR 66078. Pursuant to CWA section 307(b), the public hearing will address the pretreatment standards component of the integrated rule.

Pursuant to CAA section 307(d)(5), the hearing will address the National Emission Standards for Hazardous Air Pollutants [NESHAP] component of the integrated rule. EPA is sponsoring the public meeting to report on the status of regulatory development and to gather information and ideas from interested parties.

DATES: The date for the public hearing is Thursday, February 10, 1994, and the date for the public meeting is Thursday, February 24, 1994. Both meetings are scheduled from 9 a.m.–5 p.m.

ADDRESSES: The public hearing will be held at the U.S. Geological Survey National Center Auditorium, 12201 Sunrise Valley Drive, Reston, VA, telephone number (703) 648–4460. The public meeting will be held at the Double Tree Suites, 16500 Southcenter Parkway, Seattle, Washington, telephone number (206) 575–8220.

FOR FURTHER INFORMATION CONTACT: Wendy Smith at U.S. Environmental Protection Agency—by mail at USEPA, Engineering and Analysis Division, Mail Code 4303, 401 M Street SW., Washington, DC 20460; by telephone at (202) 260–7184. If you want to make a presentation at the public hearing, please call Debra Nicoll at (202) 260–5386 no later than 5 p.m., February 7, 1994. Please provide Ms. Nicoll the name of the speaker, affiliation, and the approximate amount of time requested for your remarks. EPA is suggesting that speakers limit their remarks to 10 minutes.

SUPPLEMENTARY INFORMATION: The comment period for the proposed rulemaking ends on March 17, 1994. All written comments submitted in accordance with the instructions in the notice of proposed rulemaking will be incorporated into the Record and considered before promulgation. It is not necessary to appear at the public hearing for comments to be considered.

Dated: January 24, 1994.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 94–2275 Filed 2–1–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 433

[MB–39–P]

[RIN: 0938–AF11]

Medicaid Program; Third Party Liability (TPL) Cost-Effectiveness Waivers

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

ACTION: Proposed rule.

SUMMARY: We are proposing to revise our rules concerning Medicaid agencies' actions where third party liability (TPL) may exist for expenditures for medical assistance covered under the State plan. We propose to allow the Medicaid agencies to request waivers from certain procedures in our regulations that are not expressly required by the Social Security Act. We would consider waiving nonstatutorily required procedures relating to identifying possible TPL where the agency finds that following a given required procedure is not cost-effective and is duplicative of another State activity. A nonstatutorily required activity would be eligible for a waiver if the cost of the required activity exceeds the TPL recoupment and the required activity accomplishes, at the same or at a higher cost, the same objective as another activity that is being performed by the States. This change would give States greater flexibility in managing their Medicaid programs.

DATES: To be considered, written comments must be mailed or delivered to the appropriate address, as provided below, and must be received by 5 p.m. on April 4, 1994.

ADDRESSES: Mail comments (original and 3 copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: MB–39–P, P.O. Box 7518, Baltimore, MD 21207–0518.

If you prefer, you may deliver your written comments (original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

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

Please address a copy of comments on information collection requirements to: Laura Oliven, Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503.

In commenting, please refer to file code MB–39–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Mel Schmerler, (410) 966–5942.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1902(a)(25) of the Social Security Act (the Act) requires that State or local Medicaid agencies take all reasonable measures to ascertain the legal liability of third parties to pay for care and services furnished to Medicaid recipients. A third party is any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished under a State plan. Medicaid is intended to be the payer of last resort; that is, other available resources must be used before Medicaid pays for the care and services of a Medicaid-eligible individual. These other resources are known as third party liability, or TPL.

Further, provisions under section 1902(a)(25)(A)(i) of the Act specify that the Medicaid State plan must provide for the collection of sufficient information to enable the State to pursue claims against third parties. Examples of liable third parties include commercial insurance companies through employment-related or privately purchased health insurance; casualty coverage resulting from an accidental injury; payments received directly from an individual who has either voluntarily accepted or been assigned legal responsibility for the health care of one or more Medicaid recipients; and fraternal groups, union, or State workers' compensation commissions. TLP also includes medical support provided by a parent under a court or administrative order.

Statutory provisions (sections 1137 and 1902(a)(25) of the Act) require States to obtain health insurance information at eligibility intake and redetermination interviews, perform the State Wage Information Collection Agency (SWICA) data match, safeguard recipient information, obtain recipient assignment of rights, and submit a TPL

action plan for HCFA approval. These statutory requirements would not be affected by the provisions of this proposed rule.

Nonstatutory requirements, specified in Section 433.138 (and subject to proposed waiver), include obtaining information (via data matching) with the State Workers' Compensation or Industrial Accident Commission files and State Motor Vehicle Accident report files. Another nonstatutory requirement is the requirement for agencies to identify all paid claims with trauma/diagnosis codes found in the ICD–9–CM 800–999, except 994.6. In Section 433.139 (and subject to proposed waiver), State agencies are required to bill the third party resource within 60 days after the last day of the month the State learns of the available resource and use the cost-avoidance method of paying.

Under our regulations at Section 433.138, pertinent health insurance information must be obtained (1) from Medicaid applicants or recipients during the determination and redetermination process; (2) by securing data match agreements with specific Federal and State agencies; (3) by conducting diagnosis and trauma code edits; and (4) by following specified procedures regarding the frequency of these activities.

Regulations at section 433.139 govern State payment of claims where TPL is involved. There are two methods of paying claims for recipients with known TPL: The cost-avoidance method and the pay-and-chase method. Under the cost-avoidance method, the Medicaid agency does not initially pay the claim, but rather returns the claim to the provider with information necessary for the provider to bill the third party. Under the pay-and-chase method, an agency may pay the total amount allowed under its payment schedule and then seek recovery from the liable third parties. The agency must initiate recovery within 60 days after the end of the month in which payment is made.

Most States that implement the requirements in our regulations at section 433.138 achieve significant Medicaid savings. Whenever third party resources can be utilized instead of Medicaid, both Federal and State taxpayers save money. In some instances, however, TPL requirements are not cost-effective.

Some States have reported very poor results in terms of identifying new TPL leads through trauma and diagnosis code edits. There are reports that some codes never yield TPL. Currently, States may obtain a partial waiver from HCFA of the requirement in section 433.138(e) to take action to identify those paid claims for Medicaid recipients that contain diagnosis codes 800 through 999 (except that no State has to pursue information concerning code 994.6, motion sickness). Under section 433.138(e), the State may obtain a waiver from complying with the requirements for specific codes.

In section 433.139(e), we also permit a State to request a waiver from HCFA of the cost-avoidance method of paying if the State could document that the pay-and-chase method was at least as cost-effective as the cost-avoidance method. The State is required to revalidate its cost-avoidance waiver request every 3 years and notify HCFA of any event that may change the cost-effectiveness of the waiver.

When these requirements were established by HCFA, the Medicaid TPL program was in its infancy. Many States were not pursuing TPL or only recovering TPL passively; that is, making recoveries when contacted by a provider or attorney who was making a third party settlement. We believed there were tremendous untapped TPL resources that were not identified by States. Therefore, the initial regulations were broad and did not allow States discretion to decide whether or not to perform required TPL activities based upon their cost-effectiveness. For this reason, we issued TPL regulations which we have now determined were too prescriptive and, at times, duplicative. On February 27, 1987, we published in the **Federal Register** (52 FR 5971) a response to State comments regarding cost-effectiveness of our discretionary regulations at sections 433.138 and 433.139. We stated that we would reevaluate these requirements if we received substantial complaints. This rule is consistent with that statement.

Currently, the majority of the States have aggressive and comprehensive TPL programs and have reported substantial savings from TPL activities. However, program experience has identified situations where some activities required by our regulations duplicate some State agency requirements in identifying new TPL leads. Also, situations have been identified where some of our requirements in regulations are not cost-effective; that is, States can reasonably expect to spend more to perform a TPL activity than anticipated or realized savings in that activity. It is for these reasons that we now propose to offer States the opportunity to request waivers from the unproductive activities that are not mandated by statute, and for which States have superior methods for accomplishing the same objectives as our regulations.

II. Proposed Revisions

The provisions of this proposed rule would allow States to request a waiver from requirements in section 433.138(c), (d)(4), (d)(5), (e), (f), (g)(1), (g)(2), (g)(3), and (g)(4) or section 433.139(b), (d)(1), and (d)(2) that are not explicitly mandated by statute when it is found that performing the requirement is not cost-effective. A nonstatutorily required activity would be eligible for a waiver if the cost of the required activity exceeds the TPL recoupment and the required activity accomplishes, at the same or at a higher cost, the same objective as another activity that is being performed by the State.

The proposed provisions would allow States to perform TPL operations more efficiently and at a greater savings to the Federal Government. Duplicative efforts (and higher costs) would be eliminated when States have already identified third party resources through another more cost-effective means. It should be noted that HCFA's financial participation in State Medicaid Management Information Systems costs, including costs related to data matches we require States to perform, may be as much as 90 percent. Therefore, it is not in the interest of the Federal Government to have States perform activities which are either duplicative or nonproductive.

For example, our regulations currently require State Medicaid agencies to perform a review of diagnosis and trauma codes to identify injuries for which TPL exist. At the same time we require States to perform data matches with the State Department of Motor Vehicles (DMV) to identify TPL injuries resulting from car accidents. These two matches replicate some of the data.

An example of this scenario was presented to HCFA by a midwestern State, which has performed the DMV data match while also performing the required diagnosis and trauma code editing. The DMV match resulted in 9,000 case leads and, of those, 107 cases had TPL. Of those 107 cases, the State had already identified 100 through trauma code editing. The seven new cases yielded a return of $3,623 but the cost to Medicaid of the DMV match was $37,785. A large portion of those costs were reimbursed by HCFA in matching administrative funding, and in retrospect, we recognize that Federal and State funds could have been better spent. By allowing the State a waiver of the DMV data match, HCFA would allow the State to operate its TPL

program in a more efficient and cost-effective manner and thus save tax dollars. Under existing regulations, there is no provision for waiver of this activity as long as a State is able to perform the match.

Another example that involves a nonproductive effort has been presented by a southern State. The State has reported on its attempt to identify TPL through a quarterly data match with Workers' Compensation. The State averages 96 leads per match. Out of these leads, an average of 89 percent are denied by the carrier or Medicaid never receives a claim, 8 percent of the claims are under the threshold amount for pursuit of cost-effective recovery, and 1 percent are already known to the State. This leaves 2 percent of leads that can be pursued, at an average recovery of $319.18 per claim. The State has not realized any collections for this effort. The cost to the State is approximately 4 to 5 man-days per quarter, plus significant systems expenses. Therefore, performing this data match does not seem to be cost-effective, and it seems to exceed our statutory mandate of performing a "reasonable effort" to identify TPL. This State also performs trauma code editing which serves to identify recipients injured on the job.

Relief from regulatory requirements would come in the form of a waiver. The State would submit a formal request to the HCFA regional office (RO). The State would be required to provide documentation that demonstrates that the cost of the required activity exceeds the TPL recoupment and the required activity accomplishes, at the same or at a higher cost, the same objective as another activity which is being performed by the State.

Documentation to support the waiver request could include past claims recovery data that demonstrate the administrative expenses involved in meeting that particular requirement, or a State analysis that documents a cost-effective alternative that accomplishes the same task. HCFA's ROs would consider the individual merits of each waiver request and would grant or deny the waiver request based on cost-effectiveness and State alternatives presented.

We would issue separate guidelines for developing and evaluating waiver requests for the new waivers. We currently have cost-effectiveness guidelines in place to govern our existing cost-avoidance waiver process. These guidelines were developed by a national work group comprised of HCFA Central Office (CO) and RO staff, whose purpose was to make the guidelines comprehensive and to ensure consistent application throughout the country. They are found in section 3904.2 of the State Medicaid Manual. We would issue similar guidelines to review waivers resulting from this proposed rule. Sources of data would most likely include claims processing tabulations, State expenditure reports, and savings data from the TPL recovery units and the HCFA Form 64.9a report.

CO staff also would provide clarification to RO staff as needed through our regular teleconferences. Consultation on specific waiver requests would be provided routinely, as is currently done in the State plan amendment process, cost-avoidance waivers, trauma code edit waivers, and State TPL action plan submissions. As with our current waiver provisions, ROs would be required to report approvals and disapprovals to CO on an ongoing basis. When changes in waiver status occur, CO also would be notified.

Implementation of this regulation would allow States flexibility in managing their individual Medicaid programs and would be consistent with Congressional concern for a Medicaid program to operate in a cost-effective manner, while providing necessary medical care for the needy.

Therefore, we propose to revise our rules to allow a State to request a waiver from any of the requirements specified in section 433.138(c), (d)(4), (d)(5), (e), (f), (g)(1), (g)(2), (g)(3), and (g)(4), which concern obtaining health insurance information, obtaining other information, exchange of data, and diagnosis and trauma code edits, and follow-up activities for certain exchanges.

We also propose to revise section 433.139, which concerns payment of claims, to allow a State to request a waiver of the requirements in paragraphs (b) and (d)(1) and (2) of this section. These paragraphs contain procedures concerning payment when probable liability is known at time of payment (cost avoidance), and a requirement to bill third parties within 60 days of the last day of the month the agency learns of the existence of TPL. However, new section 433.139(e)(4) requires that if a State requests a waiver of the requirement specifically concerning the 60-day limit, the State must submit documentation of written agreement between the State and the third party, including Medicare fiscal intermediaries and carriers, that extension of the billing requirement is agreeable to all parties.

We would add a new section 433.138(l) and revise section 433.139(e) to permit the waivers. We would require the State to submit a written request for a waiver of the specified nonstatutory requirement(s) to the HCFA RO and submit adequate documentation to establish that the regulatory activity is not cost-effective. Where the agency wishes to substitute another action for the TPL activity in section 433.138 or section 433.139, it must document that the cost of the substitute activity does not exceed the cost of the activity to be waived. If HCFA approves the State's waiver request, these net rules would relieve the State of its obligation to comply with the requirements. These procedures would parallel those found in existing section 433.139(e) for States obtaining a waiver from using the cost-avoidance method.

We would revise section 433.138(e), which already allows a waiver for specific trauma codes, to allow waivers for either the entire trauma code edit activity, or for waiver of editing specific codes, based on cost-effectiveness and duplication of effort.

We would specify in section 433.138(j) an exception to the reporting requirement for data exchanges and trauma code edits (section 433.138) when waivers are granted.

We would revise section 433.138(a) to exclude from the basic requirements those waived under paragraph (l). We also would delete the waiver provision in section 433.139(b)(2)(i), since it would be covered by the proposed revised section 433.139(e).

In addition, we propose to make conforming changes to section 433.138(c), (d), (f), and (g) to reference the proposed waiver provisions.

III. Regulatory Impact Analysis

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare and publish an initial regulatory flexibility analysis for proposed regulations unless the Secretary certifies that the regulations would not have a significant impact on a substantial number of small entities.

Under the RFA, a small entity is a small business, a nonprofit enterprise, or a government jurisdiction (such as a county or township) with a population of less than 50,000. These proposed regulations would affect only States and individuals, which are not considered small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small

rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would require States to submit a formal waiver request to be relieved of compliance with certain TPL requirements that are in our regulations when the cost of implementing the regulation's requirement is not cost-effective. It is extremely difficult to give an exact estimate of the cost savings that would accrue with the implementation of this regulation. This is largely because the cost of any single TPL data match or other procedure, as well as its relative effectiveness, varies from State to State.

In reviewing the need for this waiver, we recognized that some TPL claims reporting and payment regulations are expressly required by statute and that these and additional regulatory requirements are a valuable mechanism by which the Medicaid program has saved and recovered financial resources and that these regulations should be maintained. This waiver gives credence to valid concerns raised by States regarding the cost-effectiveness of certain portions of the TPL regulations in certain instances and allows States greater flexibility in managing their Medicaid programs.

An alternative to these regulatory enhancements would be to force States to comply with all regulations and not allow for any waiver provisions. In this scenario, States would either comply and lose money or discontinue the inefficient practice and risk HCFA sanctions through the systems performance review. Clearly, it was not the intent of the Congress for HCFA to promulgate regulations designed to save the taxpayers money, and then penalize States when the regulations are found by experience not to be cost-effective. HCFA should not be put in a position of forcing States to comply in these situations. This is consistent with our response to comments published in the Federal Register dated February 27, 1987 (52 FR 5971) stating that if HCFA received substantial complaints from State Medicaid agencies regarding the cost-effectiveness of State workers' compensation or Motor Vehicle Accident File data matches and diagnosis and trauma code edits, HCFA would reevaluate the data requirement.

We believe that implementation of this waiver would work towards a realistic and cost-effective TPL program. This change would also provide States with increased control over their individual TPL programs.

Therefore, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities. Also, this rule would not have a significant impact on the operations of a substantial number of small rural hospitals. Therefore, we have not prepared a small rural hospital analysis, or an initial regulatory flexibility analysis.

This rule was reviewed by the Office of Management and Budget (OMB) in accordance with Executive Order 12866.

IV. Paperwork Reduction Act

Sections 433.138(l) and 433.139(e) of this proposed rule contain information collection requirements that are subject to OMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C 3504, *et seq.*). Reporting burden for the collection of information in sections 433.138(1) and 433.139(e) is estimated to be 8 hours per request for waiver. Individuals wishing to comment on this estimate should send their comments to the OMB as the address listed under **ADDRESSES** in this preamble.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments that we receive by the date and time specified in the **DATES** section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 433

Administrative practice and procedure, Claims, Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 433 would be amended as follows:

PART 433—STATE FISCAL ADMINISTRATION

1. The authority citation for part 433 continues to read as follows:

Authority: Secs. 1102, 1137, 1902(a)(4), 1902(a)(25), 1902(a)(45), 1903(a)(3), 1903(d)(2), 1902(d)(5), 1903(o), 1903(p), 1903(r), and 1912 of the Social Security Act (42 U.S.C. 1302, 1320b-7, 1396a(a)(4), 1396a(a)(25), 1396(a)(45), 1396b(a)(3), 1396b(d)(2), 1396(d)(5), 1396b(o), 1396b(p), 1396b(r), and 1396k, unless otherwise noted.

2. Section 433.138 is amended by revising paragraphs (a), (c), the introductory text of (d), (e), (f), and (j); by adding undesignated introductory language to paragraph (g), and by adding a new paragraph (l) to read as follows:

§ 433.138 Determining liability of third parties.

(a) *Basic provisions.* The agency must take reasonable measures to determine the legal liability of the third parties to pay for services furnished under the plan. At a minimum, such measures must include the requirements specified in paragraphs (b) through (k) of this section, unless waived under paragraph (l) of this section.

* * * * *

(c) *Obtaining other information.* Except as provided in paragraph (l) of this section, the agency must, for the purpose of implementing the requirements in paragraphs (d)(1)(ii) and (d)(4)(i) of this section, incorporate into the eligibility case file the names and SSNs of absent or custodial parents of Medicaid recipients to the extent such information is available.

(d) *Exchange of data.* Except as provided in paragraph (l) of this section, to obtain and use information for the purpose of determining the legal liability of the third parties so that the agency may process claims under the third party liability payment procedures specified in § 433.139(b) through (f), the agency must take the following actions:

* * * * *

(e) *Diagnosis and trauma code edits.* (1) Except as specified under paragraph (e)(2) or (l) of this section, or both, the agency must take action to identify those paid claims for Medicaid recipients that contain diagnosis codes 800 through 999 International Classification of Disease, 9th Revision, Clinical Modification, Volume 1 (ICD-9-CM) inclusive, for the purpose of determining the legal liability of third parties so that the agency may process claims under the third party liability payment procedures specified in § 433.139(b) through (f).

(2) The agency may exclude code 994.6, Motion Sickness, from the edits required under paragraph (e)(1) of this section.

(f) *Data exchanges and trauma code edits: Frequency.* Except as provided in paragraph (l) of this section, the agency must conduct the data exchanges required in paragraphs (d)(1) and (d)(3) of this section in accordance with the intervals specified in § 435.948 of this chapter, and diagnosis and trauma edits required in paragraphs (d)(4) and (e) of this section on a routine and timely basis. The State plan must specify the frequency of these activities.

(g) *Follow-up procedures for identifying legally liable third party resources.* Except as provided in paragraph (l) of this section, the State

must meet the requirements of this paragraph.

* * * * *

(j) *Reports.* The agency must provide such reports with respect to the data exchanges and trauma code edits set forth in paragraphs (d)(1) through (d)(4) and paragraph (e) of this section, respectively, as the Secretary prescribes for the purpose of determining compliance under § 433.138 and evaluating the effectiveness of the third party liability identification system. However, if the State is not meeting the provisions of paragraph (e) of this section because it has been granted a waiver of those provisions under paragraph (1) of this section, it is not required to provide the reports required in this paragraph.

* * * * *

(l) *Waiver of requirements.* (1) The agency may request initial and continuing waiver of the requirements to determine third party liability found in paragraphs (c), (d)(4), (d)(5), (e), (f), (g)(1), (g)(2), (g)(3), and (g)(4) of this section if the State determines the activity to be not cost-effective. An activity would not be cost-effective if the cost of the required activity exceeds the third party liability recoupment and the required activity accomplishes, at the same or at a higher cost, the same objective as another activity that is being performed by the State.

(i) The agency must submit a request for waiver of the requirement in writing to the HCFA regional office.

(ii) The request must contain adequate documentation to establish that to meet a requirement specified by the agency is not cost-effective. Examples of documentation are claims recovery data and a State analysis documenting a cost-effective alternative that accomplished the same task.

(iii) The agency must agree, if a waiver is granted, to notify HCFA of any event that occurs that changes the conditions upon which the waiver was approved.

(2) HCFA will review a State's request to have a requirement specified under paragraph (l)(1) of this section waived and will request additional information from the State, if necessary. HCFA will notify the State of its approval or disapproval determination within 30 days of receipt of a properly documented request.

(3) HCFA may rescind a waiver at any time that it determines that the agency no longer meets the criteria for approving the waiver. If the waiver is rescinded, the agency has 6 months from the date of the rescission notice to meet the requirement that had been waived.

3. Section 433.139 is amended by revising paragraphs (b), (d)(1), (d)(2), and (e) to read as follows:

§ 433.139 Payment of claims.

* * * * *

(b) *Probable liability is established at the time claim is filed.* Except as provided in paragraph (e) of this section, if: (1) The agency has established the probable existence of third party liability at the time the claim is filed, the agency must reject the claim and return it to the provider for a determination of the amount of liability. The establishment of third party liability takes place when the agency receives confirmation from the provider or a third party resource indicating the extent of third party liability. When the amount of liability is determined, the agency must then pay the claim to the extent that payment allowed under the agency's payment schedule exceeds the amount of the third party's payment.

(2) The agency may pay the full amount allowed under the agency's payment schedule for the claim and then seek reimbursement from any liable third party to the limit of legal liability if the claim is for labor and delivery and postpartum care. (Costs associated with the inpatient hospital stay for labor and delivery and postpartum care must be cost-avoided.)

* * * * *

(d) *Recovery of reimbursement.* (1) If the agency has an approved waiver under paragraph (e) of this section to pay a claim in which the probable existence of third party liability has been established and then seek reimbursement, the agency must seek recovery of reimbursement from the third party to the limit of legal liability within 60 days after the end of the month in which payment is made unless the agency has a waiver of the 60-day requirement under paragraph (e) of this section.

(2) Except as provided in paragraph (e) of this section, if the agency learns of the existence of a liable third party after a claim is paid, or benefits become available from a third party after a claim is paid, the agency must seek recovery of reimbursement within 60 days after the end of the month it learns of the existence of the liable third party or benefits become available.

* * * * *

(e) *Waiver of requirements.* (1) The agency may request initial and continuing waiver of the requirements in paragraphs (b)(1), (d)(1), and (d)(2) of this section, if it determines that the requirement is not cost-effective. An activity would not be cost-effective if the cost of the required activity exceeds the third party liability recoupment and the required activity accomplishes, at the same or at a higher cost, the same objective as another activity that is being performed by the State.

(i) The agency must submit a request for waiver of the requirement in writing to the HCFA regional office.

(ii) The request must contain adequate documentation to establish that to meet a requirement specified by the agency is not cost-effective. Examples of documentation are costs associated with billing, claims recovery data, and a State analysis documenting a cost-effective alternative that accomplishes the same task.

(iii) The agency must agree, if a waiver is granted, to notify HCFA of any event that occurs that changes the conditions upon which the waiver was approved.

(2) HCFA will review a State's request to have a requirement specified under paragraph (e)(1) of this section waived and will request additional information from the State, if necessary. HCFA will notify the State of its approval or disapproval determination within 30 days of receipt of a properly documented request.

(3) HCFA may rescind the waiver at any time that it determines that the State no longer meets the criteria for approving the waiver. If the waiver is rescinded, the agency has 6 months from the date of the rescission notice to meet the requirement that had been waived.

(4) An agency requesting a waiver of the requirements specifically concerning either 60-day limit in paragraph (d)(1) or (d)(2) of this section must submit documentation of written agreement between the agency and third party, including Medicare fiscal intermediaries and carriers, that extension of the billing requirement is agreeable to all parties.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778- Medical Assistance Program)

Dated: July 27, 1993

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 28, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–2116 Filed 2–1–94; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 514 and 581

[Docket No. 92-31]

Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Maritime Commission is discontinuing this rulemaking proceeding. An analysis of the comments received reveals no need for the Rule as proposed. The Commission will continue to address specific situations on an ad hoc basis.

DATES: This action is effective February 2, 1994.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("FMC" or "Commission") initiated this proceeding by an Advance Notice of Proposed Rulemaking ("ANPR"), published in the **Federal Register** on June 8, 1992, 57 FR 24220. Following comments on the ANPR, the Commission published a Notice of Proposed Rulemaking ("Proposed Rule" or "NPR") in the **Federal Register** on November 3, 1992, 57 FR 49665. The NPR stated that the Commission was proposing to amend the definition of the term "shippers' association,"[1] contained in its service contract and Automated Tariff Filing and Information System ("ATFI") rules, to indicate that a group of shippers would be considered a shippers' association if it met certain requirements. In addition, the proposed definition further clarified the terms "consolidates" and "nonprofit basis" as used in the subject definition.

The Commission received 15 comments in response to the NPR.

Commenters supporting the Proposed Rule are:

(1) Conagra, Inc.;

(2) Household Goods Forwarders Association of America, Inc. ("HHGFAA");

(3) Society of the Plastics Industry, Inc. ("SPI");

(4) Cone Mills Corporation ("Cone"); and

(5) United States Department of Justice ("DOJ").

Commenters supporting the Proposed Rule, but suggesting clarifications are:

(1) American Institute for Shippers' Associations, Inc. ("AISA");

(2) Fashion Accessories Shippers' Association, Inc. ("FASA");

(3) National Industrial Transportation League ("NITL"); and

(4) American Import Shippers Association ("Import S.A.").

Commenters opposed to the Proposed Rule are:

(1) Transpacific Westbound Rate Agreement ("TWRA");

(2) Trans-Pacific Freight Conference of Japan and Japan-Atlantic and Gulf Freight Conference ("Japan Conferences");

(3) a group of nine conferences of ocean common carriers ("Nine Conferences");[2]

(4) Hanjin Shipping Co., Ltd. ("Hanjin");

(5) a group of 14 South/Central American and Caribbean Conferences ("South American/Caribbean Conferences");[3] and

(6) Fritz Companies, Inc. ("Fritz").

Positions of the Commenters

A. Comments Supporting the Proposed Rule

Cone supports the Proposed Rule because it believes it will enable Cone to move cargo to emerging countries where its volume alone is not sufficient to justify a service contract. Conagra likewise believes that the Proposed Rule will make it possible for shippers with complementary traffic to present a carrier with a more attractive traffic profile than each could present separately. It contends that to the extent such traffic can be handled more efficiently, the carrier's handling costs will be reduced. Conagra suggests that concerns about the lawfulness of the proposal are without merit and that it raises no valid antitrust concerns.

HHGFAA notes that presently, non-vessel-operating common carriers ("NVOCCs") can combine their cargo to achieve containerload rates. It perceives no reason why these arrangements between NVOCCs should not serve as a basis for negotiating service contracts without the administrative burden and expense of establishing a formal shippers' association. Allegedly, an agreement containing terms set forth in the Proposed Rule would meet the 1984 Act's definition of a shippers' association.

SPI notes that there is no requirement in the 1984 Act that shippers form a separate corporate entity to operate as a shippers' association and that the Commission has not required shippers' associations to be structured in any particular manner. It views the Proposed Rule as presenting shippers with a variety of options in forming shippers' associations, which it argues would be consistent with the policies of the 1984 Act.

DOJ contends that the Proposed Rule simply reflects past Commission policy, and that it is a reasonable interpretation of legislative intent that is well within the Commission's rulemaking discretion. DOJ believes that the Proposed Rule is likely to promote efficiency. It suggests that regulatory impediments may be discouraging the formation of shippers' associations, noting that only one percent of service contracts are with shippers' associations. DOJ advises that the Proposed Rule will not create substantial antitrust risks for either carriers or shippers. As for carriers, DOJ notes that their statutory antitrust immunity is determined by compliance with the terms of the 1984 Act and it would not be diminished if shippers were in violation of the law. DOJ explains that the formation and operation of a shippers' association ordinarily creates no antitrust concerns.

B. Comments Supporting the Proposed Rule With Modifications

As it did in its comments on the ANPR, NITL favors permitting two or more shippers to enter into a joint service contract, regardless of whether they are members of a shippers' association. It believes that the Proposed Rule will still inhibit a large number of small and medium-sized shippers from

[1] Section 3(24) of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1702(24), defines a shippers' association as:

"* * * a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group in order to secure carload, truckload, or other volume rates or service contracts."

The Commission's present service contract and ATFI regulations simply restate the statutory definition. 46 CFR 514.2, 581.1(r).

[2] The eight conferences originally submitting comments are: Asia North America Eastbound Rate Agreement; "8900" Lines; Israel Trade Conference; South Europe/USA Freight Conference; United States Atlantic and Gulf Ports/Eastern Mediterranean North African Freight Conference; United States/Southern Africa Conference; United States/East Africa Conference; and U.S. Atlantic and Gulf/Western Mediterranean Rate Agreement. After the comment period closed, the U.S. Atlantic & Gulf/Australia-New Zealand Conference joined in these comments.

[3] Venezuelan American Maritime Association; Atlantic and Gulf/West Coast South American Conference; United States/Central America Liner Association; Central America Discussion Agreement; United States Atlantic & Gulf/Hispaniola Steamship Freight Association; Hispaniola Discussion Agreement; United States Atlantic Gulf/Southeastern Caribbean Steamship Freight Association; Southeastern Caribbean Discussion Agreement; Jamaica Discussion Agreement; United States/Panama Freight Association; PANAM Discussion Agreement; Puerto Rico/Caribbean Discussion Agreement; Caribbean and Central American Discussion Agreement; and Inter-American Freight Conference.

accessing joint service contracts. NITL claims that two or more shippers would be required to operate as a de facto shippers' association in order to access a service contract. NITL further suggests that the standard for "nonprofit basis" is unclear and may also inhibit shippers. Lastly, NITL recommends that the process for memorializing the provisions for apportioning liability and authorizing the execution of a service contract should be left to the contracting parties.

AISA finds the Proposed Rule helpful in that it clarifies that "rate negotiator" shippers' associations are bona fide shippers' associations under the 1984 Act, and that they do not require Government review. AISA contends, however, that Proviso (2) of the Proposed Rule, which requires that shippers' association agreements indicate which parties have the authority to execute a service contract on behalf of the combination, inadvertently limits the function of a shippers' association to solely that of negotiating and executing contracts. AISA further claims that Proviso (3), which requires the agreements to indicate whether liability is apportioned among the combination members, should be eliminated. AISA is concerned that Proviso (3) will foreclose other valid options for addressing membership liability and that carriers may use it to impose unilateral membership liability contract terms on shippers' associations. Lastly, AISA suggests that the clarification of "consolidates" be modified to include both "rate negotiator" and "full service" shippers' associations.

FASA contends that the rule should specify a written agreement, and that any such agreement should be signed prior to negotiation or execution of a service contract. FASA notes that Proviso (3) of the Proposed Rule does not require that the agreement include an apportionment method but rather indicate only whether liability is apportioned. It suggests that this may result in simple "yes" or "no" answers. FASA also believes that the phrase "profit-making enterprise" is misleading and should instead read "* * * is not organized for the purpose of profit." Lastly, FASA asserts that NVOCCs should not be eligible to form or join shippers' associations.

Import S.A. likewise believes that the requisite agreement forming a shippers' association should be in writing and concluded prior to and independent of the execution of any service contract. Import S.A. suggests that the term "nonprofit basis" could use some clarification. It notes that an association organized on a nonprofit basis may in fact earn a profit during a particular period. It suggests, therefore, that the words "it simply requires that an association itself not be a profit-making enterprise" be deleted or be amended to state "it simply requires that the association be organized on a nonprofit basis." Like FASA, Import S.A. also maintains that NVOCCs should be prohibited from forming or participating in shippers' associations.

C. Comments Opposing the Proposed Rule

The Nine Conferences contend that the Proposed Rule expands the meaning of "shippers' association" beyond the plain meaning of the 1984 Act and the intent of Congress. They explain that Congress explored many ways to balance the power of ocean carriers with the interests of small and medium shippers. One approach was antitrust immunity for shippers' councils, but this was rejected by the House. Another alternative, which arose in the Senate, was the shipper joint venture. As described by the None Conferences, this would have permitted loose affiliations of shippers, without any central organization and operating on their own behalf, to obtain service contracts. The conferences suggest that this concept is very similar to that advanced by the Proposed Rule. Congress is said to have specifically rejected shipper joint ventures and replaced that proposal, in Conference Committee, with shippers' associations.

The Nine Conferences also point out that the definition of shippers' association refers to a "group" of shippers, and concludes that this contemplates an organization or entity separate and apart from the members, which performs functions on behalf of members. In contrast, they maintain that, under the proposed definition, there is no requirement of a group or entity acting on behalf of the members, and consolidation of cargo would be in name only. The Nine Conferences are of the opinion that under the Proposed Rule, any shipper could force negotiations with a carrier simply by joining together with another shipper. Allegedly, section 10(b)(13) of the 1984 Act[4] was not intended to extend this far.

The Japan Conferences argue that there is no statutory authority for joint service contracts or for substituting a mere shippers' agreement for a shippers' association. They contend that the Proposed Rule would weaken and undermine existing shippers' associations. They submit that Congress, in approving shippers' associations, envisioned ongoing, reliable shippers' associations subject to the internal discipline of an association. The Japan Conferences believe that it is currently easy to join bona fide shippers' associations and consequently suggest that there is no need for any liberalization. The South American/Caribbean Conferences likewise contend that it is not necessary to clarify that multiple shippers may form or operate a shippers' association, as shippers of all sizes have been doing so since enactment of the 1984 Act.

Fritz opposes the Proposed Rule because it perceives it as allowing combinations of shippers or joint ventures to be treated as shippers' associations although they are not. It notes that the definition of "shipper" refers to a person for whose account transportation is provided and concludes therefore that a shippers' association must act as a single entity. In addition, Fritz expresses concern about the possibility that a "me-too" shipper will be able to access the rate and volume of only one of the combination shippers rather than the entire obligation of the combination.

Hanjin suggests that the stated purpose of the Proposed Rule—to permit multiple shippers to enter into joint service contracts—is beyond the Commission's authority. Hanjin contends that there would essentially be no requirements for the formation of an association and that one could be formed by a one or two-sentence agreement. Hanjin contends that the proposal would make enforcement of shipper contract obligations increasingly burdensome for carriers. Hanjin notes that if the agreement among the members allows for the apportionment of liability, each shipper in effect has its own minimum volume and the carrier has the burden of enforcing portions of a single contract against different parties. On the other hand, if a carrier refuses to permit apportionment of liability, Hanjin suggests that it may be subject to claims of refusing to negotiate.

TWRA contends that the word "combination" is vague and substantially more inclusive than "association," a term, it claims, has distinct legal meaning and consequences. It states that all associations are combinations, but not all combinations are associations. TWRA advises that both incorporated and unincorporated associations have legal status, obligations, and rights

[4] Section 10(b)(13) states that no common carrier may "refuse to negotiate with a shippers' association." 46 U.S.C. app. 1709(b)(13).

among the members and also in relation to third parties. A "combination" is said to have no legal definition similar to an association and to create no definitive similar to an association and to create no definitive rights or obligations.

Noting that the Proposed Rule does not require a written document forming a shippers' association, only an "agreement," TWRA takes the position that such an association would have no permanence, structure, or articles of association to establish control of the association and its nonprofit status. In this regard, TWRA points out that the definition of "shippers' association" is an almost verbatim restatement of a term used in the Interstate Commerce Act for many years. TWRA advises that the ICC requirements for a shippers' association are:

(1) That there be an association;

(2) That it consolidate or distribute freight on behalf of its members; and

(3) That it have a formal, continuing structure that shows it is a nonprofit association controlled by its members.

Discussion

Upon review of the comments in this proceeding and a reevaluation of the concerns that prompted this proposal, the Commission has concluded that no final rule is warranted. The legal objections to the Proposed Rule have presented close and difficult questions. These questions need not be resolved at this time, however, because there are practical and policy concerns that counsel against additional regulations affecting service contract negotiations between carriers and shippers' associations.

As indicated in the Report of Commissioner Ming C. Hsu, the investigative Officer in Fact Finding Investigation No. 20, Service Contract Negotiations with Shippers' Associations and Non-Vessel-Operating Common Carriers, issued September 21, 1993, the service contract system appears to be working reasonably well as a general matter. In addition, under the present regulations that merely restate the statutory definition of "shippers' association," shippers have been able to form shippers' associations without apparent undue difficulties. If such an association meets the brief statutory definition, it is free to operate unimpeded by any additional regulatory requirements. By contrast, it appears that the Proposed Rule could create confusion where none presently exists. We note, for example, that even some of the supporting comments opposed specific provisions of the Proposed Rule on the ground that they might be counterproductive or unnecessarily burdensome. Discontinuation of this proceeding without imposing regulations will maintain the status quo in the area of service contract oversight, while allowing the Commission to address specific situations as they arise on an ad hoc basis. We are, accordingly, discontinuing this proceeding without issuing a final rule.

Therefore, it is ordered, That this proceeding is discontinued.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–2326 Filed 2–1–94; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Status Review for the Lynx

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces continuation of a rangewide status review for the lynx (*Felis lynx canadensis*), a category 2 candidate species. As a result of a court challenge by petitioners, the Service has agreed to complete a rangewide status review. The Service solicits any information, data, comments, and suggestions from the public, other concerned government agencies, the scientific community, industry, or other interested parties concerning the biological status of this species. The Service will complete the status review and publish its finding no later than November 15, 1994.

DATES: Comments and data from all interested parties will be accepted until further notice but must be received by July 1, 1994, to be included in the November finding.

ADDRESSES: Comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 100 North Park, suite 320, Helena, Montana 59601. Comments received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Kemper McMaster at the above address (406/449–5322).

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1991, the Fish and Wildlife Service (Service) received a petition from the National Audubon Society, The Humane Society of the United States, Defenders of Wildlife, Greater Ecosystem Alliance, Friends of the Loomis Forest, Methrow Valley Forest Watch, Save Chelan Alliance, Lower Columbia Basin Audubon Society, Tonasker Forest Watch, Pilchuck Audubon Society, North Cascades Audubon Society, and Sierra Club Cascade Chapter to list the North American lynx of the North Cascades ecosystem of Washington as an endangered species under the emergency provisions of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and to designate critical habitat. The Service made a 90-day finding on February 4, 1992, that substantial information had not been presented to indicate that listing the lynx in the North Cascades may be warranted. Notice of the finding was published in the **Federal Register** on October 6, 1992 (57 FR 46007).

On August 10, 1992, the petitioners filed suit in the United States District Court for the Western District of Washington in Seattle challenging the not substantial finding made by the Service. The Service agreed to reevaluate its 90-day finding. On July 1, 1993, the Service found pursuant to section 4(b)(3)(A) of the Act, 16 U.S.C. 1533(b)(3)(A), that substantial scientific or commercial evidence was not available to indicate that the lynx population in the North Cascades should be listed as endangered. The notice of that finding was published July 9, 1993 (58 FR 36924). The July finding supersedes the February finding. The July notice expressed the Service's belief that a rangewide status review should be conducted. Because of that statement, petitioners and the Service were able to come to an agreement to settle the pending lawsuit based on a commitment to complete the review by November 15, 1994.

The Service has been soliciting information on the status of the lynx since the species first appeared on the September 18, 1985, Animal Notice of Review as a category 2 candidate species. The Service acknowledges that evidence exists indicating that an in-depth rangewide status review for the lynx, a category 2 candidate species, should be continued. The Service solicits any information, data, comments, and suggestions from the public, other concerned government agencies, the scientific community,

industry, or other interested parties concerning the biological status of this species. The Service will complete the status review and publish its finding no later than November 15, 1994.

Authors

This notice was prepared by Ms. Anne Vandehey at the Service's Helena Office (see ADDRESSES above) and Dr. James L. Miller, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: January 26, 1994.

John L. Spinks, Jr.,

Deputy Regional Director.

[FR Doc. 94–2331 Filed 2–1–94; 8:45 am]

BILLING CODE 4310–55–M

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC34

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the California Red-legged Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the California red-legged frog (*Rana aurora draytonii*) as endangered pursuant to the Endangered Species Act of 1973, as amended (Act). The California red-legged frog is found primarily in wetlands and streams in coastal drainages of central California. It has been extirpated from 75 percent of its former range. This subspecies is threatened throughout its remaining range by a wide variety of human impacts, including urban encroachment, construction of reservoirs and water diversions, introduction of exotic predators and competitors, and stochastic events. This proposed rule, if made final, would extend the Act's protection to the California red-legged frog. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by April 4, 1994. Public hearing requests must be received by March 21, 1994.

ADDRESSES: Written comments and materials concerning this proposed rule should be submitted to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 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: Mr. Wayne S. White, State Supervisor, at the above address or telephone 916/978–4613.

SUPPLEMENTARY INFORMATION:

Background

The California red-legged frog (*Rana aurora draytonii*) is one of two subspecies of the red-legged frog (*Rana aurora*) found on the Pacific coast. *R. a. draytonii* was first described by Baird and Girard in 1852 from specimens collected at or near the city of San Francisco (Storer 1925). The historical range of the California red-legged frog extended from the vicinity of Point Reyes National Seashore, Marin County, California, coastally and from the vicinity of Redding, Shasta County, California, inland southward to northwestern Baja California, Mexico (Jennings and Hayes 1985, Hayes and Krempels 1986). The northern red-legged frog (*Rana aurora aurora*) ranges from Vancouver Island, British Columbia, Canada, south along the Pacific coast west of the Cascade ranges to northern California (Del Norte County). Red-legged frogs found in the intervening area (Humboldt to northern Marin County) between the two subspecies exhibit intergrade characteristics of both *R. a. aurora* and *R. a. draytonii* (Hayes and Krempels 1986). Systematic relationships between the two subspecies are not completely understood (Hayes and Miyamoto 1984, Green 1985a, Green 1986, Hayes and Krempels 1986). However, significant morphological and behavioral differences between the two subspecies suggest that they may actually be two species in secondary contact (Hayes and Krempels 1986).

Northern Marin County represents the approximate dividing line between *Rana aurora draytonii* and intergrade populations along the coastal range (M. Jennings, pers. comm., 1993). California red-legged frogs found in Nevada (Linsdale 1938, Green 1985b) were introduced. This rule would not extend the Act's protection to any *Rana aurora* in Humboldt, Trinity, and Mendocino Counties, California, and Sonoma County, California, north and west of 38°30′ N and 123° W, as well as the introduced population in Nevada.

The California red-legged frog is the largest native frog in the western United States (Wright and Wright 1949), ranging from 4 to 13 centimeters (1.5 to 5.1 inches) in length (Stebbins 1985). The abdomen and hind legs of adults are red; the back is characterized by small black flecks and larger irregular dark blotches with indistinct outlines on a brown, gray, olive, or reddish background color. Dorsal spots usually have light centers (Stebbins 1985). Dorsolateral folds are prominent on the back. Larvae range from 14 to 80 millimeters (mm) (0.6 to 3.1 inches) in length, and the background color of the body is dark brown and yellow with darker spots (Storer 1925).

Several morphological and behavioral characteristics differentiate California red-legged frogs from northern red-legged frogs. Adult California red-legged frogs are significantly larger than northern red-legged frogs by 35 to 40 mm (1.4 to 1.6 inches) (Hayes and Miyamoto 1984). Dorsal spots of northern red-legged frogs usually lack light centers common to California red-legged frogs (Stebbins 1985), but this is not a strong diagnostic character. California red-legged frogs have paired vocal sacs and call in air (Hayes and Krempels 1986), whereas northern red-legged frogs lack vocal sacs (Hayes and Krempels 1986) and call underwater (Licht 1969). Female California red-legged frogs deposit egg masses on emergent vegetation so that the egg mass floats on the surface of the water (Hayes and Miyamoto 1984). Northern red-legged frogs also attach their egg masses to emergent vegetation, but the mass is submerged (Licht 1969). California red-legged frogs breed from November to March with earlier breeding records occurring in southern localities (Storer 1925). California red-legged frogs found in coastal drainages are rarely inactive (Jennings et al. 1992), whereas those found in interior sites may hibernate (Storer 1925).

The California red-legged frog occupies a fairly distinct habitat, combining both specific aquatic and riparian components (Hayes and Jennings 1988, Jennings 1988b). The adults require a dense, shrubby or emergent riparian vegetation closely associated with deep (>0.7 meters) still or slow moving water (Jennings et al. 1992). The largest densities of California red-legged frogs currently are associated with deep-water pools with dense

stands of overhanging willows (*Salix* spp.) and an intermixed fringe of cattails (*Typha latifolia*) (Jennings 1988b). Well-vegetated terrestrial areas within the riparian corridor may provide important sheltering habitat during winter. California red-legged frogs estivate in small mammal burrows and moist leaf litter up to 26 meters (85 feet) from water in dense riparian vegetation (Rathbun et al. 1993).

Egg masses that contain about 2,000 to 5,000 moderate-sized (2.0 to 2.8 mm (0.08 to 0.11 inches) in diameter), dark reddish brown eggs are typically attached to vertical emergent vegetation, such as bulrushes (*Scirpus* spp.) or cattails (*Typha* spp.) (Jennings et al. 1992). Eggs hatch in 6 to 14 days (Jennings 1988b). The most significant mortality factor in the pre-hatching stage is water salinity (Jennings et al. 1992). One hundred percent mortality occurs in eggs exposed to salinity levels greater than 4.5 parts per thousand (Jennings and Hayes 1990). Larvae undergo metamorphosis 3.5 to 7 months after hatching (Storer 1925, Wright and Wright 1949, Jennings and Hayes 1990). Of the various life stages, larvae probably experience the highest mortality rates, with less than 1 percent of eggs laid reaching metamorphosis (Jennings et al. 1992). Sexual maturity is reached at 3 to 4 years of age (Storer 1925, Jennings and Hayes 1985). California red-legged frogs may live 8 to 10 years (Jennings et al. 1992).

The diet of California red-legged frogs is highly variable. Hayes and Tennant (1985) found invertebrates to be the most common food items. Vertebrates, such as Pacific tree frogs (*Hyla regilla*) and California mice (*Peromyscus californicus*), represented over half of the prey mass eaten by larger frogs (Hayes and Tennant 1985). Hayes and Tennant (1985) found juvenile frogs to be active diurnally and nocturnally, whereas adult frogs were largely nocturnal. Feeding activity probably occurs along the shoreline and on the surface of the water (Hayes and Tennant 1985). Larvae probably eat algae (Jennings et al. 1992).

California red-legged frogs have sustained a 75 percent reduction in their geographic range in California as a result of several factors acting singly or in combination (Jennings et al. 1992). Habitat loss and alteration, combined with overexploitation and introduction of exotic predators, were significant factors in the California red-legged frog decline in the early to mid 1900s. California red-legged frogs were extirpated from the Central Valley probably in the 1960s. Remaining aggregations of California red-legged frogs in the Sierran foothills became fragmented and were later eliminated by reservoir construction, continued expansion of exotic predators, grazing, and drought. The pattern of disappearance of California red-legged frogs in southern California is similar to that seen in the Central Valley, except that urbanization and its associated roadway, large reservoir (exotic predators), and stream channelization projects were the primary factors causing population declines.

At present, California red-legged frogs are known to occur in about 190 streams or drainages from 15 counties in central and southern California. Monterey, San Luis Obispo and Santa Barbara Counties support the greatest amount of currently occupied habitat. The most secure aggregations of California red-legged frogs are found in aquatic sites that support substantial riparian and aquatic vegetation and lack exotic predators (e.g., bullfrogs, mosquitofish, largemouth and smallmouth bass). The majority of aggregations are threatened, however, by expansion of exotic predators, proposed residential development, water storage projects, and other factors. For example, within the Central Valley hydrographic basin, only six drainages, all on the Coast range slope of the San Joaquin Valley, are known or likely to support California red-legged frogs, compared to over 60 historic locality records for this basin. Two of these drainages, known to support significant numbers of California red-legged frogs, are sites of proposed large reservoir projects. Also, in southern California, California red-legged frogs are known from only 4 locations south of the Tehachapi Mountains, compared to over 80 historic locality records for this region. Only three areas currently support more than 350 adults.

Previous Federal Action

On January 29, 1992, the Service received a petition from Drs. Mark R. Jennings, Marc P. Hayes, and Dan C. Holland to list the California red-legged frog (*Rana aurora draytonii*). The petition specified endangered or threatened status by distinct drainages (watersheds) within the range of the species. On October 5, 1992, the Service published a 90-day petition finding (57 FR 45761) that substantial information had been presented indicating the requested action may be warranted. Public comments were requested on the status of this species. The California red-legged frog had been included as a Category 1 candidate species in the Service's November 21, 1991, Animal Notice of Review (56 FR 58804). Category 1 candidates are species for which the Service has substantial information on biological vulnerability and threat to support proposals to list them as endangered or threatened. On July 19, 1993, the Service published a 12-month finding on the petitioned action (58 FR 38553). This finding indicated that listing of the California red-legged frog was warranted and that a proposed rule would be published promptly.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species 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 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 California red-legged frog (*Rana aurora draytonii*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Herpetologists have noted the decline or extirpation of California red-legged frogs from the San Francisco Bay area (Sean J. Barry, University of California, Davis, *in litt.*, 1992; Robert C. Stebbins, University of California, Berkeley, *in litt.*, 1993; John S. Applegarth, herpetologist, *in litt.*, 1993; Ed Ely, herpetologist, *in litt.*, 1993), the Salinas River drainage (Lawrence E. Hunt, University of California, Santa Barbara, *in litt.*, 1993), the San Luis Obispo, Santa Barbara, and Ventura County area (Aryan I. Roest, California Polytechnic State University, San Luis Obispo, *in litt.*, 1993; Samuel S. Sweet, University of California, Santa Barbara, *in litt.*, 1993), southern California (Patrick McMonagle, herpetologist, *in litt.*, 1993; John D. Goodman, zoologist, *in litt.*, 1992; Robert B. Sanders, San Bernardino County Museum, *in litt.*, 1992; John Stephenson, U.S. Forest Service, *in litt.*, 1993; Michael C. Long, Eaton Canyon Park Nature Center, *in litt.*, 1992; Joseph F. Copp, herpetologist, *in litt.*, 1993; Glenn R. Stewart, California Polytechnic University, Pomona, *in litt.*, 1993; Walter B. Allen, herpetologist, *in litt.*, 1993; Robert Fisher, University of California, Davis, *in litt.*, 1993), central California (Martin R. Brittan, California State University, Sacramento, *in litt.*, 1993), and the northern and southern Sierra Nevada foothills (Jay Wright, Feather River College, Quincy, *in litt.*, 1993; Alan M. McCready, California

State University, Sacramento, *in litt.*, 1992).

These observations and data provided by the petitioners indicate that the California red-legged frog has sustained a 75 percent reduction in its geographic range in California. Large aggregations of greater than 350 adults currently are known from only three areas: Pescadero Marsh Natural Preserve in coastal San Mateo County, Point Reyes National Seashore in Marin County, and canals west of San Francisco International Airport in the San Francisco Bay area (Jennings et al. 1992).

Habitat loss and alteration are primary factors that have negatively affected the California red-legged frog throughout its range. In the Central Valley of California, over 90 percent of historic wetlands have been diked, drained, or filled primarily for agricultural development and secondarily for urban development (U.S. Fish and Wildlife Service 1978). Much of the wetland habitat lost, such as in the San Joaquin Valley, was prime habitat for the California red-legged frog (Jennings and Hayes 1984). Wetland alterations, including stream channelization, clearing of vegetation, and water diversions that often accompanied agricultural development, rendered remaining aquatic sites unsuitable for California red-legged frogs. As a result, California red-legged frogs on the floor of the Central Valley were eliminated probably sometime before 1960 (Jennings et al. 1992). Remaining aggregations in drainages around the Central Valley became isolated and fragmented.

Historically, urbanization with its associated roadway, stream channelization, and large reservoir construction projects also has significantly altered or eliminated California red-legged frog habitat, with the greatest impact occurring in southern California. South of the Tehachapi Mountains in southern California, the California red-legged frog remains at only 4 of over 80 sites where it was found historically (Jennings et al. 1992). No California red-legged frogs were found during amphibian surveys in 1993 in Cleveland National Forest in southern California (J. Stephenson, pers. comm., 1993).

Urbanization poses a significant threat to the California red-legged frog. On the central California coast and south San Francisco Bay area, the Service is aware of numerous proposed residential developments that would degrade known California red-legged frog habitat either directly through on-site degradation of the stream environment or indirectly through instream flow reductions to accommodate new urban growth (U.S. Fish and Wildlife Service unpubl. data). These projects include the East County Area Plan in Alameda County, which involves development of up to 52,000 acres, and projects currently proposed in the Ruby Hills/Arroyo Del Valle watershed and south Livermore Valley; Reservoir Canyon ponds in Santa Clara County; Alamo, Shadow, and Brookside Creeks in Contra Costa County; Potrero, San Clemente, and San Jose Creeks and the Carmel River in Monterey County; and the Santa Ynez River in Santa Barbara County. In San Luis Obispo County, one of three counties with numerous drainages supporting California red-legged frogs, proposed residential and/or recreational development adjacent to San Simeon, Santa Rosa, San Juan, Chorro, and Cambria Meadows Creeks and Estrella and Salinas Rivers would degrade or eliminate California red-legged frog habitat. Updates to area plans for the North Coast, San Luis Obispo, and Paso Robles/Atascadero areas in San Luis Obispo County propose rezoning of over 240,000 acres primarily for urban development. Between the cities of Ventura and San Luis Obispo, development already has eliminated California red-legged frogs from at least eight drainages along the coast (Galen B. Rathbun and Mark R. Jennings, U.S. Fish and Wildlife Service, *in litt.*, 1993).

Historic water projects, which accompanied urban and agricultural growth, also had a negative effect on California red-legged frogs. Construction of reservoirs, such as Lake Oroville, Whiskeytown Reservoir, Don Pedro Reservoir, Lake Berryessa, San Luis Reservoir, Lake Silverwood, Lake Piru, Pyramid Lake, and Lower Otay Lake, directly eliminated California red-legged frog habitat or fragmented remaining aggregations (Jennings et al. 1992). Reservoirs also typically are stocked with exotic species of fish and the introduced bullfrog (*Rana catesbeiana*). These species often expand into previously isolated California red-legged frog habitat. The timing and duration of water releases from reservoirs, particularly on the central California coast, can render a stream unsuitable for California red-legged frog production (M. Jennings, *in litt.*, 1993) or maintain aggregations of exotic predators in downstream areas that would normally be dry in summer (S. Sweet, *in litt.*, 1993). Hayes and Jennings (1988) found that California red-legged frogs generally were extirpated from a drainage 1 to 5 years after filling of a reservoir. See Factor C below for further discussion of exotic predators.

A variety of proposed water projects threaten remaining California red-legged frog populations. Construction of major reservoirs is proposed on Los Banos Creek (Merced County), with Orestimba Creek (Stanislaus County) as an alternative reservoir site (California Department of Water Resources and the U.S. Bureau of Reclamation 1990), and on Kellogg Creek (Contra Costa County) (Contra Costa Water District 1993). These sites represent three of six sites remaining in the Central Valley hydrographic basin with known or potential aggregations of California red-legged frogs. On the Salinas River on the central coast, raising the height of Salinas Dam (Santa Margarita Lake) is proposed in San Luis Obispo County. Reservoir construction at this site may allow exotic predators access to formerly secure aggregations of California red-legged frogs isolated in upper portions of the watershed (L. Hunt, *in litt.*, 1993). Other large reservoir projects proposed in California red-legged frog habitat include the Upper Nacimiento River Project and Arroyo Seco Dam Project in Monterey County. In Santa Barbara and Ventura Counties, proposed dams on the Santa Ynez River, Sisquoc River, and Sespe Creek also would eliminate or degrade California red-legged frog habitat (S. Sweet, pers. comm., 1993).

Proposed or existing water diversions, well development, or small reservoir construction projects to supply residential uses on the central coast (e.g., San Simeon, Santa Rosa, Van Gordon, Villa, San Luis Obispo, Chorro, Pico, and Little Pico Creeks, Arroyo del Puerta, and Arroyo Laguna in San Luis Obispo County; the Carmel and Salinas River drainage basins in Monterey County; Canada de Refugio in Santa Barbara County) reduce instream flows and, when combined with drought, degrade or eliminate riparian habitat and create stressful conditions for California red-legged frogs. See Factor E below for additional discussion of the effects of drought. Small reservoirs also serve as a source of exotic fishes and bullfrogs (G. Rathbun and M. Jennings, *in litt.*, 1993). The proposed coastal branch of the State Water Project likely would result in a number of adverse effects to California red-legged frogs in many of the 24 areas receiving State water, including (1) altered water regimes in existing and any proposed delivery facilities of individual water districts, (2) spills, leaks, malfunctions, and operational errors that lead to introduction of exotic predators into isolated stream segments currently

occupied by California red-legged frogs, and (3) indirect effects associated with expanded urbanization.

Storm damage repair and flood control maintenance of streams is a widespread and ongoing threat to California red-legged frogs. Routine flood control maintenance includes vegetation removal, herbicide spraying, shaping of banks to control erosion, and desilting of the creek. All of these activities degrade California red-legged frog habitat. In San Luis Obispo and Santa Barbara Counties, maintenance work is planned for 14 and 11 drainages, respectively. All 25 drainages are known to be inhabited by California red-legged frogs. In Santa Barbara County, a larger channel maintenance project is proposed for a 4.5-mile stretch of the Santa Ynez River near Lompoc and a 10-mile segment of San Antonio Creek, both of which support California red-legged frog habitat. Channel maintenance at San Francisco International Airport threatens one of the three largest remaining aggregations of this subspecies.

Regular road maintenance activities involving grading in or adjacent to California red-legged frog habitat can result in increased siltation in the stream. If this siltation occurs during the breeding season, asphyxiation of eggs and small California red-legged frog larvae can result. On the upper Santa Ynez River and Sespe Creek in Los Padres National Forest, Sweet (pers. comm., 1993) observed California red-legged frog egg masses smothered with silt.

Livestock grazing is another form of habitat alteration that is contributing to declines in the California red-legged frog. Jennings et al. (1992) found livestock grazing to occur at all known historic locations of the California red-legged frog in the Central Valley hydrographic basin. Livestock grazing also has been implicated as a contributing factor in the decline and disappearance of California red-legged frogs from the lower Salinas River (L. Hunt, *in litt.*, 1993) and the San Francisco peninsula (S. Barry, *in litt.*, 1992). Two remaining aggregations of California red-legged frogs in the Central Valley hydrographic basin (Corral Hollow Ecological Reserve and Frank Raines Regional Park) are threatened by sedimentation of aquatic habitats either directly or indirectly caused by livestock grazing and off-road vehicle use (Jennings et al. 1992). Rathbun (pers. comm., 1993) reports that grazing is adversely altering California red-legged frog habitat on Pico, Van Gordon, San Simeon, Santa Rosa, Cambria Meadows, and Cayucos Creeks in San Luis Obispo County.

Numerous studies, summarized in Behnke and Raleigh (1978) and Kauffman and Krueger (1984), have shown that livestock grazing negatively affects riparian habitat. Cattle have a disproportionately greater adverse affect on riparian and other wetland habitats because they tend to concentrate in these areas, particularly during the dry season (Marlow and Pogacnik 1985). Cattle trample and eat emergent and riparian vegetation, often eliminating or severely reducing plant cover (Gunderson 1968, Duff 1979). Loss of riparian vegetation results in increased water temperatures (Van Velson 1979), which encourage bullfrog reproduction (bullfrogs are a predator and competitor of California red-legged frogs). Riparian vegetation loss due to cattle grazing includes the loss of willows (Duff 1979), which are associated with the highest densities of California red-legged frogs (Jennings 1988b). Cattle grazing also results in increased erosion in the watershed (Lusby 1970, Winegar 1977), which results in the sedimentation of deep pools (Gunderson 1968) used by California red-legged frogs and adversely affects aquatic invertebrates (Cordone and Kelley 1961), which are common prey items of California red-legged frogs.

Off-road vehicle use adversely affects California red-legged frogs in ways similar to livestock grazing. Off-road vehicles damage riparian vegetation and increase siltation in pools. Off-road vehicles also disturb the water in stream channels and may crush eggs, larvae, juveniles or adults. California red-legged frogs were eliminated either all or in part by off-road vehicle activities at the Mojave River above Hesperia, at Rincon Station on the San Gabriel River, and at Piru Creek above Pyramid Lake (M. Jennings, pers. comm., 1993).

Timber harvest threatens California red-legged frogs through loss of riparian vegetation, which is needed for cover and water temperature regulation, and increased erosion in the watershed, which fills pools with sediment and smothers egg masses. In Santa Cruz County, timber harvest is proposed adjacent to Adams Creek (Celia Scott, private citizen, pers. comm., 1993), 1 of 12 remaining streams in the county that support California red-legged frogs.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Records of harvesting California red-legged frogs for food date back to an account by Lockington (1879) of the commercial harvest of this species for the San Francisco market. From 1890 to 1900, the California red-legged frog supported a significant commercial fishery (Smith 1895) with about 80,000 frogs harvested annually (Jennings and Hayes 1984). Counties surrounding San Francisco Bay provided the bulk of the frog harvest in the early to mid 1890s, with the Sacramento and San Joaquin Valleys increasing in importance by the end of the decade (Chamberlain 1898, Jennings and Hayes 1985). By 1900, harvest figures for California red-legged frogs fell dramatically, indicating that overharvesting may have occurred. Jennings and Hayes (1985) hypothesized that this rapid decline in the California red-legged frog population was the result of selective harvesting of the larger females. Introduction of the bullfrog in California in 1896 was probably in response to the dwindling California red-legged frog population (Jennings and Hayes 1985).

Prior to 1950, California red-legged frogs were used sporadically for research in high schools and universities. At present, the California red-legged frog is sold commercially from suppliers located outside California in the pet trade. Because the State of California prohibits possession of wild California red-legged frogs, frogs sold in the pet trade presumably are reared in captivity (M. Jennings, pers. comm., 1993). However, California red-legged frogs occur in isolated and fragmented wetland habitat on private property and are at risk from vandalism.

C. *Disease or predation.* There have been no documented instances of disease adversely affecting the California red-legged frog.

Few data are available on the effect of native predators on the California red-legged frog. Bitterns (*Botaurus lentiginosus*) and black-crowned night herons (*Nycticorax nycticorax*) are likely predators of adult frogs (Jennings and Hayes 1990). Juvenile California red-legged frogs, which are more active diurnally and less wary than adults, may be more susceptible to predation by diurnal predators, such as the great blue heron (*Ardea herodias*) and several species of garter snakes (*Thamnophis* sp.) (Fitch 1940, Fox 1952), including the endangered San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) (Barry 1978, Wharton et al. 1986). Recent post-metamorphs also may be particularly vulnerable to predation by garter snakes, as was found in other species of ranid frogs by Arnold and Wassersug (1978).

Introduced predators of particular concern are the bullfrog, red swamp crayfish (*Procambarus clarkii*), signal crayfish (*Pacifastacus leniusculus*), and several species of fish, including bass (*Micropterus* spp.), catfish (*Ictalurus*

spp.), sunfish (*Lepomis* spp.), and mosquitofish (*Gambusia affinis*) (Moyle 1973; Hayes and Jennings 1986, 1988). All species were introduced into California in the late 1800s and early 1900s, and through range expansions, reintroductions, and transplants have become established throughout most of the state (Riegel 1959, Bury and Luckenbach 1976, Moyle 1976).

Several researchers in central California have noted the decline and eventual disappearance of California red-legged frogs once bullfrogs become established at the same site (L. Hunt, *in litt*, 1993; S. Barry, *in litt.*, 1992; S. Sweet, *in litt.*, 1993). Moyle (1973) attributed the disappearance of California red-legged frogs from the San Joaquin Valley and Sierran foothill region primarily to a combination of bullfrog predation and competition. All sites in the Sierra Nevada mountains that supported California red-legged frogs in the 1970s now are inhabited by bullfrogs (M. Jennings, *in litt.*, 1993). Over 65 percent of the streams or drainages currently known to support California red-legged frogs also are inhabited by bullfrogs, either in association with California red-legged frogs or in other portions of the drainage. Over the last decade, Jennings (*in litt.*, 1993) has observed bullfrogs moving upstream and/or downstream into formerly isolated California red-legged frog habitat in a number of drainages, including streams in Ventura, Santa Barbara, San Luis Obispo, Merced, Stanislaus, and San Mateo Counties. Game fish are introduced into drainages by stocking of reservoirs and ponds, dispersal and colonization, conveyance of project water from other streams inhabited by these exotics, and releases by individuals. At The Nature Conservancy Santa Rosa Plateau Reserve in Riverside County (the only site south of the Santa Clara River supporting California red-legged frogs), a docent found a school teacher attempting to introduce bullfrog tadpoles into the preserve in the 1980s (M. Jennings, *in litt.*, 1993). Once established, it is virtually impossible to eliminate bullfrogs (M. Jennings, *in litt.*, 1993; Cecil Schwalbe, National Park Service, Tuscon, Arizona, pers. comm., 1993; Frank Slavens, Woodland Park Zoological Gardens, Seattle, Washington, pers. comm., 1993).

Bullfrogs prey on California red-legged frogs (Twedt 1993; S. Sweet, *in litt.*, 1993) and other amphibians and aquatic reptiles (Schwalbe and Rosen 1988). Twedt (1993) documented 4 juvenile red-legged frogs in the contents of a total of 22 adult bullfrog stomachs. He also found a subadult bullfrog in one of the adult bullfrog stomachs; this prey item was between the size of an adult male (approximately 55 millimeters (2 inches)) and adult female (approximately 70 millimeters (3 inches)) red-legged frog, indicating that bullfrogs also undoubtedly prey on adult red-legged frogs. Bullfrogs may have a competitive advantage over red-legged frogs because of their (1) larger size, (2) generalized food habits (Bury and Whelan 1984), (3) extended breeding season (Storer 1933), which allows for production of two clutches of eggs during a breeding season (Emlen 1977), (4) apparent olfactory rejection of larvae by predatory fish (Kruse and Francis 1977), and (5) diminished activity periods (Woodward 1983), which also reduces their exposure to predators. Bullfrogs also interfere with red-legged frog reproduction. Several researchers have noted red-legged frogs in amplexus (mounted on) with bullfrogs (Jennings and Hayes 1990; Twedt 1993; M. Jennings, *in litt.*, 1993; Stebbins *in litt.*, 1993). However, the extent to which bullfrog predation, competition, and reproductive interference adversely affects red-legged frogs has not been studied in the field (Hayes and Jennings 1986). Habitat alterations, including removal of riparian or aquatic vegetation, reduced stream flows, and sedimentation of pools, often provide conditions detrimental to red-legged frogs but favorable to bullfrogs (Hayes and Jennings 1986; Jennings, pers. comm., 1993).

Hayes and Jennings (1986, 1988) noted an inverse correlation between the abundance of introduced fish species and red-legged frogs. Aquatic sites where introduced fishes were abundant rarely had native ranids, and when present, ranid populations were small. A similar negative correlation was reported by Hunt (*in litt.*, 1993) for red-legged frogs in the Salinas River drainage and by Moyle (1973) for the foothill yellow-legged frog (*Rana boylii*). Stocking of warm water game fish is often included as a mitigation measure in proposed reservoir projects. Results of a recent study indicate that, despite their small size, mosquitofish do prey on and incapacitate red-legged frog tadpoles by eating their fins. This mosquitofish predation may be more significant than predation by bluegill (*Lepomis macrochirus*) or bullfrogs (Michael Soulé and Randy Schmieder, University of California, Santa Cruz, pers. comm., 1993). Mosquitofish have become established statewide and are stocked routinely by mosquito abatement districts as a control measure (Moyle 1976). The demonstrated adverse effects and widespread distribution of alien fishes on red-legged frogs indicate that fish introductions are one of the primary threats to the survival of the species.

D. *The inadequacy of existing regulatory mechanisms.* In 1972, the California Fish and Game Commission amended its sport fishing regulations to prohibit take or possession of California red-legged frogs (Bury and Stewart 1973). This law, however, provides no protection for habitat of the California red-legged frog. The California red-legged frog also is classified as a "Species of Special Concern" in California (Steinhart 1990). This designation, however, provides no special, legally mandated protection.

The Clean Water Act (section 404) is the primary Federal law that could provide some protection for aquatic habitats of the California red-legged frog if the habitats are determined by the U.S. Army Corps of Engineers (Corps) to be jurisdictional areas (i.e., waters of the United States). Under section 404, nationwide permits, which undergo minimal public and agency review, can be issued for projects involving less than 10 acres of wetlands above the headwaters (i.e., streams with less than 5 cubic feet per second (cfs) mean annual flow) or for isolated waters, unless a listed species may be adversely affected. Many aggregations of California red-legged frogs occur in isolated wetlands and coastal streams that may have mean annual flows less than 5 cfs. Individual permits, which are subject to more extensive review, could be required for projects that have more than minimal impacts to waters of the United States. The Clean Water Act does not afford any special protection for candidate species. However, if the California red-legged frog is listed, the Corps would be required by section 7 of the Act to consult and obtain the concurrence of the Service prior to the authorization of any section 404 permit.

Federal lands, including those of the Forest Service, National Park Service, Bureau of Land Management, and Department of Defense, encompass approximately 10 percent of the current known range of the California red-legged frog. Multiple land use management, as currently practiced by the Forest Service, Bureau of Land Management, and National Park Service, does not provide long-term protection for the California red-legged frog.

E. *Other natural or man-made factors affecting its continued existence.* Four consecutive years of drought in California (1986–1990) severely affected remaining California red-legged frogs in

the Sierra foothills. According to the petitioners, several thousand hours of field surveys have revealed only one California red-legged frog since 1985 (Jennings et al. 1992). Many sites in intermittent streams that held California red-legged frogs before the drought were completely dry during field surveys. Sites still holding pools of water had water levels so low that access by predators was enhanced. Livestock grazing at many sites exacerbated effects of the drought by limiting or preventing riparian habitat regeneration (Jennings et al. 1992). Jennings et al. (1992) concluded that California red-legged frogs have been extirpated from the Sierra Nevada foothills or are extremely rare and vulnerable. Amphibian surveys of Sierran National Forests in 1992 revealed no California red-legged frogs (David Martin, University of California, Santa Barbara, pers. comm., 1993).

On the central California coast, drought also may play a role in decreased California red-legged frog reproduction where frogs occur in coastal lagoons. At Pescadero Marsh Natural Preserve, Jennings and Hayes (1990) found that many dead egg masses in a portion of the marsh likely were killed by excessive (> 4.5 parts per thousand) salinity levels. High salinities in the marsh were attributed to drought conditions in the watershed. Rathbun et al. (1991) attributed the absence of California red-legged frogs in lower Santa Rosa Creek and lagoon in San Luis Obispo County to overallocation of instream flows exacerbated by the drought. Increased salinities were recorded in several other coastal lagoons during the drought years (C. Swift and K. Worcester, pers. comm. in Jennings et al. 1992). In 1993, Jennings (pers. comm., 1993) reported the loss of California red-legged frog egg masses from increased salinity in Arroyo Laguna in San Luis Obispo County. Because significant numbers of California red-legged frogs occur in coastal lagoons on the central California coast, drought has the potential to severely reduce production of California red-legged frogs over a significant portion of their remaining range.

Reservoirs provide persistent habitat for bullfrogs during drought. Once rains return, bullfrogs recolonize former habitat as reservoir levels rise. Reservoirs, however, with their steep sides and lack of critical riparian vegetation, are structurally unsuitable for the California red-legged frog.

Periodic wildfires may adversely affect California red-legged frogs by causing direct mortality, destroying streamside vegetation, or eliminating vegetation that protects the watershed. The 1991 Lions Fire on upper Sespe Creek in the Los Padres National Forest destroyed known California red-legged frog habitat (S. Sweet, pers. comm., 1993). Following the fire, extensive erosion in the watershed also negatively affected California red-legged frogs (S. Sweet, pers. comm., 1993).

Extensive flooding has been implicated by Jennings and Hayes (in press) as a significant contributing factor in the extirpation of the California red-legged frog from desert drainages of southern California. For example, in the Mojave River drainage, no verifiable records or sightings exist of California red-legged frogs after 1968 (Jennings and Hayes in press). The disappearance of this species from the drainage coincided with a catastrophic flood event in the Mojave River in the winter of 1968–1969.

The high degree of fragmentation of remaining California red-legged frog habitat makes this subspecies especially vulnerable to random extinction events and to loss of genetic variability. Small population size increases rates of inbreeding and may allow expression of deleterious recessive genes occurring in the population (known as "inbreeding depression"). Loss of genetic variability, through random genetic drift, reduces the ability of small populations to respond successfully to environmental stresses. In the remaining vestiges of its former habitat and with its potentially reduced genetic variability, the California red-legged frog is vulnerable to random or stochastic events, such as fluctuations or variations of annual weather patterns (as discussed above), availability of food, predation and associated demographic uncertainty, of other environmental stresses. With only three areas currently supporting over 350 adults, all remaining populations of the species are considered vulnerable to stochastic threats.

The Service carefully has assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the California red-legged frog in determining to propose this rule. Based on this evaluation, the preferred action is to list the California red-legged frog (*Rana aurora draytonii*) as endangered. This subspecies has been extirpated from 75 percent of its former range. Seventy-seven percent of remaining aggregations currently are threatened by one or more factors, including (1) introduction of exotic predators and competitors, (2) urban encroachment, (3) construction of large and small reservoirs, water diversions and well development, (4) flood control maintenance, (5) grazing, and (6) timber harvest. Only 44 drainages, with the majority being in Monterey, Santa Barbara, and San Luis Obispo Counties, currently provide habitat free from the above threats. Fragmentation of habitat, however, renders these populations vulnerable to random extinction (stochastic) events. For the reasons discussed below, critical habitat is not being proposed at this time.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for the California red-legged frog.

As discussed under Factor B in the "Summary of Factors Affecting the Species" section, the California red-legged frog has been and continues to be threatened by taking, an activity difficult to control. Listing of the frog may result in an increase in the threat of vandalism, a concern expressed by the petitioners and other experts (M. Jennings, S. Sweet, pers. comms., 1993). California red-legged frogs occur in isolated and fragmented wetland habitat on private property and are at risk from vandalism. Publication of specific localities, which would be required in proposing critical habitat, would reveal precise locality data and thereby make the species more vulnerable to collection and acts of vandalism, and increase the difficulties of enforcement. Protection of this species' habitat will be addressed in the recovery process and through the section 7 consultation process. Therefore, it would not now be prudent to determine critical habitat of the California red-legged frog.

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 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) 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 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.

Federal agencies that may be involved as a result of this proposed rule are the Bureau of Reclamation, Bureau of Land Management, National Park Service, Forest Service, and the Departments of the Army, Navy and Air Force. At several parks, the National Park Service has conducted or is planning to conduct surveys of California red-legged frogs on park property (Daphne A. Hatch, National Park Service, *in litt.*, 1993; James Sleznick, National Park Service, *in litt.*, 1992; Gary Fellers, National Park Service, pers. comm., 1993). The Forest Service has conducted and has ongoing amphibian surveys in many National Forests within the historic range of the California red-legged frog (J. Stephenson, pers. comm., 1993; D. Martin, pers. comm., 1993). The Bureau of Reclamation is cosponsoring a proposed reservoir construction project (Los Vaqueros Reservoir) on Kellogg Creek, Contra Costa County (Contra Costa Water District 1993). A mitigation and monitoring program is proposed to compensate for California red-legged frog habitat losses. The mitigation plan includes a bullfrog and exotic fish control program to be carried out for the life of the reservoir project (Contra Costa Water District 1993). The potential for success of the mitigation plan is unknown. The proposed Los Banos Grande reservoir project on Los Banos Creek in Merced County, also cosponsored by the Bureau of Reclamation, does not provide mitigation specifically for the California red-legged frog (Cay Goude, Fish and Wildlife Service, pers. comm., 1993). The U.S. Army Corps of Engineers would be involved through their permitting authority under section 404 of the Clean Water Act. Any of the above mentioned Federal agencies would be required to consult with the Service if any action they fund, authorize, or carry out is likely to jeopardize the continued existence of the California red-legged frog.

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. With respect to the California red-legged frog, 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 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 and threatened 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. Requests for information on permits should be addressed to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; FAX 503/231–6243).

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 the California red-legged frog;

(2) The location of any additional populations of the California red-legged frog 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 the California red-legged frog;

(4) Any examples of take or vandalism of California red-legged frogs; and

(5) Current or planned activities in the subject area and their possible impacts on the California red-legged frog.

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 in the **Federal Register**. Such requests must be made in writing and addressed to the Field Supervisor of the Sacramento Field Office (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

A complete list of all references cited herein is available upon request from the Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Karen J. Miller, Sacramento Field Office (see **ADDRESSES** section), telephone 916/978–4866.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes 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, 10080 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under Amphibians, 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						
•	•	•	•	•	•	•	•
•	•	•	•	•	•	•	•
Amphibians							
Frog, California red-legged.	*Rana aurora draytonii.*	U.S.A. (CA)	Entire (excluding populations in Humboldt, Trinity, and Mendocino Cos., CA; Sonoma Co, CA, north and west of 38° 30′ N, 123° W; and NV).	E	.....	NA	NA
•	•	•	•	•	•	•	•

Dated: January 26, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–2303 Filed 2–1–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 940120–4020; I.D. No. 011094A]

RIN No. 0648–AE05

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce (Secretary) requests public comments on a proposed rule to implement Amendment 11 (amendment) to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries Off the Coasts of Washington, Oregon, and California (FMP). Amendment 11 would modify the spawning escapement goal for Oregon coastal natural (OCN) coho salmon and the criteria for establishing and managing subarea allocations for recreational coho salmon harvest south of Cape Falcon, Oregon (45°46′00″ N. lat.). The amendment is intended to: (1) Address persistent low OCN coho stock abundance and annual escapement goals below maximum sustainable yield (MSY); (2) to prevent imbalances in recreational coho harvest allocation at low allowable harvest levels; and (3) to prevent the frequent use of emergency rulemaking to implement annual management measures.

DATES: Written comments on the amendment and the proposed rule must be received by March 21, 1994.

ADDRESSES: Comments should be sent to J. Gary Smith, Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700-Bldg. 1, Seattle, WA 98115-0070, or Dr. Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90802–4213. Copies of the amendment, including the environmental assessment and the regulatory impact review/initial regulatory flexibility analysis, are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201–5344.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney R. McInnis at 310–980–4040, or Lawrence D. Six at 503–326–6352.

SUPPLEMENTARY INFORMATION: The ocean salmon fisheries in the exclusive economic zone of the United States (3 to 200 miles offshore) in the Pacific Ocean off the coasts of Washington, Oregon, and California are managed under the FMP. The FMP was developed by the Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act), and approved by the Secretary in 1978. Since then, the FMP has been amended 10 times, with implementing regulations codified at 50 CFR part 661. From 1979 to 1983, the FMP was amended annually. In 1984, a framework amendment was implemented that provided the mechanism for making preseason and inseason adjustments in the regulations without annual amendments. Amendments to the framework FMP were implemented in 1987, 1988, 1989, and 1991.

The Council prepared Amendment 11 to the FMP and submitted it to the Secretary for approval under the provisions of the Magnuson Act. On January 10, 1994, the Secretary began formal review of the amendment. A notice of availability for Amendment 11 was filed with the Office of the Federal Register on January 14, 1994, announcing a public comment period on the amendment.

The FMP amendment process for Amendment 11 was initiated at the April 6–9, 1993, Council meeting with the presentation of several alternative proposals by the Oregon Department of Fish and Wildlife (ODFW) to address OCN coho salmon management concerns. Council discussions at its September 15–17, 1993, meeting identified three alternatives, in addition to the status quo, requiring further analyses. A draft amendment was prepared and distributed to interested persons for review in October 1993. Comments were invited, and public hearings were held November 8–10,

1993, in Tillamook and Coos Bay, Oregon, and Eureka, California (58 FR 57978, October 28, 1993). During the public hearings, the ODFW and the California Department of Fish and Game (CDFG) presented for Council consideration a joint recommendation regarding recreational allocation.

After considering the comments received on the draft amendment at the public hearing and Council meetings, and from its Salmon Technical Team, Salmon Advisory Subpanel, and Scientific and Statistical Committee, the Council, at its November 17–19, 1993, meeting, selected the preferred alternative, which is based on the joint recommendation by the ODFW and CDFG. The Council's recommendation is a modification of the alternatives described in the draft amendment for public review and falls within the scope of those alternatives.

The purpose of Amendment 11 is to modify the spawning escapement goal for OCN coho salmon, and the criteria for establishing and managing, when harvest levels are low, subarea allocations for recreational coho salmon harvest south of Cape Falcon, Oregon. The OCN coho stock is composed of naturally produced coho salmon from Oregon coastal streams. OCN coho are important contributors to the ocean salmon harvest, as the stock aggregate constitutes the largest component of naturally produced coho caught in ocean salmon fisheries off Oregon and California. In any given year, OCN coho stock numbers are used to set the allowable coho harvest rate for combined natural and hatchery production for the area south of Cape Falcon.

Spawning Escapement Goal

Prior to 1987, the OCN coho spawning escapement goal was 200,000 adults, the MSY spawning escapement level determined by the ODFW. The current method of determining the OCN coho spawning escapement goal and harvest rate was adopted by the Council in 1986 and implemented by Amendment 7 to the FMP beginning in 1987. Amendment 7 established an OCN spawning escapement goal floor of 135,000 coho for estimated ocean abundances of up to 270,000 coho. the spawning escapement goal changes to 50 percent of the ocean abundance (50 percent harvest rate) for ocean abundances between 270,000 and 400,000 coho, and is capped at 200,000 coho for ocean abundances above 400,000 coho.

Amendment 7 was intended to allow some additional harvest in years when unusual conditions such as the 1983 El Niño might temporarily reduce stock abundance below 400,000 coho. The analysis supporting Amendment 7 indicated that implementing the amendment would provide increased economic benefits with a low likelihood that occasionally allowing the spawning escapement to drop to the floor level of 135,000 would jeopardize the continued productivity of the OCN stock.

The analysis supporting deviations from the fixed 200,000 spawning escapement goal at low stock sizes assumed that such deviations would occur infrequently. However, since 1985 the annual spawning escapement goal has been set below the 200,000 MSY level 50 percent of the time, and since 1979 the actual spawning escapement has met or exceeded 200,000 coho in only a single year, 1984. During this same period, the post-season estimates of total OCN stock size have not exceeded 360,000 coho salmon, compared to the 700,000 stock size that is believed to represent the MSY level. The reasons for this extended stock depression are not completely understood. Factors contributing to the decline of OCN coho include widespread and significant degradation of freshwater habitat, an extended period of poor ocean survival, and overestimation of stock abundance.

The methodology for predicting the ocean abundance of OCN coho south of Cape Falcon has had mixed results since 1984. Despite a rigorous technical review of the OCN predictor by the Council in 1987, the predictor has consistently and significantly overestimated preseason abundance since its adoption in 1988. As a result, the formula in the FMP for calculating the spawning escapement goal and associated ocean harvest rate for OCN coho has resulted in overharvest and spawning escapement falling short of its goal for the past 6 years.

In April 1991, the Council established an overfishing work group to review the status of OCN coho. This assessment was completed in February 1992 and included a review of the stock abundance predictor. While the current methodology was under review, the Council was not able to implement a new methodology that was more reliable than the current predictor for estimating ocean abundance. To compensate for the overestimation bias in the current predictor, the Council relied on emergency regulations in 1991, 1992, and 1993 to reduce the ocean harvest rate on OCN coho from the levels set in Amendment 7, thus allowing additional natural spawners to escape the ocean fisheries.

Amendment 11 would modify the OCN coho spawning escapement goal so as to achieve an aggregate OCN adult spawning density of 42 naturally spawning adults per mile in standard index survey areas each year. The standard index survey areas are 48 different stream sections that have been surveyed by ODFW each year since 1950. Under the current methods used by ODFW, the number of spawners in the standard index area is extrapolated for 4,764 miles of coastal spawning habitat. This translates to a numerical spawning escapement goal of 200,000. The original FMP spawning escapement goal of 200,000 was based on this expansion. This number of adult spawners per mile was documented as the estimated MSY spawning escapement level in an ODFW study of coastal stream spawning escapements and subsequent production from 1950 to 1980. The ODFW is currently in the fourth year of a 5-year study to confirm the relationship between the number of natural spawners counted in standard index survey areas and the total OCN coho salmon spawning populations. This study may provide a better definition of the total OCN coho spawning population when it is completed, and the results may lead to revisions in the estimated total number of spawners at the MSY level that is calculated by extrapolating from the 42 adults per mile in the standard index survey areas. This type of change would not necessitate any further changes to the FMP or its implementing regulations. If further studies result in recommended changes to the optimum number (42) of adult spawners per mile in the standard index survey areas, the FMP will need to be amended or, if the change is purely technical, the spawning escapement goal may be revised through the framework provided in 50 CFR 661, Appendix IV.B. At this time, however, Amendment 11 represents the best available science.

Amendment 11 also states that when OCN coho abundance is forecast to be less than 125 percent of the annual numerical escapement goal, or below 250,000 fish at the present spawner escapement goal of 200,000 adults, an incidental exploitation rate of up to 20 percent would be allowed for ocean and freshwater fisheries targeting on non-OCN coho salmon stocks. Concern was expressed that, when OCN coho abundance forecasts are below 168,750, the proposal for up to a 20 percent incidental harvest rate could allow OCN coho spawning escapements below the 135,000 fish floor currently contained in the FMP. In response to this concern,

the Council modified the proposal to emphasize that the 20 percent represented a maximum harvest rate. The Council will evaluate the actual level of incidental harvest of OCN coho that might be expected to occur in fisheries for chinook salmon and non-OCN coho salmon and will recommend only the minimum incidental harvest rate necessary to prosecute other fisheries, provided the rate chosen will cause no irreparable harm to the OCN stock.

Recreational Harvest Allocation

Amendment 11 also proposes to modify the subarea allocations for the recreational fishery south of Cape Falcon when the allowable recreational coho allocation for the entire area is equal to or less than 167,000 fish. This modification is intended to maintain the historical catch distribution between Oregon and California when stock sizes are at low levels, so that one geographical area is not disproportionately affected by the harvest reductions.

Due to the northward migration pattern of the affected coho stocks, coho landings occur early in the season off California and gradually move north into Oregon. Coho landings south of Humbug Mountain, Oregon (42° 40'30" N. lat.), taper off dramatically after July, whereas central Oregon fisheries tend to reach peak coho landings in July and August with fish available into September. Currently, when the recreational coho quota south of Cape Falcon is reached, the recreational fishery for coho remains open south of Humbug Mountain. In the past, the south of Cape Falcon coho quota has generally been reached after mid-August; the impacts of allowing the California recreational fishery to continue have been minor, as the season has been near the end and coho catches are generally very low south of Humbug Mountain.

With the reduction in the coho quotas and overall harvest rates caused by low coho abundance, it is possible that early fisheries to the south could catch most of the available coho impacts before fish become readily available off central Oregon, resulting in a shift of the harvest to southern Oregon and California fisheries. An example of such a redistribution occurred during the 1993 season.

In 1993, 68,000 coho were available for the recreational fishery south of Cape Falcon. The recreational season off central Oregon was closed on August 10 with 56 percent of the recreational harvest caught south of Humbug Mountain and 25 percent occurring south of Horse Mountain, California (40° 05'00" N. lat.). From 1976 to 1992 for comparison, the recreational coho harvest south of Cape Falcon averaged over 200,000 coho and the harvest south of Humbug Mountain averaged 23 percent, with 2 percent occurring south of Horse Mountain.

To maintain the historical catch distribution given the current low harvest levels, Amendment 11 establishes two subareas with independent impact quotas to ensure that a large southward shift in the recreational harvest does not occur. Of the total recreational allocation, the subarea from Cape Falcon to Humbug Mountain, Oregon, receives 70 percent and the subarea south of Humbug Mountain receives 30 percent, with the percentages being based on avoiding large deviations from historical harvest shares. Except for the area south of Point Arena, California (38° 57'30" N. lat.), the two subareas will be managed for their respective impact quotas, and the recreational fisheries for coho salmon in each area may be closed upon attainment of the quota. South of Humbug Mountain, there are 2 additional conditions: (1) An impact guideline of 3 percent of the overall south of Cape Falcon recreational allocation will be applied from Horse Mountain to Point Arena, California; and (2) the recreational fishery for coho salmon will not be closed south of Point Arena, even if the fishery between Humbug Mountain and Point Arena is closed, upon projected attainment of the south of Humbug Mountain impact quota, but the projected harvest through the end of the year will be included in the south of Humbug Mountain impact quota. Quota transfers between subareas are allowed on a one-for-one basis, but only if chinook constraints preclude access to coho.

Selection of 167,000 as the trigger for this allocation is based on 2 factors: (1) It represents a low harvest level at which a southward shift is likely due to the migratory pattern of coho and the timing of normal fishing seasons, and (2) it is the upper limit of the recreational allocation that is subject to reduction to meet hook-and-release mortality in the commercial all-salmon-except-coho fishery.

Implementation of Amendment 11 would require changes to the regulatory language in the appendix to 50 CFR part 661.

Classification

Section 304(a)(1)(D) of the Magnuson Act, as amended, requires the Secretary to publish regulations proposed by a Council within 15 days of receipt of the amendment and regulations. At this time the Secretary has not determined that the amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

This action is not significant and is not subject to review under E.O. 12866.

This proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act. The Council prepared a regulatory impact review (RIR) and an initial regulatory flexibility analysis (IRFA), which are incorporated in the Amendment 11 document and may be obtained from the Council (see **ADDRESSES**). A summary of the economic impacts evaluated apply to small business entities because this industry consists primarily of small entities. Under the Council's recommended alternative that eliminates the sliding scale escapement goal, allowable coho ocean harvests will be reduced in the short term, with the changes in net economic value (NEV) in the millions of dollars (estimates of −$1.5 million and −$3.2 million were made based on landings data for 1990 and 1992, respectively). Over the long term, some stock rebuilding is expected, resulting in an increase in allowable harvests and a reduction in the negative effects in any one year. Expression of the spawning escapement goal in terms of a number of fish per mile in standard index survey areas is expected to reduce administrative costs by allowing the Council to use the best available information to achieve MSY escapement without emergency regulations or FMP amendments. At reduced allowable harvest levels for the recreational fishery (under 167,000 coho), the Council's recommended alternative will maintain harvest shares between central Oregon and areas south of Humbug Mountain close to historic levels and minimize any controversy resulting from a geographic shift of harvest from northern to southern areas.

The Council prepared an environmental assessment for this amendment that concludes there will be no significant impact on the human environment as a result of this rule. The environmental assessment has been incorporated in the Amendment 11 document and may be obtained from the Council (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA, has determined that this rule, if implemented, is not like to

adversely affect Snake River sockeye salmon, Snake River spring/summer chinook salmon, Snake River fall chinook salmon or Sacramento River winter-run chinook salmon, species listed under the Endangered Species Act. This rule will generally apply a more conservative management standard for coho salmon off Oregon and California. Given the integrated management structure of chinook and coho fisheries, the rule will generally reduce impacts and, therefore, have a beneficial effect on the currently listed species. In addition, no fishing on these stocks will occur until a section 7 consultation has been completed governing the annual harvest regime under the FMP.

NMFS has received petitions to list two coho stocks from central California (March 11, 1993), five Oregon stocks (July 21, 1993), and a coastwide petition for all coho salmon (October 20, 1993). In response to the first two petitions, NMFS published a notice in the **Federal Register** announcing its intent to conduct a comprehensive status review to assess all coho stocks in Washington, Oregon, and California (October 27, 1993, 58 FR 57770). This rule will affect many of the stocks petitioned for listing. However, because the rule will implement more conservative standards for the management of coho fisheries, NMFS concludes that it would have a generally beneficial effect on petitioned coho salmon species as well.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

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

Dated: January 27, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 661 is proposed to be amended as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

1. The authority citation for part 661 continues to read as follows:

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

2. In the Appendix to part 661, in section II.B., a new sentence is added to the end of paragraph 2(b)(i), and a new paragraph 2(b)(v) is added to read as follows:

Appendix

* * * * *

II. Annual Changes to Management Specifications

* * * * *

B. Procedures for Establishing and Adjusting Annual Management Measures

* * * * *

2. Allocation of ocean harvest levels.

* * * * *

(b) *Coho south of Cape Falcon.* (i) * * * The recreational allowable ocean harvest will be distributed between the two major recreational subareas when the recreational allocation is equal to or less than 167,000 fish in accordance with paragraph 2(b)(v) of this section.

* * * * *

(v) When the recreational allocation is at 167,000 fish or less, the total recreational allowable ocean harvest of coho will be divided between two major subareas with independent impact quotas. The initial allocation will be 70 percent from Cape Falcon to Humbug Mountain and 30 percent south of Humbug Mountain. Coho transfers between the two impact quotas may be permitted on a one-for-one basis, if chinook constraints preclude access to coho. Horse Mountain to Point Arena will be managed for an impact guideline of 3 percent of the south of Cape Falcon recreational allocation. The recreational coho fishery between Humbug Mountain and Point Arena may be closed when it is projected that the harvest impact between Humbug Mountain and Point Arena, combined with the projected harvest impact that will be taken south of Point Arena to the end of the season, equals the impact quota for south of Humbug Mountain. The recreational fishery for coho salmon south of Point Arena will not close upon attainment of the south of Humbug Mountain impact quota.

* * * * *

3. In the Appendix to part 661, in section IV.A., the table "Summary of Specific Management Goals for Stocks in the Salmon Management Unit" is amended by revising the entry for Columbia River and Oregon Coastal Coho and its footnote 4 to read as follows:

* * * * *

SUMMARY OF SPECIFIC MANAGEMENT GOALS FOR STOCKS IN THE SALMON MANAGEMENT UNIT

System	Spawning[1] escapement goal
*	*
Columbia River and Oregon Coastal Coho.	Oregon coastal natural (OCN) coho spawning escapement is based on an aggregate density of 42 naturally spawning adults per mile in standard index survey areas.[4]
*	*

[1] Represents adult natural spawning escapement goal for viable natural stocks or adult hatchery return goal for stocks managed for artificial production.

* * * * *

[4] At OCN stock sizes below 125 percent of the annual numerical escapement goal, an exploitation rate of up to 20 percent will be allowed for incidental impacts of the combined ocean troll, sport, and freshwater fisheries. At OCN spawning escapements of 28 or fewer adults per mile, an exploitation rate of up to 20 percent may be allowed to provide only minimum incidental harvest to prosecute other fisheries, provided the rate chosen will cause no irreparable harm to the OCN stock.

* * * * *

[FR Doc. 94–2274 Filed 1–28–94; 9:55 am]

BILLING CODE 3510–22–M

50 CFR Part 685

[I.D. #012694F]

RIN 0648–AE35

Pelagic Fisheries of the Western Pacific Region

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

ACTION: Notice of Availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NMFS issues this notice that the Western Pacific Fishery Management Council (Council) has submitted Amendment 7 to the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (FMP) for review by the Secretary of Commerce and is requesting comments from the public. Amendment 7 would establish, among other matters, a limited entry program for the Hawaii-based longline fishery.

DATES: Comments will be accepted through March 28, 1994.

ADDRESSES: Comments should be mailed to Dr. Gary Matlock, Acting Regional Director, Southwest Region, NMFS, 501 West Ocean Boulevard,

Suite 4200, Long Beach, CA 90802. Clearly mark on the outside of the envelope "Comments on Amendment 7". Copies of the amendment and final environmental impact statement are available from Kitty B. Simonds, Executive Director, Western Pacific Fishery Management Council (WPFMC), 1164 Bishop Street, Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Southwest Region, NMFS, at (310) 980–4034, or Alvin Katekaru, Pacific Area Office, Southwest Region, NMFS, at (808) 955–8831; or Kitty B. Simonds, WPFMC, at (808) 523–1368.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Magnuson Act) requires that a regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. The Magnuson Act also requires that the Secretary, upon receiving the plan or amendment, must immediately make a preliminary determination whether the plan or amendment is sufficient to warrant continued review, and publish a notice that the plan or amendment is available for public review and comment. The Secretary accepted Amendment 7 for formal Secretarial review which began on January 26, 1994. The Secretary will consider all public comments received during the comment period in deciding whether to approve the amendment for implementation.

Amendment 7 to the FMP was prepared by the Council to address serious concerns about the impact of the expanded longline fishery on the status of fish stocks, the impact of increased longline catches on other fisheries, and interactions between longline fishing and protected species such as Hawaiian monk seals and sea turtles.

Among actions taken by the Council to address these concerns in the past was a request for an emergency rule and completion and submission of an FMP amendment imposing a moratorium on new entry into the longline fishery based in Hawaii. This moratorium was implemented in April 1991 and later extended to expire on April 22, 1994 as part of a final rule implementing Amendment 4 (October 16, 1991, 56 FR 51849). Amendment 7 would replace the moratorium on new entry into the Hawaii-based longline fishery with a new limited entry program for the Hawaii longline fishery.

This amendment addresses a number of concerns that are associated with the prospect of uncontrolled expansion of the longline fishery. The dramatically increased level of longline fishing harvest from the portion of the exclusive economic zone (EEZ) around Hawaii and from adjacent high seas could result in overfishing of stocks of Pacific pelagic management unit species throughout their range, most notably swordfish. Even if stocks are not affected on a stock-wide basis, the increased catches by U.S. longline vessels could adversely affect other established commercial and recreational handline and troll fisheries in the EEZ. Further, even if direct catch competition were not occurring, there would be considerable potential for market competition, both between the longline fleet and the troll and handline fleets and within the longline fishery itself. Unregulated expansion of the longline fishery could also increases the likelihood of adverse impacts on threatened and endangered species such as sea turtles which are known to be taken in the longline fishery.

On the other hand, the restrictions (e.g., limitations on permit transfers and on vessel upgrading) under the moratorium, in combination with area closures around the Northwestern and main Hawaiian Islands, that were imposed after the moratorium went into effect, have been adversely affecting a number of people who had qualified for longline permits under the moratorium. More than a quarter of the eligible fleet was inactive in 1992. In the Council's view, this has been an unintended negative effect of the management program. Further, restrictions on the longline fishery outside of the FEZ could have mixed effects on the nation. The United States would benefit if the fishery can expand without adverse effects on fish stocks, other fisheries, or protected resources and if similar controls are imposed on foreign fleets. In the absence of similar controls on foreign fleets, restricting the U.S. fleet may disadvantage the United States in any future negotiations leading to international regulation of longline fisheries and allocations of fish from the high seas.

In addition, this Amendment is intended to improve the administration of the longline fishery. New framework procedures are proposed to simplify and expedite the implementation of new regulations without a FMP amendment. This is intended to allow quicker response to new information. There is great uncertainty in the longline fishery, as it is unclear to what degree the fishery is affecting fish stocks, other fisheries, or protected resources. Of particular concern is the effect on sea turtles, serveral indigenous species of which are listed as threatened or endangered under the Endangered Species Act. There are limited framework procedures not in place to address problems concerning main Hawaiian Island and northwestern Hawaiian Island longline fishing area closures, but other measures have had to be implemented through plan amendments.

Under Amendment 7, the following persons would be eligible for Hawaii longline limited entry permits: (1) The last holder of record for any longline vessel limited entry permit under the moratorium—provided the vessel used to land longline-caught management unit species at least once during the moratorium period; (2) the last holder of record of a limited entry permit under the moratorium for a vessel less than 40 feet in length; or (3) the last holder of record of a limited entry permit obtained during the moratorium because that person also held a limited entry permit for the NWHI crustaceans (lobster) fishery.

Hawaii longline limited entry permits would be freely transferable between vessel owners. Vessel owners could also transfer their permits to other vessels owned by them, provided the new vessel is not longer than the longest vessel which had a longline permit, and made landings, during the moratorium period. The vessel's registered length as recorded on Certificates of Documentation of the U.S. Coast Guard would be the measure of length used in making determinations of compliance with this restriction.

Hawaii longline limited entry permits would be required for longline vessels used to: (i) Fish for pelagic species in the EEZ around Hawaii; or (ii) land or transship pelagic species shoreward of the outer boundary of the EEZ around Hawaii. The permits already required by existing regulations at 50 CFR 685.9 would be re-named "longline general permits" and would be required for longline vessels around American Samoa, Guam, the Northern Mariana Islands or other United States possessions in the Pacific Ocean, that are used to fish for, land, or transship pelagic species. Holders or Hawaii longline limited entry permits would not need a separate general permit to longline, land, or transship anywhere in the fishery management area (the waters off Hawaii and all the western pacific territories and possessions), or adjacent state waters. Receiving vessel permits would be required for vessels shoreward of the outer boundary of the fishery management area that do not have longline gear on board and that land

pelagic species or receive pelagic species from other vessels. For purposes of 50 CFR part 685, "land" means to begin to offload, to arrive in port with the intention of offloading, or to cause to be offloaded.

The amendment contains framework procedures to allow rapid responses to changing conditions, including biological concerns for the stocks, economic problems in the fisheries, and potential harm to protected species such as sea turtles.

Proposed regulations to implement this amendment are scheduled to be published within 15 days of this notice.

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

Dated: January 28, 1994.

David S. Crestin,

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

[FR Doc. 94–2346 Filed 1–28–94; 3:26 pm]

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Notices

Federal Register
Vol. 59, No. 22
Wednesday, February 2, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AA33

Financial Security of National Forest System Timber Sale Contracts

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final policy.

SUMMARY: The Forest Service is adopting final policy and procedure related to timber sale contract financial security. The final policy will increase the amount of the bid guarantee, revise the method for determining damages for failure to consummate a contract, eliminate the performance bond ceiling, and limit the applicability of the sale discounting procedures. The intent of the final policy is to better protect the public's interest in the sale of National Forest System timber by reducing the opportunity for speculative bidding and defaulting contract obligations. This policy is being issued to guide Forest Service personnel as Amendment No. 2400–93–____ to the Forest Service Manual (FSM) chapter 2430, Amendment No. 2400–93–____ to FSM chapter 2450 and Amendment No. 2409.18–93–____ to chapter 50 of FSH 2409.18, the Timber Sale Preparation Handbook.

EFFECTIVE DATE: These amendments are effective February 2, 1994.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to Fred Walk, Timber Management Staff, Forest Service, USDA, P.O. 96090, Washington, DC 20090–6090, (202) 205–0858.

SUPPLEMENTARY INFORMATION:

Background

After the timber market collapse of 1981, an unprecedent number of National Forest System timber sale contracts became unprofitable. Some contracts were defaulted and others were "bought out" by the Government under the Federal Timber Contract Payment Modification Act. The market decline during the 1980 period exposed a number of potential long-term difficulties with National Forest System timber sale procedures which, if not remedied, could result in speculative bidding and increase the potential for contract defaults in the future.

In 1982, the Forest Service began implementing a number of contract reforms to reduce speculative and unsound bidding, to provide for an even flow of timber receipts into the Treasury, and to prevent sale defaults. The following changes or additions to financial requirements on National Forest System sales were made:

(1) The timber sale bid guarantee was raised to 5 percent of the advertised value of contract;

(2) A cash deposit was required. The initial deposit requirement was for 5 percent of the bid value of a sale; this was later increased to 10 percent;

(3) The maximum amount of the performance bond was changed from $200,000 to $500,000; and

(4) A midpoint payment to the Government was required to provide additional incentive for timely timber removal.

These changes in timber sale financial requirements have been somewhat successful in stabilizing timber sale contracting by encouraging performance; discouraging speculation; and more adequately securing contract performance. However, additional changes are needed to further enhance financial security of timber sale contracts and to protect the taxpayer from repudiation of bids and default of contracts.

Past experience indicates that prices being bid for Forest Service timber frequently rise substantially over the advertised rates established by the agency's appraisal of the fair market value of the timber. The agency determines the appraised value by using the selling value of lumber and other forest products or by using transaction evidence of other comparable timber sales. When bid values far exceed advertised values and lumber selling values remain constant or rise minimally, the potential for purchase financial loss increases. Thus, based on bidding experience, the Forest Service believes that the public and the Government could be facing additional repudiations of bids and defaults of contracts if lumber selling values do not keep pace with bid values and if additional financial security requirements are not instituted. Accordingly, the agency believes it is essential to take additional steps to protect the public's financial interests in timber sale contracts, assure timely execution and completion of contracts, and minimize the financial risk to the Government. These additional financial security measure were published as a proposed policy in the **Federal Register** of December 7, 1990 (55 FR 50651).

Analysis and Response to Public Comments

The comment period on the proposed policy closed January 7, 1991. Nineteen respondents submitted comments. The comments came from 2 private citizens, 10 timber purchasers, 5 timber purchase associations, a preservation association, and timber advocacy group. Of the 19 public comments received, 15 came from the West and 4 from the East. Fifty-eight percent of the respondents expressed support for the policy proposals either in their entirety or with suggested modification. The remaining 42 percent did not support the proposal primarily because of perceived increases in the cost of doing business.

The following summarizes the comments and suggestions received on the proposed policy changes and the Department's response to these in the final policy.

1. Performance Guarantee Ceiling

The proposed policy would have eliminated the present $500,000 ceiling on the amount of performance guarantee required by the timber sale contract and set the minimum performance guarantee at 10 percent of the bid value.

One respondent suggested that, at the time of first entry into a sale area, the performance bond be equal to the present value of the "worse case" outcome of the logging operation. The agency disagrees. The objective of a performance guarantee or performance bond is to assure that the terms of the contract are met. Performance guarantees must protect the interests of the Government. The respondent's suggestion would be impossible to administer. The Agency believes that determining the "worst case" outcome would be highly subjective and subject

to dispute between the contract parties. The "worst case" outcome might be the default of a high priced sale which was later resold to determine damages. Making a projection of some future resale value of a sale that may or may not be defaulted is speculative and could result in very high performance bonds which would place an unfair economic burden on the majority of the timber purchasers who fully perform their timber sale contracts.

Four respondents objected to eliminating the performance bond ceiling. They thought the change would result in increases in their bonding requirements, put them at a competitive disadvantage, and discriminate against small business. The agency recognizes that small business could be disadvantaged in obtaining bonding in excess of $500,000. Nevertheless, the agency believes that only a few large and high value timber sales will require bonds of more than $500,000. The agency is of the opinion that 10 percent of the bid value is a reasonable amount for providing the minimum amount of performance bond to provide assurance of contract performance.

Most of the timber sale contracts sold within the last 15 years have required a performance guarantee that was equivalent to 10 percent of the bid value subject to certain maximum amounts. The maximum performance guarantee for sales sold since the spring of 1982 has been $500,000. Removal of the $500,000 ceiling would ensure that the performance guarantee amount would be applied equally to all sales. In the face of existing bids, the current ceiling could result in less secure guarantees that purchasers of high-priced sales will perform their contracts. Removal of the ceiling on performance guarantees should not affect many of those purchasers that ordinarily bid on National Forest timber sales. The removal of the cap would only affect sales with more than $5 million bid value. Very few sales are this size, and few small businesses buy timber sales that are this expensive. Therefore, the change would not stifle or constrain competition. What the removal of the ceiling will do is help to deter speculation by increasing capital requirements and, thus, in these large sales increase bidder financial liability in the event of default.

Having considered the comments received, the agency is retaining the elimination of the $500,000 upper limit on performance bonds in the final policy.

2. Increased Bid Guarantee

Under the proposed policy, the amount of bid guarantee required for bidding on National Forest System timber sales would increase to 10 percent of the advertised value.

One respondent suggested that the purchaser be required to pay the full amount of the winning bid at the time of the sale. The agency believes this would place a severe economic hardship on timber purchasers that would result in a significant decrease in competition and a reduction in receipts to Federal, State, and county treasuries. In some cases, requiring full payment of bid value at time of sale could prevent companies from purchasing National Forest System timber resulting in loss of employment and economic hardship to dependent communities.

Five respondents were opposed to increasing the amount of bid guarantee to 10 percent of the advertised value. The basis for their objection was that the additional bid guarantee would place an additional economic stress on the small timber purchaser and would eliminate many from bidding. The agency disagrees. The bid guarantee (deposit with bid) is a good faith showing that a timber sale high bidder will complete the requirements for contract award and will execute the contract within the specified time period. The bid guarantee also serves as a measure of the ability of the bidder to meet the financial requirements for a downpayment, periodic payment, and bonding capacity. Many bidders use bid bonds as a bid guarantee rather than obligating their cash. If bid bonds are used, only the high bidder would be required to convert the bid bond to cash, and it is not necessarily an increase in cash requirements for all bidders. The high bidder's cash would then be used to offset the amount required for downpayment. The increase in bid guarantee from 5 percent to 10 percent of advertised value will result in the high bidder making a larger cash deposit for the approximately 30 days between the bid date and the due date for the downpayment. This short-term increased cash requirement could create a financial hardship for some high bidders. The agency believes that this hardship is more than offset by the increased protection from speculative bidding and from contract repudiation. The increase in bid guarantee will also provide the government with increased financial security by providing a source of funds to satisfy the Government's losses if the contract is repudiated. Therefore, an increase in bid guarantee to 10 percent of the advertised value is adopted in the final policy.

3. Procedures for Determining Contract Repudiation Damages

The proposed policy based the determination of damages resulting from repudiation of a bid on the terms contained in timber sale contract provision C(T)9.4. Provision C(T)9.4 generally establishes damages as the difference between current contract value at the time of breach and the bid value established upon resale. The proposed policy provided the option of retaining the timber and establishing damages for breach based on appraised rather than resale value, if resale could not be accomplished in the immediate future or if no bid was received at resale.

One respondent supported the concept that repudiation constitutes a breach of contract. The respondent suggested that the penalty for this breach should not only exclude the bidder from participating in the resale, but also treat damages as a default with the bidder being required to furnish double the normal downpayment until any default amount is satisfied. The agency agrees with this comment. Repudiation of contracts will be handled under 36 CFR 223.49(e) which requires that a purchaser or affiliate awarded a future Forest Service contract must meet additional downpayment requirements under specific circumstances, including failure to perform in accordance with the terms of a timber sale contract. The additional downpayment requirements are that such a purchaser must make a minimum downpayment equal to 20 percent of the total advertised value, plus 40 percent of the total bid premium.

Three respondents suggested that repudiated contracts be offered and sold to the second high bidder at the price submitted by that bidder. They further suggested that damages be determined as the difference between the original high bid and the second high bid. This approach would be satisfactory in many instances. The agency believes, however, that there will be instances where second high bidders would decline to accept the sale at the price they bid because of the lapse of time from the bid date. When this occurs there would be no resale of the timber and, consequently, no basis for determining damages. This approach would also present the risk of selling the sale at the lower second high bid when, during an ascending market, open competitive bidding would result in a higher bid. Consequently, the final policy retains the features of the

proposed policy, and damage calculation will be based on offering the sale to the lower bidders in descending order of their bids at the high bid price. If no bidder accepts the sale at the high bid price, it would normally be reoffered at advertised rates for open bidding.

One respondent stated that the proposed policy was an over reaction to the problem and suggested that the government make an estimate of repudiation damages before advertising and then set the bid guarantee accordingly. This approach is similar to the concept of liquidated damages that is currently the method for determining damages resulting from repudiation of service contracts. however, the agency believes that to adequately protect the public interest, damages must be based on an actual loss or cost to the government and that estimating the damages of a potential repudiation well in advance of the fact would be fraught with inaccuracies and very subjective. It would be very difficult to accurately estimate bid rates 60 or more days in advance. In summary, this approach would not provide the government with an adequate determination of damages resulting from repudiation of a bid.

Four respondents objected to the language of the proposed policy that would provide the Forest Service the option of retaining the timber and establishing damages for this breach based on appraisal rather than resale, if resale cannot be accomplished in the immediate future or if no bids are received on the resale. These respondents think that the Forest Service must resell the repudiated sale in order to establish damages. They contend that if the repudiated sale is withdrawn for some reason, the government has not suffered damages. They would establish damages based on the resale value plus certain additional costs, such as interest and the cost of resale. The agency disagrees with this comment. The effort and resources expended to prepare and offer a timber sale are made in good faith. Repudiations add delay and costs regardless of subsequent events. Delay may cause loss of the opportunity to sell the timber at all if timber is damaged or deteriorates due to fire, insects, or storm damage. Also legal or other government actions such as new legislation, new court interpretations of existing law, or an agency listing of a wildlife species as threatened or endangered may develop during or as a result of delay which make prompt resale not possible. Even though most sales are reoffered for sale within six months, the agency strongly believes that damages based on the appraised value of the sale plus administrative costs associated with the repudiation are appropriate if the sale cannot be reoffered.

Therefore, the final policy differs from the proposed policy only in that a bidder that repudiates a timber sale contract will be subject to double down payment for future contracts. Under the final policy, when a sale is reoffered and the resale bid price does not exceed the original purchaser's price plus certain additional costs (e.g. interest and the cost of resale), damages are assessed at the amount of the deficiency. Further, the policy provides the Forest Service the option of retaining the timber and establishing damages for this breach based on appraisal rather than resale, when resale is not accomplished in the immediate future or if no bids are received at resale.

4. Timber Sale Discounting

The proposed policy would have discontinued the discount procedure implemented on a forest-wide test basis on some National Forests in western Oregon, western Washington, and northern California and would have applied the current discounting procedures on an individual sale basis when timber characteristics support a need for immediate harvesting. Instances might include fire-damaged, insect-damaged, and wind-thrown timber when prompt removal would support the accomplishment of land management objectives and provide for optimal utilization of salvage timber.

Four respondents objected to discontinuing the discounting test. They stated that discounting provides an incentive to counter the hoarding tendency of some purchasers and enhances the continued harvest of timber sales in a timely manner. These respondents think that an incentive-based approach encouraging early harvest is much better than the proposed policy which they considered a disincentive. Two respondents objected to use of discounting procedures on an individual sale basis. Stating that the proposal was inadequately defined, was an administrative over-reaction, and was costly and complicated, these respondents concluded that the Forest Service will be reluctant to apply discounting to individual sales.

The agency recognizes that incentives such as discounting are effective in encouraging early harvest of timber. However, the agency believes that continued area-wide use of discounting as an inducement for early harvest of timber is not warranted based on current market conditions, low volume of timber under contract, current rapid rates of harvest, and anticipated lower sale levels. The agency believes that blanket use of discounting unnecessarily devalues the timber when there is no need for prompt harvest of timber. Further, the agency believes the continued use of discounting could contribute to speculative bidding by persons who expect to harvest timber early in the contract period. Such speculation may result in an unfair competitive advantage for some purchasers. Also, if a purchaser's expectations of early harvest cannot be realized, payment of undiscounted prices higher than expected could cause default.

Despite agency concerns about the blanket application of area-wide discounting, the agency believes that there are some situations (e.g., early removal of fire-damaged, insect-damaged, and wind-thrown timber), where the use of discounting can be warranted. In such situations, the expectation is that lower payment rates and the other disadvantages of discounting will be more than offset by the benefits of prompt harvest of timber subject to rapid deterioration and by protection of other resource values. Further, discounting procedures on an area-wide basis may become warranted if the present market or other conditions is an area change to the degree that encouragement of prompt harvest is in the government's interest. For example, high levels of uncut volume under contract could cause the agency to consider area-wide use of discounting.

Recognizing that the discount procedures are complicated and that there could be some reluctance among Forest Service officials to include discounting provisions in an individual timber sale contract or to seek approval for area-wide use, the agency believes that justification and approval processes will ensure that discounting is applied only where and when there is good rationale for its use.

Therefore, having considered all of the comments, the final policy on discounting is the same as that proposed. The final policy provides for use of discounting upon an individual sale basis when specific situations justify the need for immediate harvesting and on an area-wide basis only when warranted by market conditions and upon request of the Regional Forester and approved by the Chief. Under the final policy, situations requiring the use of discounting must be documented by the line officer with the authority to approve the sale on which it is to be used. When market conditions warrant discounting on a National

Forest or area-wide basis, the Regional Forester may request approval to use discounting from the Chief of the Forest Service. The request for approval must document the existing and anticipated market conditions (e.g., volume under contract, rate of removal, when volume is removed during the contract, expected sell levels) for the Region or area affected.

Conclusion

The objectives of the financial security measures contained in this final policy are to assure timely execution and completion of timber sale contracts, to maintain competition by qualified bidders, to discourage speculation, and to minimize the financial risk to the Government in instances where purchasers do not complete contracts.

The final policy eliminates the present $500,000 ceiling on the amount of performance guarantee required by the timber Sale contract, and establishes the minimum performance guarantee at 10 percent of the total bid value.

The final policy increases the amount of bid guarantee required to bid on National Forest System timber sales to 10 percent of the total advertised value.

Under the final policy, repudiation of a bid will be considered a breach of contract and damages will be based on the bid price of the reoffered timber plus administrative costs, such as the costs incurred by the government in making the reoffer plus interest. Further, if no bids are received on the reoffered sale or if the timber cannot be immediately reoffered due to delay or other factors, damages will be the difference between the repudiated bid value and the appraised value of the reoffering. Administrative costs will then be added to the difference in values.

The final policy discontinues the discounting procedure implemented on a forest-wide, test basis on some National Forests in western Washington, Oregon and Northern California initiated in 1982 (47 FR 16181). The final policy provides for Service-wide use of discounting upon an individual sale basis when specific situations justify the need for immediate harvesting and on an area-wide basis only when warranted by market conditions and upon request of the Regional Forester and approval by the Chief.

Regulatory Impact

This action has been reviewed under USDA procedures and Executive Order 12291 on Federal Regulations. It has been determined that this policy is not a major rule. The procedures implemented by this policy will not have an effect of $100 million or more on the economy, substantially increase prices or costs for consumers, industry, State, or local governments, nor adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete in foreign markets. In short, little or no effect on the National economy will result from this notice of policy change. This action consists of administrative changes to policy for timber sale contract financial security. With regard to the removal of the bond maximum, very few sales are over $5 million in value; therefore, few sales or purchasers are involved. The largest of sales are more likely to affect large businesses than small. The change in liability for repudiation of contract (by failing to provide the necessary bond; execute the contract; or make the required cash deposit) will only have an effect on purchasers who do not consummate their contracts. These purchasers are expected to be few in number. All prospective purchasers must submit a bid guarantee with their bids. The guarantee is returned to the unsuccessful bidders after completion of the bid opening procedures. Only the high bidder is required to maintain the bid guarantee until the contract is consummated. Under existing procedures, the successful purchaser would have to provide a performance bond equal to 10 percent of the bid value and, in addition, make a minimum cash deposit equal to 10 percent of the bid value within 30 days after notification of award. In view of existing requirements, increasing the bid guarantee to 10 percent of the advertised value should have minimal effects on purchasers.

This final policy has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the final policy does not pose the risk of a taking of constitutionally protected private property.

Moreover, this policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), and it has been determined that this policy will not have a significant effect on a substantial number of small entities as defined by the Act. Additional financial security measures do have some economic impact on all classes of businesses, and the majority of the agency's timber sales are purchased by small businesses. However, the adopted measures have the intended effect of preventing speculative bids, defaults, and repudiation of timber sales. Therefore, they will benefit the majority of small businesses dependent on the agency's timber sales as a source of raw material, by helping ensure that small businesses are not competing for the limited timber resource that is offered for sale against businesses that speculatively bid or make a high bid and then lack the financial means to operate the sales. Moreover, these measures will preserve the long-range revenues to affected counties and will reduce the adverse economic impacts these entities would experience in the event of sale defaults.

Further, this policy has been reviewed under Executive Order 12778, Civil Justice Reform. Adoption of this policy will have the following effect: (1) All state and local laws and regulations that are in conflict with this policy or which would impede its full implementation are preempted; (2) the policy expressly repeals or modifies previous policies; (3) the policy is not to be applied retroactively; (4) and no administrative procedures are necessary before a party may file suit in court challenging this policy.

This policy will not result in additional paperwork not already required by law or not already approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

This policy deals with business practices related to timber sale contracts and, as such, has no direct effect on the amount, location, or manner of timber offered for purchase. Section 31.1b, paragraph 2, of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions." Based on consideration of the comments received and the nature and scope of this policy, the Forest Service has determined that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement (40 CFR 1508.4).

The text of the final policy as it will be issued in the Forest Service Manual and Timber Sale Preparation Handbook is set out at the end of this notice.

Dated: December 28, 1993.

David M. Unger,

Associate Chief.

Financial Security Measures

Forest Service Manual Chapter 2430, Commercial Timber Sales

2431.33—Discounting. The line officer with the authority to make the timber sale may approve the use of discounting procedures set forth in FSH 2409.18, section 54.4 for an individual timber sale to:

1. Support a need for immediate harvesting, such as an economic incentive for early removal of fire-damaged, insect-damaged, or wind-thrown timber;

2. Support the accomplishment of land management objectives;

3. Provide for optimal utilization of salvage timber. Document the need and rationale for discounting in the environmental assessment or other environmental documentation prepared for the sale.

The use of discounting on an area-wide basis is permissible upon the Regional Forester's request and the Chief's approval when remaining volume under contract in an area exceeds 3 times the Allowable Sale Quantity (ASQ) or exceeds 3 or more years of sold volume whichever is greater. In making this determination, consider total unprocessed volume inventories held by area purchasers. Base the request to provide a discounting incentive on the need for increasing or providing an even flow of timber receipts to the Government.

* * * * *

2431.43—Bid Guarantee. Require a bid guarantee of 10 percent of the advertised value for National Forest System timber sales.

* * * * *

2432.54—Bid Repudiation. Consider a timber sale contract to be repudiated when a timber sale is not consummated because the high bidder fails to make the downpayment, provide a performance bond, and/or execute the contract.

2432.54a—Notice to Purchaser. The Contracting Officer shall notify the bidder of the repudiation and breach of contract by certified mail. The date of the receipt of notice shall be the date of the repudiation. Also, include notice that the bidder has breached the contract and:

1. Is subject to exclusion from bidding on the resale pursuant to 36 CFR 223.86(a)(1).

2. May be required to make downpayment equal to 20 percent of the total advertised value, plus 40 percent of the total bid premium on future Forest Service contracts pursuant to 36 CFR 223.49(e).

2432.54b—Assessment of Damages. Assess damages for a repudiated sale in the following manner and sequence:

1. Offer the sale to the second high bidder at the rates bid by the high bidder. If the second high bidder declines the contract, offer it in turn to remaining bidders in the order of their bids. If any bidder accepts the contract offer at the high bid rate, assess no damages.

2. If there is no second high bidder, more than one second high bidder (tied), or all bidders decline the contract offer, attempt to readvertise the repudiated sale within six months of repudiation at appropriate appraised rates.

a. Determine damages based on the difference between the total resale bid value and the total value of the repudiated contract. Add certain additional costs (such as interest and the cost of resale) as indicated in the applicable provision of the sample contract prepared for the sale.

b. If there are no bids on the readvertised sale, base damages on the difference between the readvertised appraised value and the total bid value of the repudiated contract. Add certain additional costs (such as interest and the cost of resale) as indicated by the applicable provision of the sample contract prepared for the sale.

3. If the sale is not excepted to be readvertised within 6 months, base damages on the difference between the appraised value of the repudiated contract as of date of repudiation and the total bid value of the repudiated contract. Add certain additional costs (such as interest and the cost of resale) as indicated by the applicable provision of the sample contract prepared for the repudiated sale.

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Forest Service Manual Chapter 2450, Timber Sale Contract Administration

FSM 2456.14—Penal Sum of the Performance Bond. The penal sum of the performance bond shall be at least 10 percent of the total bid value rounded up to the next $100 when the bid value is $10,000 or less and the next $1,000 when the bid value exceeds $10,000. The bond may be higher than the minimum amount of bond if needed to cover work required of the purchaser after the logging season is completed.

Forest Service Handbook

FSH 2409.18, Timber Sale Preparation Handbook—Chapter 50, Final Package Preparation, Review, Appraisal and Offering

54.4—Discount of Payment Rates for Early Harvest. Use the procedures of this section for individual sales or on an area-wide basis where discounting has been approved (FSM 2431.33). Use the following guidelines in establishing discounted rates:

1. Discounting of payment rates for early harvest may only be authorized for scaled sales.

2. Discount rates are a percentage factor based upon a combination of the interest rate being paid on money being borrowed by the Treasury at the time of advertisement and the length of time before the sale termination date that material is cut and scaled, up to a maximum discount of 25%.

a. Make no discount for material scaled during the 12 months before termination of the sale.

b. For material scaled 12 to 24 months before termination date, apply a discount factor of 50 percent of the Treasury rate stated in the advertisement.

c. For material scaled 24 to 36 months before the termination date, apply a discount factor of 100 percent of the Treasury rate stated in the advertisement.

d. For material scaled 36 to 48 months before the termination date, apply a discount factor of 150 percent of the Treasury rate stated in the advertisement.

e. For material scaled 48 to 60 months before the termination date, apply a discount factor of 200 percent of the Treasury rate stated in the advertisement.

f. For material scaled 60 to 72 months before the termination date, apply a discount factor of 250 percent of the Treasury rate stated in the advertisement.

g. Make no discount factor exceeding 25 percent of the bid rates at any time.

h. Apply no discount factor that reduces the miminum charge below that needed to ensure cost recovery of small business opted road construction to be done by the Forest Service or that reduces the minimum charge below base rates.

i. Apply no discount rate that reduces the minimum charge for a combination of species, product, and unit of measure listed in the timer sale contract below the advertised rate for that combination. That is, limit the maximum discount tc

the bid premium shown for each appraisal group listed.

[FR doc. 94–2302 Filed 2–1–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 930942–3331]

Federal Levee Repair Policy Under Economic Development Assistance for Disaster Relief Activities Under Public Law 103–75, Chapter I; Correction

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Correction.

SUMMARY: In notice document 93–31632 beginning on page 69102 in the issue of Wednesday, December 29, 1993, make the following correction:

On page 69102 in the first column, **DATES:** "Preapplications in accordance with criteria set forth herein for levee repairs which are needed to protect critical public infrastructure will be received until January 28, 1994." This should be changed to read "Preapplications or Letters of Intent (which describe the project location, scope of work, total estimated cost, and other pertinent information necessary for the proposal evaluation) in accordance with criteria set forth herein for levee repairs which are needed to protect critical public infrastructure will be received until February 18, 1994."

Dated: January 27, 1994

Wilbur F. Hawkins,

Acting Assistant Secretary for Economic Development.

[FR Doc. 94–2354 Filed 2–1–94; 8:45 am]

BILLING CODE 3510–24–M

Minority Business Development Agency

Business Development Center Applications: Honolulu, HI

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from July 1, 1994 to June 30, 1995, is estimated at $333,125. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the Honolulu, Hawaii Geographic Service Area.

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

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria; The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director or MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDC's shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is March 21, 1994. Applications must be postmarked on or before March 21, 1994.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, March 1, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Office 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Cost—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the

Department of Commerce to cover pre-award costs.

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

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applications are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination—The Departmental Grants Officers may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must subject an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a complete Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(Catalog of Federal Domestic Assistance 11.800 Minority Business Development)

Dated: January 26, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–2259 Filed 2–1–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: Oxnard, California

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from July 1, 1994 to June 30, 1995, is estimated at $222,196. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the Oxnard, California Geographic Service Area.

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

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per

hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is March 21, 1994. Applications must be postmarked on or before March 21, 1994.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, March 1, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

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

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: January 26, 1994.

Melda Cabrera,

Regional Director San Francisco Regional Office.

[FR Doc. 94–2260 Filed 2–1–94; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Applications: State of Alaska

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from July 1, 1994 to June 30, 1995, is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the

State of Alaska Geographic Service Area.

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

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the applications (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine in funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications in March 21, 1994. Applications must be postmarked on or before March 21, 1994.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001, March 1, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contract person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Cost—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

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

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination—The Department Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial

transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a complete Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

(Catalog of Federal Domestic Assistance 11.800 Minority Business Development)

Dated: January 26, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–2258 Filed 2–1–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 012593C]

Shrimp Fishery of the Gulf of Mexico; Public Hearings

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene two public hearings on draft Amendment 7 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico. Amendment 7 proposes to: (1) Define overfishing for white shrimp; (2) provide for a framework adjustment for the overfishing definitions for brown, white, and pink shrimp; (3) revise the overfishing definition for royal red shrimp; and (4) eliminate the total allowable level of foreign fishing to allow the domestic fleet to harvest the optimum yield.

DATES: Written comments on the proposed action must be received by April 22, 1994. The hearings are scheduled as follows: Wednesday, February 23, 1994, in Galveston, Texas, from 6 p.m. to 8 p.m. and Thursday, March 3, 1994, in Corpus Christi, Texas from 2 p.m. to 4 p.m.

ADDRESSES: Comments should be addressed to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609. The hearings will be held at the following locations:

1. Galveston, Texas—Ballroom North, Holiday Inn on the Beach, 5002 Seawall Boulevard, Galveston, Texas
2. Corpus Christi, Texas—Marriott Bayfront Hotel, 900 Shoreline Boulevard, Corpus Christi, Texas.

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, 813–228–2815.

SUPPLEMENTARY INFORMATION: The hearings are physically accessible to people with disabilities. Requests for sing language interpretation or other auxiliary aids should be directed to Laura Mataluni at the above Council address by February 15, 1994.

Dated: January 27, 1994.

David S. Crestin,

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

[FR Doc. 94–2347 Filed 2–1–94; 8:45 am]

BILLING CODE 3510–22–M

National Telecommunications and Information Administration (NTIA)

Public Hearing on Universal Service and the National Information Infrastructure

NTIA will hold a public hearing, titled "Telecommunications to Serve the Cities—Universal Service in Urban America" in Los Angeles, California at the California Museum of Science and Industry (Exposition Park), Mark Taper Hall of Economics and Finance, Seminar Room, second floor, on February 16, 1994, from 8 a.m. to 4 p.m. Demonstrations of advanced telecommunications technologies will be held from 11:30 a.m. to 4 p.m. at the California Afro-American Museum at 600 Exposition Park.

To register for the hearing, fax or mail to Yvette Barrett, NTIA, Room 4888, Herbert C. Hoover Building, 14th and Constitution Ave. NW., Washington, DC 20230, fax (202) 482–6173, on or before February 14, 1994, the following information: name, title, company/affiliation, address, telephone number, fax number, areas of interest, and whether written testimony is intended to be provided for the record.

FOR FURTHER INFORMATION CONTACT: Joann Anderson, (202) 482–1880, Office of Policy Analysis and Development.

Larry Irving,

Assistant Secretary for Communications and Information.

[FR Doc. 94–2405 Filed 2–1–94; 8:45 am]

BILLING CODE 3510–60–P

Patent and Trademark Office

Meeting of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Change in notice of public meeting.

SUMMARY: The location of the meeting of the Public Advisory Committee for Trademark Affairs, published in the **Federal Register** of January 18, 1994, (59 FR 2597) has been changed.

PLACE: U.S. Patent and Trademark Office, 2900 Crystal Drive, South Tower Building, Arlington, Virginia, in the Lobby level Conference Room.

Dated: January 28, 1994.

Fred E. McKelvey,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 94–2350 Filed 2–1–94; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

January 27, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: Januay 31, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, 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 current limit for Categories 351/651 is being increased by recrediting unused carryforward.

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 58 FR 62645, published on November 29, 1993). Also see 58 FR 61679, published on November 22, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 27, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 12, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made-fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994.

Effective on January 31, 1994, you are directed to increase the limit for Categories 351/651 to 212,000 dozen [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and Guatemala.

The guaranteed access level for Categories 351/651 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to 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. 94–2353 Filed 2–1–94; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1993.

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Prepare an Environmental Impact Statement for Proposed Realignment of Naval Air Warfare Center, Patuxent River, MD

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the realignment of Naval Air Warfare Center, Aircraft Division (NAWCAD) Patuxent River, Lexington Park, Maryland. This action is being conducted in accordance with the Defense Base Closure and Realignment Act of 1990 (Pub. L. 101–510) and the specific 1993 base closure and realignment decisions which became effective in September 1993.

The proposed action involves the relocation of personnel and activities from the Naval Air Systems Command, Arlington, Virginia, and from NAWCAD Trenton, New Jersey, to NAWCAD Patuxent River and, possibly, to the Naval Electronic Systems Engineering Activity (NESEA) site, St. Inigoes, Maryland. The Navy was directed to close NESEA St. Inigoes by the same 1993 base closure and realignment decisions; however, it was decided that the property would not be disposed of, but would be transferred to the Naval Air Systems Command to support its relocation to southeastern Maryland.

In order to meet the facility and operational requirements of the realigning activities at the two receiving sites, the realignment will require 500,000 to 700,000 square feet of facilities. These facility and operational requirements will be met through the utilization of existing space (renovation of buildings) and/or new construction of facilities, such as administrative buildings, parking structures, test labs and other support facilities. Approximately 3,000 additional personnel, with their dependents, will relocate to support the various activities.

Alternatives addressed in the EIS will focus on means of meeting realignment requirements at NAWCAD Patuxent River, including alternative construction site locations. The EIS will discuss environmental impacts resulting from the construction and operation of facilities as well as expected associated impacts to the local communities resulting from the relocation of military and civilian personnel and their dependents. Major environmental issues that will be addressed in the EIS will include, but not be limited to, impacts on cultural resources, terrestrial and aquatic habitats, stormwater runoff, noise, and air quality. Other impacts to be considered will include impacts to community services, such as school capacity, infrastructure, and traffic. Cumulative impacts associated with the realignment of all personnel and activities to the region around NAWCAD Patuxent River will be considered.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold a public scoping meeting on Thursday, February 17, 1994, beginning at 7 p.m. at the Carter Office Building, Leonardtown, Maryland. The meeting will be advertised in Southern Maryland tri-county area newspapers.

A brief presentation will precede requests for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit his/her oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed to: Commanding Officer, Naval Air Station Patuxent River, Building 407, Patuxent River, Maryland 20670–5409, (Attn: Joan Hinson), telephone (301) 826–7512. All comments must be received no later than March 28, 1994.

Dated: January 28, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–2348 Filed 2–1–94; 8:45 am]

BILLING CODE 3810–AE–M

Intent To Prepare an Environmental Impact Statement for Proposed Disposal And Reuse of Naval Air Station Glenview, Glenview, IL

Pursuant to the National Environmental Policy Act as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the disposal and reuse of Naval Air Station (NAS) Glenview, Glenview, Illinois.

In accordance with recommendations of the 1993 Base Closure and Realignment Commission, the Navy plans to close NAS Glenview in 1995. Operations conducted at NAS Glenview will be disestablished or relocated to other Department of Defense locations. The proposed action involves the disposal of land, buildings, and infrastructure of NAS Glenview for subsequent reuse.

The Navy intends to analyze the environmental effects of the disposal of NAS Glenview based on the reasonably foreseeable reuse of the property, taking into account uses to be identified by the Glenview Naval Air Station Community Reuse Planning Group. It is anticipated that reuse alternatives for NAS Glenview may include, but not be limited to: Aviation, housing, education or institutional, light industry, office space, wildlife preserve, recreational, or a combination of those uses. The "no action" alternative of Navy retention of NAS Glenview land, buildings, and infrastructure in caretaker status will also be addressed in the EIS. However, because of the process mandated by the Base Closure and Realignment Act, selection of the "no action" alternative would be considered impracticable for the Navy to implement.

Major environmental issues that will be addressed in the EIS include, but are not limited to: Air quality, water quality, wetlands, endangered species, cultural resources, and socioeconomic impacts.

The Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to the proposed reuse alternatives. The Navy will hold a public scoping meeting on Thursday, February 17, 1994, beginning at 7 p.m., at the Lyceum Conference Room, Glenbrook South High School Auditorium, 4000 West Lake Avenue, Glenview, Illinois. This meeting will be advertised in area newspapers.

A brief presentation will precede request for public comment.

Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commenter believes the EIS should address. Written statements and/or questions regarding the scoping process should be mailed no later than 3 March 1994 to: Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, Charleston, SC 29419–9010 (Attn: Mr. Thomas Burst, Code 203), telephone (803) 743–0590.

Dated: January 28, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–2349 Filed 2–1–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER93–932–000, et al.]

Central Vermont Public Service Corp. et al.; Electric Rate and Corporate Regulation Filings

January 25, 1994.

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

1. Central Vermont Public Service Corp.

[Docket No. ER93–932–000]

Take notice that on December 27, 1993, Central Vermont Public Service Corporation ("Central Vermont" or the "Company") tendered for filing an amendment to its filing in the above-referenced docket.

Comment date: February 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. 2322120 Nova Scotia Limited

[Docket No. EG94–16–000]

On January 18, 1994 "2322120 Nova Scotia Limited" ("O&M Sub"), c/o Kelly A. Tomblin, Energy Initiatives, Inc., One Upper Pond Road, Parsippany, New Jersey 07054, 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.

O&M Sub states that it is a Nova Scotia corporation formed to provide certain operation and maintenance services to an electric and steam generating facility to be located in Brooklyn, the Province of Nova Scotia, Canada, which facility will be owned by Brooklyn Energy Limited Partnership, a Nova Scotia limited partnership.

Comment date: February 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Co.

[Docket No. ER93–576–000]

Take notice that on December 20, 1993, Southern California Edison Company (Edison) tendered for filing an amendment in the above-referenced docket.

Comment date: February 3, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corp.

[Docket No. EL94–17–000]

Take notice that on December 29, 1993, Florida Power Corporation (Florida Power) tendered for filing a Petition for Declaratory Order. Florida Power requests that the Commission, pursuant to Section 207 of the Rules of Practice and Procedure, issue a declaratory order resolving a dispute between Florida Power, Tampa Electric and the City of St. Cloud, Florida over the pricing of firm transmission service.

Comment date: February 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. 2322177 Nova Scotia Limited

[Docket No. EG94–15–000]

On January 18, 1994, 2322177 Nova Scotia Limited ("Equity Sub"), located care of Kelly A. Tomblin, Energy Initiatives, Inc., One Upper Pond, Parsippany, New Jersey, 07054, filed an application with the Federal Energy Regulatory Commission for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Equity Sub intends to operate a wood-fired cogeneration facility with a net power production capacity of 26 5 MW.

Equity Sub is a Nova Scotia corporation formed to acquire a limited partnership interest in Brooklyn Energy Limited Partnership, a Nova Scotia limited partnership formed to own an electric and steam generating facility to be located in Brooklyn, the Province of Nova Scotia, Canada.

Comment date: February 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc. and Gulf States Utilities Co.

[Docket Nos. EC92–21–000 and ER92–806–004]

Take notice that on December 30, 1993, Entergy Services, Inc. tendered for filing copies of its compliance filing in the above-referenced dockets. On January 3, 1994 and January 11, 1994, Entergy Services, Inc. tendered for filing revised copies of its December 30, 1993, compliance filing.

Comment date: February 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. New York State Electric & Gas Corp.

[Docket No. ER94–191–000 Corp.]

Take notice that on December 28, 1993, New York State Electric & Gas Corporation (NYSEG) tendered for filing an amendment to its November 29, 1993 filing in the above-referenced docket.

Comment date: February 4, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2292 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EF94–5031–000, et al.]

Electric Rate and Corporate Regulation Filings

January 24, 1994.

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

1. United States Department of Energy—Western Area Power Administration (Pick-Sloan Missouri Basin Program-Eastern Division)

[Docket No. EF94–5031–000]

Take notice that on January 10, 1994, the Deputy Secretary of Energy tendered for filing, on behalf of the Western Area Power Administration, revised rates for firm power from the Pick-Sloan Missouri Basin Program-Eastern Division. The Deputy Secretary states that he has confirmed and approved the revised rates on an interim basis.

Comment date: February 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. United States Department of Energy—Western Area Power Administration (Parker-Davis Project)

[Docket No. EF94–5041–000]

Take notice that on January 10, 1994, the Deputy Secretary of Energy tendered for filing, on behalf of the Western Area Power Administration, revised rates for firm power from the Parker-Davis Project and for firm and nonfirm transmission service from the Parker-Davis Project. The Deputy Secretary states that he has confirmed and approved the revised rates on an interim basis.

Comment date: February 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. United States Department of Energy—Western Area Power Administration (Loveland Area Projects)

[Docket No. EF94–5181–000]

Take notice that on January 10, 1994, the Deputy Secretary of Energy tendered for filing, on behalf of the Western Area Power Administration, revised rates for firm power from the Loveland Area Projects and firm and nonfirm transmission service from the Loveland Area Projects transmission system. The Deputy Secretary states that he has confirmed and approved the revised rates on an interim basis.

Comment date: February 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2291 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2402–003 Michigan]

Upper Peninsula Power Co; Availability of Draft Environmental Assessment

January 27, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major new license for the Prickett Project, located on the Sturgeon River, in Baraga and Houghton counties, Michigan and has prepared a Draft Environmental Assessment (draft EA) for the project. In the draft EA, the Commission's staff has analyzed the environmental impacts of the existing project and has concluded that approval of the project, with appropriate enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the draft EA are available for review in the Public Reference Branch, room 3104 of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Please submit any comments within 45 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 925 North Capitol Street NE., Washington, DC 20426. Please affix Project No. 2402 to all comments. For further information, please contact CarLisa Linton,

Environmental Coordinator, at (202) 219–2802.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2310 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–113–000, et al.]

Columbia Gas Transmission Corporation, et al.; Natural Gas Certificate Filings

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

1. Columbia Gas Transmission Corp. and Tennessee Gas Pipeline Co.

[Docket No. RP94–113–000]

January 13, 1994.

Take notice that on January 10, 1994, Columbia Gas Transmission Corporation (Columbia) and Tennessee Gas Pipeline Company (Tennessee) filed a joint petition pursuant to section 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, requesting an order approving a stipulation entered into on October 1, 1993. Petitioners state the stipulation provides for termination of all firm transportation and storage contracts between them, through permanent assignment of Tennessee capacity to Columbia's customers and through payment of an exit fee to Tennessee by Columbia for abandonment of unassigned capacity on Tennessee.

Petitioners state that under the terms of the stipulation Columbia will assign all of its capacity rights under Contract No. T–2030 (15,637 Dth per day of storage withdrawal under Tennessee's SS–E rate schedule), and under Contract Nos. T–4613/T–4872 (10,425 Dth per day of firm transportation under Tennessee's FT–B rate schedule). Columbia would also assign a portion of its rights under Contract No. T–3871 (263,998 Dth per day of firm transportation under Tennessee's FT–A rate schedule).

The petitioners further state Columbia will pay Tennessee a negotiated exit fee for termination of the unassigned portion of Columbia's capacity rights under Contract No. T–3871 and for termination of Contact Nos. T–3869/T–4870 (6,928 Dth per day of firm transportation under Tennessee's FT–B rate schedule). They state the exit fee will be computed at the time the stipulation becomes effective, based on a formula that takes into account, among other things, the amount of unassigned capacity, estimates of Tennessee's rates over the term of the contracts, and the net present value of the nominal claim. Based on assumptions with a January 1, 1995 effective date, petitioners estimate an exit fee of $36.7 million.

Petitioners request an order approving recovery of the exit fee in Columbia's rates through its TCRA (transportation costs rate adjustment) mechanism. They request authorization for Tennessee to retain a portion of the exit fee equal to the amount it would have collected from Columbia in demand charges for the unassigned capacity through July 1, 1995. Tennessee proposes to credit the remaining portion of the exit fee to its firm customers through its GSR cost recovery mechanism.

Petitioners further request abandonment authorization under section 7(b) of the Natural Gas Act for the following transportation and exchange services:

Tennessee

Rate Schedule T–133
Rate Schedule T–140
Rate Schedule T–147

Tennessee and Columbia

Tennessee Rate Schedule X–58—
Columbia Rate Schedule X–78
Tennessee Rate Schedule X–60—
Columbia Rate Schedule X–90
Tennessee Rate Schedule X–66—
Columbia Rate Schedule X–119

Comment date: February 1, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Texas Eastern Transmission Corp.

[Docket No. CP94–178–000]

January 14, 1994.

Take notice that on January 12, 1994, Texas Eastern Transmission Corporation (Texas Eastern), P. O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–178–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale certain facilities in the Caillou Island area, Terrebonne Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Texas Eastern proposes to abandon, by sale to The Offshore Group, a barge and appurtenant equipment located in the Caillou Island Field, Terrebonne Parish, Louisiana. Texas Eastern states that it was authorized to construct certain facilities, including the barge, to connect natural gas supplies dedicated to it by Louisiana Land and Exploration Company (LL&E). LL&E owns compression facilities on the barge which are used to deliver natural gas to Texas Eastern. LL&E has made arrangements with Texaco, Inc. to provide compression service to deliver the natural gas to Texas Eastern. LL&E therefore no longer requires Texas Eastern's barge or the facilities on it.

Comment date: February 4, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Transcontinental Gas Pipe Line Corp.

[Docket No. CP94–182–000]

January 14, 1994.

Take notice that on January 13, 1994, Transcontinental Gas Pipe Line Corporation (TGPL), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP94–182–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap to Exxon Company, U.S.A. (Exxon) under TGPL's blanket certificate issued in Docket No. CP83–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, TGPL proposes to construct and operate a new sales tap to Exxon on TGPL's existing 20-inch South McMullen Lateral in McMullen County, Texas. TGPL states that it would use the facilities to deliver, on an interruptible basis, up to 400 Mcf of natural gas per day to Exxon. TGPL would transport the natural gas for Exxon under part 284 of the Commission's Regulations, it is stated. TGPL states that Exxon would reimburse it for the cost of the facilities.

TGPL asserts that the new sales tap would not have any significant impact on TGPL's peak day or annual deliveries and is not prohibited by TGPL's gas tariff.

Comment date: February 28, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing

therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2294 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD94–02389T Oklahoma–69]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 27, 1994.

Take notice that on January 24, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Hoxbar Formation, underlying portions of Caddo and Grady Counties, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as all of Section 13, in Township 10 North, Range 9 West, and Section 19, in Township 10 North, Range 8 West.

The notice of determination also contains Oklahoma's findings that the referenced 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 determation 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. 94–2313 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–181–000, et al.]

Williams Natural Gas Company, et al.; Natural Gas Certificate Filings

January 25, 1994.

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

1. Williams Natural Gas Co.

[Docket No. CP94–181–000]

Take notice that on January 13, 1994, Williams Natural Gas Company (Williams) P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94–181–000, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon approximately 73.3 miles of 12-inch and 20-inch transmission pipeline located in Alfalfa County, Oklahoma and Barber, Harper, Sumner and Sedgwick Counties, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Williams proposes to abandon by reclaim approximately 8.8 miles of 12-inch pipeline and 61.2 miles of 20-inch pipeline and to abandon in place approximately 3.3 miles of 20-inch pipeline.

Williams states that all deliveries made from the pipeline to be abandoned have been relocated to an adjacent 6-inch pipeline, therefore there would be no abandonment of service. Williams states further that the estimated cost of abandonment would be approximately $227,130 with an estimated salvage value of $525,000.

Comment date: February 15, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Co.

[Docket No. CP94–188–000]

Take notice that on January 18, 1994, Panhandle Eastern Pipeline Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–188–000 an application pursuant to Sections 7 (b) and (c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of certain new facilities and the abandonment of certain other facilities in its Howell Storage Field, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Panhandle proposes to construct and operate a new injection/withdrawal well and approximately 225 feet of 8-inch storage well flow line in its Howell Storage Field in Livingston County, Michigan. Panhandle states that part of the storage field lies directly under the City of Howell where there are no existing injection/withdrawal wells, which results in this portion of the storage field not being drained efficiently. The proposed well would enable Panhandle to more efficiently cycle the portion of the storage field under the City of Howell, it is stated. Panhandle further states that the proposed well would increase the working gas inventory by about 900,000 Mcf, with a corresponding decrease in the base gas inventory. Panhandle asserts that the new facilities would not increase the certificated maximum capacity of the field or the maximum peak day withdrawal rate. Panhandle further proposes to connect an existing well to the new storage well flow line and to abandon in place the 4-inch storage well flow line presently connecting the existing well to the storage field gathering system.

Panhandle states that the proposed well would be drilled utilizing new horizontal drilling technology at a location 90 feet from the wellhead of an existing well. Panhandle asserts that because of the experimental nature of the new well, its drilling and completion are being done in cooperation with the Gas Research Institute (GRI). GRI has agreed to co-fund this project and will share the technical results with other GRI members.

Panhandle estimates the cost of the project to be $1,104,200, which will be financed with general funds available to

Panhandle. GRI would contribute $300,000 toward the cost of the project it is stated.

Comment date: February 15, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP94–195–000]

Take notice that on January 24, 1994, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP94–195–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to continue to operate facilities constructed on an emergency basis to implement an interruptible transportation service for a new shipper, Songer Gas Company (Songer), under the blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National Fuel states that on January 16, 1994, a customer of Songer's notified National Fuel that he and sixteen other customers were out of gas. It was indicated that a phone call to Mr. Ken Songer revealed that he was planning to thaw out his wells but that he could not get his tractor started. It is then indicated that on that same day National Fuel installed a temporary connection to provide service for Songer's customers and subsequently filed a report of emergency transaction with the Commission. National Fuel states that it proposes to continue the operation of the emergency facility beyond the sixty-day period permitted under the emergency regulations.

National Fuel estimates total annual deliveries of 500 Mcf. National Fuel indicates that the facility cost approximately $850. National Fuel also states that the proposed delivery point is not prohibited by its existing tariff. National Fuel further states that the addition of the delivery facilities would have a minimal impact on its peak day and annual deliveries.

Comment date: March 11, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2293 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–115–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 27, 1994.

Take notice that on January 21, 1994, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet:

Sub First Revised Sheet No. 98

The proposed effective date of the tariff sheet is November 1, 1993.

Algonquin states that the purpose of this filing is to recover stranded costs allocated to Algonquin in Texas Eastern Transmission Corporation's (Texas Eastern) filing in Docket No. RP93–204–000 dated December 30, 1993. In compliance with the October 29 Order in Docket No. RP93–204–000, Texas Eastern submitted a filing to recover stranded costs using the allocation method accepted by the Commission in the December 17 Order in Docket Nos. RS92–11–000, et al.

Algonquin states that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2308 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–112–003]

Blue Lake Gas Storage Co.; Proposed Changes in FERC Gas Tariff

January 27, 1994.

Take notice that on January 21, 1994, Blue Lake Gas Storage Company (Blue Lake) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute First Revised Sheet No. 5.

Blue Lake states that Substitute First Revised Sheet No. 5 inserts the portion of the definition under footnote No. 3 which was inadvertently omitted when Blue Lake filed its First Revised Sheet No. 5. In all other respects Substitute First Revised Sheet No. 5 is the same as First Revised Sheet No. 5 which was accepted in the above captioned Dockets by the Commission in a January 12, 1994 Order. Blue Lake requests that October 1, 1993, the same date that First Revised Sheet No. 5 became effective, also be the effective date for Substitute First Revised Sheet No. 5.

Blue Lake states that copies of the filing were served upon Blue Lake's jurisdictional customer.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public information in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2315 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–4–000]

Mississippi River Transmission Corp.; Informal Settlement Conference

January 27, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, February 7, 1994, at 10 a.m., and continuing on Tuesday, February 8, 1994, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Warren C. Wood at (202) 208–2091.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2311 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2420–001 Utah]

PacifiCorp Electric Operations; Availability of Draft Environmental Assessment

January 27, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Cutler Project, located on the Bear River in Cache and Box Elder Counties, Utah, near Logan, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that issuance of a new license for the project, with appropriate environmental protection and enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. For further information, contact Vince Yearick, Environmental Coordinator, at (202) 219–3073.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2312 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–117–000]

Panhandle Eastern Pipe Line Co., Proposed Changes in FERC Gas Tariff

January 27, 1994.

Take notice that on January 24, 1994 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2 revised sheets listed on Appendix A to the filing.

Panhandle states that such changes are made to amend Rate Schedule T–39 for the transportation of natural gas on behalf of United Cities Gas Company (United Cities) to reflect Trunkline Gas Company's and Panhandle's transportation rates as approved in Docket Nos. RP89–160–000, RP89–114–000, RP92–165–000, RS92–25–000, and RS92–22–000, et al.

Panhandle respectfully requests that the Commission grant such waivers as may be necessary for the acceptance of the tariff sheets submitted herewith, to become effective on the dates shown thereon.

Panhandle states that a copy of this letter and enclosures was served on United Cities and the respective state commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2316 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–116–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 27, 1994.

Take notice that on January 24, 1994, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

Proposed to be Effective October 1, 1993
Revised 2nd Sub Original Sheet No. 628
Proposed to be Effective October 3, 1993
2nd Revised 2nd Sub Original Sheet No. 628
Proposed to be Effective November 1, 1993
2nd Sub First Revised Sheet No. 628

Texas Eastern states that the proposed tariff sheets reflect the inclusion of references to Rate Schedule LLFT, effective October 1, 1993, and Rate

Schedule VKFT, effective October 3, 1993, in the definition of GSR Demand Account and in Section 15.2(D) of the General Terms and Conditions. In addition, Texas eastern states that the tariff sheets reflect the inclusion of the mitigation measure for Rate Schedule SCT Customers filed on November 15, 1993 in Docket No. RS92–11–020 and approved by the Commission's "Fourth Order on Compliance Filing and Third Order on Rehearing" issued December 17, 1993 in Docket No. RS92–11, *et al.*, to be effective June 1, 1993.

The proposed effective date of the tariff sheets are October 1, 1993, October 3, 1993 and November 1, 1993, as shown above.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2307 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–106–000, et al.]

Texas Gas Transmission Corp.; Informal Settlement Conference

January 27, 1994.

Take notice that an informal settlement conference will be convened in the above-captioned proceeding at 10 a.m. on February 4, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information please contact Michael D. Cotleur, (202) 208–1076, or Arnold H. Meltz (202) 208–2161.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2309 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–8–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

January 27, 1994.

Take notice that on January 24, 1994 Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets included in Appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to track rate changes attributable to (1) transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT–NT, (2) transportation service purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule X–42 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule LSS, (3) transportation service purchased from National Fuel under its Rate Schedule X–54 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule SS–2 and (4) transportation service purchased from National Fuel under its Rate Schedule X–58 the costs of which are included in the rates and charges payable under TGPL's Niagara Import Point Project—System Expansion (NIPPs–SE) firm transportation service. The tracking filing is being made pursuant to Section 4 of TGPL's Rate Schedule FT–NT, Section 4 of TGPL's Rate Schedule LSS, Section 4 of TGPL's Rate Schedule SS–2 and Section 8.01(i) of TGPL's NIPPs–SE Rate Schedules X–315, X–316, X–318 and X–324.

TGPL states that included in Appendices B through E attached to the filing are the explanations of the rate changes and details regarding the computation of the revised FT–NT, LSS, SS–2 and NIPPs–SE rates, respectively.

TGPL states that copies of the filing are being mailed to each of its FT–NT, LSS, SS–2 and NIPPs–SE customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before February 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2317 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–43–001]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 27, 1994.

Take notice that on January 21, 1994, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Substitute Second Revised Sheet No. 6A. The proposed effective date of this tariff sheet is January 1, 1994.

WNG states that this filing is being made in compliance with Commission order issued December 30, 1993 in Docket Nos. TM94–3–20–000, et al. The order required all interstate pipelines that are members of GRI that have tariff provisions applicable to new customers that differ from the method of determining new customers' load factors set forth in the order, to revise their tariffs. In accordance with the order, WNG is refiling Sheet No. 6A to include the high load factor rate.

WNG states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before February 3, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to

the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–2314 Filed 2–1–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4832–7]

Clean Air Act; Acid Rain Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of the 1994 EPA SO_2 Allowance Auctions.

SUMMARY: Pursuant to Title IV of the Clean Air Act and 40 CFR Part 73, the EPA is responsible for implementing a program to reduce emissions of sulfur dioxide (SO_2), a precursor of acid rain. The centerpiece of the SO_2 control program is the allocation of transferable allowances, or authorizations to emit SO_2, which are distributed in limited quantities for existing utility units and which eventually must be held by virtually all utility units to cover their SO_2 emissions. These allowances may be transferred among polluting sources and others, so that market forces may govern their ultimate use and distribution, resulting in the most cost-effective sharing of the emissions control burden. In addition, EPA is directed under Section 416 of the Act to conduct annual sales and auctions of a small portion of allowances (2.8%) withheld from the total allowances allocated to utilities each year. Sales and auctions are expected to stimulate and support such a market in allowances and to provide a public source of allowances, particularly to new units for which no allowances are allocated. Today, the Acid Rain Division is giving notice of the second annual SO_2 allowance auctions. The regulations governing the auctions and sales were promulgated on December 17, 1991 (40 CFR part 73, subpart E).

EPA has delegated the administration of the EPA allowance auctions to the Chicago Board of Trade (CBOT). The auctions will be conducted under the regulations cited above. Anyone can participate in the EPA auctions and bidders are not restricted as to the quantity or price of their bid. Allowances sold at the auctions will be sold to the highest bidder until no allowances remain. The 1994 auctions will consist of one "spot" auction and two "advance" auctions. Allowances sold in the spot auction are useable for compliance beginning in 1995. Allowances sold in the 6-year advance auction are useable for compliance beginning in 2000; allowances sold in the 7-year advance auction are useable for compliance beginning in 2001. 25,000 allowances will be sold in the 6-year advance auction, which are the unsold allowances from the 1993 direct sale. 50,000 spot allowances will be sold in the spot auction and 100,000 allowances will be sold in the 7-year advance auction. Bid Forms for the 1994 auctions must be received by the CBOT by the close of business on March 22, 1994. The auctions themselves will be conducted on March 28, 1994, with the results announced the next day.

CBOT will also sell in the 1994 auctions any spot, 6-year advance, or 7-year advance allowances that are offered by others holding allowances in EPA's Allowance Tracking System. However, offered allowances will be sold after the allowances that were withheld from the utilities, so offered allowances will consequently be sold at a lower price than the withheld allowances. Owners of offered allowances may set a minimum price for their allowances. To offer allowances in the EPA auctions, owners of allowances must submit an SO_2 Allowance Offer Form to EPA by the close of business on March 11, 1994. The auction and sale regulations require that offer forms be received by EPA no later than 15 business days prior to the date of the auctions, which would be March 4, 1994. However, this year, the date that offer forms must be received by EPA is being extended to March 11, 1994 due to the delay in the opening of the Allowance Tracking System. This extension will not be implemented permanently and only applies to the 1994 auctions.

ADDRESSES:

U.S. EPA Acid Rain Division (6204J), Attn: Auctions and Sales, 401 M St., SW., Washington, DC 20460.

Chicago Board of Trade, Attn: EPA Auctions, 141 W. Jackson Blvd., suite 2240, Chicago, IL 60604.

Forms needed to participate in the EPA auctions will be available from the Acid Rain Division by February 14, 1994. To obtain forms, call the Acid Rain Hotline at (202) 233–9620.

FOR FURTHER INFORMATION: Information on bidding in the 1994 EPA auctions can be found in the brochure "How to Bid in the EPA SO_2 Allowance Auctions, Second Annual Auctions—March 28, 1994;" general information on the EPA auctions can be found in the "Acid Rain Program Allowance Auctions and Direct Sales" fact sheet. These publications can be obtained by calling the Acid Rain Hotline or by writing to EPA at the address listed above.

Dated: January 25, 1994.

Brian J. McLean,

Director, Acid Rain Division.

[FR Doc. 94–2355 Filed 2–1–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4832–5]

Public Water System Supervision Program Revision for Puerto Rico

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that Puerto Rico is revising its approved Public Water System Supervision Primacy Program. Puerto Rico has adopted drinking water regulations that satisfy the national Primary Drinking Water Regulations (NPDWR) for the Surface Water Treatment Rule (SWTR) and the Total Coliforms Rule (TCR) promulgated by USEPA on June 29, 1989 (54 FR 27486 and 54 FR 27544) respectively.

The USEPA has determined that Puerto Rico's SWTR and TCR regulations are no less stringent than the corresponding Federal regulations and that Puerto Rico continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10.

All interested parties, other than Federal Agencies, may request a public hearing. A request for a public hearing must be submitted to the USEPA Regional Administrator at the address shown below within thirty (30) days after the date of this **Federal Register** Notice. If a substantial request for a public hearing is made within the required thirty-day period, a public hearing will be held and a notice will be given in the **Federal Register** and a newspaper of general circulation. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. If no timely and appropriate request for a hearing is received and the Regional Administrator does not choose to hold a hearing on his or her own motion, this determination shall become final and effective thirty (30) days after publication of this **Federal Register** Notice.

Any request for a public hearing shall include the following information:

(1) The name, address and telephone number of the individual organization or other entity requesting a hearing;

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement on information that the requesting person intends to submit at such hearing; and

(3) The signature of the individual making the requests or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: Requests for Public Hearing shall be addressed to: Regional Administrator, U.S. Environmental Protection Agency—Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

All documents relating to this determination are available for inspection between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Puerto Rico Department of Health, Public Water System Supervision Program, Edificio A. Centro Medico, Call Box 70184, San Juan, Puerto Rico 00909.

USEPA-Caribbean Field Office, Office 2A, Podiatry Center Building, 1413 Fernandez Juncos Avenue, Santurce, Puerto Rico 00909.

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section Room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

FOR FURTHER INFORMATION CONTACT: Walter E. Andrews, Chief, Drinking and Groundwater Protection Branch, U.S. Environmental Protection Agency—Region II, (212) 264–1800.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR.

Dated: January 11, 1994.

William J. Muszynski,

Acting Regional Adminstrator, EPA, Region 2.

[FR Doc. 94–2283 Filed 2–1–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4831–4]

Radiation Cleanup Regulation Subcommittee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL92563, EPA gives notice that the Radiation Cleanup Regulation Subcommittee of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Environmental Information and Assessments (EIA) Committee will meet by conference call on Thursday, February 24, 1994, from 1 p.m. to 4 p.m., EST. The Subcommittee provides advice to EPA regarding the development of regulations to be applied to sites contaminated with radioactive material.

The Agency received the benefit of Subcommittee members' views on appropriate risk/cleanup levels, future land use, and site specific public involvement at the open subcommittee meeting of October 18–19, 1993. This conference call will provide an update on how those views have helped inform the Agency's decision-making process to date as regulatory development progresses. There will also be a limited discussion of regulations governing the disposal of wastes generated during cleanup operations, which are in the preliminary stages of development. This conference call is primarily intended to provide an intermediate update for subcommittee members. It is anticipated that a full-scale subcommittee meeting will be held in the Spring for in-depth discussion of all pertinent issues.

For additional information, contact Miles Kahn, Designated Federal Official, Office of Radiation and Indoor Air, Radiation Studies Division, Mailcode 6603J, 401 M Street, SW., Washington, DC 20460. Phone: 202–233–9384 or FAX: 202–233–9650. Individuals wishing to participate in the conference call as audience or commenters should call the Designated Federal Official as soon as possible, since there is a limited number of conference lines available.

Members of the public wishing to submit comments on the issues discussed by the subcommittee should submit them in writing to: USEPA—Mail Stop 6102; Air Docket No. A–93–27; Room M–1500; First Floor, Waterside Mall; 401 M St., SW., Washington, DC 20460.

Dated: January 24, 1994.

Morris Altschuler,

Acting Director, Office of Cooperative Environmental Management.

[FR Doc. 94–2276 Filed 2–1–94; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30360; FRL–4757–3]

Micro Flo Co.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application submitted by Micro Flo Company, to register the pesticide product Corn Rootworm Granular Bait, a biological insecticide containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by March 3, 1994.

ADDRESSES: By mail submit comments identified by the document control number [OPP–30360] and the file symbol (51036–ENU) to: Public Response and Program Resources Branch, Field Operations Division (7506C), Attention PM 18, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: PM 18, Phil Hutton, Registration Division (7505C), Rm. 213, CM #2, (703–305–7690).

SUPPLEMENTARY INFORMATION: EPA received an application from Micro Flo Company, P.O. Box 5948, Lakeland, FL 33807, to register the pesticide product Corn Rootworm Granular Bait (File Symbol 51036–ENU), a biological insecticide. This product contains the following plant floral volatile attractants as active ingredients: cinnamaldehyde, cinnamyl alcohol, 4-methoxy cinnamaldehyde, 3-phenyl propanol, 4-methoxy phenethyl alcohol, indole, and 1,2,4 trimethoxybenzene, ingredients not included in any previously registered product pursuant to the provisions of section 3(c)(4) of FIFRA.

The product was classified for general outdoor use against adult Diabroticine corn rootworms and cucumber beetles *Diabrotica* and *Acalymma* species on specific raw agricultural commodities and ornamentals. Notice of receipt of the application does not imply a

decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: January 24, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–2279 Filed 2–1–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–48324]

AERR Co. Site, Unincorporated Jefferson County, Colorado; Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9622(i), as amended by the Superfund Amendments and reauthorization Act ("CERCLA"), notice is hereby given of a proposed administrative settlement concerning the AERR Co. site in unincorporated Jefferson County, Colorado. The proposed administrative settlement resolves an EPA claim under section 107 of CERCLA, 42 U.S.C. 9607 against Adolph Coors Company, Ball Corporation, Continental Can Company, The Denver Post Corporation, Eastman Kodak Company, Eaton Corporation, Entrada Industries, Inc., Hewlett-Packard Company, Pease Industries, Sterling Stainless Tube Corporation, and Syntex Chemicals, Inc. The settlement requires the settling parties to pay $488,867.41 to the Hazardous Substances Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at EPA Region VIII's Superfund Records Center, which is located on the 8th floor of the North Tower, at 999 18th Street, Denver, Colorado.

DATES: Comments must be submitted by March 4, 1994.

ADDRESSES: The proposed administrative settlement and additional background information relating to the settlement are available for public inspection at EPA Region VIII's Superfund Records Center, at the address listed above. A copy of the proposed settlement may be obtained from Carol Pokorny (8HWM–ER), Enforcement Specialist, USEPA, 999 18th Street, suite 500, Denver, CO 80202–2466. Comments should reference the AERR CO. Site, Jefferson County, CO, EPA Docket No. CERCLA–VIII–94–04, and should be addressed to Ms. Pokorny at the address given above.

FOR FURTHER INFORMATION CONTACT: Wendy Silver, Office of Regional Counsel, (303) 294–7570.

Dated: November 23, 1993.

Kerrigan G. Clough,

Acting Regional Administrator.

[FR Doc. 94–2277 Filed 2–1–94; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

U.S./Central America Liner Association, et al.; Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010987–019.

Title: U.S./Central America Liner Association.

Parties:

Crowley American Transport, Inc.
Seaboard Marine, Ltd.
Sea-Land Service, Inc.

Synopsis: The proposed amendment (1) changes the name of the Agreement to the Latin American Shipping Service Association; (2) adds King Ocean Central America, S.A., and Tropical Shipping and Construction Co., Ltd., as parties to the Agreement; (3) clarifies the intermodal portion of the geographic scope; (4) modifies the alternate port service authority to ports within a trade area section; (5) authorizes the parties to interchange equipment; (6) revises the trade area sections of the Agreement and authorizes parties to limit their participation in such sections; (7) modifies Article 11, Prohibited Acts, to conform to Commission regulations and to clearly delineate the parties' obligations; (8) revises independent action provisions; and (9) revises service contract provisions. The amendment also restates the Agreement.

Agreement No.: 224–200563–002.

Title: Port of Oakland/Trans Pacific Container Service Corporation Terminal Agreement.

Parties:

Port of Oakland ("Port")
Trans Pacific Container Service Corporation ("TPCC").

Synopsis: The proposed amendment would permit the Port to assign certain marine terminal facilities to TPCC for the 25 year term of the Agreement.

Agreement No.: 224–200842.

Title: The Port Authority of New York & New Jersey/Sea-Land Service, Inc. Container Incentive Agreement.

Parties:

The Port Authority of New York & New Jersey ("Port")
Sea-Land Service, Inc. ("Sea-Land")

Synopsis: The Agreement provides for the Port to pay Sea-Land a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals

during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200843.

Title: The Port Authority of New York & New Jersey/D.B. Turkish Cargo Lines Container Incentive Agreement.

Parties:

The Port Authority of New York & New Jersey ("Port")
D. B. Turkish Cargo Lines ("Turkish").

Synopsis: The Agreement provides for the Port to pay Turkish a container incentive of $20.00 for each import container and $30.00 for each export container loaded or unloaded from a vessel at the Port's marine terminals during calendar year 1994, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Agreement No.: 224–200845.

Title: Port of Galveston/Sun Line Cruises Terminal Agreement.

Parties:

Port of Galveston ("Port")
Sun Line Cruises ("Sun Cruises")

Synopsis: The proposed Agreement would permit Sun Line to pay the Port dockage charges that were in effect on February 1, 1993, for the term of the Agreement.

Dated: January 27, 1994.

By Order of the Federal Maritime Commission

Joseph C. Polking,

Secretary.

[FR Doc. 94–2284 Filed 2–1–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank of Waunakee Employee Stock Ownership Plan, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 25, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bank of Waunakee Employee Stock Ownership Plan, Waunakee, Wisconsin; to become a bank holding company by acquiring 95 percent of the voting shares of Waunakee Bank Shares, Inc., Waunakee, Wisconsin, and thereby indirectly acquire Bank of Waunakee, Waunakee, Wisconsin.

2. Capitol Bancorp, Ltd., Lansing, Michigan; to acquire 100 percent of the voting shares of Financial Center Corporation, Holland, Michigan, and thereby indirectly acquire Paragon Bank & Trust, Holland, Michigan.

3. Mutual Bancshares Corporation, Milwaukee, Wisconsin; to become a bank holding company by acquiring 100 percent of Mutual Savings Bank, Milwaukee, Wisconsin, a *de novo* bank, which will merge with Mutual Savings Bank, Brown Deer, Wisconsin.

4. Old Kent Financial Corporation, Grand Rapids, Michigan, and Old Kent-Illinois, Inc., Chicago, Illinois; to acquire 100 percent of the voting shares of Edgemark Financial Corporation, Chicago, Illinois, and thereby indirectly acquire Merchandise National Bank, Chicago, Illinois; Edgewood Bank, Countryside, Illinois; EdgeMark Bank-Lombard, Lombard, Illinois; First National Bank of Lockport, Lockport, Illinois; and EdgeMark Bank-Rosemont, Rosemont, Illinois.

Board of Governors of the Federal Reserve System, January 26, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–2305 Filed 2–1–94; 8:45 am]

BILLING CODE 6210–01–M

Robert W. Hanson; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than February 22, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Robert W. Hanson, Eden Prairie, Minnesota; to acquire an additional 13.3 percent of the voting shares of St. Joseph Bancshares, Inc., St. Joseph, Minnesota, for a total of 33.4 percent, and thereby indirectly acquire First State Bank, St. Joseph, Minnesota.

Board of Governors of the Federal Reserve System, January 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-2322 Filed 2-1-94; 8:45 am]

BILLING CODE 6210-01-F

Dann Gerald Snow, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice

or to the offices of the Board of Governors. Comments must be received not later than February 22, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Danny Gerald Snow, Manassas, Virginia; to acquire an additional 3.27 percent of the voting shares of Security Bank Corporation, Manassas, Virginia, for a total of 10.67 percent.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Preston Turner Bostwick, Arlington, Georgia; to retain 60.3 percent of the voting shares of B.H.C., Inc., Arlington, Georgia, and thereby indirectly acquire Bostwick Banking Co., Arlington, Georgia.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. James L. Blin, Osprey, Florida; Bywater Properties, Iowa City, Iowa; Willis Crees, Waterloo, Iowa; Collin Fritz, Peoria, Arizona; Vernon Hoffman, Independence, Iowa; William Kuehn, Sumner, Iowa; Gary Short and Harriet Short, both of Independence, Iowa; to acquire an additional 68.35 percent of the voting shares of Independence Bancshares, Inc., Independence, Iowa, for a total of 81.91 percent, and thereby indirectly acquire Security State Bank, Independence, Iowa, and First State Bancorporation, Independence, Iowa, and thereby indirectly acquire Northeast Security Bank, Sumner, Iowa.

2. Van A. Dukeman, David J. Downey George T. Shapland and Gregory B. Lykins, all of Champaign, Illinois; to acquire, as a group, 33.19 percent of the voting shares of BankIllinois Financial Co., Champaign, Illinois, and thereby indirectly acquire Bank of Illinois in Champaign, Illinois.

D. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Albert Furman, Glenview, Illinois; to acquire 45.4 percent; Robert Cook, Union Grove, Wisconsin, to acquire 7.6 percent; Robert Durham, Austin, Texas, to acquire 7.6 percent; Howard Marvin, Palm Desert, California, to acquire 7.6 percent; and Robert Wunsch, Austin, Texas, to acquire 7.6 percent of the voting shares of Hutto State Bank, Hutto, Texas.

E. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Kaharudin Latief, Jakarta, Indonesia; to acquire 33.3 percent of the voting shares of Bank of San Francisco Company Holding Company, San Francisco, California, and thereby indirectly acquire Bank of San Francisco, San Francisco, California.

Board of Governors of the Federal Reserve System, January 26, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–2306 Filed 2–1–94; 8:45 am]

BILLING CODE 6210–F–M

Southwest Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 25, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Southwest Bancshares, Inc., Jonesboro, Arkansas; to acquire 100 percent of the voting shares of FirstBank of Arkansas, Kensett, Arkansas.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Peoples Bancshares, Inc., Clay Center, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of The Peoples National Bank, Clay Center, Kansas.

Board of Governors of the Federal Reserve System, January 27, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-2323 Filed 2-1-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Low Level Exposure to Chemicals and Neurologic Sensitivity; Meeting

Name: Conference on Low Level Exposure to Chemicals and Neurologic Sensitivity.

Times and Dates: 8 a.m.–5:15 p.m., April 6, 1994. 8 a.m.–4 p.m., April 7, 1994.

Place: The Stouffer Harbor Place Hotel, 202 East Pratt Street, Baltimore, Maryland, 21202, telephone 410/547–1200.

Status: The entire meeting will be open to the public, limited only by space available.

Purpose: To explore clinical observations and basic research information potentially relevant to neurobiologic mechanisms of sensitivity to low level chemical exposures, and to discuss possible tools for advancing the understanding of the neurological effects of low level environmental chemical exposures. The information gained from this meeting will be used by the Agency for Toxic Substance and Disease registry (ATSDR) to develop testable hypotheses.

Contact Persons for More Information: Patricia Price, M.D., ATSDR, Mailstop E–33, 1600 Clifton Road, NE., Atlanta, Georgia, telephone 404/639–6204; Frank Mitchell, M.D., ATSDR, Mailstop E–28, 1600 Clifton Road, NE., Atlanta, Georgia, telephone 404/639–0700.

Dated: January 27, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination.

[FR Doc. 94–2329 Filed 2–1–94; 8:45 am]

BILLING CODE 4160–70–M

Centers for Disease Control and Prevention

Hospital Infection Control Practices Advisory Committee: Subcommittee on Prevention and Control of Antimicrobial Resistant Microorganisms in Hospitals; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee meeting.

Name: Subcommittee on Prevention and Control of Antimicrobial Resistant Microorganisms in Hospitals.

Time and Date: 9 a.m.–3:30 p.m., February 18, 1994.

Place: CDC, Auditorium A, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will review current knowledge about the epidemiology and laboratory aspects of antimicrobial resistance among nosocomial pathogens and develop an agenda for a workshop later this year to revise and/or develop recommendations to control these pathogens in acute care settings.

Matters to be Discussed: The subcommittee will hold its second meeting to review current knowledge about the epidemiology and laboratory aspects of vancomycin resistance in enterococci and develop a comprehensive strategic plan to detect, prevent, and control resistant enterococci in U.S. hospitals. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Julia S. Garner, R.N., M.N., Nurse Consultant, Hospital Infections Program, NCID, CDC, 1600 Clifton Road, NE., Mailstop A–07, Atlanta, Georgia 30333, telephone 404/639–1552.

Dated: January 27, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–2330 Filed 2–1–94; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93F–0483]

Rio Linda Chemical Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rio Linda Chemical Co., Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of chlorine dioxide to disinfect waters contacting fresh meat, fresh poultry, processed meat, and processed poultry.

DATES: Written comments on the petitioner's environmental assessment by March 4, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–254–9519.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4A4408) has been filed by Rio Linda Chemical Co., Inc., 410 North 10th St., Sacramento, CA 95814. The petition proposes that the food additive regulations be amended to provide for the safe use of chlorine dioxide to disinfect waters contacting fresh meat, fresh poultry, processed meat, and processed poultry.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before March 4, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 24, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–2268 Filed 2–1–94; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Subcommittee Meeting of the Anesthetic and Life Support Drugs Advisory Committee

Date, time, and place. March 1 and 2, 1994, 8 a.m., Potomac Inn, Ballrooms A, B, and C, Three Research Ct., Rockville, MD.

Type of meeting and contact person. Open committee discussion, March 1, 1994, 8 a.m. to 1 p.m.; open public hearing, 1 p.m. to 3 p.m., unless public participation does not last that long; open committee discussion, 3 p.m. to 5 p.m.; open committee discussion, March 2, 1994, 8 a.m. to 1 p.m.; Igor Cerny, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5455.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in the field of anesthesiology and surgery.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before February 15, 1994, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss how to ensure the safe use of products intended for premedication (including preoperative sedation, conscious sedation, and monitored anesthesia care) in pediatric practice. Recommendations from the meeting will serve as the basis for labeling information that can promote the safe administration of products intended for pediatric premedication.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this

notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: January 27, 1994.

Jane E. Henney,

Deputy Commissioner for Operation.

[FR Doc. 94–2269 Filed 2–1–94; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Announcement of Application Deadlines for Fiscal Year 1994 for Selected Programs of the Maternal and Child Health Bureau

AGENCY: Health Resources and Services Administration (HRSA), PHS.

ACTION: Advance notice of application deadline dates.

SUMMARY: The Health Resources and Services Administration's Maternal and Child Health Bureau (MCHB) expects to provide funding for new and competing renewal grant projects and cooperative agreements for the following programs during fiscal year 1994. The HRSA is announcing anticipated application deadline, award, funding and project period information for the following categories of: (1) Special Projects of Regional and National Significance (SPRANS) under the MCH Federal Set-Aside Program, funded under section 502(a) of the Social Security Act; (2) HIV Demonstration Program for Children, Adolescents and Families funded under Title IV of the Ryan White C.A.R.E. Act; and (3) Emergency Medical Services for Children Project Grants, funded under section 1910 of the Public Health Service Act.

FOR FURTHER INFORMATION CONTACT: Potential applicants may contact Chief, Grants Management Branch, Office of Program Support, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18–12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–1440 for application information and other programmatic information concerning these programs. Requests should specify the category or categories of activities for which an application is requested.

SUPPLEMENTARY INFORMATION: A Notice of Availability of Funds will be published in the **Federal Register** for each of these programs, announcing program provisions, priorities, and review criteria. The actual amounts available for awards and their allocation may vary from those in this notice, based on the volume and quality of applications received.

Set forth below is the application information, in table form:

MCH Federal Set-aside Grant and Cooperative Agreements Anticipated Deadline, Award, Funding, and Project Period Information, by Category

[FY 1994]

Funding source category	Application deadline	Estimated number of awards	Estimated amounts available	Project period
Grants in the following areas:				
(1) Research	March 1, 1994–August 1, 1994.	Up to 20	$2.5 million	Up to 5 years.
(2) Training:				
(2.1) Long term	April 15, 1994	Up to 28	13.4 million	Up to 5 years.
(2.2) Continuing Education	July 1, 1994	Up to 14	750,000	Up to 3 years.
(3) Genetic Disease Testing, Counseling and Information.	April 25, 1994	Up to 18	3 million	3 years.

MCH Federal Set-aside Grant and Cooperative Agreements Anticipated Deadline, Award, Funding, and Project Period Information, by Category—Continued

[FY 1994]

Funding source category	Application deadline	Estimated number of awards	Estimated amounts available	Project period
(4) Special MCH Improvement Projects (MCHIP) of Regional and National Signifi-cance in the following areas:				
(4.1) Maternal, Infant, Child, and Adolescent Health.	April 29, 1994	Up to 10	1.0 million	Up to 3 years.
(4.1.1) School Health Program	(Date to be announced)	Up to 10	2.5 million	Up to 2 years.
(4.2) Health Care Reform for CSHCN.	May 10, 1994	20	3.5 million	4 years.
(4.3) Data Utilization	June 15, 1994	5	500,000	Up to 3 years.
(4.4) Healthy Tomorrows Partnership for Children.	May 2	Up to 10	500,000	5 years.
(4.5) Field—Initiated Projects	April 1, 1994–August 15, 1994.	Up to 10	Up to 500,000	Up to 5 years.
Cooperative Agreements (MCHIPs) in the following area:				
(1) CSHCN Child and Adolescent Service System Program (CASSP).	May 10, 1994	1	1.5 million	Up to 5 years.

HIV Demonstration Grants for Children, Adolescents and Families Under Title IV of the Ryan White C.A.R.E. Act Anticipated Deadline, Award, Funding, and Project Period Information, by Category

[FY 1994]

Funding source category	Application deadline	Estimated number of awards	Estimated amounts available	Project period
Grants in the following categories:				
(1) HIV Demonstration Projects for Children, Adolescents, and Families.	April 8, 1994	Up to 20	$10 million	3 years.
(2) Comprehensive Care Planning	April 8, 1994	Up to 4	0.3 million	1 to 2 years.

Emergency Medical Services for Children Project Grants and Cooperative Agreements Anticipated Deadline, Award, Funding, and Project Period Information by Category

[FY 1994]

Funding source category	Application deadline	Estimated number of awards	Estimated amounts available	Project period
Grants in the following areas:				
(1) State Planning	March 4, 1994	4	$200,000	1 year.
(2) State Systems:				
(2.A) Implementation	April 22, 1994	4	1.25 million	2 years.
(2.B) System Enhancement	April 22, 1994	5	600,000	2 years.
(3) Targeted Issues	April 22, 1994	5	$750,000	2 years.
Cooperative Agreements in the following area:				
(1) Resource Capacity	April 22, 1994	2	800,000	2 years.

Dated: January 26, 1994.

William A. Robinson,

Acting Administrator.

[FR Doc. 94–2271 Filed 2–1–94; 8:45 am]

BILLING CODE 4160–15–P

Extension of Deadline Date for Grants for Interdisciplinary Training for Health Care for Rural Areas for FY 1994

The Health Resources and Services Administration (HRSA) announced in the **Federal Register** on January 6, 1994 (59 FR 771) that applications are being accepted for fiscal year (FY) 1994, Grants for Interdisciplinary Training for Health Care for Rural Areas under the authority of section 778, title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Section 778 of the Public Health Service Act, as amended, authorizes the Secretary to award grants for interdisciplinary training projects designed to provide or improve access to health care in rural areas.

To provide additional time for applicants to complete applications, the deadline date for this program is extended to February 15, 1994. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

If additional programmatic information is needed, please contact: Dr. Marcia Brand, Program Officer, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, HRSA, Parklawn Building, room 8C–02, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6763, FAX: 301–443–1164.

Dated: January 26, 1994.

William A. Robinson,

Acting Administrator.

[FR Doc. 94–2270 Filed 2–1–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Consensus Development Conference on Helicobacter Pylori and Peptic Ulcer Disease

Notice is hereby given to the NIH Consensus Development Conference on "Helicobacter Pylori and Peptic Ulcer Disease," which will be held February 7–9, 1994, in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Institute of Diabetes and Digestive and Kidney Diseases and the NIH Office of Medical Applications of Research. The conference is cosponsored by the National Institute of Allergy and Infectious Diseases. The conference begins at 8:30 a.m. on February 7 and 8 and at 9 a.m. on February 9.

One in a series of NIH Consensus Development Conferences, this conference will evaluate all the data that are available on H. pylori and its role in causing peptic ulcer disease and gastric malignancy and on the best and most appropriate means of diagnosing and treating H. pylori infection. The conference will bring together specialists in gastroenterology, infectious disease, epidemiology, and pathology, as well as representatives from the public.

Following 1½ days of presentations and discussion by the audience, an independent non-Federal consensus panel will weigh the scientific evidence and write a draft statement in response to the following key questions:

- What is the role of H. pylori infection in causing peptic ulcer disease and gastric malignancy?
- Does eradication of H. pylori infection alter the natural history of peptic ulcer disease?
- Which patients with H. pylori infection should be treated?
- What are the best and most appropriate means of diagnosis and monitoring of H. pylori infection?
- What are the best means of eradication of H. pylori infection?
- What are the most important issues to be addressed by future research in H. pylori infection?

On the final day of the meeting, the consensus panel chairman will read the draft statement to the conference audience and invite comments and questions.

Advance information on the conference program and conference registration materials may be obtained from: Laura Hazan, Technical Resources, Inc., 3202 Tower Oaks Blvd., suite 200, Rockville, Maryland 20852, (301) 770–3153.

The final consensus statement will be submitted for publication in professional journals and other publications. The final consensus statement will be available approximately April 1, 1994. Requests for the final consensus statement should be addressed to the NIH Consensus Program Information Service, P.O. Box 2577, Kensington, Maryland 20891, phone 1–800–NIH–OMAR (1–800–644–6627).

Dated: January 24, 1994.

Harold Varmus,

Director, NIH.

[FR Doc. 94–2448 Filed 2–1–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Wild & Scenic Rivers System; Approval of Application

AGENCY: Office of the Secretary, DOI.

ACTION: Notice of approval.

SUMMARY: The Secretary of the Interior hereby announces approval of an application by the Governor of Arkansas to include segments of the Cossatot River, Arkansas and its tributary Brushy Creek as state-administered components of the National Wild and Scenic Rivers System.

FOR FURTHER INFORMATION CONTACT: Alan Ragins, Rivers, Trails and Conservation Program, National Park Service, Southwest Region, P.O. Box 728, 1220 St. Francis Drive, Santa Fe, New Mexico 87504–0728 (Telephone: 505–988–1876).

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted the Secretary of the Interior by section 2 of the Wild and Scenic Rivers Act (Pub. L. 90–542, as amended; 16 U.S.C. 1273, *et seq.*) and upon proper application of the Governor of the State of Arkansas, a 10.4-mile segment of the Cossatot River and a 0.3-mile segment of Brushy Creek in Arkansas are hereby designated as state-administered components of the National Wild and Scenic Rivers System.

The Secretarial designation covers that part of the Cossatot and Brushy Creek within the boundaries of the Cossatot River Sate Park-Natural Area in Polk and Howard Counties. This action is based on the designation of the river by the State of Arkansas and the protection offered this river and its immediate environment by and pursuant to applicable State laws and regulations.

On July 3, 1990, President Clinton, then the Governor of Arkansas, petitioned the Secretary of the Interior to add the above described segments of the Cossatot River to the National System. On April 22, 1992, Congress added the Cossatot to the National Wild and Scenic Rivers System (Pub. L. 102–275). However, the State is pursuing its original request for Secretarial designation for the following reasons:

1. To officially classify the State-managed river segments as "Scenic."
2. To recognize the State Management Plan for the Cossatot River State Park and Natural Area.
3. To refine the current definition of the State's portion of the scenic river corridor.

In response to the Governor's request, the Secretary, through the National Park

Service conducted a complete review of the State application and documents associated with the designation decision. As a result of that review, the Secretary has determined that the 10.4-mile segment of the Cossatot River and a 0.3-mile segment of Brushy Creek in the State's application should be designated as a State-administered component of the National Wild and Scenic Rivers System, as provided for in section 2(a)(ii) of the Wild and Scenic Rivers Act.

The State of Arkansas has fulfilled the requirements of the Act by designating these segments as components of the Arkansas System of Natural and Scenic Rivers and by adopting a program of action that will adequately protect the river from adverse State actions. The National Park Service evaluation of the river concluded that these segments of the Cossatot River and Brushy Creek meet the criteria for the scenic classification under the Act. Accordingly, the following river segments are classified as scenic pursuant to section 2(b) of the Act to be administered by State government:

Cossatot River: Scenic—The 10.4-mile segment of the Cossatot River within the boundaries of the Cossatot River State Park-Natural Area just above the State Highway 246 crossing, at the Ouachita National Forest boundary in Polk County to the crossing at State Highway 4 in Howard County.

Brushy Creek: Scenic—The 0.3-mile segment of Brushy Creek within the boundaries of the Cossatot River State Park-Natural Area in Polk County.

This action is taken following public involvement and consultation with the Departments of Agriculture, Army, Energy, Transportation, the Federal Energy Regulation Commission, and the U.S. Environmental Protection Agency as required by section 4(c) of the Wild and Scenic Rivers Act. A 45-day period for public comment on the State's application and river management plan and on the environmental assessment of the proposed national designation was provided from April 15, 1991, to May 31, 1991. All comments received have been carefully considered.

Notice is hereby given that effective upon this date, the above-described river segments are approved for inclusion in the National Wild and Scenic Rivers System to be administered by the State of Arkansas.

Dated: January 14, 1994.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94-2287 Filed 2-1-94; 8:45 am]

BILLING CODE 4310-70-M

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Intentional Introductions Policy Review Committee; Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Intentional Introductions Policy Review Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. The Committee will meet to review the final version of the proposed report to Congress.

DATES: The Intentional Introductions Policy Review Committee will meet from 9 a.m. to 3 p.m. on Thursday, February 17, 1994.

ADDRESSES: The Intentional Introductions Policy Review Committee meeting will be held in room 13836, National Oceanic and Atmospheric Administration Building, 3, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson, Intentional Introductions Policy Review Committee Chair, National Marine Fisheries Service, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910 at (301) 713-2322.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Intentional Introductions Policy Review Committee, a committee of the Aquatic Nuisance Species Task Force established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101-646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: January 27, 1994.

Noreen Clough,

Acting Assistant Director—Fisheries, Acting Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 94-2344 Filed 2-1-94; 8:45 am]

BILLING CODE 4310-55-M

Minerals Management Service

Outer Continental Shelf, Alaska, Gas and Oil Lease Sale 148

AGENCY: Minerals Management Service, Interior.

ACTION: Call for information and nominations and notice of intent to prepare an environmental impact statement.

1. *Authority.* This Call/NOI is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356, (1988)), and the regulations issued thereunder (30 CFR part 256).

2. *Purpose of Call.* The purpose of the Call is to gather information for proposed OCS Gas and Oil Lease Sale 148. This proposed sale, located in the Chukchi Sea Planning Area, is tentatively scheduled for June 1997.

Information and nominations on gas and oil leasing, exploration, and development and production within the Chukchi Sea Planning Area are sought from all interested parties. This early planning and consultation step is part of the Area Evaluation and Decision Process and is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the leasing process pursuant to the OCS Lands Act, as amended (43 U.S.C. 1331-1356) (1988), and regulations at 30 CFR part 256. This Call does not indicate a preliminary decision to lease in the area described below. Final delineation of the area for possible leasing will be made at a later date and in compliance with all applicable laws including requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), as amended, and with established departmental procedures.

3. *Description of Area.* The area of this Call, located offshore the State of Alaska in the Chukchi Sea Planning Area as identified on the attached map, extends offshore from approximately 3 miles to 200 miles, in water depths from around 10 to 100 meters. The area available for nominations and comments consists of approximately 4,700 whole and partial blocks (about 10 million hectares or 26 million acres). Respondents may nominate and are asked to comment on any acreage within the entire Call area. A large-scale map of the Chukchi Sea Planning Area (hereinafter referred to as the Call map), showing boundaries of the area on a block-by-block basis, and a complete list of Official Protraction Diagrams (OPD's), are available from the Records Manager, Alaska OCS Region, Minerals

Management Service, 949 East 36th Avenue, room 502, Anchorage, Alaska 99508–4302, telephone (907) 271–6621. The OPD's may be purchased from the Records Manager for $2 each. Current editions of the listed OPD's are based on the North American Datum of 1983.

4. *Instructions on Call.* Respondents are requested to nominate blocks within the Call area that they would like to be considered for inclusion in proposed OCS Lease Sale 148. Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Respondents are asked to submit a list of whole and partial blocks nominated (by OPD designations) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are deemed to be proprietary information.

Respondents are also requested to rank areas nominated according to priority of interest (e.g., Priority 1 (high), Priority 2 (medium), or Priority 3 (low)). Areas nominated that do not indicate priorities will be considered Priority 3. Respondents are encouraged to be specific in indicating areas or blocks by priority. Blanket priorities on large areas are not useful in the analysis of industry interest. The telephone number and name of a person to contact in the respondent's organization for additional information should be included in the response.

Comments are sought from all interested parties about particular geologic, environmental, biological, archaeological, or social and economic conditions, conflicts, or other information that might bear upon potential leasing and development in the Call area. Comments are also sought on potential conflicts with approved local coastal management plans (CMP's) that may result from the proposed sale and future OCS gas and oil activities. If possible, these comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Those submitting comments are requested to list block numbers or outline the subject area on the large-scale Call map.

Nominations and comments must be received no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled "Nominations for Proposed Chukchi Sea Lease Sale 148," or "Comments on the Call for Information and Nominations for Proposed Chukchi Sea Lease Sale 148," as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, room 603, Anchorage, Alaska 99508-4302.

5. *Use of Information from Call.* Information submitted in response to this Call will be used for several purposes. First, responses will be used to help identify the areas for potential gas and oil development. Second, comments on possible environmental effects and potential-use conflicts will be used in the analysis of environmental conditions in and near the Call area. The third program for this Call is to assist in the scoping of the EIS and the development of alternatives to the proposed action for analysis. The NOI to prepare an EIS is included later in this document. Fourth, comments may be used in developing lease terms and conditions to ensure safe offshore gas and oil activities. Fifth, comments may be used to point out potential conflicts between offshore gas and oil activities and the State's CMP.

6. *Existing Information.* The Information Base Review (IBR) step was completed in March 1993. The purpose of the IBR is to evaluate the availability and quality of information relevant to decisions on this proposed Sale.

The IBR for Chukchi Sea Sale 148 included publication of a Request for Interest and Information in December 1992, with comments due by the end of January 1993, and Information Transfer Meetings in Anchorage, Alaska, in January 1993. On the basis of the information analyzed during the review process, a determination was made that there is sufficient information and interest to proceed with the Call.

The National Research Council of the National Academy of Sciences is conducting a study on environmental information for gas and oil leasing decisions in the Beaufort and Chukchi Seas, and Navarin Basin OCS Planning Areas. This study, expected to be completed in the first quarter of 1994, will examine information needs, costs of obtaining information, potential improvements in the management and prediction of environmental effects that may result from acquiring additional information, and alternatives to conducting additional studies. The conclusions of this report can be considered, along with information received in response to the Call and scoping efforts, in subsequent decisions in the prelease process.

An extensive environmental, social and economic studies program has been under way in this area since 1975. The emphasis has been on: geologic mapping; environmental characterization of biologically sensitive habitats; endangered whales and marine mammals; physical oceanography; ocean-circulation modeling; and ecological effects of gas and oil activities. A complete listing of available study reports and information for ordering copies may be obtained from the Records Manager, Alaska OCS Region, at the address stated under Description of Area. The reports may also be ordered directly from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephone at (730) 487-4650.

In addition, a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, at the address stated under Instructions on Call or by telephone at (907) 271-6620.

Summary Reports and Indices and technical and geologic reports are available for review at the MMS Alaska OCS Region (see address under Description of Area). Copies of the Alaska OCS Regional Summary Reports may also be obtained from the OCS Information Program, Office of Offshore Information and Publications, Minerals Management Service, 381 Elden Street, Herndon, Virginia 22070.

7. *Tentative Schedule.* Approximate dates for actions and decision and consultation points in the planning process are:

Milestones	Dates
Comments Due on the Call	March 1994.
Scoping Comments Due	April 1994.
Area Identification	October 1994.
Draft EIS/Proposed Notice of Sale Published	December 1995.
Hearings on Draft EIS Held	January 1996.
Governor's Comments Due on Proposed Notice of Sale	March 1996.

Milestones	Dates
Final EIS Filed with EPA	January 1997.
Constistency Determination Signed	January 1997.
Final Notice of Sale Published	May 1997.
Sale	June 1997.

8. *Purpose of Notice of Intent to Prepare an Environmental Impact Statement.* Purusant to the regulations (40 CFR 1501.7) implementing the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), as amended, MMS is announcing its intent to prepare an EIS regarding the gas and oil leasing proposal known as OCS Gas and Oil Lease Sale 148 Chukchi Sea. Throughout the scoping process, Federal, State, and local governments and other interested parties have the opportunity to aid MMS in determing the significant issues and alternatives to be analyzed in the EIS and the possible need for additional information.

The EIS analysis will focus on the potential environmental effects of leasing, exploration, and development of the blocks included in the area defined in the Area Identification procedure as the proposed area of the Federal action. Alternatives to the proposal that may be considered are to delay the sale, cancel the sale, or modify the sale. The Proposed Final Comprehensive Program 1992–1997 indicated that during the prelease process for this sale, consideration will be given to establishing a coastal buffer.

9. *Instructions on Notice of Intent.* Federal, State, and local governments and other interested parties are requested to send their written comments on the scope of the EIS, significant issues that should be addressed, and alternatives that should be considered to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, at the address stated under Instructions on Call above. Comments should be enclosed in an envelope labeled "Comments on the Notice of Intent to Prepare an EIS on the proposed Chukchi Sea Lease Sale 148." Comments are due not later than 45 days from publication of this Notice.

Dated: January 26, 1994.

Tom Fry,

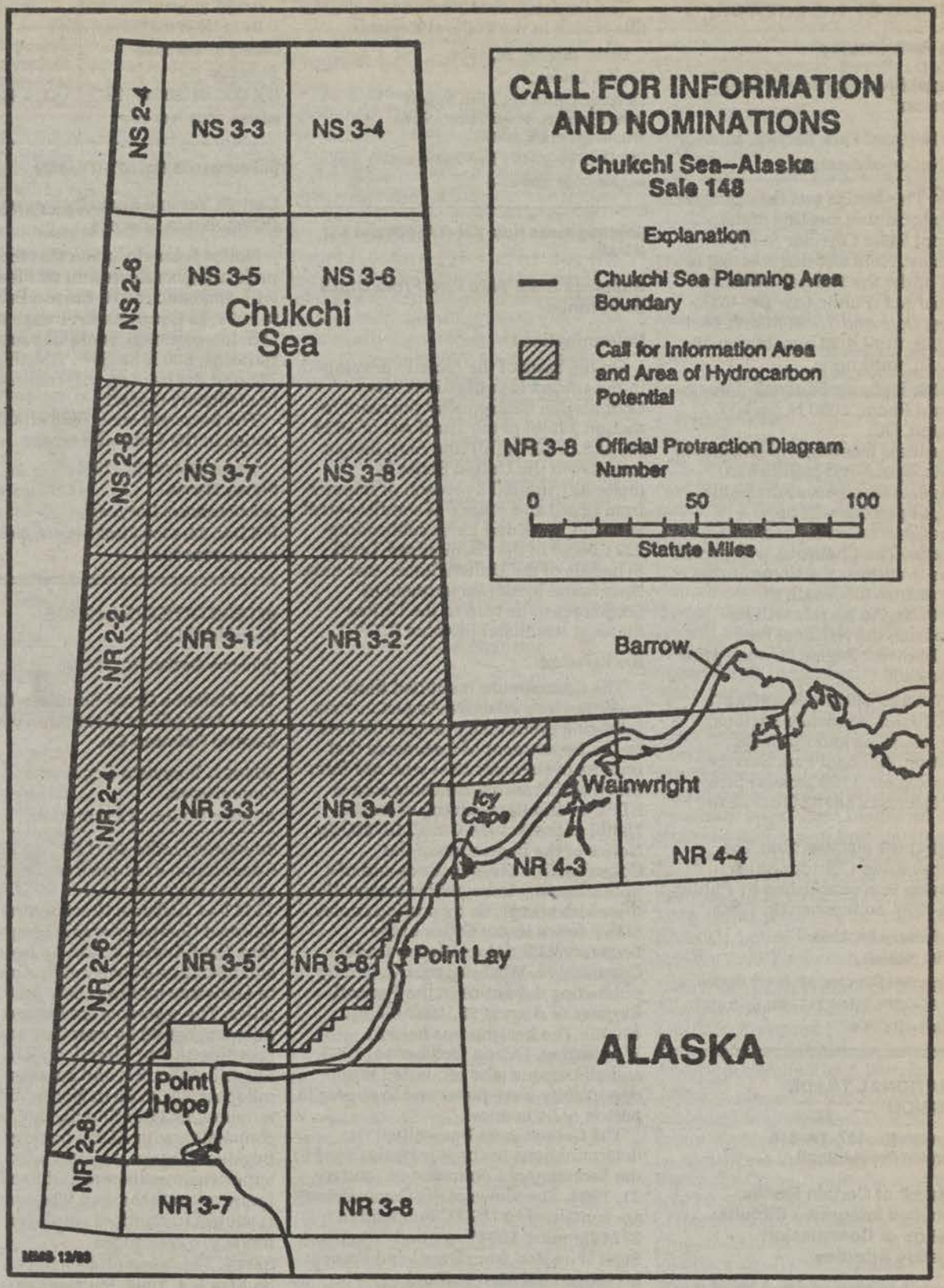
Director, Minerals Management Service.

Approved:

Bob Armstrong,

Assistant Secretary Land and Minerals Management.

BILLING CODE 4310-MR-M



[FR Doc. 94–2290 Filed 2–1–94; 8:45 am]

BILLING CODE 4310-MR-C

DEPARTMENT OF THE INTERIOR,

National Park Service

Mississippi River Corridor Study Commission

AGENCY: National Park Service, Interior

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Mississippi River Corridor Study Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: March 14, 1994; 8 a.m. until 4:30 p.m. March 16, 1994; 8 a.m. until noon.

ADDRESSES: Embassy Square Suites Conference Room, 2000 N. St. NW. Washington, DC.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. The Chairman will permit attendees to address the Commission, but may restrict the length of presentations. An agenda will be available from the National Park Service, Midwest Region, 1 week prior to the meeting.

FOR FURTHER INFORMATION CONTACT: David N. Given, Associate Regional Director, Planning and Resource Preservation, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska 68102 (402) 221–3082.

SUPPLEMENTARY INFORMATION: The Mississippi River Corridor Study Commission was established by Public Law 101–398, September 28, 1990.

Dated: January 24, 1994.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 94–2288 Filed 2–1–94; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–315 (Enforcement Proceeding)]

In the Matter of Certain Plastic Encapsulated Integrated Circuits: Designation of Commission Investigative Attorney

Notice is hereby given that, as of this date, Thomas L. Jarvis, Esq. of the Office of Unfair Import Investigations is designated as the Commission investigative attorney in the above-cited investigation.

The Secretary is requested to publish this Notice in the **Federal Register.**

Dated: January 26, 1994.

Lynn I. Levine,

Director, Office of Unfair Import Investigations, 500 E Street, S.W., Washington, DC 20436

[FR Doc. 94–2340 Filed 2–1–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–636 and 637 (Final)]

Stainless Steel Wire Rod From Brazil and France

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil and France of stainless steel wire rod, provided for in subheading 7221.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective August 2, 1993, following preliminary determinations by the Department of Commerce that imports of stainless steel wire rod from Brazil and France were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 18, 1993 (58 FR 43908). The hearing was held in Washington, DC, on October 14, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 21, 1994. The views of the Commission are contained in USITC Publication 2721 (January 1994), entitled "Stainless Steel Wire Rod from Brazil and France: Investigations Nos. 636 and 637 (Final)."

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Brunsdale dissenting.

Issued: January 24, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–2338 Filed 2–1–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–355]

Certain Vehicle Security Systems and Components Thereof

Notice is hereby given that the prehearing conference in this matter will commence at 10 a.m. on February 9, 1994, in Courtroom A (room 100), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: January 25, 1994.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 94–2339 Filed 2–1–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32410]

The Alabama Great Southern Railway Co.—Acquisition Exemption—Illinois Central Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343-44 Alabama Great Southern Railroad Company's (AGS) acquisition from the Illinois Central Railroad (IC) and operation of two rail line segments in Louisiana totaling about 3.60 route miles. The segments are between milepost NA 38.25 near Colt and milepost 36.0 in Slidell, on IC's Shoreline District, and between milepost NN 36.66 in North Slidell and milepost 35.31 in Slidell, at IC's connection with AGS's trackage on IC's Bogalusa District, together with all the appurtenances thereto and fixed improvements thereon. The exemption is subject to standard employee protective conditions.

DATES: This exemption will be effective on March 4, 1994. Petitions to stay must be filed by February 17, 1994, and petitions to reopen must be filed by February 28, 1994.

ADDRESSES: Send pleadings referring to Finance Docket No. 32410 to (1) Office

of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, (2) James R. Paschall, Norfolk Southern Corporation, 3 Commercial Place, Norfolk, VA 23510-2191.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927-5610. (TDD for hearing impaired (202) 927-5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 927-5721).

Decided: January 26, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons, and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-2357 Filed 2-1-94; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8 a.m., Tuesday, March 8, 1994.

Place: Los Angeles Airport Marriott Hotel; 5855 West Century Boulevard; Los Angeles, California.

Status: Open.

Matters to be Considered: An update on the selection of the NIC Director, a progress report on NIC's strategic management and performance review process, an update of mental health issues in jails, an update of the NIC/NIJ/CMHS Agreement, an update of the NIC staffing analysis, a funding status report of the NASA/NIC program, a NIC budget update, the FY 1995 Program Plan recommendation, a briefing on the California Corrections Executive Council, and a report on the Memorandum of Understanding with the National Institute on Drug Abuse.

Contact Person for More Information: Larry Solomon, Deputy Director (202) 307-3106, ext. 155.

Verna M. Muckle,

Acting Deputy Director.

[FR Doc. 94-2203 Filed 2-1-94; 8:45 am]

BILLING CODE 4410-36-M

National Science Foundation

Academic Research Infrastructure Program; Notice of Competition

The National Science Foundation announces the FY-1994 competition for the Academic Research Infrastructure Program. This program is designed to improve the condition of research equipment and facilities in our Nation's academic institutions in all areas of science traditionally supported by the National Science Foundation. One of the goals of the program is to assist graduate and undergraduate academic institutions, including those that historically have received limited Federal research and development funds, to improve their academic science and engineering infrastructure. The Program consists of two components: instrumentation and facilities modernization. The former provides support for the acquisition or development of major state-of-the-art research instrumentation. The latter provides support for the renovation and/or repair of existing science and engineering research and research training facilities. In FY-1994, separate competitions will be held for instrumentation and facilities modernization.

The Program expects to allocate approximately $50 million in FY-1994 for instrumentation and $50 million for facilities modernization. Previous proposal success rates for the program have been 26% for instrumentation and 30% for facilities modernization respectively. Awards for instrumentation will range from $100,000 to $2 million with a required matching/cost sharing at the level between 30-50% for all institutions. Awards for facility renovation/repair projects will range from $100,000 to $2 million with a required 50% matching/cost sharing on the part of the submitting institution from Ph.D.-granting institutions or at a level between 20% and 50% from non-Ph.D.-granting institutions. It is not the intent of the program to fund new construction or expansion of existing facilities. Proposals may be submitted by institutions of higher education, independent nonprofit research institutions, research museums, and legally incorporated consortia thereof. Proposals for Instrumentation must be received by March 15, 1994, and proposals for Facilities Modernization must be received by April 5, 1994. For additional information and proposal guidelines, call the Office of Science and Technology Infrastructure at (703) 306-1040, or write to: the National Science Foundation, OSTI, 4201 Wilson Boulevard, Arlington, VA 22230, or send email requests to: ari@nsf (BITNET) or ari@nsf. gov (INTERNET).

Dated: January 27, 1994.

Sherrie Blevins Green,

Program Manager for Academic Research Infrastructure.

[FR Doc. 94-2286 Filed 2-1-94; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from January 7, 1994, through January 21, 1994. The last biweekly notice was published on January 19, 1994 (59 FR 2859).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a

margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By March 4, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: November 4, 1993

Description of amendment request: The proposed amendment revises Technical Specification 6.13.1 to provide use of alarming dosimeters in high radiation areas. This change includes newly revised 10 CFR Part 20 requirement references and is consistent with NUREG-1413, Standard Technical Specifications - Westinghouse Plants, Specification 5.11.1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change could involve a reduction in personnel radiation exposure by utilizing alarming dosimeters. This change does not involve any plant systems or components which could increase the probability of an accident. Therefore, there would be no increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change could reduce the possibility of an accidental overexposure by alerting personnel when their maximum allowable exposure has been received. This change does not involve any plant systems or components. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety. Due to the nature of this proposed change, it is not related to any plant system. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: August 27, 1993

Description of amendment request: The proposed amendments would revise the Braidwood Station, Units 1 and 2, and Byron Station, Units 1 and 2, Technical Specifications (TS) regarding inspection requirements for pipe snubbers. The proposed changes implement Generic Letter (GL) 90-09, and would affect the surveillance requirements of TS section 4.7.8 and the bases for these requirements, section 3/4.7.8. Specifically, the amendment would change the existing inspection periods, visual inspection acceptance criteria, and functional test requirements. Additionally, there would be changes to the bases to include reference to GL 90-09, and other editorial changes would be made.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The amended surveillance requirement adds a table that addresses the maximum number of snubber failures that can be tolerated prior to reducing the inspection interval. This number is a function of the population size of a particular type of snubber. The revised requirement will allow the inspection intervals to be compatible with the 24 month fuel cycles, and provisions are included to extend the inspection interval up to 48 months. A provision is included to allow an evaluation to determine operability to justify continued operation with a snubber that is unacceptable.

The purpose of the amendment request is to provide for alternative inspection intervals that take the size of the population of a snubber type into account. The proposed change provides the same confidence level and allows snubber inspection and corrective action to be performed during refueling outages. This allows the plant to avoid a mid-cycle outage due to a small number of snubber failures.

The proposed change allows for a small percentage of snubbers in each category to fail the required visual examination without adjusting the inspection frequency. If a statistically significant percentage of snubbers fail, the visual examination inspection interval is reduced based on the percentage of failed snubbers.

The proposed change has no direct or indirect impact on reactivity management activities.

The change is not expected to have an impact on equipment failures. Any snubbers that fail to meet the visual examination acceptance criteria are either functionally tested in the as-found condition to verify continued acceptability, or an evaluation is performed to demonstrate the acceptability of continued operation with an unacceptable snubber. No new equipment is being introduced and no systems are operated in a configuration that has not been evaluated, so no new failure modes are introduced.

The affected transients are the design basis earthquake and the spectrum of event initiating transients, with the capability of imposing significant dynamic loads or otherwise which impact the structural integrity of the Reactor Coolant System (RCS).

The snubbers are installed to ensure the structural integrity of the RCS and required support systems. Their failure is passive in nature. The probability of a transient initiating event occurring is unrelated to the existence or condition of equipment that is designed to perform a mitigating function. The snubbers are installed to ensure an acceptable system response to a dynamic load, and their availability does not impact the frequency of occurrence of earthquakes or other transients resulting in significant dynamic loading.

The revised testing provisions are designed to allow some flexibility while still maintaining a high probability that the installed snubbers will be capable of performing their intended function when required. The revised surveillances appropriately consider the size of the population of a particular type of snubber, and are sufficient to ensure the consequences of an accident will be unchanged when the revised requirements are implemented. By maintaining a statistically high level of confidence in the function of the plant's snubbers, the system response to transient initiating events will be as designed and thus, the off-site dose projected to occur of

any affected transient will remain acceptably low.

As previously stated, the revised surveillance provides a high confidence that the affected systems will remain intact and functional. Evaluation of the effects of operating with a degraded snubber is required to ensure that adequate margin exists to support continued plant operation. If this evaluation cannot adequately justify continued operation, the appropriate action statement will be applied. These provisions are sufficient to assure that the probability of an equipment malfunction will not increase.

The consequences of equipment malfunction will not increase. Sufficient redundancy exists to accommodate the complete failure of one train of required equipment. The requisite electrical and physical separation are sufficient to ensure that the redundant train remains unaffected. This redundancy is adequate to ensure that the undetected failure of a snubber will not have a severe impact on overall system response to a transient.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility of a new or different type of accident is not created by this change. No new or different equipment is being introduced, and no system will be operated in a different configuration without first having the effects of the new configuration evaluated. The new configuration would be system and/or plant operation with a snubber installed that has failed its visual examination. The required evaluation must be sufficient to provide confidence that continued operation is acceptable; otherwise, the provisions of the action statement will be observed.

3. The proposed changes do not involve a significant reduction in the margin of safety.

No reduction in the margin of safety will occur as a result of this proposed change. As previously described, the controls in place will provide a high confidence the affected systems will continue to be functional. No significant increase in the rate of occurrence of undetected inoperable snubbers is expected to occur, and the allowable failures prior to applying an increased test frequency is still a small percentage of the total snubber population.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: September 2, 1993, supplemented by letter dated January 7, 1994.

Description of amendment request: The proposed amendment would revise the Braidwood Station, Units 1 and 2, and Byron Station, Units 1 and 2, Technical Specifications (TS) to allow replacement of the 125 Volt DC Gould batteries with the new 125 Volt DC AT&T batteries and rephrase their design duty cycle. In addition, the proposed amendment would revise the batteries crosstie loading limitations and the crosstie breaker limitations. The associated Bases would also be revised to discuss the purpose for the crosstie limitations and to discuss design duty cycle requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The replacement AT&T battery has been selected to meet or exceed the design, functional, and operational requirements of those of the present Gould battery, including crosstie load limitations. The crosstie breaker limitation change to allow crosstie between two shutdown units is consistent with the Safety Evaluations issued with Technical Specification Amendment 5 for both Braidwood and Byron Stations. The remaining changes are administrative in nature or provide clarification to maintain consistency with other Technical Specifications and the Standard Technical Specifications.

The overall design, function, and operation of the DC system and equipment has not been altered by these changes. The proposed changes do not affect any accident initiators or precursors and do not alter the design assumptions for the systems or components used to mitigate the consequences of an accident as analyzed in UFSAR Chapter 15. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

B. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The replacement AT&T battery will provide the same functions as those of the present Gould battery and will be operated with the same types of operational controls. These limits will include battery float terminal voltage, individual cell voltage and electrolyte specific gravity, and crosstie loading. Crosstie conditions are allowed under the present Technical Specifications. The remaining changes are administrative in nature or provide clarification to maintain consistency with other Technical Specifications and the Standard Technical Specifications.

The DC system and its equipment will continue to perform the same functions and be operated in the same fashion. The proposed change does not create any new or common failure modes. The proposed changes do not introduce any new accident initiators or precursors, or any new design assumptions for the systems or components used to mitigate the consequences of an accident. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated has not been created.

C. The proposed change does not involve a significant reduction in a margin of safety.

The replacement AT&T battery will meet or exceed the design, functional, and qualification requirements of those of the present Gould batteries. The proposed Technical Specification limitations for the AT&T battery are derived from the same methodology and margins as those for the Gould battery. Increasing the crosstie loading limit takes advantage of the larger AT&T battery capacity with its increased design margin. The proposed change to the crosstie loading limit will continue to conservatively envelop the postulated design requirements. The remaining changes are administrative in nature or provide clarification to maintain consistency with other Technical Specifications and the Standard Technical Specifications.

The inherent design conservatism of the DC system and its equipment has not been altered. The DC system and its equipment will continue to be operated with the same degree of conservatism. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: October 28, 1993

Description of amendment request: The proposed amendment would revise the Emergency Core Cooling System (ECCS) injection valve stroke times and ECCS response times for Motor-Operated Valve (MOV) modifications that increase injection valve stroke times.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The probability of an accident previously evaluated will not increase as a result of this change, because the only modification being performed is to the stroke times for the LPCS [Low Pressure Core Spray System], LPCI [Low Pressure Coolant Injection System], and HPCS [High Pressure Core Spray System] injection valves. Changing the opening or closing time of the injection valves for these ECCS systems does not cause any accident previously evaluated to occur. Therefore, modifying their stroke times will not increase the probability of occurrence for any accident previously evaluated.

The consequences of a LOCA [Loss of Coolant Accident] are not significantly increased and do not exceed the previously accepted licensing criteria for this accident. GE [General Electric Company] has calculated the revised licensing basis PCT [Peak Centerline Temperature] for LaSalle Station to be 1260°F, which is well below the 2200°F criterion of 10 CFR 50.46 and Section 15.6.5 of NUREG-0800 (Standard Review Plan). The acceptance criteria for cladding oxidation, metal-water reaction (hydrogen generation), coolable geometry and long-term cooling also continue to be met with the increased valve stroke times.

GE has performed sensitivity analysis justifying the continued applicability of previous analyses for Anticipated Transients Without Scram (ATWS), containment analyses, off-site dose (Main Steamline Break Outside Containment), and HPCS-related transients (Loss of Feedwater Flow). Other events are not affected because these systems are not assumed to function.

2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The only modification is to increase the stroke time of the injection valves for LPCS, LPCI, and HPCS. This does not result in any changed component interactions, other than to increase the affected ECCS response times. The injection valves will still provide the function for which they were designed. Since the systems will continue to function as intended, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3) The proposed changes do not involve a significant reduction in a margin of safety because:

While the calculated licensing basis PCT is larger than that previously calculated with the current valve stroke times, the new PCT remains far below the 2200°F licensing acceptance limit associated with a LOCA. This limit has been previously evaluated as providing a sufficient margin of safety. All other LOCA licensing limits also continue to be met with the increased stroke times. For other accidents and transients, the increased stroke times have a negligible effect on the results, so the margin of safety is preserved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: April 15, 1992, as modified by letters dated December 8, 1992, and June 25, 1993.

Description of amendment request: The proposed amendment would revise the provisions in the Technical Specifications to incorporate Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability,' and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light-Water Reactors,'" power-operated relief valve (PORV) requirements for power operation, and to modify the primary coolant system (PCS) overpressure protection specification venting requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification requiring Operability of the PORVs and their block valves does not alter plant operation or configuration in any way. It is current practice to maintain these valves in an Operable condition to meet the requirements of existing Specification 3.1.8, which is applicable when below 430°F. The effect of the proposed changes is to extend the applicability of the Operability requirement for these valves. The addition of PORV Operability requirements when at Hot Standby and above would not involve a significant increase in the probability or consequence of an accident previously evaluated.

Replacing the requirements to vent the PCS through a 1.3 square inch vent with a vent capable of relieving 167 gpm at a pressure less than the Appendix G limits will not significantly increase the probability or consequences of an overpressurization event occurring. The 1.3 square inch vent area in Technical Specification 3.1.8 was intended to be a means of protecting the Primary Coolant System (PCS) from exceeding the limit of the 10 CFR [Part] 50, Appendix G, curve following an overpressure transient. Analysis has shown that manual vent valves PC-514 and PC-515 will provide a relief capacity of 167 gpm at a PCS pressure of approximately 115 psig, well below the minimum 331 psig limit (Appendix G curve limit for a 40°F/hr heat-up). This relief capacity will protect the PCS against a pressure transient caused by a maximum charging/letdown imbalance coincident with a 40°F/hr PCS heat-up rate and a 60°F/hr pressurizer heat-up rate.

Two other pressure transients, a High Pressure Safety Injection (HPSI) pump start and a Primary Coolant Pump (PCP) start, are also precluded. With the PCS in a vented and depressurized state, the PCS would be below 212°F Existing technical specifications require both HPSI pumps to be rendered inoperable below 260°F and, with the system depressurized, normal operating procedures prohibit a PCP start due to insufficient pump net positive suction head (NPSH).

Therefore, the 1.3 square inch requirement can be replaced with a requirement to have a vent capable of relieving 167 gpm at a PCS pressure less than or equal to the Appendix G limit with no significant increase in the probability or consequences of an overpressurization event occurring.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The addition of PORV Operability requirements when at Hot Standby and above will not alter plant operation or configuration. It will not alter any equipment or analyses. Therefore the addition of these PORV Operability requirements will not create the possibility of a new or different kind of accident from any previously evaluated.

The new technical specifications requirements for PCS vent capacity will provide an equivalent or better, overpressure protection as compared to the existing requirement. No analysis has been found that shows that the existing 1.3 square inch vent area will protect the PCS from exceeding the Appendix G curve limit. However, analysis has been developed which shows that manual vent valves PC-514 and PC-515 will

provide adequate relief capacity, maintaining PCS pressure within the 10 CFR [Part] 50, Appendix G, limits. Furthermore, two other pressure transients, a HPSI pump start and a PCP start, are also precluded by either existing technical specifications or normal plant operating procedures.

Another related analysis has shown that relief valve RV-3164, the Low Pressure Safety Injection (LPSI) pumps, the LPSI pump seals, and the system piping of the shutdown cooling system have the capability of providing adequate overpressure protection to the shutdown cooling system.

The addition of the manual vent valves do not introduce a vent path where a vent path had not previously existed. Therefore, the possibility of an accident of a new or different type, than previously evaluated in the FSAR, will not be created.

3. Involve a significant reduction in a margin of safety.

The margin of safety will not be reduced by the proposed Technical Specifications changes. The extension of PORV Operability requirements has no effect on any margin of safety. The previous requirement assumed that a vent with an equivalent flow area as the original PORV would provide the same relief as the PORV itself and gave no consideration to how that flow area should factor in system losses or vent location. The new technical specification requirement offers a means to ensure the PCS will be protected against all achievable overpressure transients for the system configuration, with analyses to support it.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201

NRC Project Director: A. Randolph Blough, Acting

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: December 16, 1993

Description of amendment request: The proposed amendment clarifies the requirements for maintaining secondary containment integrity when one or more Reactor Building Ventilation supply and exhaust valves are declared inoperable. The technical specification (TS) change adds a new Limiting Condition for Operation, Basis Statement, and Surveillance Requirements for these isolation valves. The change revises TS definition 1.14c, adds new Specifications 3.5.B.2, 3.5.B.3, 4.5.R, and a Basis statement to TS 3.5, edits T.S. 3.5.B.1.1. It also renumbers TS 3.5.B.2 through 3.5.B.4, to 3.5.B.4 through 3.5.B.7. It also revises specification references within to reflect new specification numbers.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear has determined that operation of the Oyster Creek Nuclear Generating Station in accordance with the proposed Technical Specifications does not involve a significant hazard. The changes do not:

1. Involve a significant increase in the probability or the consequence of an accident previously evaluated.

The failure of any component in the [Reactor Building Ventilation System] RBVS was not considered as a credible initiating event for a design basis accident. However, the RBVS is designed to mitigate the consequences of a potential radiological release by the isolation of all supply and exhaust ducts to the environs. Since the failure of the RBVS was never considered as one of the initiators of an accident, this proposed change cannot increase the probability of occurrence of an accident. During the proposed Limiting Condition for Operation (LCO), the supply or exhaust duct will be isolated within 8 hours by one isolation valve secured in its post accident design position. Since the duct can perform its post accident design function (isolation), there is no increase in the consequences of an accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

The design function of the RBVS automatic isolation valves is to isolate the ducts which penetrate the Reactor Building or Secondary Containment during a radiological release. During the LCO, the duct will be isolated within 8 hours by one isolation valve secured in the closed position. Since the duct will be isolated, this change will not create a possibility for an accident or malfunction of a different type than previously identified.

3. Involve a significant reduction in a margin of safety.

If a RBVS automatic isolation valve (supply) is declared inoperable, the proposed LCO would allow continued plant operation with that supply duct isolated. Since the RBVS can still perform its design function (redundant ductwork) under normal plant and design accident conditions, there is no reduction in the margin of safety. For an inoperable isolation valve in the exhaust duct, the exhaust duct will be isolated within 8 hours by one isolation valve secured in the closed position. Further, the RBVS and the [Standby Gas Treatment System] SGTS will be aligned for an accident condition with no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: November 17, 1993

Description of amendment requests: The proposed amendments would modify the Technical Specifications to allow a portion of the Waste Gas Holdup System (WGHS) Explosive Monitoring System to be inoperable for 160 days on a one-time basis. This is to allow replacement of the Waste Gas Oxygen Analyzer.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

We have evaluated the proposed T/S changes and have determined that the changes should involve no significant hazards consideration. Operation of the Cook Nuclear Plant in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The purpose of the hydrogen and oxygen monitors is to measure the concentrations of these gases in the WGHS to ensure that the gas mixture is non-flammable. We can accomplish this purpose and ensure safe operation of the WGHS by operating the system in the proposed manner. During the equipment replacement interval, we will be assuming that the hydrogen concentration is above the flammable limit (4%). The limiting factor then is the oxygen concentration at which hydrogen and oxygen become flammable. The existing hydrogen monitor will be in continuous operation to verify the hydrogen level. The information provided by the oxygen monitor being replaced is not essential to the safe operation of the WGHS since it is redundant to information provided by the remaining oxygen monitor. The only difference between the two (2) oxygen

monitors is that the one being replaced provides an automatic isolation of the waste gas decay tank when the oxygen concentration reaches 3%. The isolation of the waste gas decay tanks will be performed manually during the replacement. In the event the remaining oxygen monitor becomes inoperable, we will follow the currently approved T/Ss. Since operation of the WGHS in the manner we have proposed will ensure that the purpose of the oxygen and hydrogen monitors is fulfilled and safe operation of the WGHS is maintained, the proposed change will not involve a significant increase in the probability or consequences of a previously analyzed incident.

The proposed change to the Automatic Gas Analyzer (QC-31) tag number to QC-1400 will not reduce in any way requirements or commitments in the existing T/Ss. The proposed change will eliminate confusion of spare parts of the new analyzer panel installed in 1990.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated. During the replacement of the monitors the waste gas holdup system will continue to operate normally. The proposed method of operation will ensure that the oxygen and hydrogen gas mixture is non-flammable. For this reason, operating the explosive gas monitoring system in the proposed manner will not place the plant in a new or unanalyzed condition. Therefore, we believe that this change will not introduce a new or different kind of accident than previously analyzed.

The proposed editorial change will not create the possibility of a new or different kind of accident from any previously evaluated, because these changes will not place the plant in a new or unanalyzed condition.

(3) Involve a significant reduction in a margin of safety.

The proposed amendment does not involve a significant reduction in the margin of safety. The remaining oxygen monitor will be available to maintain the oxygen concentration below the limit required for hydrogen flammability in oxygen. In addition, the oxygen grab samples will provide redundant information and will serve as a check of the monitor's readings. If the remaining monitor becomes inoperable, we will follow the actions of our current T/Ss. During the equipment replacement period, we will be assuming that the hydrogen concentration is above the flammable limit (4%). This will then make the oxygen level the controlling parameter in a possible flammable combination of oxygen and hydrogen. The existing hydrogen monitor will be in continuous operation to verify the hydrogen level. These proposed interim measures will not significantly affect our ability to maintain the hydrogen and oxygen concentration within the limits to prevent flammability. Therefore, we believe that operation of the system in this manner does not involve a significant reduction in a margin of safety.

The proposed editorial change will not involve a significant reduction in margin of safety, because all accident analyses and nuclear design bases remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: A. Randolph Blough, Acting

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: December 20, 1993

Description of amendment requests: The proposed amendments would revise the Technical Specifications to change Train A and B Emergency Loads from 8 hour to composite 4 hour, delete a load on the Train B batteries load list, and revise the operational loads on the Train N batteries.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, a proposed amendment does not involve a significant hazards consideration if the change does not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) create the possibility of a new or different kind of accident from any previously analyzed.

(3) involve a significant reduction in a margin of safety.

Criterion 1

The change is proposed to comply with the LOCA/LOOP [loss-of-coolant accident/loss-of-offsite power] and SBO [Station Blackout] requirement for Cook Nuclear Plant for battery testing. The composite test as addressed above meets these requirements for four hour test profiles. This change is consistent with the UFSAR three hour LOCA/LOOP and NUMARC 87-00 Station Blackout Rule four hour. Based on these considerations, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

The change only addresses the battery profile test which meets both LOCA/LOOP and SBO for Cook Nuclear Plant. No specific physical or operational changes to the plant will occur due to this change. Thus, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The proposed change revises the battery profile test table from an eight hour to a four composite test which complies with both LOCA/LOOP and SBO as defined for Cook Nuclear Plant. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: A. Randolph Blough, Acting

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: December 22, 1993

Description of amendment requests: The proposed amendments would revise the Technical Specifications section addressing steam generator stop valves making it more consistent with the revised Standard Technical Specifications and clarifying certain surveillance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, a proposed change does not involve a significant hazards consideration if the change does not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated,

2. create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. involve a significant reduction in a margin of safety.

Criterion 1

The limiting conditions for operation involving the steam generator stop valves are not altered by this proposed change. The surveillance requirements are lessened for Unit 2 in that valve stroke timing does not have to be performed on valves that are

closed. This is consistent with the wording of the Unit 1 T/S, and reflects the fact that, when closed, the valves are already in the position required by the assumptions in the safety analysis and therefore stroke timing is not necessary. The remaining changes are consistent with NUREG 1431, and as such, have already been found acceptable by the NRC. Therefore, it is concluded that the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

No changes to the limiting conditions for operation of the steam generator stop valves are proposed as part of this amendment request. The proposed changes do not involve any physical changes to the plant. The changes will allow operation in Modes 2 and 3 with more than one steam generator stop valve inoperable. However, inoperable valves must be closed and their closure periodically reverified. When closed, the valves are already in the position required by the assumptions in the safety analysis. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3

The limiting conditions for operation involving the steam generator stop valves are not altered by this proposed change. The surveillance requirements are lessened for Unit 2 in that valve stroke timing does not have to be performed on valves that are closed. This is consistent with the wording of the Unit 1 T/S, and reflects the fact that, when closed, the valves are already in the position required by the assumptions in the safety analysis and therefore stroke timing is not necessary. The remaining changes are consistent with NUREG 1431, and, as such, have already been found acceptable by the NRC. Therefore, it is concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: A. Randolph Blough, Acting

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: December 22, 1993

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.4.4.e (Emergency Ventilation System). TS 3.4.4.e currently permits fuel handling operations to continue during refueling for up to 7 days with one circuit of the emergency ventilation system inoperable provided all active components of the other emergency ventilation system circuit are operable. The proposed revision would permit fuel handling operations to continue during refueling beyond 7 days with one circuit of the emergency ventilation system inoperable provided the remaining emergency ventilation system circuit is operable and in operation. The licensee stated that the proposed revision is consistent with recently issued Amendment No. 47 to the Nine Mile Point Unit 2 TSs and with the NRC's Improved Standard Technical Specifications, NUREG-1433.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1 [NMP1], in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Emergency Ventilation System responds to a release of radioactivity to the secondary containment by maintaining a negative pressure in secondary containment and by providing a filtered elevated release. The proposed change to LCO [Limiting Condition for Operation] 3.4.4.e would allow continuation of refueling beyond seven days with one emergency ventilation circuit inoperable provided the operable emergency ventilation circuit is in operation. A plant specific PRA [Probabilistic Risk Assessment] was performed to evaluate the probability of a fuel bundle drop event resulting in a need to start the Emergency Ventilation System with a concurrent failure of the Emergency Ventilation System that would result in an unfiltered ground level release under the current Technical Specifications and the proposed change. The results of this assessment indicate that the probability is not significantly increased. In addition, the order of magnitude of the probability of such a release, under the current or proposed Technical Specifications, is very small, i.e., 10^{-6}. This amendment requires no physical changes to NMP1. Therefore, the proposed changes to the Technical Specifications do not significantly increase the probability of an accident previously evaluated.

Section XV.C.3 of the UFSAR [Updated Final Safety Analysis Report] evaluates a fuel bundle drop accident. The radiological consequences of this accident are within the guidelines of 10 CFR Part 100. The UFSAR radiological evaluation takes credit for the operation of an emergency ventilation circuit in mitigating the consequences of this accident. During refueling with one emergency ventilation circuit inoperable for more than seven days, the proposed Technical Specification change would require that an operable emergency ventilation circuit be placed in operation. With an operable emergency ventilation circuit operating prior to a fuel bundle drop accident, the radiological consequences of this accident remains bounded by the current UFSAR evaluation. Therefore, from a radiological perspective, the proposed Technical Specification change is bounded by the current radiological evaluation in the UFSAR. Therefore, the Technical Specification change does not significantly increase the consequences of a previously evaluated accident.

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

This amendment does not involve any accident precursors or initiators. During an accident involving the release of radioactivity to the secondary containment atmosphere an operable emergency ventilation circuit would already be running and performing its safety function. The operating status of a running emergency ventilation circuit, which was manually started, would be unaffected by the receipt of an automatic start signal due to the detection of high radiation in secondary containment. Accordingly, the proposed Technical Specification change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 1, in accordance with proposed amendment, will not involve a significant reduction in a margin of safety.

The current Technical Specifications, LCO 3.4.4, provide a margin of safety by requiring both emergency ventilation circuits to be operable during a refueling condition. With one emergency ventilation circuit inoperable, the current Technical Specifications allow continuation of refueling for up to seven days, at which time refueling must be stopped. This Technical Specification requirement ensures that an emergency ventilation circuit will be available to provide a filtered release to the environment during an accident which could result in the release of radioactivity to the secondary containment atmosphere.

The proposed change to LCO 3.4.4.e would allow continuation of refueling beyond seven days with one emergency ventilation circuit inoperable provided the operable emergency ventilation circuit is in operation. By placing the remaining operable emergency ventilation circuit in operation, active single failures associated with its startup have been eliminated. These eliminated failures include automatic initiation instrumentation, relaying logic, breaker operation, fan startup and valve operation. With an operable emergency ventilation circuit in operation, its safety function is being performed. In addition, the status of the operating emergency ventilation circuit is indicated in the control room. Therefore, the running,

operable emergency ventilation circuit provides a level of safety comparable to two non-running, operable emergency ventilation circuits.

Based upon the above analysis, the margin of safety is not significantly reduced by allowing refueling to continue beyond seven days with one emergency ventilation circuit inoperable since the operable emergency ventilation circuit is in operation.

These changes are consistent with Amendment No. 47 for Nine Mile Point Unit 2 and with the Improved Standard Technical Specifications, NUREG-1433.

Accordingly, as determined by the analysis above, this proposed amendment involves no significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of amendment request: December 27, 1993

Description of amendment request: The proposed amendment would relocate Technical Specification (TS) Tables 3.2.7, "Reactor Coolant Isolation Valves," and 3.3.4, "Primary Containment Isolation Valves," from TS 3.2.7/4.2.7 and 3.3.4/4.3.4, respectively, to a plant procedure overning lists removed from TSs per Generic Letter (GL) 91-08, "Removal of Component Lists from Technical Specifications." The plant procedure would be subject to the requirements specified in the Administrative Controls section of the Nine Mile Point Nuclear Station Unit No. 1 (NMP-1) TS. The proposed amendment would also make conforming changes to the TS Bases. These lists of valves will continue to be included in the NMP-1 Updated Final Safety Analysis Report (FSAR). The licensee stated that the proposed changes would be consistent with NRC staff guidance issued in GL 91-08.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

1.The proposed amendment does not involve a physical change to any system, structure, or component that affects the probability or consequences of any accident or malfunction of equipment important to safety.

Relocation of the component lists to plant procedures and the Updated FSAR is in accordance with Generic Letter 91-08. This change does not alter the existing operability or surveillance requirements for the components to which they apply. The proposed changes are under the change control provisions in Section 6.0, "Administrative Controls," of the Technical Specifications. The changes associated with the Bases for Specification[s] 3.2.7/4.2.7 and 3.3.4/4.3.4 are consistent with the issuance of prior license amendments. Since the proposed amendment does not affect the operation or testing of any plant systems or components, it will have no impact on the probability or consequences of accidents or malfunctions previously evaluated.

2.The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to Technical Specification 3.2.7/4.2.7, 3.3.4/4.3.4 and Bases do not introduce any new modes of plant operation or new accident precursors, involve any physical alterations to plant configurations, or make changes to system setpoints which could initiate a new or different kind of accident. The proposed changes relocate Reactor Coolant Primary Containment Isolation Valve Tables 3.2.7 and 3.3.4 into a procedure governing controlled lists removed from TS per Generic Letter 91-08 under the change control provisions in Section 6.0, "Administrative Controls," of the Technical Specifications. The testing associated with these valves remains unchanged, therefore, it will not affect system or component operability. In addition, the removal of generic reference to the 60 second closure time is consistent with previously issued license amendments and has no impact on either the Limiting Condition for Operation or Surveillance Requirement. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The operation of Nine Mile Point Unit 1, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The Technical Specification Limiting Conditions for Operation and Surveillance Requirements for the valves listed in Tables 3.2.7 and 3.3.4 are not being altered. The valve lists will be incorporated into a procedure governing controlled lists removed from TS per Generic Letter 91-08. This is controlled by Section 6.0, "Administrative Procedures."

In addition, removal of generic reference to the 60 second closure time is consistent with previously issued license amendments and has no impact on either the Limiting Conditions for Operation or Surveillance Requirements. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502.

NRC Project Director: Robert A. Capra

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 4, 1993

Description of amendment request: The proposed amendment would delete the emergency diesel-generator engine speed specification from Surveillance Requirement (SR) 4.8.1.1.2a.5 and would replace the diesel engine speed requirement with an electrical frequency requirement in SR 4.8.1.1.2g. Currently, SR 4.8.1.1.2a.5 specifies both a minimum engine speed and a nominal electrical frequency and acceptable deviation from the nominal value. SR 4.8.1.1.2g currently specifies only a minimum engine speed. The specified minimum engine speed is not consistent with the acceptable frequency deviation below the nominal value.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes merely delete the specification of emergency diesel-generator minimum engine speed while retaining or substituting the specification of electrical frequency to be attained by the emergency diesel-generator. The diesel engine and generator are directly coupled and must rotate at the same speed, therefore, speed and frequency are directly

related and specification of acceptance values for both parameters is redundant. Furthermore, electrical frequency, not engine speed, is the parameter of interest with regard the ability of the system to power emergency loads. The proposed changes do not affect the adequacy of the surveillance test or the reliability of the system to power emergency loads, and do not involve any physical changes to facility structures, systems, or components. Therefore, since the reliability of the emergency diesel-generators will not be reduced, the probability or consequences of any accident previously evaluated is not increased.

B. The changes do not create the possibility of a new or different kind

of accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because no physical changes to facility structures, systems, or components are involved and they do not affect the manner by which the facility is operated.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because the proposed changes do not affect the manner by which the facility is operated or involve changes to equipment or features which affect the operational characteristics of the facility. Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston Massachusetts 02110-2624.

NRC Project Director: John F. Stolz

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: October 28, 1993

Description of amendment request: The proposed amendment would implement 13 of the 47 line item Technical Specification (TS) improvements recommended by Generic Letter 93-05. Most of the proposed changes would revise the allowable time intervals for performing certain Surveillance Requirements (SR) on various plant components during power operation or would delete the requirement entirely or under certain conditions. One proposed change would modify testing requirements identified in an ACTION statement. The specific changes are as follows:

1. *SR 4.1.3.1.2* - The allowable interval between tests to demonstrate the operability of any partially or fully withdrawn control rod would be increased to 92 days from 31 days.

2. *SR 4.6.4.1* - The allowable interval between tests to demonstrate the operability of the hydrogen monitors by performing an Analog Channel Operational Test (ACOT) would be increased to 92 days from 31 days, and by performing a Channel Calibration to every refueling outage from 92 days on a staggered basis.

3. *SR 4.3.2.1, Table 4.3-2, Functional Unit 3.c.4 and SR 4.3.3.1, Table 4.3-3, Functional Units 1 through 6* - The allowable interval between tests to demonstrate the operability of the radiation monitors by performing an ACOT and Digital Channel Operational Test (DCOT) would be increased to quarterly from monthly.

4. *SR 4.4.6.2.2*- The time the plant may be in Cold Shutdown before Pressure Isolation Valve testing is required prior to entering Mode 2 would be increased to 7 days from 72 hours.

5. *SR 4.4.11.1* - The allowable interval between tests to demonstrate the operability of the Reactor Coolant System vent block valves would be increased to cold shutdown from every 92 days.

6. *SR 4.4.3.2* - The allowable interval between tests to verify pressurizer heater capacity would be increased to each refueling outage from 92 days.

7. *SR 4.5.1.1.1* - The requirement to verify the boron concentration of the accumulator contents after a volume increase of 1-percent or more would be removed under certain conditions.

8. *SR 4.5.1.1.2* - The requirement to perform an ACOT and Channel Calibration on accumulator water level and pressure instrumentation would be deleted.

9. *SR 4.5.2* - The requirement to visually inspect the containment sump upon completion of each containment entry would be modified to avoid unnecessary containment sump inspections when multiple containment entries are made on the same day.

10. *SR 4.6.2.1* - The allowable interval between tests to verify that each containment spray nozzle is unobstructed would be increased to every 10 years from 5 years.

11. *SR 4.6.4.2* - The allowable interval between tests to demonstrate operability of each hydrogen recombiner system would be increased to each refueling interval from 6 months.

12. *SR 4.7.1.2.1* - The allowable interval between tests of the auxiliary and startup feedwater pumps would be increased to 92 days on a staggered test basis from 31 days.

13. *TS 3.8.1.1* - The ACTION statements would be changed so that when the Limiting Conditions for Operation are not met due to:

a. Inoperability of one or two offsite power circuits the starting of a diesel-generator would no longer be required;

b. Inoperability of one diesel-generator, starting of the remaining diesel-generator would be required within 8 hours only under certain conditions instead of within 24 hours under all conditions;

c. Inoperability of a diesel-generator and an offsite power circuit, starting of the remaining diesel-generator would be required within 8 hours only under certain conditions instead of within 24 hours under all conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

A. The changes do not involve a significant increase in the probability or consequences of an accident previously evaluated (10 CFR 50.92(c)(1)) because the proposed changes either merely modify the allowable intervals between certain surveillance tests, delete the SR, or alter an ACTION statement with regard to required testing. The safety functions of the related structures, systems, or components are not changed in any manner nor are the reliabilities of any structure, system, or component reduced by the revised surveillance or testing requirements. The changes do not affect the manner by which the facility is operated and do not change any facility design feature, structure, system, or component. Since there is no change to the facility or operating procedures, and the safety functions and reliabilities of structures, systems, or components are not affected, there is no affect upon the probability or consequences of any accident previously analyzed.

B. The changes do not create the possibility of a new or different kindof accident from any accident previously evaluated (10 CFR 50.92(c)(2)) because they do not change the facility or affect the manner by which the facility is operated. The proposed changes merely change certain surveillance or testing requirements.

C. The changes do not involve a significant reduction in a margin of safety (10 CFR 50.92(c)(3)) because they do not affect the manner by which the facility is operated or change equipment or features which affect the operational characteristics of the facility.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Attorney for licensee: Thomas Dignan, Esquire, Ropes & Gray, One International Place, Boston Massachusetts 02110-2624.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: December 17, 1993

Description of amendment request: The proposed amendment changes the action statements for the limiting conditions associated with the electrical power sources (Technical Specification 3.8.1.1).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, NNECO has reviewed the attached proposed changes and has concluded that they do not involve a significant hazards consideration. The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to rewrite the action statements for Technical Specification 3.8.1.1 will decrease the wear on the EDGs [emergency diesel generators] by reducing the number of required starts. These changes will also allow adequate time for the completion of manufacturer recommended EDG engine prelube and warmup procedures. They ensure that the operability of the AC sources is demonstrated with reasonable assurance. Also, the reliability of the EDGs will be enhanced by reducing the potential for numerous unloaded EDG starts during an LCO [limiting condition for operation] period. The proposed changes could reduce the number of required unloaded EDG starts from nine to one. Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to rewrite the action statements for Technical Specification 3.8.1.1 do not alter the method of operating the plant, nor do they introduce any new failure modes. The proposed changes affect EDG testing frequency only, they have no impact on any accident analysis. The proposed changes provide assurance that the EDGs will be able to power their respective safety systems if required. Also, they do not involve any physical alterations to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors.

3.Involve a significant reduction in a margin of safety.

The proposed changes to rewrite the action statements for Technical Specification 3.8.1.1 do not affect the capability of the EDGs to perform their function. The intent of the changes is to increase the overall EDG reliability, by reducing the wear resulting from excessive and unwarranted testing. The proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: June 12, 1992, as supplemented September 17, 1992, March 17, 1993, August 17, 1993, August 18, 1993, and December 29, 1993.

Description of amendment request: The purpose of the proposed changes is to revise the Technical Specifications (TS) to permit operation of the James A. FitzPatrick Nuclear Power Plant at an uprated power of 2536 MWt. The licensee's engineering analyses and evaluations confirm that the plant can be operated at an uprated power. The increase in the rated power from 2436 MWt to 2536 MWt corresponds to a 4.8 percent increase in rated steam flow. The increase in rated power remains below the plant design power level of 2550 MWt which was the basis for the original plant safety evaluation.

The changes affect the operating parameters of the reactor, operational restrictions, setpoints for safety systems, analytical results, and test requirements. There are also administrative changes. The changes in each of these categories are summarized as follows:

Reactor Parameters: The effect on reactor parameters is limited. Higher power is achieved by control rod pattern adjustments to increase reactor thermal power in a more uniform (flattened) powerdistribution to increase steam flow without increasing core recirculation flow. This requires an increased reactor dome pressure for adequate turbine inlet pressure.

Operational Limits: The increased thermal power requires a change to the limitation on operation in the high power low flow portion of the power/flow map to limit thermal hydraulic instabilities and power oscillations.

Setpoints: The increased reactor pressure has a direct impact on the high pressure scram setpoint and the safety relief valve setpoint. Additionally, the bypass for the turbine stop valve closure and control valve fast closure scram will be changed in proportion to the increase in thermal power.

Analysis Results: Analyses of uprated power transients and accidents requires changes to various TS and their Bases. Operational parameters and assumptions used in analyses were revised to reflect their use as initial conditions. Revised radiological analyses changed dose results. The results of the accident analyses requires revisions to properly reflect plant capabilities.

Testing: A number of changes to testing requirements result from power uprate. The increase to reactor pressure has a direct effect on hydrostatic leakage testing pressure. The test pressure for High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) pumps will be revised to reflect safety relief valve setpoints assumed in analyses.

Administrative: Administrative changes (i.e., adding references, revising references and correcting associated errors) will also be made.

No changes to the Radiological Effluent Technical Specifications were identified.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant at a thermal power of 2536 MWt will not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The James A. FitzPatrick nuclear power plant was reviewed for operation at a rated power of 2550 MWt at the time of its operating license, [***]. This review was based on the original design of the plant. Since that time, a number of safety issues of a generic and plant specific nature as well as

plant modifications have changed the originally reviewed design.

Generic criteria, methodologies and evaluation scope required to uprate BWRs up to 5% were prepared by General Electric and submitted to the NRC in LTR-1 [NEDC-31897P-A, "Generic Guidelines for General Electric Boiling Water Reactor Power Uprate≥]. This was supplemented by the submittal of generic evaluations in LTR-2 [NEDC-31984P, "Generic Evaluations of General Electric Boiling Water Reactor Power Uprate" and Supplement 1] to determine: which NRC and industry generic communications were applicable to power uprate and how they should be treated; analytical evaluations that could be generically approved; bounding evaluations of components and equipment, and; the effect of power uprate on safety margin. These generic evaluations are supplemented by plant specific evaluations. The Power Uprate Safety Analysis Report (PUSAR) describes the dependence placed on References 1 and 2, the additional analyses that were performed, the results of these additional analyses and overall conclusions on the safety impacts of power uprate.

The plant systems and components will be within design limits at power uprate conditions with minor modifications. At uprated power, the power plant will not be operated in a manner that is different from current operations except for limited changes to operating parameters such as primary system pressure, steam flow and feedwater temperature. Setpoints are revised as necessary to reflect new operational conditions and analyses. The ECCS-LOCA [emergency core cooling system-loss-of-coolant accident] analysis using current practices demonstrates compliance with design and regulatory acceptance criteria at uprated power.

The radiological consequences of accidents have been evaluated using more current methodologies with consistent assumptions and continue to meet acceptance criteria. Compliance with NRC dose criteria using current methodologies is discussed in Section 9.2 of the PUSAR. The effect of power uprate on dose analyses now discussed in the FSAR [Final Safety Analysis Report] were qualitatively assessed recognizing that power uprate increases doses in direct proportion to the 4.1% increase in thermal power. An increase of 4.1% to the calculated doses currently identified in FSAR Chapter 14 indicates that a reevaluation using the original methodology would have demonstrated compliance with current NRC dose criteria. A review of Table 14.4-2 indicates that, with the 4.1% increase, offsite doses would be substantially less than NRC allowable values. A review of Table 14.8-1 indicates that, with the 4.1% increase, control room doses would be substantially less than NRC allowables except for the main steam line break (MSLB). However, the MSLB dose would drop well below allowables once the proposed change on allowable coolant activity (reduces the limit by more than a factor of ten) is accounted for.

[Thus, based on the above analysis and supplemental analyses performed by the NRC staff, the increase in power level discussed herein and associated Technical Specification changes do not significantly increase the probability or consequences of an accident previously evaluated.]

2. create the possibility of a new or different kind of accident from any accident previously evaluated.

Operation at uprated power involves no changes to the manner in which the plant is operated. There are changes to operational parameters and setpoints but analyses of these identified no new failure modes or accident scenarios. The effects of transients and accidents fall within design capabilities. Systems and components are capable of operating and performing their safety functions at uprated power. No mechanisms for creating a new or different accident were identified.

3. involve a significant reduction in a margin of safety.

The power uprate will not result in significant increases to primary system temperature and pressure due to postulated operating transients or accidents. These and other margins of safety have been discussed in the PUSAR, where it is demonstrated that there will be no reductions in the margin of safety because the plant will still meet its design and regulatory acceptance criteria. For example, the core will continue to be operated with the same margin to the safety limit minimum critical power ratio. Fuel thermal limits will continue to meet NRC acceptance criteria. Plant systems and equipment are designed for uprated power conditions and have been evaluated for their capability to perform at uprated conditions. They will continue to perform within design limits.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 22, 1993

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications proposes to remove the reference to American Society for Testing and Materials (ASTM) Standard D 270-65 from Surveillance Requirement 4.12.A.1.i. ASTM D 270-65, which specifies procedures to draw a representative fuel oil sample, has been superseded and is no longer in effect. The FitzPatrick Surveillance Procedure currently requires sampling in accordance with ASTM D 270-65 but notes that it has been superseded by ASTM D 4057-88. The proposed change makes Surveillance Requirement 4.12.A.1.i consistent with fuel oil Surveillance Requirement 4.9.C.1, for the emergency diesel generators (EDGs), by adopting the current industry fuel oil sampling standard. There are no changes to the acceptance criteria for fuel oil quality which are based on ASTM D 975-81.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

Plant accident analyses are not affected by the Technical Specification change. The change removes reference to ASTM D 270-65 as the method for obtaining samples of diesel fuel oil from Surveillance Requirement 4.12.A.1.i. The American Society for Testing and Materials has superseded ASTM D 270-65 with ASTM D 4057. The proposed change provides improved flexibility to adopt standards as they are issued without requiring a license amendment and makes Surveillance Requirement 4.12.A.1.i consistent with both Surveillance Requirement 4.9.C.1 for the EDG and the STS [Standard Technical Specification]. The nature of this change will not cause any increase in the probability or consequences of previously evaluated accidents.

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed change involves no hardware modifications to any plant structures, systems or components. The change removes reference to ASTM D 270-65 as the method for obtaining samples of diesel fuel oil from Surveillance Requirement 4.12.A.1.i. The American Society for Testing and Materials has superseded ASTM D 270-65 with ASTM D 4057. The nature of this change is such that no new or different kind of accident can be created.

3. involve a significant reduction in the margin of safety.

The proposed change will not cause a reduction in the margin of safety. The results of the plant accident analyses continue to bound operation under the proposed changes so there is no reduction in the margin of safety. The change removes reference to ASTM D 270-65 to allow the use of ASTM D 4057-88 as the method for obtaining

samples of diesel fire pump fuel oil. The change will make Surveillance Requirement 4.12.A.1.i consistent with existing Surveillance Requirement 4.9.C.1 for the EDG and allow current standards to be used for fuel oil sampling. Revisions of this nature will not cause a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 28, 1993

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications (TSs) revises the scope of startup and power escalation reports to reflect the guidance provided by the Standard Technical Specifications (STS). Current TS requirements state, "The report shall address each of the tests identified in the FSAR [Final Safety Analysis Report] ...."

The list of tests provided in the FSAR includes many tests which were required for the initial plant startup but are not performed for subsequent startups. Currently, the licensee satisfies TS requirements in the startup reports by identifying tests which are not performed, their purpose, and the reason for not performing them.

The inclusion of such a section in the startup reports is unnecessary. This amendment would revise the TSs to permit subsequent startup reports to address only those tests that are actually performed.

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes involve no hardware modifications, no changes to the operation of any system or component, no changes to structures, and alters future startup reports by addressing only tests that are performed. A change in reporting format will not eliminate the performance of startup tests that are necessary or required. These changes can not alter the probability or consequences of existing accident analyses as documented in the FSAR or the NRC staff SER [Safety Evaluation Report].

2. create the possibility of a new or different kind of accident from those previously evaluated.

The changes do not alter the testing procedures or methodologies. The changes provide a basis, in accordance with NRC guidance, for allowing future startup test reports to mention and discuss only those tests that are actually performed. These changes can not result in a new or different type of accident than those previously evaluated.

3. involve a significant reduction in the margin of safety.

There are no changes to tests that are performed in support of plant startup [***]. Removing a requirement for reporting on tests that are not performed will not cause a reduction in any margin of safety.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 29, 1993

Description of amendment request: The proposed amendment to the James A. FitzPatrick Technical Specifications would eliminate an inconsistency between the Reactor Coolant System (RSC) leakage detection and operability requirements in Limiting Conditions for Operation (LCO) 3.6.D.1 and 3.6.D.4.

LCO 3.6.D.1 currently requires that RCS leakage be below specified limits when there is irradiated fuel in the reactor vessel and reactor coolant temperature is greater than 212°F. LCO 3.6.D.4 requires the leakage monitoring systems to be operable during power operation (i.e., when the mode switch is in the Startup/Hot Standby position or the Run position with the reactor critical above 1 percent rated power, as defined per Specification 1.0.O). These two LCOs are not consistent. The proposed revision of LCO 3.6.D.4 will take the more conservative approach of requiring the leakage monitoring systems to be operable when the leakage limits of LCO 3.6.D.1 are in effect.

The proposed changes also make editorial corrections which are considered administrative in nature.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment involves no hardware changes, no changes to the operation of any systems or components and no changes to structures. It alters an LCO to require plant leakage detection systems to be operable during the same plant conditions that RCS leakage limits apply. The revised LCO requires leakage detection systems in operational modes consistent with other portions of the Technical Specifications. Additional changes include editorial corrections such as correct specification numbering, proper system identification, and clarification of a surveillance requirement cross reference. Since the change to the LCO for leakage detection will require operability under a greater range of plant conditions to be consistent with detection requirements, there is no change to previously determined accident probabilities or consequences. The editorial changes have no adverse safety implications.

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed amendment involves no hardware changes, no changes to the operation of any systems or components and no changes to structures. It alters the Technical Specifications only to the extent of making two LCOs consistent by requiring the leakage detection system to be operable when leakage limits apply and making editorial changes. Editorial changes and increasing the plant conditions for leakage system operability can not create the possibility of a new or different kind of accident from those previously evaluated since the editorial changes have no safety significance and the operability changes are being made for consistency with the modes when leakage detection is required to function.

3. involve a significant reduction in the margin of safety.

The proposed amendment revisions involve no hardware changes, no changes to the operation of any systems and no changes to structures. The revised LCO criteria for RCS leakage detection system operability has increased the plant conditions when operability is required to match the plant conditions when leakage limits apply. Editorial changes and expanded operability requirements in the LCOs will not result in any change to existing safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: December 29, 1993

Description of amendment request: This proposed amendment to the James A. FitzPatrick Technical Specifications, Appendix B, revises Surveillance Requirement 3.1.a and Table 3.10-2. The existing Surveillance Requirement in Specification 3.1.a, which references Table 3.10-2, requires the performance of instrument checks, tests, and calibrations to assure the operability of specific gaseous effluent radiation monitors. It does not require any surveillances for the associated data recorders. However, Limiting Condition for Operation (LCO) 3.1.a specifically states that "...pathways shall be monitored and recorded ...." which requires the recorders to be operable for the gaseous effluent monitoring system to be considered operable. The proposed changes to the Radiological Effluent Technical Specifications (RETS) add the radiation monitor recorders to the Surveillance Requirement and Table 3.10-2 for the gaseous effluent monitoring system. This will provide the surveillance requirements for the data recorders.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment involves no hardware changes, no changes to the operation of any systems or components and no changes to structures. It alters procedures by including the recorders in the Surveillance Requirements for determining the operability of the radiological monitoring/recording instrumentation. The inclusion of the data recorders in the Surveillance Requirements for checking, testing, and calibration does not reduce gaseous effluent monitoring capability while providing greater assurance that data is recorded. Adding the existing system surveillance to the Technical Specifications will not have any affect on previously evaluated accident probabilities or consequences.

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed amendment involves no hardware changes, no changes to the operation of any systems or components and no changes to structures. It alters procedures by including the data recorders in the Surveillance Requirements for the radiation monitors. These changes do not affect the manner in which the gaseous effluent radiation monitoring system is operated or tested. The resulting changes do not pose a safety issue concern different from those analyzed previously in the FSAR [Final Safety Analysis Report] or the NRC staff SER [Safety Evaluation Report].

3. involve a significant reduction in the margin of safety.

The proposed amendment involves no hardware changes, no changes to the operation of any systems and no changes to structures. It alters procedures by including the data recorders in the Surveillance Requirements for the radiation monitors. The revised surveillance requirement increases the scope of surveillance for the gaseous effluent radiation monitoring system, for consistency with the LCO. It does not cause any reduction in any safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: January 11, 1994

Description of amendment request: This proposed amendment to the James A. FitzPatrick Technical Specifications (TS) would temporarily waive the 2-year maximum surveillance interval for the Type C test (local leak rate test) of the shutdown cooling isolation valves (10MOV-17 and 10MOV-18). The waiver would permit deferring this test until the next refueling outage, currently scheduled for the end of November 1994.

TS 4.7.A.2.e(5) and 10 CFR Part 50 Appendix J require the containment isolation valves to be leak-rate tested during each refueling outage, but at intervals of not greater than 2 years. As a result of the extended 1991-1993 refueling outage, and the length of the current operating cycle, tests of all containment isolation valves are due prior to the start of the next refueling outage. Two mid-cycle outages were scheduled, in part, to accommodate the testing of these valves, except for the shutdown cooling isolation valves. The shutdown cooling isolation valves cannot be removed from service during a non-refueling outage to accommodate a leak-rate test since its associated system is needed to remove reactor decay heat. The reliability of the isolation valve design, and the very low probability that the shutdown cooling system penetration would result in a pathway for leakage to the reactor building, as discussed in the application, is provided as justification for this one-time schedular extension.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is limited to a one-time schedular extension in the shutdown cooling isolation valve Type C test. The change does not introduce any new modes of plant operation, make any physical changes, or alter any operational setpoints. Therefore, the change does not degrade the performance of any safety system assumed to function in the accident analysis. The extension will not result in a significant increase in valve

leakage considering that: (1) the valves are infrequently stroked, and then only when the reactor vessel is at low pressure, (2) monitoring the normal operating status of the RHR [residual heat removal] system assures the absence of gross valve leakage, and (3) the valves were replaced with valves of an improved design which has been confirmed by past Type C tests to exhibit satisfactory leak rate performance. For these reasons, the change does not involve a significant increase in the probability of an accident.

The change does not involve a significant increase in the consequences of an accident evaluated since any leakage through the shutdown cooling penetration will not significantly increase for reasons discussed in the previous paragraph, and such leakage is negligible compared to the main steam line break accident analyzed in the FSAR [final safety analysis report].

2. create the possibility of a new or different kind of accident from those previously evaluated.

The proposed change does not introduce new accident initiators or failure mechanisms since the change does not alter the physical characteristics of any plant system or component. The change is limited to a one-time schedule extension for the shutdown cooling isolation valve Type C tests.

3. involve a significant reduction in the margin of safety.

There is a very low probability of a significant increase in valve leakage considering the demonstrated reliability of the current valve design, the infrequent use of the valves, and the monitoring of the normal operating status of the RHR system. Moreover, any potential incremental benefit of performing the tests within the two year requirement would not be sufficient to offset the increased occupational radiation exposure associated with testing, and the risk to plant safety associated with the removal from service of the primary method of decay heat removal. Consequently, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: October 1, 1993 TS 93-09

Description of amendment request: The proposed changes would revise the setpoints and time delays for the auxiliary feedwater (AFW) and 6.9 kv shutdown board loss of voltage and degraded voltage instrumentation. The proposed changes would affect Technical Specification (TS) Tables 3.3-3, 3.3-4, 3.3-5, 4.3-2, and the Bases for Specification 3/4.7.1.2. Table 3.3-3 would be revised: (1) to reflect the use of a two-out-of-three voltage sensor logic for loss of power detection (and one-out-of-two logic scheme for the timing relays) by adding requirements for the respective AFW, 6.9 kv shutdown board, and emergency diesel generator (EDG) voltage sensors and load shed timers; (2) by changing the description of the functional unit from "Station Blackout" to "Loss of Power Start;" (3) by adding a footnote to indicate that the new requirements apply only to the shutdown boards on the same unit; (4) by increasing the modes for which the EDG sensors and timers must be operable to include Modes 5 and 6 when the associated EDG must be operable; (5) by changing the associated Action statements to reflect the design changes and consistency; (6) to reflect consistent terminology in the Table and action statements; (7) by changing the minimum number of channels that would be required to be operable; (8) by changing the footnote to reflect the conditions when the loss-of-power instrumentation is required to be operable in Modes 5 and 6; and (9) by adding an exclusion to Specification 3.0.4. Similar changes were proposed for Tables 3.3-4, 3.3-5 and 4.3-2. The proposed change to Bases 3/4.7.1.2 would clarify AFW operability on loss of power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed revision supports the implementation of design logic and setpoint changes to the loss-of-power relaying. This relaying is designed to ensure adequate voltage is available to safety-related loads in order to enhance their operability and support accident mitigation functions and to provide for auxiliary feedwater (AFW) pump starts. The design changes alter relay logic and delete unnecessary relaying, but do not change the diesel generator (D/G) start and load-shedding actuations that result from loss-of-power conditions. Therefore, no new actuations or functions have been created; and because the existing and proposed functions provide for accident mitigation considerations that are not the source of an accident, the probability of an accident is not increased. The deletion of the 6.9-kilovolt shutdown board normal-feeder undervoltage relays actually reduces the potential for inadvertent shutdown board blackouts as a result of short-duration voltage transients or instrument failures.

The setpoints and time delays for loss-of-power functions have been modified based on the guidelines developed by the Electrical Distribution System Clearinghouse as evaluated and determined through detailed analysis by TVA. This design is documented in TVA Calculations SQN-EEB-MS-TI06-0008, 27DAT, and DS-1-2 and is available for NRC review at the SQN site. The assigned values are conservative settings that will ensure adequate voltage is supplied to safety-related loads for accident mitigation and safety functions under normal, degraded, and loss-of-offsite-power voltage conditions with appropriate time delays to prevent damage to electrical loads and minimize premature or unnecessary actuations. The identification of loss-of-voltage conditions is enhanced by the design changes to ensure the timely sequencing of loads onto the D/G and the initiation of AFW pump starts for accident mitigation. Because there are no reductions in safety functions resulting from the design logic, setpoint, and time-delay changes to the loss-of-power instrumentation and offsite dose levels for postulated accidents will not be increased, the consequences of an accident are not increased.

The applicable mode addition, TS 3.0.4 exclusion deletion, and response time measurement clarification incorporated in the proposed change do not affect plant functions. These changes reflect the requirements that SQN has been maintaining and serve to clarify the requirements to provide consistency of application and easier understanding. The AFW footnote addition and bases revision only clarify operability conditions that are consistent with the plant design for the AFW pump and loss-of-power instrumentation. Because there are no changes to plant functions or operations, these revisions have no impact on accident probabilities or consequences.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

As described above, the loss-of-power instrumentation ensures adequate voltage to safety-related loads by initiating D/G starts and load shedding and provides for AFW pump starting, but is not considered to be the source of an accident. Although the design logic, setpoint, and time-delay actuation criteria have changed, the output functions to various plant systems that actuate for load shedding and D/G starts remain the same. Therefore, actuation criteria have been affected, but not safety functions, and the TVA evaluation has confirmed that the new

design enhances the ability to maintain adequate voltage to support safety functions. Since safety functions have not changed and the new loss-of-power instrumentation design continues to support operability of safety-related equipment, no new or different accident is created.

The applicable mode addition, TS 3.0.4 exclusion deletion, and response time measurement clarification, as well as the AFW operability clarifications, do not affect plant functions and will not create a new accident.

3. Involve a significant reduction in a margin of safety.

The proposed loss-of-power TS changes support design logic, setpoint, and time-delay requirements that have been verified by TVA analysis to provide acceptable voltage levels for safety-related components. In determining the acceptability of these voltage levels, the minimum voltage for operation as well as detrimental component heating resulting from sustained degraded-voltage conditions were considered. This design ensures that safety-related loads will be available and operable for normal and accident plant conditions. The applicable mode addition, TS 3.0.4 exclusion deletion, response time measurement clarification, and AFW operability clarifications provide enhancements to TS requirements and do not affect plant functions. Therefore, no safety functions are reduced by these changes and there is no reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: November 18, 1993 (TS 93-17)

Description of amendment request: The proposed change would delete the requirement of License Condition 2.H of the Operating License. This license condition requires reporting the violation of certain license conditions to the NRC Regional Administrator within 24 hours by phone and facsimile, and a followup report within 14 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is a deletion of an administrative reporting requirement that does not in any way affect a previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. The proposed change is administrative in nature and does not affect any accident initiators for SQN. No new failure modes are introduced.

3.Involve a significant reduction in a margin of safety.

Plant safety margins are established through limiting conditions of operation, limiting safety system settings, and safety limits specified in the TSs. As a result of the proposed amendment, there will be no changes to either the physical design of the plant or to any of these settings and limits. The proposed changes are administrative and do not affect the safe operation of SQN. Therefore, there will be no changes to any of the margins of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: December 7, 1993 (TS 93-16)

Description of amendment request: The proposed change would incorporate the following changes to Section 6.0, "Administrative Controls," of the Technical Specifications (TS): (1) delete Section 6.1.2 that indicates that the Corporate Manager of Radiological Control has the responsibility for the radiological environmental program, dose calculations, and projections; (2) added a requirement in Section 6.5.1.6 for review of the Offsite Dose Calculations Manual (ODCM) by the Plant Operations Review Committee (PORC); (3) added implementation of the ODCM to Section 6.8.1 as an activity requiring written procedures and deleted the requirement that they be maintained by the Radiological Control Group; (4) delete the requirement in Section 6.8.4.a for Radiological Control to implement and control the ODCM; (5) changed the review authority for changes to the ODCM from the Radiological Assessment Review Committee (RARC) to the PORC and added a reference to Specification 6.5.1A in Section 6.14.1.2; (6) approval authority for deviations from the overtime guidelines in Section 6.2.2.g would be changed to show that Plant Manager designee also has the authority; (7) PORC member titles would be changed in accordance with the current organizational structure; (8) the requirements for the RARC would be deleted from Sections 6.5.2.7.i, 6.5.3, 6.10.2.k and the index; (9) move the condenser inleakage monitoring requirement from Section 6.8.5.c.(vii) to 6.8.5.c.(iii) and delete the requirement to repair, plug, or isolate leaks; (10) change the title "Shift Supervisor" (SS) to "Shift Operations Supervisor" (SOS) in various locations in Section 6 and in Operating License Items 2.C.(23).A and 2.C.(16).a for Units 1 and 2 respectively; (11) change the title of the Senior Vice President, Nuclear Group, in Section 6.2.1 to Senior Vice President, Nuclear Power; (12) change the title of the Operational Quality Assurance Program in Section 6.5.2.8.d to Nuclear Quality Assurance Program; and (13) move the requirement for implementation of the Quality Assurance Program for environmental monitoring from Section 6.8.4.b to Section 6.8.1.h. Other administrative changes related to these changes were also submitted that affect Section 6.0, the operating license, index, and definitions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). The operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes only affect the administrative controls found in Section 6.0 of the SQN TSs and the operating license. No plant equipment or operating practices are affected by these changes. The revised administrative controls will continue to adequately implement administrative activities to support plant nuclear safety. Since there are no physical changes to the plant, there is no increase in the probability of an accident because these administrative controls are not the source of previously evaluated accidents. Similarly, with no change to plant equipment or operating requirements, the plant response to accident conditions and therefore the consequences of an accident remain unchanged. These proposed changes will not increase the consequences of an accident and offsite dose rates will not be impacted.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The administrative controls affected by the proposed changes are not considered to be the source of any accident and these changes will not alter any plant features or processes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident and the administrative controls will continue to implement the actions necessary to support plant activities and nuclear safety.

3. Involve a significant reduction in a margin of safety.

Plant features and setpoints remain unchanged by the proposed changes to the administrative controls. The margins of safety established by the SQN design are not affected by these changes. The proposed administrative controls will continue to maintain the actions and programs that ensure appropriate plant design, operation, and procedures to support the required margin of safety. Therefore, the proposed changes will not reduce the margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: September 29, 1993

Description of amendment request: The proposed amendments would change the test intervals from monthly to quarterly, consistent with the Inservice Test Program, for several pumps and related systems, including safety injection, residual heat removal and containment spray pumps.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of specific general considerations related to equipment surveillance requirements and their relationship to equipment operability are administrative in nature. They do not change the interpretation or intent of the Technical Specifications. These conditions are consistent with the Westinghouse Standard Technical Specifications (STS).

The addition of the specific requirement for the Inservice Test Program to Section 15.4.2 of the Technical Specifications only reiterates the requirements of 10 CFR 50.55a(g). This requirement does not implement any new requirements on the operation or testing of equipment.

The decrease in the number of equipment operational transients due to the increase in the surveillance interval for the Safety Injection System (SI), Residual Heat Removal (RHR) System, and Containment Spray (CS) System pumps and valves will result in an increase in system availability. Reduced testing is also expected to have a positive affect on overall equipment reliability since frequent testing results in increased wear and potential for equipment failure. Other actions including a monthly verification of system lineups for the SI, CS and RHR systems provides increased assurance of system operability between surveillance tests. The potential for equipment problems to go undetected for a longer period of time is small as indicated by equipment surveillance history.

Therefore, these changes will not effect the probability or consequences of previously analyzed accidents.

2. The proposed amendments will not create the possibility of a new or different kind of accident from any accident previously analyzed.

These changes only affect the equipment testing frequency. Equipment design, operation and the methods of testing will not be changed. Therefore, the proposed changes cannot create the possibility of a new or different kind of accident than any accident previously evaluated.

3. The proposed amendments will not involve a significant reduction in the margin of safety.

The proposed changes which implement the requirements of 10 CFR 50.55a(g) and clarify the general considerations related to equipment surveillances are administrative in nature. They do not change the intent of any existing license or other requirement.

The increase in equipment surveillance intervals will result in an improvement in equipment and system availability and reliability. Surveillance of equipment will be performed as required by the regulations and Section XI of the ASME Boiler and Pressure Vessel Code. These proposed changes will reduce the potential for equipment failures due to unnecessary testing.

Adequate assurance is provided by testing in accordance with the ASME Code requirements and periodic verification of system lineups to ensure that the affected systems remain operable and capable of performing their design function. Therefore, a reduction in a margin of safety will not occur.

The NRC staff has reviewed the licensee's analysis and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John N. Hannon

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: December 1, 1993

Description of amendment request: The proposed amendment would revise the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) by incorporating technical and administrative changes to TS 3.10, Control Rod and Power Distribution Limits. The proposed changes eliminate specifications for fuel designs no longer used at Kewaunee, specify required actions to be taken upon exceeding control bank insertion limits, and revise the limits for Departure from Nucleate Boiling (DNB) related parameters to assure operation within the assumptions of the Updated Safety Analysis Report (USAR) analyses.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

(a) TS 3.10.b.1, 3.10.b.4 and Table TS 3.10-2

The proposed changes were reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes eliminate the specifications for fuel that is no longer used at the Kewaunee Nuclear Power Plant. Eliminating these specifications does not affect the probability of any accident previously evaluated.

The specifications for the current fuel vendor are being retained and ensure the consequences of previously evaluated Departure from Nucleate Boiling (DNB) related accidents are enveloped by the Updated Safety Analysis Report (USAR) analyses. Therefore, these changes will not increase the consequences of an accident previously evaluated in the USAR.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating setpoints, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3) Involve a significant reduction in the margin of safety.

The proposed change deletes specifications for fuel that is no longer used at the Kewaunee Nuclear Power Plant. The limits for the current fuel vendor are retained and are not affected by this proposed change. This does not alter the input or assumptions of the safety analysis, and therefore it will not involve a reduction in the margin of safety.

(b) TS 3.10.d

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change specifies the required actions to be taken when the control bank insertion limits are exceeded. The current TS requires compliance with the control bank insertion limits, but gives no corrective action for when these limits are exceeded. The new specification requires operators to initiate boration to restore shutdown margin within one hour of exceeding the control bank insertion limits and to restore the control banks to within the limits within 2 hours. If either of these requirements cannot be achieved, within 1 hour the operators must initiate actions to achieve Hot Standby within the next 6 hours and Hot Shutdown within the following 6 hours. Adding these requirements clarifies and enhances the Technical Specifications and will have no impact on the probability of an accident previously evaluated.

The proposed addition is conservative and ensures that proper and adequate measures are taken when the control bank exceeds the control bank insertion limits. Therefore, this addition will not increase the consequences of an accident previously evaluated in the USAR.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating setpoints, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3) Involve a significant reduction in the margin of safety.

The proposed change is conservative and clarifies the necessary actions to be taken when control bank insertion limits are exceeded. This proposed change is an enhancement to the specification and does not reduce the margin of safety.

(c) TS 3.10.k

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change decreases the maximum RCS inlet temperature limit for steady state 100% operation from 536.5 degrees Fahrenheit to 535.5 degrees Fahrenheit. The value of 539.5 degrees Fahrenheit is the assumed RCS inlet temperature for the DNB related accidents analyzed in the USAR. These accidents are the Uncontrolled Rod Cluster Control Assembly Withdrawal at Power Accident, the Uncontrolled Rod Cluster Control Assembly Withdrawal from a Subcritical Condition Accident, the Rod Cluster Control Assembly Misalignment, the Start-Up of an Inactive Reactor Coolant Loop Accident, the Excessive Heat Removal due to Feedwater System Malfunction Accident, the Excessive Load Increase Incident, the Loss of Reactor Coolant Flow Accident, the Loss of External Electrical Load, the Steam Line Break, and the Rod Cluster Control Assembly Ejection. A four degree assumed instrument error reduces the maximum allowed RCS inlet temperature to 535.5 degrees Fahrenheit. Decreasing this value to ensure consistency with the USAR analysis assumptions will have no impact on the probability of an accident previously evaluated.

The proposed change is conservative to ensure that the consequences of a previously evaluated DNB-related accident are enveloped by the USAR analysis. Therefore, this change will not increase the consequences of an accident previously evaluated in the USAR.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating setpoints, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3) Involve a significant reduction in the margin of safety.

The proposed change is conservative and is consistent with the assumptions in the USAR. This proposed change is an enhancement to the specification and does not reduce the margin of safety.

(d) TS 3.10.l

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change increased the minimum RCS pressure limit for steady-state 100% power operation from the currently specified 2200 psig to 2205 psig. The value of 2205 psig (30 psig below the nominal design value of 2235 psig) was the assumed initial condition for the DNB related accidents analyzed in the USAR. These accidents are the Uncontrolled Rod Cluster Control Assembly Withdrawal at Power Accident, the Uncontrolled Rod Cluster Control Assembly Withdrawal from a Subcritical Condition Accident, the Rod Cluster Control Assembly Misalignment, the Start-Up of an Inactive Reactor Coolant Loop Accident, the Excessive Heat Removal due to Feedwater System Malfunction Accident, the Excessive Load Increase Incident, the Loss of Reactor Coolant Flow Accident, the Loss of External Electrical Load, the Steam Line Break, and the Rod Cluster Control Assembly Ejection. Increasing this value to ensure consistency with the USAR analysis assumptions will have no impact on the probability of an accident previously evaluated.

The proposed change is conservative to ensure that the consequences of a previously evaluated DNB-related accident is enveloped by the USAR analysis. Therefore, this change will not increase the consequences of an accident previously evaluated in the USAR.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, operating setpoints, or overall plant performance. Therefore, it does not create the possibility of a new or different kind of accident.

3) Involve a significant reduction in the margin of safety.

The proposed change is conservative and is consistent with the assumptions in the USAR. This proposed change is an enhancement to the specification and does not reduce the margin of safety.

(e) TS 3.10.m

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1)Involve a significant increase in the probability or consequences of an accident previously evaluated.

TS 3.10.m.1 provides the limits and required actions to be taken when the RCS flow rate per loop is less than the USAR analysis assumptions. Decreasing the flow limit to be consistent with the USAR assumptions will have no impact on the probability of an accident previously evaluated. Compliance with the flow limit assumed in the USAR analyses ensures the consequences of previously evaluated DNB-related accidents are enveloped by the USAR analyses. Therefore, this change will not increase the consequences of an accident previously evaluated in the USAR.

The proposed revision places an additional restriction on RCS flow when less than the design flow rate of 89,000 gallons per minute per loop. The intent of specifying action in accordance with 3.10.n is to ensure that reactor power is reduced to a point at which the DNB ratio margin is restored. Compliance

with this specification will not increase the probability of an accident previously evaluated, nor increase the consequences of an accident.

The intent of TS 3.10.m.2 is to clarify the conditions under which the reactor coolant flow rate is verified. The conditions, methodology, and uncertainties associated with this verification are not changed by this specification. Clarifying the TS by inclusion of the conditions for verifying the flow rate will not increase the probability or consequences of any accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accidents previously evaluated.

A new or different kind of accident from those previously evaluated will not be created by this TS change. The proposed amendment does not alter the plant configuration, operating setpoints or overall plant performance.

3) Involve a significant reduction in the margin of safety.

A specification on steady-state RCS flow rate is necessary to ensure DNB ratio criteria will be met during the DNBR limiting events analyzed in the USAR. Reducing the reactor coolant flow limit to the value assumed in the USAR analyses does not result in a reduction in the margin of safety.

The additional restrictions being imposed if the specified limit is not met provide additional assurance the DNBR margin will be restored. These additional restrictions do not exist in the current TS. The imposition of these restrictions results in an enhancement to the margin of safety.

Clarifying the TS by inclusion of conditions under which the flow verification is to be performed will not reduce the margin of safety. Existing approved constraints, methodology, and uncertainties are not being changed by this clarification.

(f) TS 3.10.n

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed change will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The intent of this new TS is to outline the actions required when the limits of TS 3.10.k (RCS temperature), TS 3.10.l (RCS pressure) and TS 3.10.m.1 (RCS flow) are exceeded. Collectively, these three specifications place limits on the DNB-related parameters to assure each is maintained within the normal steady-state envelope assumed in the USAR safety analysis. This specification is an enhancement to our existing specification to add clear guidance which does not presently exist. Providing this information for the plant staff and operators will not increase the probability of an accident previously evaluated.

The addition of this action statement will ensure that the consequences of an analyzed accident are not increased. The proposed specification allows 2 hours to evaluate and restore parameters to within limits. If this time frame is not satisfied, then within the next 6 hours, power is reduced in order to restore a margin of safety. Following analysis, thermal power may be raised not to exceed a level analyzed to maintain a minimum DNBR of 1.30.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not alter the plant configuration, operating setpoints or overall plant performance.

3) Involve a significant reduction in the margin of safety.

Addition of the specification is an enhancement to the current specification which does not alter input to the safety analysis. Therefore, it will not involve a reduction in the margin of safety.

(g) Administrative changes to Section TS 3.10 including Figure TS 3.10-2.

The proposed change was reviewed in accordance with the provisions of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2) Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3) Involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature and do not alter the intent or interpretation of the TS. Therefore, no significant hazards exist.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

NRC Project Director: John N. Hannon

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: December 7, 1993

Description of amendment request: The proposed amendment would revise Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) 5.3.a.1 to provide flexibility in the repair of fuel assemblies containing damaged and leaking fuel rods by reconstituting the assemblies, provided that an NRC-approved methodology is used. This proposed change is consistent with guidance provided in Supplement 1 to Generic Letter (GL) 90-02, "Alternative Requirements for Fuel Assemblies in the Design Features Section of Technical Specifications," dated July 21, 1992. In addition, administrative changes to KNPP TS Section 5 have been proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

The proposed changes were revised in accordance with the provision of 10 CFR 50.92 to show no significant hazards exist. The proposed changes will not:

1) involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change to the requirements for "Fuel Assemblies" in the "Design Features" section of the KNPP TS will not involve a significant increase in the probability or consequences of an accident previously evaluated. This proposed change will not result in modifications to fuel assemblies that would have a significant effect on safety because of the requirement to implement these changes using an NRC-approved methodology. This requirement will confirm conformance to existing design limits and confirm that safety analyses criteria are met before operation during the next fuel cycle. This license amendment request is consistent with guidance provided by the NRC and will result in flexibility for improved fuel performance.

2) create the possibility of a new or different kind of accident from any accident previously evaluated.

The creation of new or different kind of accident from any previously evaluated accident is not considered a possibility because the changes are administrative in nature and do not represent an actual modification to the plant or change its safety analyses.

3) involve a significant reduction in the margin of safety.

The margin of safety is maintained by adherence to other fuel related TS limits and the USAR design bases. The changes do not directly affect any safety system or the safety limits, and thus does not affect the plant margin of safety.

Accordingly, these proposed changes do not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Bradley D. Jackson, Esq., Foley and Lardner, P. O. Box 1497, Madison, Wisconsin 53701-1497.

NRC Project Director: John N. Hannon

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: October 19, 1993

Brief description of amendments: The amendments change the Technical Specifications (TS) add a footnote to TS 4.6.1.2.b that allows a one-time exemption from the accelerated containment integrated leak rate test (CILRT) requirements to return the CILRT frequency for both units to a normal Type A test interval.

Date of issuance: January 11, 1994

Effective date: January 11, 1994

Amendment Nos.: 167 and 198

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59745) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 11, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Duke Power Company, Docket Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: May 3, 1993, as supplemented August 11, 1993.

Brief description of amendments: The amendments revise the limiting conditions for operation and surveillance requirements related to the Low Pressure Service Water System.

Date of issuance: January 13, 1994

Effective date: To be implemented within 30 days from the date of issuance.

Amendment Nos.: 203, 203, and 200

Facility Operating License Nos. DPR-38, DPR-47, and DPR-55: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52983) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 13, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One,Unit No. 2, Pope County, Arkansas

Date of application for amendment: October 27, 1993

Brief description of amendment: The amendment relocated the requirement of Technical Specification 4.5.2.g.1 to verify the correct position of each electrical and/or mechanical position stop for the Emergency Core Cooling System throttle valves within 4 hours of each valve stroking operation or maintenance on the valve, to procedures that control the maintenance and operation of these valves.

Date of issuance: January 14, 1994

Effective date: To be implemented within 30 days from the date of issuance.

Amendment No.: 155

Facility Operating License No. NPF-6 Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 8, 1993 (58 FR 64606) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 11, 1993

Brief description of amendment: The amendment changed the Grand Gulf Nuclear Station Technical Specifications to support compliance with the new requirements of Title 10 Code of Federal Regulations Part 20 and Part 50.36a. The request to change the wording of TS 1.46 which relates to the definition of an UNRESTRICTED AREA remains under consideration and will be the subject of a future licensing action.

Date of issuance: January 10, 1994

Effective date: January 10, 1994

Amendment No: 111

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46233) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 10, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: August 27, 1993.

Description of amendment request: The amendment changes the footnote on page 1 of License NPF-86 by deleting Vermont Electric Generation and

Transmission Cooperative, Inc., (Vermont), as one of the entities for which North Atlantic Energy Service Corporation (North Atlantic) is authorized to act. The change reflects the purchase of Vermont's share of the Seabrook Station, Unit 1 by North Atlantic Energy Corporation (NAEC) pursuant to a prior settlement of a claim by Vermont against Public Service Company of New Hampshire (PSNH). NAEC acquired PSNH's interest in the Seabrook Station, Unit 1 in accordance with the Plan for Reorganization for PSNH.

Date of issuance: January 7, 1994

Effective date: To be implemented by May 30, 1994.

Amendment No.: 28

Facility Operating License No. NPF-86. Amendment revised the License.

Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52990). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 7, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 7, 1992 as supplemented July 12, 1993

Brief description of amendment: The amendment changed the setpoint limit for the degraded-voltage protection system referred to as the offsite-power low signal.

Date of issuance: January 14, 1994

Effective date: January 14, 1994

Amendment No.: 159

Facility Operating License No. DPR-40. Amendment revised the TechnicalSpecifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55584) The additional information contained in the supplemental letter dated July 12, 1993, was clarifying in nature and, thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 15, 1993

Brief description of amendment: The amendment revised the Technical Specifications (TSs) by implementing Generic Letters (GLs) 86-10 and 88-12. This removed the fire protection TSs and placed these parts in the Updated Safety Analysis Report (USAR).

Date of issuance: January 14, 1994

Effective date: January 14, 1994

Amendment No.: 160

Amendment No.: 160

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59753) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 14, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania.

Date of application for amendment: August 3, 1993

Brief description of amendment: This amendment removes shutdown system control valves and primary containment isolation valves from TS Tables 3.3.7.4-1, "Remote Shutdown Instrumentation and Controls," and 3.6.3-1, "Primary Containment Isolation Valves," as a result of eliminating the steam condensing mode of the Residual Heat Removal system.

Date of issuance: January 12, 1994

Effective date: January 12, 1994

Amendment No. 65

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50969) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 12, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: May 21, 1993, as supplemented October 7, 1993, and December 3, 1993

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to incorporate the following changes:

(1) The safety injection system test frequency (specified in TS Section 4.5.A.1.a) was changed to accommodate operation on a 24-month cycle.

(2) The loss of normal AC in conjunction with a safety injection signal test frequency (specified in TS Section 4.6.A.3) was changed to accommodate operation on a 24-month cycle. This TS section was also reformatted to improve clarity.

(3) The auxiliary feedwater system undervoltage automatic start test frequency (specified in TS Table 4.1-1) was changed to accommodate operation on a 24-month cycle.

(4) The auxiliary feedwater system main feedwater pump trip automatic start test frequency (specified in TS Table 4.1-1) was changed to accommodate operation on a 24-month cycle.

In addition, quarterly testing and 24-month calibration requirements were added to TS Table 4.1-1 for the main steam line flow instrumentation. These surveillances were added to ensure operability of the main steam line flow circuits and to be consistent with the TSs surveillance requirements for other engineered safety features instruments.

These changes followed the guidance provided in Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle."

Date of issuance: January 11, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 142

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41510)The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 11, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: October 29, 1993

Brief description of amendment: The amendment revises Technical Specifications (TSs) Sections 3.10 (Control Rods and Power Distribution Limits) and 4.2 (Inservice Inspections) to correct administrative errors that resulted from the issuance of TS Amendment Nos. 57 and 103. The amendment corrects the errors and further clarifies the TS.

Date of issuance: January 12, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 143

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 8, 1993 (58 FR 64615) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 12, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: October 30, 1991

Brief description of amendment: The amendment revised Technical Specification 3.1.3.2, "Control Rod Maximum Scram Insertion Times," to clarify the conditions under which the plant must be shut down in the event that individual control rod scram insertion times exceed the allowable values.

Date of issuance: January 19, 1994

Effective date: January 19, 1994

Amendment No. 54

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 11, 1991 (56 FR 64651) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 19, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Notice Of Issuance Of Amendments To Facility Operating Licenses And Final Determination Of No significant Hazards Consideration And Opportunity For A Hearing (Exigent Public Announcement Or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By March 4, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the

Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company, Docket No. 50-265, Quad Cities Nuclear Power Station, Unit 2, Rock Island County, Illinois

Date of application for amendments: October 29, 1993, as supplemented by letters dated December 22, 1993 and January 14, 1994.

Brief description of amendments: The license amendment dispositions Unreviewed Safety Questions (USQ) related to proposed plant modifications associated with reactor vessel water level instrumentation. These modifications have been initiated to mitigate the circumstances outlined in NRC Bulletin 93-03, "Resolutions of Issues Related to Reactor Vessel Water Level Instrumentation in BWRs."

Date of issuance: January 19, 1994

Effective date: January 19, 1994

Amendment No.: 139

Facility Operating License No. DPR-30. Public comments requested as to proposed no significant hazards consideration: No.The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated January 19, 1994.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

NRC Project Director: James E. Dyer

Dated at Rockville, Maryland, this 26th day of January 1994.

For the Nuclear Regulatory Commission.

John N. Hannon,

Acting Director, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation

[Doc. 94-2174 Filed 2-1-94; 8:45 am]

BILLING CODE 7590-01-F

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Management Oversight of Service Contracting

AGENCY: Executive Office of the President, Office of Management and Budget, Office of Federal Procurement Policy (OFPP).

ACTION: OFPP is requesting comments on proposed changes to OFPP Policy

Letter 93–1, "Management Oversight of Service Contracting" which are set forth in Supplement No. 1 to the Policy Letter.

SUMMARY: OFPP Policy Letter 93–1, "Management Oversight of Service Contracting," was signed by the former OFPP Administrator on November 19, 1993 and published in the **Federal Register** on December 2, 1993 (58 FR 63593).

The Policy Letter is now being revised with a goal of establishing a more "results-oriented" approach to providing agencies with best practices to use in managing and administering service contracts. The initial guidance neither prescribes specific improvements that agencies can make in this area nor ways that results can be measured. During this Administration, OFPP's activities will focus on two major objectives: streamlining the procurement process and achieving excellence in contractor performance. We believe that one way to improve contractor performance is to improve contract management and administration. In this regard, we plan to work with the agencies and industry to develop practices that represent best value in contract management and administration. This approach is in keeping with the National Performance Review principle of providing guiding principles rather than rigid rules. Hence, we are revising the Policy Letter, in particular sections 8a and 8b, to reflect this new approach. Agencies are encouraged to begin developing implementation strategies and initiating staff training to ensure effective implementation of the provisions of this revised Policy Letter until the Federal Acquisition Regulation (FAR) is changed.

Since the December 2, 1993 **Federal Register** notice which also included the rescission of OMB Circular No. A–120, some agencies have raised concerns that the rescission of the Circular was effective immediately but the Policy Letter was not effective until 30 days after publication in the **Federal Register**. (OFPP has a statutory requirement to allow 30 days before any procurement policy can become effective.) We understand the concern, but it was our intent to make the rescission of Circular A–120 effective immediately, although we realize that it takes time to have the FAR guidance changed. In the interim, agencies are encouraged to review their internal procedures for managing and controlling the use of advisory and assistance services and determine what changes may be needed to ensure compliance with this revised Policy Letter. Some agencies may elect to use their existing management control procedures for all services covered by the Policy Letter until the FAR guidance is in place.

We are issuing the following changes to the Policy Letter which are included in the attached Supplement No. 1:

1. The second sentence under section 4 (Definition) is being revised to clarify that only nonpersonal services obtained under contract from the private sector (i.e., business firms, educational institutions, non-profits, and state and local governments) are covered. Services obtained through the use of interagency agreements are not covered by this Policy Letter.

2. The second paragraph under section 5 (Exclusions) is revised to delete reference to the management oversight responsibilities which will be consistent with the revised paragraphs 8a. and 8b.

3. The second introductory paragraph under section 7 (Good Management Practices) is being revised to delete reference to the requirement for individual and class reviews, and the reference to the responsible management official. Agencies must ensure that they are in compliance with appropriate OFPP Policy Letters applicable to service contracting and use good management practices and contract administration techniques when contracting for services.

4. Paragraphs a. and b. under Section 8 (Responsibilities) are being revised in their entirety to incorporate the new "best practices" approach to managing and administering service contracts.

5. Paragraph d. under section 8, which pertains to the Inspectors General, is being revised to ensure that any reviews are simply to ensure that agencies are in compliance with the revised Policy Letter.

The guidance in section 7 which refers to the questions in the appendix A, and any resulting "best practices" models developed by OFPP in contract administration should not be viewed as mandatory regulatory guidance for audit purposes. We believe that agencies should use the questions as warning signals to prevent problems from occurring and the "best practices" models to help resolve those problems.

All other provisions of the policy Letter remain unchanged.

COMMENT DATE: Comments must be received on or before March 4, 1994.

ADDRESSES. Comments should be sent to Dr. Steven Kelman, Administrator, Office of Federal Procurement Policy, Office of Management and Budget, Old Executive Office Building, room 352, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator, 202–395–3302.

List of Subjects

Government Procurement.

Steven Kelman,

Administrator.

Policy Letter 93–1, Supplement No. 1

To the Heads of Executive Departments and Agencies

Subject: Management Oversight of Service Contracting.

The purpose of this supplement to Policy Letter 93–1 is to provide agencies with a more "results-oriented" approach to managing and administering service contracts by introducing the "best practices" concept. The Policy Letter was issued on November 19, 1993 and published in the **Federal Register** on December 2, 1993 (58 FR 63593).

The following changes are being made to the Policy Letter:

1. Section 4. *Definition.* The second sentence is revised to read: For purposes of this Policy Letter, only nonpersonal services obtained under contract are covered.

2. Section 5. *Exclusions.* The second paragraph is revised to read:

Services obtained under contracts below the small purchase threshold, through the use of interagency agreements, and that are incidental to supply contracts also are excluded from coverage of this Policy Letter. However, agencies should ensure that they are in compliance with appropriate OFPP Policy Letters applicable to service contracting and use good management practices and contract administration techniques when using these contracting methods to obtain services.

3. Section 7. *Good Management Practices.* The second introductory paragraph is revised to read:

The following sections offer guidance to ensure that good management practices are being followed. Agencies should involve procurement and program officials when developing requirements for service contracts. Appendix A contains a series of questions to help analyze and perfect service contract requirements within these guidelines. If the guidelines apply, and if the response to any of the questions listed in the Appendix is affirmative, agencies should ensure that they are in compliance with appropriate OFPP Policy Letters applicable to service contracting and use good management practices and contract administration techniques.

4. Section 8. *Responsibilities.* Paragraphs a., b., and d. are revised to read:

a. Heads of Agencies. Agency heads (or their designees) should ensure that:

(1) Requirements for services are clearly defined and appropriate performance standards are developed so that contractor performance meets contract terms and conditions.

(2) Service contracts are awarded and administered in such a manner that will

provide the customer its goods and services on time, and within budget.

(3) Specific procedures are in place when contracting for services to assure compliance with OFPP Policy Letter 92–1, Inherently Governmental Functions (57 FR 45096 (1992), 91–2, Service Contracting (56 FR 15110 (1991), and 89–1, Conflicts of Interest Policies Applicable to Consultants, 54 FR 51805 (1989).

(4) Implementation strategies are developed and necessary staff training is initiated to assure effective implementation of these policies.

b. Contracting Officials. Contracting officials should ensure that "best practice" techniques, such as those set forth below, are used when contracting for services:

(1) The corporate experience section of a contractor's bid proposal should be reviewed to detect conflicts of interest. Usually, the corporate experience section contains the contractor's prior business clients.

(2) Monthly progress reports should be reviewed to detect whether the contractor may be performing inherently governmental functions.

Contracting officials should also seek other best practices techniques in contract management and administration that may be used within their own contracting activities or other agencies that will help to achieve excellence in contractor performance. OFPP will also be working to develop governmentwide "best practices" models in contract administration which will be issued as separate guidance.

d. Inspectors General. The Inspectors General are encouraged to conduct vulnerability assessments of service contracting and, where warranted, include in their annual plans a review of service contracts to ensure compliance with the Policy Letter.

The guidance in section 7 which refers to the questions in appendix A, and any resulting "best practices" models developed by OFPP should not be viewed as mandatory regulatory guidance for audit purposes.

All other provisions of the Policy Letter remain unchanged.

Information Contact. For information regarding this Supplement, contact Linda G. Williams, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street, NW., room 9001, Washington, DC 20503. Telephone (202) 395–3302.

Effective Date. This supplement is effective 30 days after the date of publication in the Federal Register.

Steven Kelman,

Administrator.

[FR Doc. 94–2356 Filed 2–1–94; 8:45 am]

BILLING CODE 3110–01–M

PENSION BENEFIT GUARANTY CORPORATION

Disaster Relief

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of disaster relief in response to Los Angeles earthquake.

SUMMARY: The Pension Benefit Guaranty Corporation is waiving penalties for certain late payments of premiums, is forgoing assessment of penalties for failure to comply with certain information submission requirements, and is extending the deadlines for complying with certain requirements of its administrative review and standard termination regulations. This relief is generally available to persons residing in, or whose principal place of business is within, an area designated by the Federal Emergency Management Agency as affected by the major disaster declared by the President of the United States on account of the severe earthquake in the Los Angeles area.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Renae R. Hubbard, Special Counsel, Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1001 *et seq.* Under ERISA and the PBGC's regulations, a number of deadlines must be met in order to avoid the imposition of penalties or other consequences. Four areas in which the PBGC is providing relief are (1) penalties for late payment of premiums due the PBGC, (2) ERISA section 4071 penalties for failure to provide required notices or other material information by the applicable time limit, (3) deadlines for filing a standard termination notice and distributing plan assets in a standard termination, and (4) deadlines for filing requests for reconsideration or appeals of certain agency determinations.

The President of the United States has declared, under the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121, 5122(2), 5141(b)), that a major disaster exists because of the severe earthquake that struck the Los Angeles area on January 17, 1994. At this time, three California counties (Los Angeles, Ventura, and Orange) are designated areas (within the meaning of Federal Emergency Management Agency (FEMA") regulations; 44 CFR 205.2(a)(5)).

Given the severity of this major disaster, as the Executive Director of the PBGC, I have decided to provide relief from certain PBGC deadlines and penalties. For purposes of premium penalties, section 4071 penalties, and standard termination deadlines, this notice is applicable with respect to plans whose administrators' or sponsors' principal place of business, or for which the office of a service provider, bank, insurance company, or other person maintaining information necessary to meet the applicable deadlines, is located in a designated disaster area. For purposes of filing requests for reconsideration or appeals, this notice is applicable to any aggrieved person who is residing in, or whose principal place of business is within, a designated disaster area, or with respect to whom the office of the service provider, bank, insurance company, or other person maintaining the information necessary to file the request for reconsideration or appeal is within such an area.

Premiums

The PBGC will waive the late payment penalty charge with respect to any premium payment required to be made on or after January 15, 1994, and before March 15, 1994, if the payment is made by March 15, 1994. The PBGC is not permitted by law to waive late payment interest charges. (ERISA section 4007(b); 29 CFR 2610.7 and 2610.8(b)(3).)

Section 4071 Penalties

The PBGC will not assess a section 4071 penalty for a failure to file any of the following notices that were, or will be, required to be filed with the PBGC on or after January 15, 1994, and before March 15, 1994, if the notice is filed by March 15, 1994:

Standard termination post-distribution certification (PBGC Form 501; ERISA section 4041(b)(3)(B); 29 CFR 2617.28(h) (57 FR 59206, 59233–34, December 14, 1992);

(2) Notice of termination for multiemployer plans (ERISA section 4041A; 29 CFR 2673.2);

(3) Notice of plan amendments increasing benefits by more than $10 million (ERISA section 307(e)); and

(4) Reportable event notice, except for reportable events related to bankruptcy or insolvency (or similar proceeding or settlement), liquidation or dissolution, and transactions involving a change in contributing sponsor or controlled group (ERISA section 4043; 29 CFR 2615.21, 2615.22, and 2615.23).

The PBGC will not assess a section 4071 penalty for a failure to provide certain supporting information and documentation when any of the following notices is timely filed:

(1) Notice of failure to make required contributions totaling more than $1

million (including interest) (PBGC Form 200; ERISA section 302(f)(4); 29 CFR 2615.30), and

(2) Notice of a reportable event related to bankruptcy or insolvency (or similar proceeding or settlement), liquidation or dissolution, or a transaction involving a change in contributing sponsor or controlled group. For a notice of failure to make required contributions, the timely filed notice must include at least items 1 through 7 and items 11 and 12 of Form 200; the responses to items 8 through 10, with the certifications in items 11 and 12, may be filed late. For a reportable event notice, the timely filed notice must include at least the information specified in 29 CFR 2615.3(b) (1) through (5); the information that may be filed late is that specified in 29 CFR 2615.3(b) (6) through (9) and 2615.3(c) (5) and (6), as applicable. This relief applies to notices that were, or will be, required to be filed with the PBGC on or after January 15, 1994, and before March 15, 1994, provided that all supporting information and documentation are filed by March 15, 1994.

Standard Termination Notice and Distribution of Assets

With respect to a standard termination for which the standard termination notice is required to be filed, or the distribution of plan assets is required to be completed, on or after January 15, 1994, the PBGC is extending to March 15, 1994, the time within which the standard termination notice must be filed (and, thus, the time within which notices of plan benefits must be provided) and the time within which the distribution of plan assets must be completed. In addition, as noted above, the PBGC is providing relief from penalties for late filing of the post-distribution certification. (On August 24, 1993, the PBGC published an interim rule amending 29 CFR 2617.3, 2617.25, and 2617.28 to provide for extensions of time under the circumstances addressed in this notice (58 FR 44738; as corrected, 58 FR 48600, September 17, 1993).)

Requests for Reconsideration or Appeals

For persons who are aggrieved by certain agency determinations and for whom a request for reconsideration or an appeal is required to be filed on or after January 15, 1994, and before March 15, 1994, the PBGC will extend the time for filing to March 15, 1994. (On August 24, 1993, the PBGC published an interim rule amending 29 CFR 2606.4, 2606.33, and 2606.53 to provide for extensions of time under the circumstances addressed in this notice (58 FR 44738; as corrected, 58 FR 48600, September 17, 1993).)

Applying for Waivers/Extensions

A submission to the PBGC to which a waiver or an extension is applicable under this notice should be marked in bold print "EARTHQUAKE RELIEF, County of (fill in appropriate county name and state)" at the top center.

Issued in Washington, DC this 28th day of January, 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–2345 Filed 2–1–94; 8:45 am]

BILLING CODE 7708–01–M

POSTAL RATE COMMISSION

Commission Visits

January 25, 1994.

Notice is hereby given that on February 8, 9, and 10, 1994, members of the Commission and certain advisory staff personnel will visit the mailing operations of:

- ADVO, Inc., Windsor, Connecticut;
- Dow Jones & Company, Inc., Chicopee, Massachusetts;
- I.T.T. Hartford Insurance Group, Hartford, Connecticut; and
- J.C. Penney Company, Manchester, Connecticut.

A report of the visits will be on file in the Commission's Docket Room. For further information, contact Charles L. Clapp, Secretary of the Commission at 202–789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 94–2257 Filed 2–1–94; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33524; File Nos. SR–MCC–93–4 and SCCP–93–03]

Self-Regulatory Organizations; Midwest Clearing Corporation and Stock Clearing Corporation of Philadelphia, Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to the Establishment of Interfaces With the National Securities Clearing Corporation's Fixed Income Transaction System

January 26, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 23, 1993, and October 15, 1993, respectively, the Midwest Clearing Corporation ("MCC") and the Stock Clearing Corporation of Philadelphia ("SCCP") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I and II below, which Items have been prepared primarily by MCC and SCCP. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule changes.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

MCC and SCCP each propose to establish an interface with National Securities Clearing Corporation's ("NSCC") recently approved Fixed Income Transaction System ("FITS") which is designed to achieve higher rates of trade comparison at earlier times in the municipal securities comparison process.[2]

II. Self-Regulatory Organizations' Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, MCC and SCCP included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. MCC and SCCP have prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

Under the proposed rule filings, MCC and SCCP each will implement procedures to establish an interface with NSCC's FITS to enable MCC and SCCP participants to take advantage of the improved input and comparison features of FITS. It should be noted that all trade comparison will be conducted at NSCC and not at either MCC or SCCP.

MCC and SCCP are required by NSCC to submit two-side original trade input information on behalf of their respective participants to NSCC by 2 a.m. on the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] For a detailed discussion of the various legal, regulatory, and operational issues of FITS, refer to Securities Exchange Act Release No. 32747 (August 13, 1993), 58 FR 44530 [File No. SR–NSCC–93–02] (order approving proposed rule change).

business day after trade date ("T+1").[3] NSCC will transmit a comparison report to MCC and SCCP reflecting the compared trades of their respective participants early on the morning of T+1 so that MCC and SCCP can produce contract reports for their own participants.[4] MCC's and SCCP's interfaces with NSCC will enable their participants to take full advantage of the features and benefits offered by FITS.[5]

B. Self-Regulatory Organizations' Statement on Burden on Competition

MCC and SCCP do not believe a burden will be placed on competition as a result of the proposed rule changes.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No comments were received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Section 17A(a)(2)(A) of the Act directs the Commission to facilitate a national system for the prompt and accurate clearance and settlement of securities transactions.[6] Because the interfaces enable MCC and SCCP participants to utilize FITS with all its benefits, the Commission believes, for all the reasons set forth in the FITS approval order,[7] that the proposed rule changes filed by MCC and SCCP further this goal.

MCC and SCCP have requested that the Commission find good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because the Commission has previously published notice of and has approved NSCC's implementation of the system.[8] NSCC's proposed rule change did not generate any comment letters, and none are expected on MCC's and SCCP's proposals. Furthermore, MCC and SCCP filed the proposed rule changes implementing the interfaces with FITS subsequent to the interfaces becoming operational.

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 submissions, 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, and at the principal offices of MCC and SCCP. All submissions should refer to File Nos. SR–MCC–93–04 and SR–SCCP–93–03 and should be submitted by February 23, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule changes (File Nos. SR–MCC–93–04 and SR–SCCP–93–03) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2319 Filed 2–1–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33525; File No. SR–NSCC–93–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Capital and Clearing Fund Requirements for Users of Mutual Fund Services

January 26, 1994.

On August 20, 1993, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (File No. SR–NSCC–93–11) with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] On August 23, 1993,

I. Description

NSCC has revised its capital standards for broker-dealers and banks that desire to join NSCC to use only NSCC'S mutual fund services[4] and for entities that desire to join NSCC to become Funds Members.[5] NSCC also has revised its clearing fund requirements for members that limit their use of NSCC services to only NSCC's mutual fund services. The revisions are to better reflect the risks and nature of NSCC's mutual fund services, which are not guaranteed by NSCC.

Broker-dealer applicants for NSCC membership that wish to restrict their NSCC activities to the mutual fund services will be required to have $25,000 in excess net capital over the minimum net capital requirement imposed by the Commission or their designated examining authority, whichever is greater. Bank or trust company applicants will be required to have $100,000 in excess capital over the capital requirement imposed by their state or federal regulatory authority.[6] Members who are accepted under these proposed alternative standards will be required, depending on their level of settlement debits with NSCC, to make deposits to the clearing funds for their mutual fund services activities of $10,000, $20,000, or $40,000 instead of the current $5,000, $10,000, or $20,000, respectively.[7]

Broker-dealer applicants for Fund Member status that distribute shares for investment companies with aggregate assets under management of $500,000 or more will be required to have $25,000 in excess net capital over the minimum net capital requirement imposed by the Commission or their designated examining authority, whichever is greater. Applicants that distribute shares for investment companies with

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[3] MCC has set a deadline of midnight central standard time ("c.s.t.") on T for its participants to submit trade information to MCC. SCCP has set a deadline of 1 a.m. eastern standard time ("e.s.t.") on T for its participants to submit trade information to SCCP.

[4] MCC will provide contract reports to MCC participants by 6 a.m. c.s.t., and SCCP will provide contract reports to SCCP participants by 8 a.m. e.s.t.

[5] For a detailed discussion of the benefits of FITS, refer to Securities Exchange Act Release No. 32747, *supra* note 2.

[6] 15 U.S.C. 78q–1(a)(2)(A) (i) and (ii).

[7] *Supra* note 2.

[8] *Supra* note 2.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 33157 (November 4, 1993), 58 FR 60077.

[3] Letters from Donald J. Boteler, Vice President—Operations, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission (November 16, 1993) and Steven J. Paggioli, Robert H. Wadsworth & Associates, Inc., to Jonathan G. Katz, Secretary, Commission (December 1, 1993).

[4] NSCC's mutual fund services are described in detail in NSCC Rule 52, "Mutual Fund Services."

[5] Entities qualifying as Fund Members are governed primarily by NSCC Rule 51, "Fund Member," and Addendum I, "Standards of Financial Responsibility and Operational Capacity for Fund Members" of NSCC Rules and Procedures. Fund Members are broker-dealer distributors of mutual fund shares that are not full clearing members of NSCC but utilize NSCC's mutual fund services.

[6] The proposed rule change also will change the definition of the term "Mutual Fund Services Broker-Dealer" to "Mutual Fund Services Member" in order to include broker-dealers, banks, trust

aggregate assets under management of less than $500,000 will be required to have excess net capital of $50,000 over the minimum net capital requirements imposed by the Commission or their designated examining authority, whichever is greater. Investment company applicants will be permitted to become Fund Members provided that they have a minimum of $100,000 in assets under management.

II. Discussion

The Commission believes the proposal is consistent with Section 17A of the Act.[8] Specifically, Section 17A(b)(3)(B) requires a clearing agency's rules to provide for the participation of registered broker-dealers, registered clearing agencies, registered investment companies, and banks deemed appropriate to the development of a national system for the clearance and settlement of securities transactions.[9] NSCC's rule change expands the number of members eligible to clear and settle their mutual fund transactions through NSCC's facilities. Access to NSCC's mutual fund services is increasingly important to all entities in the mutual fund industry. Lower net capital requirements will enable smaller mutual funds, broker-dealers, banks, and trust companies to participate in NSCC's mutual fund services. Smaller entities thus achieve a parity with their larger competitors in terms of access to orderly, automated transaction processing systems, which are now the industry standard. A common automated means of communication among those entities involved in mutual fund transactions serves the public interest by eliminating the existence of inefficient, error-prone manual data interchanges.

The Commission also believes that NSCC's rule change satisfies the requirements of Sections 17A(b)(3)(A) and (F) that a clearing agency be organized and that its rules be designed to safeguard securities and funds in its custody or control or for which it is responsible.[10] Because NSCC does not guarantee the completion of mutual fund transactions under its mutual fund services program, the Commission does not believe that any additional risk to NSCC will result from the lower net capital requirements for those members that use only the mutual fund services of NSCC and does not believe that NSCC's ability to safeguard securities or funds will be impaired. Along with lower net capital requirements, NSCC is imposing increased clearing fund requirements for members who participate in NSCC's mutual fund services program under the alternative net capital requirements approved in this order. The Commission believes that the increased clearing funds requirements will help protect NSCC and its participants from the risk of default by members using NSCC's mutual fund services.

III. Conclusion

For the reasons stated above, the Commission finds that NSCC's proposal is consistent with section 17A of the Act.[11]

It is therefore ordered, pursuant section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–NSCC–93–11) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2321 Filed 2–1–94; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78q–1 (1988).

[9] 15 U.S.C. 78q–1(b)(3)(B) (1988).

[10] 15 U.S.C. 78q–1(b)(3)(A) and (F) (1988)

[11] 15 U.S.C 78q–1 (1988).

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–33531; File No. SR–NYSE–93–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Bond Listing Standards

January 27, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 22, 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would enable the Exchange to simplify and relax its standards for the listing and delisting of debt securities.

The complete text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to revise its standards for the listing and delisting of debt securities. In particular, the Exchange seeks to clarify and simplify its debt security listing standards.

The Exchange hopes to make an Exchange listing more accessible for issuers of debt securities and to facilitate the listing of debt securities. The Exchange's goal in both cases is to augment the number of listed debt securities. The Exchange believes that this will serve the public interest because it will subject a greater number of debt securities to the Exchange's trading and disclosure systems.

In order to accomplish these goals, the Exchange proposes to rely upon the Exchange's equity listing and maintenance standards in determining whether issues can adequately demonstrate that they can meet interest obligations on debt securities. That is, where an issuer has common stock listed on the Exchange and is in good standing, the Exchange would normally list the issuer's debt security issues of $5 million or more. Because the debt security enjoys seniority over the equity issue, the "good standing" test warrants listing the debt security.

Where the issuer of a debt security does not list its common stock on the Exchange, the Exchange proposes to rely upon the analyses of nationality recognized securities rating organizations ("NRSRO") for the interest-coverage determination.

For those purposes, the Exchange proposes to make the following changes to Paragraphs 102.03, 103.05, 703.06, 801.00 and 802.00 of the Exchange's Listed Company Manual:

Under Paragraph 102.03:

- As at present, the Exchange would require the issue to have a market value or principal amount of $5 million.
- The Exchange would no longer require the issuer to demonstrate on a pro forma basis interest coverage on all debt securities.[1]
- The Exchange would no longer evaluate the anticipated distribution of a debt security. (The proposed rule change proposes a conforming change to Paragraph 703.06 to remove a mention of the distribution requirement.)
- The Exchange would not longer require convertible debt securities to be convertible only into common stock listed on the Exchange, although the Exchange would require that equity securities underlying convertible securities be subject to a real-time last sale reporting obligation.
- I the case of debt securities proposed to be listed by "unaffiliated" issuers:

An NRSRO must have assigned a current rating to the issue that is no lower than the ratings in the S&P Corporation "B" category (*i.e.*, "B-" or better) or another NRSRO's counterpart to the S&P Corporation rating.

Alternatively, if no NRSRO has assigned a rating to the issue, an NRSRO must have currently assigned either an investment grade rating (*i.e.*, an S&P Corporation rating no lower that "BBB-" or another NRSRO's counterpart to the S&P Corporation rating) to a senior issue or, in the case of a *pari passu* [2] or junior issue (including a preferred stock or debt security issue), a rating no lower than the ratings in the S&P Corporation "B" category (*i.e.*, "B-" or better) or another NRSRO's counterpart to the S&P Corporation rating.

In the case of a listing for an unrated issue that is junior to an issue with an investment grade rating, the Exchange notes that a junior issue would generally be rated no more than one rating category below an immediate senior issue. Thus, the Exchange feels that such an unrated debt issue seeking to list would, if it were rated, receive a rating that satisfies the minimum "B-" rating standard. All other unrated debt issues of unaffiliated issuers must either be senior to or *pari passu* with an issue rated at least "B-" in order to qualify for listing on the Exchange.

An "unaffiliated" issuer is one that has no equity securities listed on the Exchange; is not, directly or indirectly, majority-owned by, nor under common control with, an issuer of Exchange-listed equity securities; and is not issuing a debt security that an issuer of Exchange-listed equity securities is guaranteeing.

Paragraph 103.05 makes the same changes to the listing standards for the debt securities of non-U.S. companies as Paragraph 102.03 makes in respect of the standards for domestic debt securities.

Under Paragraph 810.00, the Exchange proposes to review the continued listing of a debt security convertible into an equity security when the equity security is delisted. In addition, the Exchange proposes to delist a debt security when the underlying equity security ceases to be subject to real-time trade reporting.

Under Paragraph 802.00, the Exchange would no longer view inadequate interest coverage of an issuer or its parent or a subsidiary as reason for delisting a security.[3]

In the case of a sovereign issue, the Exchange will evaluate whether to list the issue for trading on a case-by-case basis. The Exchange's current policy in respect of municipal securities is to list initially only term/dollar bonds.[4]

The Exchange believes that it should extend to a broader universe of debt securities the benefits that derive from the Exchange's unique bond market and price disclosure mechanism, especially for individual bond holders and small to mid-sized institutions. The debt security listing standard modifications that the proposed rule change proposes would effect such an extension to the betterment of the community of investors and debt securities.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has 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 publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Station, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–49 and should be submitted by February 23, 1994.

[1] Currently, Paragraph 802.00 deems coverage to be "inadequate" if interest charges on all debt issued by the company, its parent or a subsidiary exceed pro forma earnings (before or after taxes) as reported in a filing to the Commission.

[2] A *pari passu* issue would have equal standing with the debt issue to be listed.

[3] *See supra*, note 1.

[4] A term/dollar municipal bond is issued with a single maturity date (as opposed to a serial bond), and is quoted in dollars or as a percentage of its par value (rather than by yield). As such, it resembles a corporate bond. Telephone conversation between Fred Siesel, Director, Fixed Income Markets, NYSE, and Beth Stekler, Attorney, SEC, on January 7, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–2320 Filed 2–1–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Research and Special Programs Administration

[Docket No. PDA–3(RF)]

Chester, West Virginia Ordinance No. 305 Regarding Transportation of Hazardous Wastes

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

ACTION: Notice Dismissing Application and Closing the Docket.

APPLICANT: National Solid Wastes Management Association, on behalf of its Chemical Waste Transportation Institute.

LOCAL LAW AFFECTED: Ordinance No. 305 of the City of Chester, West Virginia, Regarding Transportation of Hazardous Wastes.

APPLICABLE FEDERAL REQUIREMENTS: Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. § 1801 et seq., and the Hazardous Materials Regulations, 49 CFR Parts 171–180.

MODE AFFECTED: Highway

SUMMARY: The application for a determination of preemption is dismissed, and this docket is closed, because Ordinance No. 305 of Chester, West Virginia never went into effect.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION: In December 1991, the National Solid Wastes Management Association, on behalf of its Chemical Waste Transportation Institute (CWTI), petitioned for an administrative determination that the HMTA preempts Chester, West Virginia Ordinance No. 305, regarding the transportation of hazardous wastes. In its application, CWTI stated that the Chester City Council had "enacted Ordinance No. 305," and the copy of Ordinance No. 305 attached to CWTI's application indicated that the Ordinance had been "Passed and Adopted" on December 2, 1991.

On April 6, 1992, FHWA and RSPA published a Public Notice and Invitation to Comment on CWTI's application. 57 FR 11654. That Notice was issued jointly by both agencies because the requirements in Ordinance No. 305 purported to affect both the highway routing of hazardous materials and other aspects of hazardous materials transportation. See 57 FR at 11655. In response to that Notice, four industry associations and more than 20 individual companies submitted comments opposing Ordinance No. 305 and supporting a finding of preemption. One party submitting comments, the Tri-State Area Transporters Association, stated that Ordinance No. 305 was originally scheduled to become effective February 1, 1992, but that in January 1992, "Chester apparently revised the ordinance, with no effective date given."

No party, including the City of Chester, submitted comments opposing CWTI's application. CWTI submitted further comments, which it called "rebuttal."

In a recent telephone conversation, Chester Mayor Ken Morris advised RSPA that Ordinance No. 305 was never adopted and never went into effect. Copies of a December 6, 1993 letter to Mayor Morris, confirming the substance of this telephone conversation, were sent to CWTI and each party submitting comments on CWTI's application. In a December 17, 1993 letter, CWTI advised that, based on information from its members, Ordinance No. 305 has never been enforced and that CWTI had "no objection to DOT dismissing the Institute's petition at this time * * * without prejudice * * *"

CWTI's application is hereby dismissed, and the docket is closed. If the requirements contained in Chester, West Virginia Ordinance No. 305 are ever adopted and enforced, CWTI may again submit an application for a preemption determination.

Issued in Washington, DC on January 25, 1994 .

Rodney E. Slater,

Administrator, Federal Highway Administration.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 94–2285 Filed 2–1–94; 8:45 am]

BILLING CODE 4910–60–P

Federal Railroad Administration

Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3274

Applicant: Kansas City Southern Railway Company, Mr. M. W. Hahn, Vice President—Transportation, 4601 Blanchard Road, Shreveport, Louisiana 71107.

The Kansas City Southern Railway Company seeks approval of the proposed modification of the traffic control system, on the single main track, near Gentry, Arkansas, milepost 225.19, on the Second Subdivision; consisting of the discontinuance and removal of automatic block signal No. 2252.

The reason given for the proposed changes is to improve train operation and avoid unnecessary blocking of highway traffic at Flint Creek Road.

BS–AP–No. 3275

Applicant: CSX Transportation, Mr. W. J. Scheerer, Chief Engineer—Train Control, 500 Water Street, Jacksonville, Florida 32202.

CSX Transportation seeks approval of the proposed modification of the signal system, on all main tracks and No. 1 and No. 2 tracks, between CP 43, milepost PLE43.4, near New Castle, Pennsylvania, and CP 17Y, milepost PLY16.8, near Pittsburgh, Pennsylvania, on the Cumberland Division, Pittsburgh Subdivision, consisting of the following:

1. The discontinuance and removal of 52 controlled signals, 20 automatic signals, and 2 power-operated derails;
2. The relocation of 45 controlled signals and 12 automatic signals; and
3. The conversion of 10 power-operated switches to hand operation.

The reason given for the proposed changes is the installation of new signal equipment to replace inadequate and deteriorated signal facilities.

BS–AP–No. 3276

Applicant: Union Pacific Railroad Company, Mr. P. M. Abaray, Chief Engineer—Signals & Construction, 1416 Dodge Street, room 1000, Omaha, Nebraska 68179.

The Union Pacific Railroad Company seeks approval of the proposed

modification of the traffic control system, on the two main tracks and siding, near Browder, Texas, milepost 216.6, Ft. Worth Division, Dallas Subdivision, consisting of the following:

1. The discontinuance and removal of CPT217, including six controlled signals, 45L, 47L, 49L, 45R, 47R, and 49R; and

2. The installation of four automatic signals, 2179–1, 2179–2, 2178–1, and 2178–2 near milepost 218.96.

The reason given for the proposed changes is that the signals at CPT217 are no longer necessary because the power-operated crossovers have been removed.

BS–AP–No. 3277

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer—Signals & Construction, 1416 Dodge Street, room 1000, Omaha, Nebraska 68179.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of signal 2889–3 and 2889–4 at milepost 288.8, and the discontinuance and removal of the associated coded cab signal track circuits, on yard tracks 289 and 290, from milepost 288.8 to CP B288 at milepost 287.2, in the North Platte Terminal, North Platte, Nebraska.

The reason given for the proposed changes is that due to operational changes, tracks 289 and 290 are no longer used to bypass the classification yard. Tracks 289 and 290 have been incorporated into a nine track westbound coal yard used for the staging and inspection of empty coal trains, making the signals and coded cab track circuits unnecessary.

BS–AP–No. 3278

Applicants:

Mid-Michigan Railroad, Inc., Mr. Dale W. Carlstrom, General Manager, 432 East Grove Street, Greenville, Michigan 48838.

Grand Rapids and Eastern Railroad Company, Mr. Dennis Kling, General Manager, 430 East Grove Street, Greenville, Michigan 48838.

Mid-Michigan Railroad, Inc. (MMRR) and the Grand Rapids and Eastern Railroad Company (GRE) jointly seek approval of the proposed discontinuance and removal of the automatic interlocking, near Lowell, Michigan, MMRR milepost 104.9, where a single main track of the MMRR crosses at grade a single main track of the GRE; consisting of the discontinuance and removal of all interlocking and associated approach signals, and the installation of a swing gate.

The reason given for the proposed changes is to eliminate facilities no longer required for present day operations.

BS–AP–No. 3279

Applicant: Red River Valley and Western Railroad Company, Mr. Kent P. Shoemaker, Chairman and CEO, P.O. Box 608, Wahpeton, North Dakota 58074.

The Red River Valley and Western Railroad Company (RRVW) seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Wahpeton Junction, milepost 1.4 and Casselton, milepost 55.0, North Dakota, on the Cass Line, Second Subdivision. RRVW proposes to operate the trackage under track warrant control rules.

The reason given for the proposed changes is that the character and use of the trackage has changed substantially since the automatic block signal system (ABS) was originally installed and the ABS is no longer required for safe operations.

BS–AP–No. 3280

Applicant: Burlington Northern Railroad Company, Mr. W. G. Peterson, Director, Signal Engineering, 373 Inverness Drive South, Englewood, Colorado 80112–5831.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, between Jonesboro, Arkansas, milepost 424.0 and Harvard, Arkansas, milepost 471.0, on the Springfield Division, Thayer Subdivision; consisting of the discontinuance and removal of 14 automatic block signals and 2 controlled signals, and the installation of 26 automatic block signals and 2 controlled signals.

The reason given for the proposed changes is to respace and relocate signals associated with a pole line elimination project and installation of solid-state coded track circuits.

BS–AP–No. 3281

Applicant: Chicago and North Western Transportation Company, Mr. D. E. Waller, Vice President, Engineering and Materials, One North Western Center, Chicago, Illinois 60606.

The Chicago and North Western Transportation Company (CNW) seeks approval of the proposed modification of the automatic block signal system, on the single main track, between Merriam, milepost 35.6 and Belle Plaine, milepost 46.4; and between Kasota, milepost 76.8 and Mankato, milepost 85.6, Minnesota, on the Merriam Subdivision, consisting of the relocation of 12 signals and the discontinuance and removal of two signals.

The reason given for the proposed changes is to maximize efficiency and safety of train operations by replacing aging pole line with modern solid state coded track circuitry.

BS–AP–No. 3282

Applicant: CSX Transportation, Mr. W. J. Scheerer, Chief Engineer, Train Control, 500 Water Street, Jacksonville, Florida 32202.

CSX Transportation seeks approval of the proposed modification of the signal system, on the single main track between Dalton, milepost WA98 and Tilton, milepost WA90, Georgia on the Corbin Division, W&A Subdivision, consisting of the discontinuance and removal of four automatic signals, 93.6, 93.5, 96.9, and 97.0; and the relocation of four automatic signals, 91.9, 92.0, 95.0, and 95.1.

The reason given for the proposed changes is to improve operations and increase efficiency.

Rules Standards & Instructions Application (RS&I-AP)-No. 1091

Applicants:

National Railroad Passenger Corporation, Mr. C. P. Wahmann, Assistant Vice President, Transportation, 30th and Market Streets, Philadelphia, Pennsylvania 19104.

CSX Transportation, Mr. R. H. Young, Jr., Assistant Vice President, Passenger Services, 500 Water Street, Jacksonville, Florida 32202.

The National Railroad Passenger Corporation (Amtrak) and CSX Transportation (CSX) jointly seek temporary relief from § 236.566 of the Rules, Standards and Instructions (49 CFR part 236) to the extent that Amtrak be permitted to operate Passenger Train No. 50 with cab signals cut out between "SY" (Seminary), milepost 103.9 and "RO", milepost 110.0, a distance of 6.1 miles, on the RF&P Subdivision of CSX.

The justification for relief is that it will be several months before a sufficient number of F–40 locomotives are retrofitted with "tuned-75 decoders" to assure proper cab signal operation through the application area.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW.,

Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on January 26, 1994.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 94–2272 Filed 2–1–94; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 94–10; Notice 1]

AC Cars Ltd; Receipt of Petition for Temporary Exemption From Standard No. 208

AC Cars Ltd. of Weybridge, Surrey, England, has petitioned for a temporary exemption until November 1, 1996, for its Ace model, from the automatic protection requirements of Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*. The basis of the petition is that compliance would cause substantial economic hardship.

Notice of receipt of the petition is published in accordance with agency regulations on the subject (49 CFR part 555) and does not represent any judgment of the agency on the merits of the petition.

Petitioner's Hardship Arguments

Under 15 U.S.C. 1410(a)(1)(A), the Administrator may provide a temporary exemption upon a finding that "compliance would cause substantial economic hardship and that the manufacturer has, in good faith, attempted to comply * * *."

The following is a summary of AC's petition. The company is privately owned and produced no motor vehicles during the 12 months preceding the filing of its petition. The first prototype of the Ace was shown in 1986. Since then, the company has spent much time redesigning it "to meet the increasingly higher standards of emissions and safety * * * with the original intentions of achieving first sales into North America." To date, the petitioner has spent approximately 5,000,000 Pounds Sterling on the project, 100,000 of which (and 1,250 man hours) have been spent in the past two years in research and development relating to meeting the automatic restraint requirements of Standard No. 208. Because the Ace is a full convertible, the company found that it could not adopt an automatic seat belt system. Additional design changes, development and actual testing are necessary in order to install in the Ace an airbag system that meets Standard No. 208. Being a small manufacturer of motor vehicles, the petitioner has had to rely on the expertise of outside parties in the design and development of necessary components.

AC has concluded that modifications of the following will be required to accommodate driver and passenger side airbag systems: Interior dash and cockpit components, seats, steering wheel and chassis. The estimted cost of these modifications is 750,000 Pounds Sterling, exclusive of testing costs. The company's balance sheet shows that its cumulative losses, which were approximately 1,500,000 Pounds Sterling as of December 31, 1989, has increased to approximately 4,275,000 Pounds Sterling as of September 30, 1993.

The company anticipates that it will be able to conform by November 1, 1996. It projects total sales of 200 units in 1994 and 350 in 1995, half of which are proposed for North American sales.

Arguments Why an Exemption Would be in the Public Interest and Consistent With Traffic Safety Objectives

In order to grant an exemption, the Administrator must also find that the exemption is in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act. In support of its petition, AC has informed NHTSA that the Ace will be equipped with a three-point restraint system that conforms to Standard No. 208, "the mountings of which have been tested in accordance with and achieved FMV210 (sic) US standard approval." Further, except for the automatic restraint requirements, the Ace has been designed to meet all other Federal motor vehicle safety standards, and the bumper standard. It will be manufactured "using the following US sourced components: Ford engine, transmission, exhaust, wiring and associated components." According to the petitioner, "US parts sourcing and dealer network labor involvement is also in the best interest of the US economy."

Interested persons are invited to submit comments on the petition described above. Comments should refer to the Docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh St. SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below 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. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: March 4, 1994.

Authority: 15 U.S.C. 1410; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 27, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–2351 Filed 2–1–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–71; Notice 2]

Determination That Nonconforming 1986 Bentley Turbo Passenger Cars Are Eligible for Importation

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

ACTION: Notice of determination by NHTSA that nonconforming 1986 Bentley Turbo passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1986 Bentley Turbo passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation to the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1986 Bentley Turbo), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective February 2, 1994.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to

conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determined in the Federal Register.

G&K Automotive Conversion, Inc. of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to determine whether 1986 Bentley Turbo passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on October 26, 1993 (58 FR 57670) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #53 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1986 Bentley Turbo not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1986 Bentley Turbo originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i) (I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 27, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–2352 Filed 2–1–94; 8:45 am]

BILLING CODE 4910–59–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Information on Imports During First 10 Months of 1993; Opportunity for Public Comment; Disposition of the Review of Worker Rights Practices in Costa Rica and Paraguay in the 1993 Annual GSP Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice informs the public of certain import statistics for the period from January through October 1993 and affords the public an opportunity to comment on certain discretionary decisions the President may make with respect to the Generalized System of Preferences (GSP) program. These decisions concern: (1) The GSP "competitive need" limits set forth in section 504(c) of the Trade Act of 1974, as amended (the "1974 Act") (19 U.S.C. 2464(c)); (2) the "de minimis waiver" authority set forth in section 504(d)(2) of the 1974 Act; and (3) the redesignation authority set forth in section 504(c)(5) of the 1974 Act. Presidential decisions concerning the application of competitive need limits and other product-related decisions stemming from the 1993 Annual Review are expected to be announced in April, and implemented on July 1, 1994. This notice also announces the successful disposition of the review of worker rights practices in Costa Rica and Paraguay in the 1993 Annual GSP Review.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971.

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limits

Pursuant to section 504(c), any GSP-eligible beneficiary country that exported to the United States during the most recent calendar year a quantity of any one GSP eligible article in excess of (1) $25 million indexed to the nominal growth of U.S. Gross National Product (GNP) since 1974, or (2) 50 percent of the value of total U.S. imports of the article, is to be removed from GSP eligibility with respect to that article not later than July 1 of the next calendar year. The preliminary estimate of this dollar limit, subject to revision, is $107,320,423 for calendar year 1993.

II. Reduced Competitive Need Limits

Pursuant to section 504(c)(2) of the 1974 Act, a general review of the GSP was initiated in 1985 and the results of the review were announced on January 2, 1987 (52 FR 389). The purpose of the general review was to determine whether beneficiary countries had become sufficiently competitive in GSP-eligible products, on a product and country specific basis. For beneficiaries found to be sufficiently competitive with respect to a product, the percentage competitive need limit was reduced to 25 percent and the dollar limit was reduced to $25 million, indexed to the nominal growth of U.S. GNP since 1984. The preliminary estimate of this dollar limit, subject to revision, is $41,621,070 for calendar year 1993.

III. Discretionary Decisions

A. De Minimis Waivers

Section 504(d)(2) of the 1974 Act permits the President to disregard the 50 percent "competitive need" limit with respect to any eligible article if the value of total imports of the article during the most recent calendar year did not exceed $5 million, indexed to the nominal growth of U.S. GNP since 1979. The preliminary estimate of the *de minimis* level, subject to revision, is $12,553,356 for calendar year 1993.

B. Redesignation of Eligible Articles

If a country is no longer a beneficiary developing country with respect to an eligible article because imports exceeded the competitive need limits in a prior year, then, pursuant to section 504(c)(5) of the 1974 Act, the President may redesignate the beneficiary developing country with respect to the eligible article if imports do not exceed the competitive need limits in a subsequent year.

IV. Implementation of Competitive Need Limits, Waivers, and Redesignations

A proclamation will be issued to be effective July 1, 1994, making the adjustments to the list of eligible articles that are required by section 504(c) of the 1974 Act and announcing the discretionary decisions referred to in this notice, on the basis of official data covering all of calendar year 1993.

It should be emphasized that the information set forth below covers only the first 10 months of 1993. Partial year data is being published now to provide the maximum possible advance indication of adjustments that may be made to meet the requirements of section 504(c) of the 1974 Act and to afford the earliest opportunity for comment on the possible discretionary decisions.

List I below shows specific GSP-eligible articles for beneficiaries which have already exceeded estimated competitive need limitations (i.e., a beneficiary supplied over $107,320,423 or $41,621,070 in the case where a beneficiary has been found sufficiently competitive in the product, during January–October 1993) or have been graduated from the GSP in early years pursuant to the President's discretionary authority.

List II below shows beneficiaries which are approaching the competitive need limitations (i.e., a beneficiary accounted for over 42 percent of the value of total U.S. imports and/or over $85,856,338 million or in the case where a beneficiary has been found sufficiently competitive, over 21 percent and/or $33,296,856 million during January–October 1993).

List III below shows beneficiaries which, despite accounting for more than 50 percent (or 25 percent in the case of a beneficiary found sufficiently competitive in a product) of the value of total U.S. imports of an article, may be eligible to receive GSP benefits through the *de minimis* waiver (i.e., where a beneficiary accounted for more than the applicable percentage limit but the value of total U.S. imports of the item was less that $12,553,356 during January–October 1993).

List IV below shows articles from beneficiaries which are currently ineligible for GSP duty-free treatment but which may be eligible for redesignation to GSP status pursuant to the President's discretionary authority (i.e., a beneficiary accounted for less than 50 percent, or 25 percent in the case of products for which it was found sufficiently competitive, of the value of U.S. imports and the value of U.S. imports of the article from the beneficiary developing country was less than the applicable dollar limit during January–October 1993). This list does not include articles from India which do not receive GSP treatment as a result of Presidential Proclamation 6425 of April 29, 1992 (57 FR 19067), 6446 of June 15, 1992 (57 FR 26969) or 6447 of June 15, 1992 (57 FR 26981).

V. Public Comments

All written comments with regard to the decisions summarized above should be addressed to: GSP Subcommittee, Office of the U.S. Trade Representative, 600 17th Street NW., room 517, Washington, DC 20506. All submissions must be in English and should conform to the information requirements of 15 CFR 2007. Furthermore, each party providing comments should indicate on the first page of the submission its name, the relevant Harmonized Tariff Schedule subheading(s), the beneficiary country or territory of interest, and the type of action (i.e., the use of the President's *de minimis* waiver authority, etc.) in which the party is interested.

A party must provide fourteen copies of its statement which must be received by the Chairman of the GSP Subcommittee no later than 5 p.m., Wednesday, March 2. Comments received after the deadline will not be accepted. If the comments contain business confidential information, fourteen copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, the submissions containing confidential information should be clearly marked "confidential" at the top and bottom of each page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential".

Written comments submitted in connection with these decisions, except for information granted "business confidential" status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline by appointment only with the staff of the USTR Public Reading Room. Other requests and questions should be directed to the GSP Information Center at USTR by calling (202) 395–6971.

VI. Disposition of the Review of Worker Rights Practices in Costa Rica and Paraguay in the 1993 Annual GSP Review

In June 1993, petitions were filed with the Office of the United States Trade Representative that requested a review of worker rights practices in Costa Rica and in Paraguay in the 1993 Annual GSP Review. In October 1993, the petitions were accepted and a review was initiated to determine whether Costa Rica and Paraguay were complying with the worker rights provision of section 502 of the Trade Act of 1974 (19 U.S.C. 2462), which requires beneficiary countries to have taken and be taking steps to afford internationally recognized worker rights (58 FR 53959). At the time that the petitions were accepted for review, United States Trade Representative Kantor noted that, because actions to improve worker rights in Costa Rica and Paraguay were in process, the GSP reviews could be terminated at any time during the review period. In December 1993, Costa Rica and Paraguay were found to be taking steps to afford internationally recognized worker rights, as provided in section 502 of the Trade Act of 1974, because substantial positive actions had been taken by the Government of Costa Rica and the Government of Paraguay to resolve the allegations and shortcomings listed in the petitions. Accordingly, the GSP reviews were terminated.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

BILLING CODE 3190–01–M

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS		HTSUS	PARTNER	IMPORTS	SHARE
*	R	0603.10.70	Colombia	99,754,374	88.8%
G	D	2825.90.15	Brazil	455,736	11.0%
G	D	2827.59.05	Israel	1,406,747	83.0%
G		2903.40.00	Israel	60,891	0.0%
G	D	2933.40.10	Israel	1,552,119	55.1%
G	D	4007.00.00	Malaysia	5,315,191	52.8%
*		4015.11.00	Malaysia	258,788,777	72.8%
*		4412.11.20	Indonesia	196,351,039	73.6%
*		6406.10.65	Dominican Republic	155,335,426	57.9%
*		7113.19.50	Israel	139,512,758	9.1%
2		7113.19.50	India	107,674,021	7.0%
*		7113.19.50	Thailand	182,579,282	12.0%
G	D	7202.21.10	Brazil	124,679	19.8%
G		7307.21.50	Brazil	21,145	0.1%
G		7307.91.50	Brazil	2,090,900	7.1%
G	D	7604.10.30	Venezuela	204,641	3.8%
G	D	7605.21.00	Venezuela	957,358	7.8%
		8471.91.00	Malaysia	215,236,040	8.3%
2		8471.92.40	Malaysia	153,713,716	4.2%
*		8517.10.00	Thailand	112,033,486	13.5%
2		8521.10.60	Indonesia	179,876,211	8.2%
		8525.20.50	Malaysia	113,270,333	13.5%
*	R	8527.21.10	Brazil	51,485,846	5.8%
2		8527.31.40	Malaysia	246,149,980	42.6%
G		9401.90.40	Croatia	465,137	1.4%
G		9401.90.40	Slovenia	1,391,625	4.3%
*	R	9403.60.80	Thailand	62,527,342	6.5%

FLAGS: 'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec;
'R'=Reduced limits apply; 'Z'=Subject to reduced limits, All limits waived.
'H'=Grad, Reduced limit would apply; 'D'=De min; 'X'=Reduced limit waiver.

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Colombia	99,754,374	1
Brazil	54,178,306	5
Croatia	465,137	1
Dominican Republic	155,335,426	1
India	107,674,021	1
Indonesia	376,227,250	2
Israel	142,532,515	4
Malaysia	992,474,037	6
Slovenia	1,391,625	1
Thailand	357,140,110	3
Venezuela	1,161,999	2
TOTAL	2,288,334,800	27

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0210.20.00	Uruguay	4,230,811	68.7%
D	0210.90.40	Venezuela	112,657	64.2%
D	0303.77.00	Chile	1,788,987	83.6%
D	0303.80.20	Lithuania	2,000	100.0%
D	0304.20.50	Peru	137,435	49.5%
D	0708.10.40	Guatemala	4,521,465	65.7%
D	0708.90.05	Turkey	192,234	57.5%
D	0708.90.15	India	99,694	76.7%
D	0708.90.30	Dominican Republic	48,815	48.7%
D	0709.10.00	Colombia	188,347	56.4%
D	0709.20.10	Peru	1,235,048	53.9%
D	0710.29.15	India	22,380	60.6%
D	0710.29.30	Dominican Republic	1,379,877	94.4%
D	0710.80.65	Guatemala	909,473	50.8%
D	0710.80.93	Guatemala	1,806,882	84.8%
D	0711.10.00	Israel	94,989	69.3%
D	0711.20.15	Lebanon	7,970	52.0%
D	0711.30.00	Turkey	743,379	65.5%
D	0712.90.65	Israel	902,292	47.8%
D	0713.20.10	Turkey	25,391	90.0%
* D	0713.31.40	Thailand	565,076	53.8%
D	0713.90.60	India	108,595	68.4%
D	0714.10.00	Costa Rica	6,572,836	95.4%
D	0714.20.00	Dominican Republic	1,133,705	94.6%
D	0714.90.10	Costa Rica	3,604,675	45.0%
D	0714.90.20	Jamaica	4,979,412	46.6%
D	0802.50.20	Turkey	91,963	52.2%
D	0802.50.40	Turkey	80,384	54.0%
D	0802.90.80	Ivory Coast	2,438,607	79.0%
D	0804.50.80	Thailand	619,513	59.2%
D	0805.90.00	Israel	164,526	53.9%
D	0807.10.60	Israel	39,838	57.6%
D	0811.20.20	Chile	2,799,384	67.7%
D	0811.90.10	Honduras	1,383,394	42.3%
D	0811.90.10	Costa Rica	1,834,883	56.1%
D	0811.90.50	Costa Rica	882,401	58.0%
D	0811.90.55	Guatemala	1,438,042	46.1%
*	0813.10.00	Turkey	15,699,754	95.5%
* D R	0813.30.00	Argentina	3,400,266	55.9%
D	0813.40.10	Thailand	1,519,395	93.7%
D	1007.00.00	Argentina	39,350	48.4%
* D	1102.30.00	Thailand	1,950,265	89.9%
D	1102.90.30	El Salvador	1,383	50.9%
D	1106.30.20	Ecuador	58,538	83.4%
	1210.10.00	Czech Republic	5,841,091	42.0%
D	1301.90.40	Brazil	130,103	98.3%
D	1515.30.40	India	9,502,548	77.1%
D	1519.11.00	Malaysia	2,262,665	78.4%
D	1519.19.20	Malaysia	5,260,111	48.7%
	1520.10.00	Malaysia	6,769,740	43.3%
D	1602.31.00	Israel	893,304	49.7%

FLAGS: 'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec;
'R'=Reduced limits apply; 'Z'=Subject to reduced limits, All limits waived.
'H'=Grad, Reduced limit would apply; 'D'=De min; 'X'=Reduced limit waiver.

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	1602.50.09	Brazil	262,636	43.0%
*	1602.50.20	Argentina	64,389,850	74.2%
D	1604.14.50	Thailand	218,795	84.6%
D	1604.15.00	Chile	7,148,242	69.3%
2 D	1604.16.10	Morocco	6,369,087	54.6%
D	1604.16.30	Morocco	5,084,712	97.2%
D	1605.10.05	Thailand	31,639	48.9%
*	1605.10.20	Thailand	7,406,288	51.3%
D	1605.90.10	Indonesia	2,609,135	49.3%
*	1701.11.02	Guatemala	44,296,951	54.3%
D	1701.12.01	Colombia	35,204	83.7%
D	1701.99.01	Guatemala	1,902,945	60.6%
D	1702.30.20	Pakistan	34,558	70.7%
D	1702.90.35	Dominican Republic	2,756,483	62.0%
D	1702.90.40	Belize	2,060,883	80.8%
D	1703.10.30	Dominican Republic	989,069	50.8%
D	1703.90.30	India	29,323	68.7%
D	2001.20.00	Israel	359,945	45.5%
D	2005.80.00	Thailand	3,839,211	88.2%
D	2006.00.70	Thailand	2,400,681	54.7%
D	2007.99.40	Thailand	495,043	82.6%
D	2007.99.48	Argentina	209,187	54.5%
* D R	2007.99.50	Brazil	1,199,894	22.8%
D	2008.19.25	Philippines	3,078	100.0%
D	2008.19.30	Turkey	1,103,093	77.9%
D	2008.30.10	Brazil	61,383	49.5%
D	2008.30.37	Argentina	163,010	73.1%
D	2008.30.95	Israel	83,591	58.3%
D	2008.50.20	Argentina	188,282	65.2%
D	2008.99.23	Dominican Republic	137,562	52.9%
D	2008.99.35	Thailand	2,266,942	77.3%
D	2008.99.45	Dominican Republic	134,768	55.0%
D	2207.10.30	Poland	80,559	74.2%
D	2208.90.10	Trinidad and Tobago	287,527	85.9%
D	2308.90.50	El Salvador	29,198	100.0%
D	2401.20.20	Dominican Republic	2,429,266	55.8%
	2401.20.50	Indonesia	11,376,038	52.2%
*	2402.10.80	Dominican Republic	21,172,826	61.9%
D	2515.11.00	Brazil	22,244	71.6%
	2603.00.00	Chile	16,522,090	45.5%
D	2608.00.00	Peru	4,219,679	42.4%
D	2611.00.00	Bolivia	3,222,757	42.8%
D	2825.70.00	Chile	1,573,586	67.6%
D	2827.31.00	Israel	606,240	47.9%
* D	2827.39.20	India	106,116	76.4%
D	2827.51.10	Israel	1,336,149	95.6%
D	2827.51.20	Israel	1,549,882	86.1%
D	2827.59.50	Israel	1,963,889	70.9%
* D	2827.60.20	India	397,544	56.1%
D	2833.23.00	Turkey	56,000	72.8%
D	2840.11.00	Turkey	1,120,000	98.6%

FLAGS: 'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec;
'R'=Reduced limits apply; 'Z'=Subject to reduced limits, All limits waived.
'H'=Grad, Reduced limit would apply; 'D'=De min; 'X'=Reduced limit waiver.

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	2843.30.00	Chile	2,954,831	82.1%
D	2849.10.00	Brazil	159,810	43.7%
	2903.15.00	Brazil	12,883,875	46.4%
D	2903.19.10	Brazil	542,088	74.0%
D	2907.23.00	Brazil	254,040	71.0%
D	2909.44.00	Brazil	318,587	79.4%
D	2912.49.10	Israel	1,776,557	44.4%
* D R	2915.31.00	Brazil	1,409,878	22.5%
D	2915.34.00	Venezuela	322,399	55.1%
D	2917.19.10	Hungary	313,250	52.4%
D	2917.32.00	Brazil	1,806,632	86.9%
D	2918.15.10	Israel	5,199,199	58.5%
D	2918.16.10	Israel	88,002	74.9%
D	2918.21.10	Brazil	3,601,924	50.0%
D	2918.21.50	Poland	212,300	87.1%
D	2918.22.50	Argentina	5,355	100.0%
*	2918.90.30	Bahamas	100,976,445	64.6%
D	2921.12.00	Brazil	9,329	47.8%
* D	2921.42.21	India	301,597	100.0%
D	2921.49.20	Israel	1,262,100	43.3%
* D	2921.49.30	India	104,143	55.4%
* D	2922.29.25	India	647,964	68.1%
D	2924.29.02	Hungary	257,745	86.8%
D	2929.10.15	Brazil	189,330	52.5%
D	2930.90.30	Israel	2,205,996	48.8%
D	2931.00.25	Israel	2,946,799	66.8%
* D	2933.40.08	India	310,673	63.7%
D	2933.40.30	Brazil	5,429,120	92.4%
D	2933.51.30	Hungary	325,323	52.3%
D	2933.59.15	Venezuela	1,543,365	43.5%
D	2933.90.18	Israel	5,196,401	78.3%
D	2934.30.15	Hungary	344,976	42.1%
D	2934.90.16	Israel	352,383	91.3%
D	2935.00.33	Poland	808,898	99.6%
D	2935.00.44	Croatia	725,544	99.2%
D	2941.40.00	Hungary	200,622	62.7%
D	3001.10.00	Argentina	1,057,729	51.9%
D	3003.39.10	Argentina	3,397,738	99.6%
* D	3301.12.00	Brazil	9,970,827	83.2%
D	3301.19.10	Israel	839,706	78.0%
* D	3301.24.00	India	747,883	59.4%
D	3402.19.10	Brazil	1,515,486	50.5%
D	3806.30.00	Argentina	571,100	59.3%
D	3808.40.50	Israel	100,128	47.6%
D	3812.20.10	Brazil	1,641,357	47.7%
D	3814.00.20	Brazil	637,945	49.2%
D	4006.10.00	Israel	46,518	61.1%
*	4011.91.50	Israel	12,367,567	62.9%
*	4016.99.25	Thailand	7,431,507	50.1%
* D	4104.10.20	Argentina	5,573,793	67.1%
D	4104.10.40	Brazil	1,316,581	57.3%

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LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
* D	4104.29.30	India	1,831,908	52.5%
* D	4104.29.50	Argentina	4,517,190	47.5%
*	4104.31.20	Thailand	16,107,716	95.8%
D	4104.39.20	Thailand	256,973	44.6%
	4104.39.40	Argentina	27,053,918	45.5%
*	4104.39.60	Argentina	8,046,972	44.7%
D	4106.12.00	Pakistan	836,329	54.0%
D	4106.20.30	Pakistan	4,088,775	48.9%
* D	4106.20.60	India	5,635,105	50.4%
D	4107.21.00	Venezuela	175,621	61.7%
D	4107.29.60	Indonesia	4,096,093	43.3%
D	4109.00.70	Brazil	213,437	67.1%
D	4202.22.35	Philippines	122,600	92.2%
D	4202.29.20	Ecuador	2,187	80.7%
D	4202.99.20	Thailand	2,754	73.6%
	4203.21.20	Indonesia	13,719,460	50.5%
	4203.21.40	Philippines	29,970,215	44.1%
D	4205.00.60	Argentina	502,360	73.3%
* R	4411.11.00	Brazil	12,781,458	57.8%
* D R	4411.19.20	Brazil	2,625,047	63.8%
D	4411.29.60	Estonia	523,123	69.3%
2	4412.11.10	Indonesia	12,836,771	67.8%
* D	4412.11.50	Indonesia	4,761,614	52.3%
D	4412.12.15	Brazil	4,947,477	98.4%
D	4412.19.10	Brazil	151,084	94.1%
D	4412.19.40	Indonesia	4,798,480	73.6%
D	4412.29.10	Indonesia	865,857	69.3%
* D	4412.29.40	Brazil	3,427,854	55.8%
D	4412.99.10	Brazil	104,625	100.0%
D	4412.99.40	Poland	1,655,790	91.7%
D	4417.00.60	Brazil	211,308	74.2%
2 D	4418.20.40	Malaysia	2,187,370	87.9%
D	4601.10.00	Philippines	181,620	47.1%
D	4602.10.23	Indonesia	2,493	47.1%
D	4802.60.10	Brazil	3,007,145	61.8%
D	4804.41.40	Venezuela	1,188,536	70.4%
D	4823.90.20	Philippines	4,968,129	57.4%
* D	5208.31.20	India	332,797	95.3%
* D	5208.32.10	India	943,074	93.9%
* D	5208.41.20	India	2,559,353	76.6%
* D	5208.42.10	India	6,172,014	99.5%
* D	5208.51.20	India	73,647	98.1%
* D	5209.31.30	India	740,881	81.9%
* D	5209.41.30	India	2,551,935	93.1%
D	5307.20.00	India	891,085	42.8%
* D	5310.90.00	India	183,582	48.4%
D	5607.29.00	Brazil	3,245,993	53.1%
D	5607.30.20	Philippines	4,330,928	88.4%
D	5609.00.20	Philippines	281,381	48.2%
* D	5702.20.10	India	2,771,911	92.6%
	6116.10.08	Thailand	6,575,098	47.3%

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LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	6302.99.10	India	3,800	48.6%
* D	6304.99.25	India	106,666	90.9%
D	6501.00.30	Brazil	2,331,646	43.5%
D	6501.00.60	Czech Republic	424,183	97.9%
D	6502.00.20	Ecuador	129,182	62.6%
* R	6702.90.65	Thailand	7,622,122	55.8%
D	6801.00.00	India	615,000	61.3%
D	6905.10.00	Venezuela	6,388,011	56.9%
D	7017.20.00	Brazil	3,888,300	52.7%
D	7106.92.00	Chile	7,414,523	81.4%
D	7109.00.00	Chile	8,492,958	99.8%
*	7113.11.20	Thailand	6,993,814	55.5%
D	7113.20.10	Thailand	177,525	68.8%
D	7113.20.21	Peru	53,965	79.6%
D	7114.19.00	Chile	8,890,940	87.6%
	7115.90.10	Argentina	12,227,664	46.9%
D	7307.21.10	India	5,569,603	50.5%
D	7308.20.00	Brazil	5,841,481	61.4%
D	7319.20.00	Malaysia	1,437,077	57.4%
D	7401.10.00	Chile	1,388,760	93.6%
D	7401.20.00	Bolivia	42,229	100.0%
D	7403.12.00	Peru	627,183	86.1%
*	7403.13.00	Chile	8,759,310	44.8%
*	7403.19.00	Chile	43,742,198	77.9%
D	7413.00.10	Turkey	777,624	47.8%
	7418.10.20	India	21,169,384	43.5%
D	7603.10.00	Bahrain	823,908	43.4%
D	7604.10.30	Slovenia	3,725,000	69.1%
D	7614.10.50	Brazil	1,684,149	86.2%
D	7614.90.20	Venezuela	3,356,525	91.6%
D	7614.90.50	Venezuela	1,021,398	87.6%
D	7616.10.50	Brazil	10,937	44.8%
D	8107.90.00	Bulgaria	86,427	47.0%
1 D	8112.91.50	Chile	2,457,934	88.5%
D	8213.00.60	Brazil	605,807	51.3%
D	8402.20.00	Colombia	7,614,238	99.7%
D	8404.10.00	Israel	2,382,541	84.4%
D	8404.20.00	Israel	6,841,103	94.7%
	8404.90.00	Israel	6,706,002	43.5%
D	8406.19.90	Israel	1,903,926	90.7%
R	8409.99.91	Brazil	38,152,629	21.8%
	8414.30.40	Brazil	79,179,438	48.4%
* D R	8429.30.00	Brazil	6,511,359	61.2%
D	8458.99.10	Czech Republic	650,000	53.3%
D	8459.51.00	Czech Republic	3,524,394	52.4%
	8471.92.40	Thailand	99,273,346	2.7%
D	8480.10.00	Poland	1,998,232	66.4%
R	8483.10.30	Brazil	34,466,767	23.3%
	8517.30.15	Israel	12,278,348	46.0%
D	8519.21.00	Malaysia	774,342	67.5%
*	8521.10.60	Thailand	91,502,585	4.2%

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LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
1	8521.10.90	Malaysia	26,859,403	42.1%
D	8525.20.20	Philippines	5,310,313	44.2%
	8535.40.00	Dominican Republic	21,921,868	53.6%
D	8539.29.20	Macao	384,587	54.9%
	8544.30.00	Thailand	106,783,798	5.7%
D	8546.10.00	Brazil	735,541	72.7%
*	8802.30.00	Brazil	99,236,404	8.3%
	9006.53.00	Malaysia	87,934,211	13.9%
D	9014.10.60	Israel	1,916,748	50.3%
D	9014.10.70	Israel	2,378,472	43.9%
D	9015.10.40	Israel	3,129,461	87.5%
D	9018.90.10	Argentina	347,320	63.3%
*	9018.90.80	Dominican Republic	105,864,985	20.3%
* D R	9025.11.20	Brazil	737,720	25.7%
* D	9025.11.20	India	1,253,556	43.7%
D	9102.29.04	Philippines	2,086,589	57.8%
D	9401.90.15	Czech Republic	561,792	67.4%
D	9401.90.25	Indonesia	1,946,065	64.1%
D	9403.90.25	Indonesia	1,097,667	47.5%
2	9405.50.30	India	11,278,405	54.2%
D	9602.00.40	Israel	968,608	67.2%
D	9606.29.20	Thailand	276,044	64.1%
D	9614.20.60	Turkey	125,246	77.0%
D	9614.20.80	Turkey	149,237	48.4%

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LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina	131,691,084	17
Bahamas	100,976,445	1
Bahrain	823,908	1
Belize	2,060,883	1
Bolivia	3,264,986	2
Brazil	347,460,675	44
Bulgaria	86,427	1
Chile	113,933,743	13
Colombia	7,837,789	3
Costa Rica	12,894,795	4
Croatia	725,544	1
Czech Republic	11,001,460	5
Dominican Republic	157,969,224	11
Ecuador	189,907	3
El Salvador	30,581	2
Estonia	523,123	1
Guatemala	54,875,758	6
Honduras	1,383,394	1
Hungary	1,441,916	5
India	77,062,166	31
Indonesia	58,109,673	11
Israel	78,881,210	32
Ivory Coast	2,438,607	1
Jamaica	4,979,412	1
Lebanon	7,970	1
Lithuania	2,000	1
Macao	384,587	1
Malaysia	133,484,919	8
Morocco	11,453,799	2
Pakistan	4,959,662	3
Peru	6,273,310	5
Philippines	47,254,853	9
Poland	4,755,779	5
Slovenia	3,725,000	1
Thailand	364,316,130	23
Trinidad and Tobago	287,527	1
Turkey	20,164,305	12
Uruguay	4,230,811	1
Venezuela	14,108,512	8
TOTAL	1,786,051,874	279

LIST III : POSSIBLE de MINIMIS ITEMS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	0210.20.00	Uruguay	4,230,811	68.7%
D	0210.90.40	Venezuela	112,657	64.2%
D	0303.77.00	Chile	1,788,987	83.6%
D	0303.80.20	Lithuania	2,000	100.0%
D	0304.20.50	Peru	137,435	49.5%
D	0708.10.40	Guatemala	4,521,465	65.7%
D	0708.90.05	Turkey	192,234	57.5%
D	0708.90.15	India	99,694	76.7%
D	0708.90.30	Dominican Republic	48,815	48.7%
D	0709.10.00	Colombia	188,347	56.4%
D	0709.20.10	Peru	1,235,048	53.9%
D	0710.29.15	India	22,380	60.6%
D	0710.29.30	Dominican Republic	1,379,877	94.4%
D	0710.80.65	Guatemala	909,473	50.8%
D	0710.80.93	Guatemala	1,806,882	84.8%
D	0711.10.00	Israel	94,989	69.3%
D	0711.20.15	Lebanon	7,970	52.0%
D	0711.30.00	Turkey	743,379	65.5%
D	0712.90.65	Israel	902,292	47.8%
D	0713.20.10	Turkey	25,391	90.0%
* D	0713.31.40	Thailand	565,076	53.8%
D	0713.90.60	India	108,595	68.4%
D	0714.10.00	Costa Rica	6,572,836	95.4%
D	0714.20.00	Dominican Republic	1,133,705	94.6%
D	0714.90.10	Costa Rica	3,604,675	45.0%
D	0714.90.20	Jamaica	4,979,412	46.6%
D	0802.50.20	Turkey	91,963	52.2%
D	0802.50.40	Turkey	80,384	54.0%
D	0802.90.80	Ivory Coast	2,438,607	79.0%
D	0804.50.80	Thailand	619,513	59.2%
D	0805.90.00	Israel	164,526	53.9%
D	0807.10.60	Israel	39,838	57.6%
D	0811.20.20	Chile	2,799,384	67.7%
D	0811.90.10	Honduras	1,383,394	42.3%
D	0811.90.10	Costa Rica	1,834,883	56.1%
D	0811.90.50	Costa Rica	882,401	58.0%
D	0811.90.55	Guatemala	1,438,042	46.1%
* D R	0813.30.00	Argentina	3,400,266	55.9%
D	0813.40.10	Thailand	1,519,395	93.7%
D	1007.00.00	Argentina	39,350	48.4%
* D	1102.30.00	Thailand	1,950,265	89.9%
D	1102.90.30	El Salvador	1,383	50.9%
D	1106.30.20	Ecuador	58,538	83.4%
D	1301.90.40	Brazil	130,103	98.3%
D	1515.30.40	India	9,502,548	77.1%
D	1519.11.00	Malaysia	2,262,665	78.4%
D	1519.19.20	Malaysia	5,260,111	48.7%
D	1602.31.00	Israel	893,304	49.7%
D	1602.50.09	Brazil	262,636	43.0%
D	1604.14.50	Thailand	218,795	84.6%
D	1604.15.00	Chile	7,148,242	69.3%

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LIST III : POSSIBLE de MINIMIS ITEMS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
2 D	1604.16.10	Morocco	6,369,087	54.6%
D	1604.16.30	Morocco	5,084,712	97.2%
D	1605.10.05	Thailand	31,639	48.9%
D	1605.90.10	Indonesia	2,609,135	49.3%
D	1701.12.01	Colombia	35,204	83.7%
D	1701.99.01	Guatemala	1,902,945	60.6%
D	1702.30.20	Pakistan	34,558	70.7%
D	1702.90.35	Dominican Republic	2,756,483	62.0%
D	1702.90.40	Belize	2,060,883	80.8%
D	1703.10.30	Dominican Republic	989,069	50.8%
D	1703.90.30	India	29,323	68.7%
D	2001.20.00	Israel	359,945	45.5%
D	2005.80.00	Thailand	3,839,211	88.2%
D	2006.00.70	Thailand	2,400,681	54.7%
D	2007.99.40	Thailand	495,043	82.6%
D	2007.99.48	Argentina	209,187	54.5%
* D R	2007.99.50	Brazil	1,199,894	22.8%
D	2008.19.25	Philippines	3,078	100.0%
D	2008.19.30	Turkey	1,103,093	77.9%
D	2008.30.10	Brazil	61,383	49.5%
D	2008.30.37	Argentina	163,010	73.1%
D	2008.30.95	Israel	83,591	58.3%
D	2008.50.20	Argentina	188,282	65.2%
D	2008.99.23	Dominican Republic	137,562	52.9%
D	2008.99.35	Thailand	2,266,942	77.3%
D	2008.99.45	Dominican Republic	134,768	55.0%
D	2207.10.30	Poland	80,559	74.2%
D	2208.90.10	Trinidad and Tobago	287,527	85.9%
D	2308.90.50	El Salvador	29,198	100.0%
D	2401.20.20	Dominican Republic	2,429,266	55.8%
D	2515.11.00	Brazil	22,244	71.6%
D	2608.00.00	Peru	4,219,679	42.4%
D	2611.00.00	Bolivia	3,222,757	42.8%
D	2825.70.00	Chile	1,573,586	67.6%
D	2827.31.00	Israel	606,240	47.9%
* D	2827.39.20	India	106,116	76.4%
D	2827.51.10	Israel	1,336,149	95.6%
D	2827.51.20	Israel	1,549,882	86.1%
D	2827.59.50	Israel	1,963,889	70.9%
* D	2827.60.20	India	397,544	56.1%
D	2833.23.00	Turkey	56,000	72.8%
D	2840.11.00	Turkey	1,120,000	98.6%
D	2843.30.00	Chile	2,954,831	82.1%
D	2849.10.00	Brazil	159,810	43.7%
D	2903.19.10	Brazil	542,088	74.0%
D	2907.23.00	Brazil	254,040	71.0%
D	2909.44.00	Brazil	318,587	79.4%
D	2912.49.10	Israel	1,776,557	44.4%
* D R	2915.31.00	Brazil	1,409,878	22.5%
D	2915.34.00	Venezuela	322,399	55.1%
D	2917.19.10	Hungary	313,250	52.4%

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LIST III : POSSIBLE de MINIMIS ITEMS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	2917.32.00	Brazil	1,806,632	86.9%
D	2918.15.10	Israel	5,199,199	58.5%
D	2918.16.10	Israel	88,002	74.9%
D	2918.21.10	Brazil	3,601,924	50.0%
D	2918.21.50	Poland	212,300	87.1%
D	2918.22.50	Argentina	5,355	100.0%
D	2921.12.00	Brazil	9,329	47.8%
* D	2921.42.21	India	301,597	100.0%
D	2921.49.20	Israel	1,262,100	43.3%
* D	2921.49.30	India	104,143	55.4%
* D	2922.29.25	India	647,964	68.1%
D	2924.29.02	Hungary	257,745	86.8%
D	2929.10.15	Brazil	189,330	52.5%
D	2930.90.30	Israel	2,205,996	48.8%
D	2931.00.25	Israel	2,946,799	66.8%
* D	2933.40.08	India	310,673	63.7%
D	2933.40.30	Brazil	5,429,120	92.4%
D	2933.51.30	Hungary	325,323	52.3%
D	2933.59.15	Venezuela	1,543,365	43.5%
D	2933.90.18	Israel	5,196,401	78.3%
D	2934.30.15	Hungary	344,976	42.1%
D	2934.90.16	Israel	352,383	91.3%
D	2935.00.33	Poland	808,898	99.6%
D	2935.00.44	Croatia	725,544	99.2%
D	2941.40.00	Hungary	200,622	62.7%
D	3001.10.00	Argentina	1,057,729	51.9%
D	3003.39.10	Argentina	3,397,738	99.6%
* D	3301.12.00	Brazil	9,970,827	83.2%
D	3301.19.10	Israel	839,706	78.0%
* D	3301.24.00	India	747,883	59.4%
D	3402.19.10	Brazil	1,515,486	50.5%
D	3806.30.00	Argentina	571,100	59.3%
D	3808.40.50	Israel	100,128	47.6%
D	3812.20.10	Brazil	1,641,357	47.7%
D	3814.00.20	Brazil	637,945	49.2%
D	4006.10.00	Israel	46,518	61.1%
* D	4104.10.20	Argentina	5,573,793	67.1%
D	4104.10.40	Brazil	1,316,581	57.3%
* D	4104.29.30	India	1,831,908	52.5%
* D	4104.29.50	Argentina	4,517,190	47.5%
D	4104.39.20	Thailand	256,973	44.6%
D	4106.12.00	Pakistan	836,329	54.0%
D	4106.20.30	Pakistan	4,088,775	48.9%
* D	4106.20.60	India	5,635,105	50.4%
D	4107.21.00	Venezuela	175,621	61.7%
D	4107.29.60	Indonesia	4,096,093	43.3%
D	4109.00.70	Brazil	213,437	67.1%
D	4202.22.35	Philippines	122,600	92.2%
D	4202.29.20	Ecuador	2,187	80.7%
D	4202.99.20	Thailand	2,754	73.6%
D	4205.00.60	Argentina	502,360	73.3%

FLAGS: 'G'=Grad; '*'=Excl full yr; '1'=Excl Jan/Jun; '2'=Excl Jul/Dec;
'R'=Reduced limits apply; 'Z'=Subject to reduced limits, All limits waived.
'H'=Grad, Reduced limit would apply; 'D'=De min; 'X'=Reduced limit waiver.

LIST III : POSSIBLE de MINIMIS ITEMS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
* D R	4411.19.20	Brazil	2,625,047	63.8%
D	4411.29.60	Estonia	523,123	69.3%
* D	4412.11.50	Indonesia	4,761,614	52.3%
D	4412.12.15	Brazil	4,947,477	98.4%
D	4412.19.10	Brazil	151,084	94.1%
D	4412.19.40	Indonesia	4,798,480	73.6%
D	4412.29.10	Indonesia	865,857	69.3%
* D	4412.29.40	Brazil	3,427,854	55.8%
D	4412.99.10	Brazil	104,625	100.0%
D	4412.99.40	Poland	1,655,790	91.7%
D	4417.00.60	Brazil	211,308	74.2%
2 D	4418.20.40	Malaysia	2,187,370	87.9%
D	4601.10.00	Philippines	181,620	47.1%
D	4602.10.23	Indonesia	2,493	47.1%
D	4802.60.10	Brazil	3,007,145	61.8%
D	4804.41.40	Venezuela	1,188,536	70.4%
D	4823.90.20	Philippines	4,968,129	57.4%
* D	5208.31.20	India	332,797	95.3%
* D	5208.32.10	India	943,074	93.9%
* D	5208.41.20	India	2,559,353	76.6%
* D	5208.42.10	India	6,172,014	99.5%
* D	5208.51.20	India	73,647	98.1%
* D	5209.31.30	India	740,881	81.9%
* D	5209.41.30	India	2,551,935	93.1%
D	5307.20.00	India	891,085	42.8%
* D	5310.90.00	India	183,582	48.4%
D	5607.29.00	Brazil	3,245,993	53.1%
D	5607.30.20	Philippines	4,330,928	88.4%
D	5609.00.20	Philippines	281,381	48.2%
* D	5702.20.10	India	2,771,911	92.6%
D	6302.99.10	India	3,800	48.6%
* D	6304.99.25	India	106,666	90.9%
D	6501.00.30	Brazil	2,331,646	43.5%
D	6501.00.60	Czech Republic	424,183	97.9%
D	6502.00.20	Ecuador	129,182	62.6%
D	6801.00.00	India	615,000	61.3%
D	6905.10.00	Venezuela	6,388,011	56.9%
D	7017.20.00	Brazil	3,888,300	52.7%
D	7106.92.00	Chile	7,414,523	81.4%
D	7109.00.00	Chile	8,492,958	99.8%
D	7113.20.10	Thailand	177,525	68.8%
D	7113.20.21	Peru	53,965	79.6%
D	7114.19.00	Chile	8,890,940	87.6%
D	7307.21.10	India	5,569,603	50.5%
D	7308.20.00	Brazil	5,841,481	61.4%
D	7319.20.00	Malaysia	1,437,077	57.4%
D	7401.10.00	Chile	1,388,760	93.6%
D	7401.20.00	Bolivia	42,229	100.0%
D	7403.12.00	Peru	627,183	86.1%
D	7413.00.10	Turkey	777,624	47.8%
D	7603.10.00	Bahrain	823,908	43.4%

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LIST III : POSSIBLE de MINIMIS ITEMS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
D	7604.10.30	Slovenia	3,725,000	69.1%
D	7614.10.50	Brazil	1,684,149	86.2%
D	7614.90.20	Venezuela	3,356,525	91.6%
D	7614.90.50	Venezuela	1,021,398	87.6%
D	7616.10.50	Brazil	10,937	44.8%
D	8107.90.00	Bulgaria	86,427	47.0%
1 D	8112.91.50	Chile	2,457,934	88.5%
D	8213.00.60	Brazil	605,807	51.3%
D	8402.20.00	Colombia	7,614,238	99.7%
D	8404.10.00	Israel	2,382,541	84.4%
D	8404.20.00	Israel	6,841,103	94.7%
D	8406.19.90	Israel	1,903,926	90.7%
* D R	8429.30.00	Brazil	6,511,359	61.2%
D	8458.99.10	Czech Republic	650,000	53.3%
D	8459.51.00	Czech Republic	3,524,394	52.4%
D	8480.10.00	Poland	1,998,232	66.4%
D	8519.21.00	Malaysia	774,342	67.5%
D	8525.20.20	Philippines	5,310,313	44.2%
D	8539.29.20	Macao	384,587	54.9%
D	8546.10.00	Brazil	735,541	72.7%
D	9014.10.60	Israel	1,916,748	50.3%
D	9014.10.70	Israel	2,378,472	43.9%
D	9015.10.40	Israel	3,129,461	87.5%
D	9018.90.10	Argentina	347,320	63.3%
* D R	9025.11.20	Brazil	737,720	25.7%
* D	9025.11.20	India	1,253,556	43.7%
D	9102.29.04	Philippines	2,086,589	57.8%
D	9401.90.15	Czech Republic	561,792	67.4%
D	9401.90.25	Indonesia	1,946,065	64.1%
D	9403.90.25	Indonesia	1,097,667	47.5%
D	9602.00.40	Israel	968,608	67.2%
D	9606.29.20	Thailand	276,044	64.1%
D	9614.20.60	Turkey	125,246	77.0%
D	9614.20.80	Turkey	149,237	48.4%

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LIST III : POSSIBLE de MINIMIS ITEMS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina	19,972,680	13
Bahrain	823,908	1
Belize	2,060,883	1
Bolivia	3,264,986	2
Brazil	70,760,104	38
Bulgaria	86,427	1
Chile	44,910,145	10
Colombia	7,837,789	3
Costa Rica	12,894,795	4
Croatia	725,544	1
Czech Republic	5,160,369	4
Dominican Republic	9,009,545	8
Ecuador	189,907	3
El Salvador	30,581	2
Estonia	523,123	1
Guatemala	10,578,807	5
Honduras	1,383,394	1
Hungary	1,441,916	5
India	44,614,377	29
Indonesia	20,177,404	8
Israel	47,529,293	29
Ivory Coast	2,438,607	1
Jamaica	4,979,412	1
Lebanon	7,970	1
Lithuania	2,000	1
Macao	384,587	1
Malaysia	11,921,565	5
Morocco	11,453,799	2
Pakistan	4,959,662	3
Peru	6,273,310	5
Philippines	17,284,638	8
Poland	4,755,779	5
Slovenia	3,725,000	1
Thailand	14,619,856	14
Trinidad and Tobago	287,527	1
Turkey	4,464,551	11
Uruguay	4,230,811	1
Venezuela	14,108,512	8
TOTAL	409,873,563	238

LIST IV : POSSIBLE REDESIGNATION ITEMS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
2	0710.80.70	Guatemala	3,136,836	38.0%
*	1005.90.20	Argentina	0	0.0%
*	1005.90.40	Argentina	407,532	39.8%
*	1103.14.00	Thailand	7,808	31.0%
*	1605.10.20	Malaysia	374,611	2.5%
*	1701.11.01	Brazil	59,386,073	14.6%
*	1701.11.02	Brazil	0	0.0%
*	1701.12.01	Brazil	0	0.0%
*	1701.91.21	Brazil	0	0.0%
*	1701.99.01	Brazil	0	0.0%
*	R 2007.99.50	Brazil	1,199,894	22.8%
2	2603.00.00	Indonesia	13,119,021	36.2%
*	R 2804.69.10	Brazil	369,742	1.2%
*	2906.11.00	Brazil	1,176,025	7.6%
*	R 2915.31.00	Brazil	1,409,878	22.5%
*	2918.22.10	Turkey	0	0.0%
*	2933.39.25	Brazil	627,500	3.6%
*	2934.90.14	Brazil	0	0.0%
*	R 3823.90.40	Brazil	1,039,722	7.5%
*	3904.21.00	Brazil	0	0.0%
*	3909.10.00	Israel	22,535	0.3%
*	4011.10.00	Brazil	72,587,413	7.0%
*	4011.20.00	Brazil	36,484,266	4.4%
*	4104.10.40	India	6,881	0.2%
*	4104.21.00	Argentina	2,578,666	19.5%
2	4104.22.00	Brazil	5,014,585	38.0%
*	4104.22.00	Argentina	1,061,037	8.0%
*	4104.29.50	Argentina	4,517,190	47.5%
*	4104.29.90	Argentina	290,011	0.7%
*	4104.31.50	Argentina	2,898,467	16.1%
*	4104.31.60	Argentina	747,291	2.5%
*	4104.31.80	Argentina	5,820,165	7.0%
*	4104.39.50	Argentina	17,293	0.2%
*	4104.39.60	Argentina	8,046,972	44.7%
*	4104.39.80	Argentina	3,112,918	13.5%
*	4105.20.60	Argentina	12,778	0.0%
*	4106.12.00	India	0	0.0%
*	4106.19.00	India	99,170	2.4%
*	4106.20.30	India	2,900,535	34.6%
*	R 4107.21.00	Argentina	49,992	17.5%
*	R 4107.29.30	Argentina	827,359	13.1%
*	4107.29.60	Argentina	143,477	1.5%
*	4107.90.60	Argentina	0	0.0%
*	4109.00.70	Argentina	0	0.0%
*	4411.19.40	Brazil	3,241,525	22.3%
*	4411.21.00	Brazil	0	0.0%
*	4411.29.60	Brazil	0	0.0%
*	4411.29.90	Brazil	0	0.0%
*	4412.12.20	Brazil	45,325,652	35.3%
*	4412.12.20	Indonesia	47,525,938	37.0%
*	4412.12.50	Brazil	566,311	15.6%

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LIST IV : POSSIBLE REDESIGNATION ITEMS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	4412.12.50	Indonesia	131,059	3.6%
*	4412.29.30	Brazil	2,213,534	27.5%
*	4412.29.30	Indonesia	3,346,793	41.5%
*	4412.29.40	Indonesia	493,179	8.0%
*	4421.90.50	Brazil	329,198	9.0%
*	4421.90.60	Brazil	234,761	2.9%
*	4823.20.10	Brazil	0	0.0%
* R	6406.10.65	Brazil	6,204,448	2.3%
*	6406.99.60	Argentina	4,161,820	39.0%
* R	6908.10.20	Thailand	2,196,002	14.1%
* R	6910.10.00	Brazil	1,193,776	1.6%
* R	6910.90.00	Brazil	681,085	8.9%
* R	6911.90.00	Brazil	38,977	0.1%
*	6912.00.44	Brazil	28,425	0.0%
*	7103.99.10	Thailand	15,166,632	22.0%
*	7113.11.50	Thailand	69,516,837	36.0%
*	7113.20.50	Thailand	546,559	5.9%
*	7116.10.10	Thailand	0	0.0%
*	7116.20.10	Thailand	8,563,202	21.6%
*	7202.21.50	Brazil	23,178,280	29.4%
*	7202.30.00	Brazil	22,990,864	23.2%
*	7402.00.00	Chile	55,950,305	36.4%
*	7403.11.00	Chile	44,180,342	9.2%
*	7403.12.00	Chile	0	0.0%
*	7403.13.00	Chile	8,759,310	44.8%
*	7403.21.00	Chile	0	0.0%
*	7403.22.00	Chile	0	0.0%
*	7403.23.00	Chile	0	0.0%
*	7403.29.00	Chile	0	0.0%
* R	7407.21.90	Brazil	5,092,514	12.6%
*	7413.00.10	Peru	0	0.0%
*	7604.29.30	Venezuela	0	0.0%
*	7605.11.00	Venezuela	0	0.0%
2	8402.20.00	Philippines	0	0.0%
* R	8408.20.20	Brazil	913,402	3.4%
2 R	8408.20.90	Brazil	9,623,199	16.2%
* R	8409.91.91	Brazil	23,775,737	2.5%
* R	8409.99.99	Brazil	19,944,776	8.0%
*	8419.19.00	Israel	28,570	0.0%
*	8419.90.10	Israel	0	0.0%
* R	8429.11.00	Brazil	47,810	0.0%
* R	8429.20.00	Brazil	2,778,800	11.1%
* R	8431.49.90	Brazil	11,948,106	2.5%
*	8521.10.60	Thailand	91,502,585	4.2%
2	8542.80.00	Malaysia	3,119,767	20.1%
*	8802.30.00	Brazil	99,236,404	8.3%
*	9018.90.80	Dominican Republic	105,864,985	20.3%
*	9025.11.20	India	1,253,556	43.7%
*	9105.19.10	Brazil	0	0.0%
*	9105.19.40	Brazil	179,355	3.4%
*	9401.30.40	Croatia	0	0.0%

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LIST IV : POSSIBLE REDESIGNATION ITEMS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

FLAGS	HTSUS	PARTNER	IMPORTS	SHARE
*	9401.30.40	Slovenia	0	0.0%
* R	9401.40.00	Thailand	37,710	0.3%
*	9401.61.40	Croatia	67,784	0.0%
*	9401.61.40	Slovenia	67,587	0.0%
* R	9401.61.60	Thailand	2,558,059	1.5%
*	9401.69.60	Croatia	3,458,545	1.0%
*	9401.69.60	Slovenia	25,435,170	8.0%
* R	9401.69.80	Thailand	2,318,946	6.1%
* R	9403.30.80	Thailand	897,147	0.6%
* R	9403.40.90	Thailand	10,669,575	9.1%
* R	9403.50.90	Thailand	2,483,895	0.8%
*	9405.30.00	Thailand	28,369,223	9.6%
* R	9504.20.60	Brazil	1,200,097	19.6%

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LIST IV : POSSIBLE REDESIGNATION ITEMS

1993 U.S. IMPORTS - JANUARY THROUGH OCTOBER

TOTALS BY PARTNER

PARTNER	IMPORTS	COUNT
Argentina	34,692,968	19
Brazil	460,262,134	45
Chile	108,889,957	8
Croatia	3,526,329	3
Dominican Republic	105,864,985	1
Guatemala	3,136,836	1
India	4,260,142	5
Indonesia	64,615,990	5
Israel	51,105	3
Malaysia	3,494,378	2
Peru	0	1
Philippines	0	1
Slovenia	25,502,757	3
Thailand	234,834,180	15
Turkey	0	1
Venezuela	0	2
TOTAL	1,049,131,761	115

[FR Doc. 94-2300 Filed 2-1-94; 8:45 am]

BILLING CODE 3190-01-C

Sunshine Act Meetings

Federal Register
Vol. 59, No. 22
Wednesday, February 2, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting

TIME: 10:00 a.m.–12:00 noon.

PLACE: ADF Headquarters.

DATE: Friday, February 4, 1994.

STATUS: Open.

Agenda

11:00 President's Report
12:00 Audit Committee Report
12:30 Executive Session

If you have any questions or comments, please direct them to Ms. Janis McCollim, Executive Assistant to the President, who can be reached at (202) 673–3916.

Gregory Robeson Smith,

President.

[FR Doc. 94–2426 Filed 1–31–94; 12:49 pm]

BILLING CODE 6116–01–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: January 25, 1994, 59 FR 3647.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: January 26, 1994, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Item CAG–5 on the Agenda scheduled for January 26, 1994:

Item No., Docket No., and Company

CAG–5—RP93–184–000, RP93–185–000 and RP94–76–000, Carnegie Natural Gas Company

Lois D. Cashell,

Secretary.

[FR Doc. 94–2465 Filed 1–31–94; 2:18 pm]

BILLING CODE 6712–01–M

NATIONAL SCIENCE FOUNDATION

NATIONAL SCIENCE BOARD OFFICE

DATE AND TIME:

February 10, 1994, 8:00 a.m., Closed Session
February 11, 1994, 9:00 a.m., Closed Session
February 12, 1994, 9:50 a.m., Open Session

PLACE: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS:

Part of this meeting will be open to the public.
Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, February 10, 1994

Closed Session (8:00 a.m.—5:00 p.m.)

—Committee and Task Force Meetings

Friday, February 11, 1994

Closed Session (9:00 a.m.—9:50 a.m.)

—Minutes of November 1993 Meeting
—Budget
—Grants and Contracts

Friday, February 11, 1994

Open Session (9:50 a.m.—11:35 a.m.)

—Minutes
—Chairman's Report
—Director's Report
—Reports from Committees
—Presentation

Marta Cehelsky,

Executive Officer.

[FR Doc. 94–2385; Filed 1–31–94; 9:14 am]

BILLING CODE 7555–01–M

U.S. RAILROAD RETIREMENT BOARD

Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on February 9, 1994, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

(1) Plan to Improve the Quality and Timeliness of RUIA Claims Processing.
(2) Generic National performance Review Letter.
(3) Field Migration Schedule.
(4) Pocatello Base Point—Change-of-Station Moving Expenses (Pocatello).
(5) ADP Steering Committee.
(6) Bureau of the Actuary.
(7) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement Act and Railroad Unemployment Insurance Act.
(8) Regulations—Part 203, Employees Under the Railroad Retirement Act.
(9) Regulations—Part 230, Reduction and Non-Payment of Annuities by Reason of Work.
(10) Regulations—Part 328, Voluntary Leaving of Work.
(11) Regulations—Part 345, Contribution and Contribution Reports.

Portion Closed to the Public

(A) 1994 Performance Appraisal Plans (Individuals Who Report Directly to the Board).

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 386–4920.

Dated: January 28, 1994.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–2416 Filed 1–31–94; 11:58 am]

BILLING CODE 7905–01–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

TIME AND DATE: 9:00 a.m., February 7, 1994.

PLACE: Uniformed Services University of the Health Sciences, Room D3001, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

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—1 November 1993; (2) Awards; (3) Graduate Degrees; (4) Faculty Matters; (5) Departmental Reports; (6) Financial Report; (7) Report—President, USUHS; (8) Comments—Chairman, Board of Regents.

New Business

CONTACT PERSON FOR MORE INFORMATION: Charles R. Mannix, Executive Secretary of the Board of Regents, 301/295–3028.

Dated: January 31, 1994.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–2486 Filed 1–31–94; 3:46 pm]

BILLING CODE 5000–04–M

Corrections

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This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122793A]

Groundfish of the Gulf of Alaska

Correction

In notice document 93-32090 beginning on page 295 in the issue of Tuesday, January 4, 1994, make the following corrections:

1. On page 295, in the first column, under **DATES:**, in the third line, "March 7, 1994." should read "February 28, 1994."

2. On page 296, in the first column, in the file line at the end of the document, "Filed 12-9-93;" should read "Filed 12-29-93;".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–1, 201–3, 201–20, and 201–39

RIN 3090–AF04

Amendment of FIRMR Provisions Relating to FIRMR Applicability, FIRMR Bulletins, Present Value Analysis, and Recycled Federal Information Processing (FIP) Resources

Correction

In proposed rule document 93-31152 beginning on page 39 in the issue of Monday, January 3, 1994, make the following corrections:

1. On page 39, in the second column, under **SUPPLEMENTARY INFORMATION:**, in the first paragraph, in the sixth line, after "equipment", insert "that is to be used as replacement parts for FIP equipment".

2. On the same page, in the same column, in the same paragraph, in the 13th line, "produce." should read "product."

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-930-4214-10; COC-55542]

Proposed Withdrawal; Scheduled Public Meeting; Colorado

Correction

In notice document 94-1294 beginning on page 3120 in the issue of Thursday, January 20, 1994, under **ADDRESSES**, in the second paragraph, in the second line, "1815 H. Road" should read "2815 H. Road".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No.93-ANM-14]

Proposed Amendment to Class E Airspace; Medford, OR

Correction

In proposed rule document 94-787 beginning on page 1682 in the issue of Wednesday, January 12, 1994, make the following corrections:

§ 71.1 [Corrected]

1. On page 1683, in the second column, in § 71.1, incorporation by reference material, in the fourth line from the bottom, "ANM OR E5 Medford, OR [Revised]" should read "ANM OR E4 Medford, OR [Revised]".

2. On the same page, in the third column, in § 71.1, incorporation by reference material, the heading "ANM OR E4 Medford, OR" should read "ANM OR E5 Medford, OR".

BILLING CODE 1505-01-D

federal register

Wednesday
February 2, 1994

Part II

Department of Health and Human Services

Centers for Disease Control and Prevention

Draft Guideline for Prevention of Nosocomial Pneumonia; Notice of Comment Period

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft Guideline for Prevention of Nosocomial Pneumonia: Part 1. "Issues on Prevention of Nosocomial Pneumonia—1994" and Part 2. "Recommendations for Prevention of Nosocomial Pneumonia"; Notice of Comment Period

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice is a request for review and comment of the draft Guideline for Prevention of Nosocomial Pneumonia. The Guideline consists of two parts entitled "Issues on Prevention of Nosocomial Pneumonia—1994," and "Recommendations for Prevention of Nosocomial Pneumonia," prepared by the Hospital Infection Control Practices Advisory Committee (HICPAC) and the National Center for Infectious Diseases (NCID), CDC.

DATES: Written comments on the draft document must be received on or before April 4, 1994.

ADDRESSES: Comments on this document should be submitted in writing to the CDC, Attention: Pneumonia Guideline Information Center, Mailstop A07, 1600 Clifton Road, NE., Atlanta, Georgia 30333. To order copies of the **Federal Register** containing the document, contact the U.S. Government Printing Office, Order and Information Desk, Washington, DC 20402–9329, at (202) 783–3238. Specify the date of the issue requested and stock number 069–001–000–70–0. See page II of the **Federal Register** for additional ordering and cost information. In addition, the **Federal Register** may be viewed and photocopied at most libraries designated as U.S. Government Depository Libraries and at many other public and academic libraries that receive the **Federal Register** throughout the country. The order-desk operator can tell you the location of the U.S. Government Depository Library nearest you.

FOR FURTHER INFORMATION CONTACT: The Pneumonia Guideline Information Center, (404) 332–2569.

SUPPLEMENTARY INFORMATION: This document updates and replaces the previously published CDC Guideline for the Prevention of Nosocomial Pneumonia. Emphasis is placed on bacterial pneumonias, including gram-negative bacillary pneumonias and Legionnaires' disease; pneumonia due to *Aspergillus* spp.; and lower respiratory tract infections caused by respiratory syncytial and influenza viruses. Part I, "Issues on Prevention of Nosocomial Pneumonia—1994," was prepared by staff of NCID, CDC, and provides the background for the HICPAC-consensus recommendations contained in Part II, "Recommendations for Prevention of Nosocomial Pneumonia."

HICPAC was established in 1991 to provide advice and guidance to the Secretary, DHHS; the Assistant Secretary for Health; the Director, CDC; and the Director, NCID, regarding the practice of hospital infection control and strategies for surveillance, prevention, and control of nosocomial infections in U.S. hospitals. The committee also advises the CDC on periodic updating of guidelines and other policy statements regarding prevention of nosocomial infections.

The Guideline for Prevention of Nosocomial Pneumonia is the first of a series of CDC guidelines being revised by HICPAC and NCID, CDC.

Dated: January 25, 1994.

Walter R. Dowdle,

Deputy Director, Centers for Disease Control and Prevention (CDC).

GUIDELINE FOR PREVENTION OF NOSOCOMIAL PNEUMONIA

Second Edition

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References

Executive Summary

This document updates and replaces the previously published CDC Guideline for Prevention of Nosocomial Pneumonia (Infection Control 1982;3:327–33, Resp Care 1983;28:221–32, and Am J Infect Control 1983;11230–9). The revised guideline is designed to reduce the incidence of nosocomial pneumonia and provides the rationale (in Part I) for the recommendations (in Part II) considered prudent by consensus of the members of HICPAC. A working draft of the guideline has been reviewed by experts in infection control, pulmonology, respiratory therapy, anesthesiology, internal medicine, and pediatrics. However, all recommendations in the guideline may not reflect the opinions of all reviewers.

Pneumonia is the second most common nosocomial infection in the United States and is associated with substantial morbidity and mortality. Most patients with nosocomial pneumonia are those with extremes of age, severe underlying disease, immunosuppression, depressed sensorium, cardiopulmonary disease, and thoraco-abdominal surgery. Although patients with mechanically assisted ventilation do not comprise a major proportion of patients with nosocomial pneumonia, they have the highest risk of developing the infection.

Most bacterial nosocomial pneumonias occur by aspiration of bacteria colonizing the oropharynx or upper gastrointestinal tract of the patient. Intubation and mechanical ventilation greatly increase the risk of nosocomial bacterial pneumonia because they alter first-line patient defenses. Pneumonias due to *Legionella* spp., *Aspergillus* spp., and influenza virus are often caused by inhalation of contaminated aerosols. Respiratory syncytial virus (RSV) infection usually follows viral inoculation of the conjunctivae or nasal mucosa by contaminated hands.

Traditional preventive measures for nosocomial pneumonia include decreasing aspiration by the patient, preventing cross-contamination or colonization via hands of personnel, appropriate disinfection or sterilization of respiratory-therapy devices, use of available vaccines to protect against particular infections, and education of hospital staff and patients. New measures under investigation involve reducing oropharyngeal and gastric colonization by pathogenic microorganisms.

Introduction

The Guideline for Prevention of Nosocomial Pneumonia is intended for use by personnel who are responsible for surveillance and control of infections in acute-care hospitals. The guideline may not be applicable in long-term care facilities because of the unique characteristics of these settings.

The revised guideline addresses common problems encountered by infection-control practitioners regarding the prevention and control of nosocomial pneumonia in U.S. hospitals. Sections on the prevention of bacterial pneumonia in mechanically ventilated and/or critically ill patients, care of respiratory-therapy devices, prevention of cross-contamination, and prevention of viral lower respiratory-tract infections, such as respiratory syncytial virus (RSV) and influenza infections, have been expanded and updated. New sections on Legionnaires' disease and pneumonia due to *Aspergillus* spp. have been added. Lower respiratory tract infection due to *Mycobacterium tuberculosis* is not addressed in this document; it is covered in separate guidelines.[1] *

Part I, Issues for Prevention of Nosocomial Pneumonia—1994, can be an important resource for educating healthcare workers regarding prevention and control of nosocomial respiratory tract infections. Because education of healthcare workers is the cornerstone of an effective infection control program, hospitals should give high priority to continuing infection control educational programs for these staff members.

*[1]*Footnotes to appear at end of docket.

PART I. ISSUES ON PREVENTION OF NOSOCOMIAL PNEUMONIA—1994

BACTERIAL PNEUMONIA

I. Etiologic Agents

The reported distribution of etiologic agents causing nosocomial pneumonia varies between hospitals because of differences in patient populations and diagnostic methods employed.[2-11] In general, however, bacteria have been the most frequently isolated pathogens.[2-7,10,12-14] Schaberg et al. reported that in 1986–1989, aerobic bacteria comprised at least 73%, and fungi 4%, of isolates from sputum and tracheal aspirates of cases at the University of Michigan Hospitals and hospitals participating in the National Nosocomial Infection Surveillance (NNIS); very few anaerobic bacteria and no viruses were reported, probably because anaerobic and viral cultures were not performed routinely in the reporting hospitals (Table 1).[4] Similarly, cultures of bronchoscopic specimens from mechanically ventilated patients with pneumonia have rarely yielded anaerobes.[6-8,10,12,15,16] Only the report by Bartlett, which was based mainly on cultures of transtracheal aspirates in patients not receiving mechanically assisted ventilation, showed a predominance of anaerobes.[5]

Nosocomial bacterial pneumonias are frequently polymicrobial,[5,8,10,12,13,16-20] and gram-negative bacilli are the usual predominant organisms (Table 1);[2-7,10,12-14] however, *Staphylococcus aureus* (especially methicillin-resistant *S. aureus*)[6,8,11,16,21] and other gram-positive cocci, including *Streptococcus pneumoniae*,[6,8] have recently emerged as significant isolates;[15] and *Haemophilus influenza* has been isolated from mechanically ventilated patients with pneumonia that occurs within 48–96 hours after intubation.[4-6,13,16,22] In NNIS hospitals, *Pseudomonas aeruginosa, Enterobacter* sp., *Klebsiella pneumoniae, Escherichia coli, Serratia marcescens, and Proteus* spp. comprised 50% of the isolates from cultures of respiratory tract specimens of patients for whom nosocomial pneumonia was diagnosed by using clinical criteria; *S. aureus* accounted for 16%, and *H. influenzae*, for 6% (Table 1).[4] Fagon and co-workers reported that gram-negative bacilli were present in 75% of quantitative cultures of protected-specimen brushings (PSB) from patients who had received mechanically assisted ventilation and acquired nosocomial pneumonia; 40% were polymicrobial.[6] In the report by Torres et al., 20% of pathogens recovered from cultures of PSB, blood, pleural fluid, or percutaneous lung aspirate were gram-negative bacilli in pure culture, and 17% were polymicrobial; however, 54% of specimens did not yield any microorganism, probably because of receipt of antibiotics by patients.[7]

II. Diagnosis

The diagnosis of nosocomial bacterial pneumonia has been difficult.[8,9,17,23-32] Frequently, the criteria for diagnosis have been fever, cough, and development of purulent sputum, in combination with radiologic evidence of a new or progressive pulmonary infiltrate, a suggestive Gram's stain, and cultures of sputum, tracheal aspirate, pleural fluid, or blood.[4,5,23,25,33-36] Although clinical criteria together with cultures of sputum or tracheal specimens may be sensitive for bacterial pathogens, they are highly nonspecific, especially in patients with mechanically assisted ventilation;[9,10,13-16,19,24-26,29,31,37-42] on the other hand, cultures of blood or pleural fluid have very low sensitivity.[9,19,20,43]

Because of these problems, a group of investigators recently formulated consensus recommendations for standardization of methods to diagnose pneumonia in clinical research studies of ventilator-associated pneumonia.[44-46] These methods involve bronchoscopic techniques, e.g., quantitative culture of PSB,[6,8-10,14,16,27,31,38,41,47,48] BAL,[8,13,41,47,49-54] and pBAL.[15] The reported sensitivities and specificities of these methods have ranged between 70% to 100% and 60% to 100%, respectively, depending on the tests or diagnostic criteria they were compared with. Because these techniques are invasive, they may cause complications such as hypoxemia, bleeding, or arrhythmia.[9,14,42,44,52,55,56] In addition, the sensitivity of the PSB procedure may decrease in patients receiving antibiotic therapy.[10,14,27] Nonbronchoscopic (NB) procedures, e.g., NB-pBAL[13,27,57,58] or NB–PSB,[14] which utilize blind catheterization of the distal airways, have been developed recently; however, they have not been extensively evaluated. Although the use of bronchoscopic and nonbronchoscopic diagnostic tests can be a major step in better defining the epidemiology of nosocomial pneumonia especially in mechanically ventilated patients, further studies are needed to determine their applicability in daily clinical practice.

III. Epidemiology

NNIS reports that pneumonias (diagnosed on the basis of the CDC surveillance definition of nosocomial pneumonia) and surgical-wound infections account for approximately 15% each of all hospital-associated infections and are the second most common nosocomial infections after that of the urinary tract.[3] In 1984, the overall incidence of lower respiratory tract infection was 6 per 1,000 discharged patients.[3] The incidence ranged from 4.2 to 7.7 per 1,000 discharged patients for nonteaching and university-affiliated hospitals, respectively, probably reflecting institutional differences in the level of patients' risk for acquiring nosocomial pneumonia.

Nosocomial bacterial pneumonia often has been identified as a postoperative infection.[59,60] In the Study of the Efficacy of Nosocomial Infection Control in the 1970s, 75% of reported cases of nosocomial bacterial pneumonia occurred in patients who had had a surgical operation; the risk was 38 times greater for thoracoabdominal procedures than for those involving other body sites.[60] More recent epidemiologic studies, including NNIS studies, have identified other subsets of patients at high risk of developing nosocomial bacterial pneumonia: Patients with endotracheal intubation and/or mechanically assisted ventilation, depressed level of consciousness (particularly those with closed-head injury), prior episode of a large-volume aspiration, or underlying chronic lung disease, and patients >70 years of age. Other risk factors include 24-hour ventilator-circuit changes, fall-winter season, stress-bleeding prophylaxis with cimetidine with or without antacid, presence of a nasogastric tube, severe trauma, and recent bronchoscopy.[7,34,35,61-69]

Recently, NNIS stratified the incidence density of nosocomial pneumonia by patients' use of mechanical ventilator and type of intensive care unit (ICU). From 1986 to 1990, the median rate of ventilator-associated pneumonia per 1,000 ventilator-days ranged from 4.7 in pediatric ICUs to 34.4 in burn ICUs.[63] In contrast, the median rate of nonventilator-associated pneumonia per 1000 ICU-days ranged from 0 in pediatric and respiratory ICUs to 3.2 in trauma ICUs.

Nosocomial pneumonia has been associated with high fatality rates. Crude mortality rates of 20%–50% and attributable mortality rates of 30%–33% have been reported; in one study, pneumonia comprised 60% of all deaths due to nosocomial infections.[18,35,70-75] Patients receiving mechanically assisted ventilation have higher mortality rates

than patients not receiving ventilation support; however, other factors, such as a patient's underlying disease(s) and organ failure, are stronger predictors of death in patients with pneumonia.[34]

Pneumonia-associated morbidity has not been evaluated in recent years. Past studies, however, have shown that pneumonia could prolong hospitalization by 4–9 days.[74–77] A conservative estimate of the direct cost of excess hospital stay due to pneumonia is $1.1 billion a year for the nation.[78] Because of its reported frequency, associated high fatality rate, and attendant costs, nosocomial pneumonia is a major infection control problem.

IV. Pathogenesis

Bacteria may invade the lower respiratory tract by aspiration of oropharyngeal organisms, inhalation of aerosols containing bacteria, or less frequently, by hematogenous spread from a distant body site (Figure 1). In addition, bacterial translocation from the gastrointestinal tract has been recently hypothesized as a mechanism for infection. Of these routes, aspiration is believed to be the most important for both nosocomial and community-acquired pneumonia.

In radioisotope-tracer studies of healthy adults, 45% were found to aspirate during sleep.[79] Persons with abnormal swallowing, such as those who have depressed consciousness, respiratory tract instrumentation and/or mechanically assisted ventilation, gastrointestinal tract instrumentation or diseases, or have just undergone surgery, are particularly likely to aspirate.[7,34,35,60,80]

The high incidence of gram-negative bacillary pneumonia in hospitalized patients appears to be the result of factors that promote colonization of the pharynx by gram-negative bacilli and the subsequent entry of these organisms into the lower respiratory tract.[33,81–84] Whereas aerobic gram-negative bacilli are recovered infrequently or are found in small numbers in pharyngeal cultures of healthy persons,[81,85] colonization dramatically increases in patients with coma, hypotension, acidosis, azotemia, alcoholism, diabetes mellitus, leukocytosis, leukopenia, pulmonary disease, nasogastric or endotracheal tubes in place, and in patients given antimicrobial agents.[33,84,86,87]

Oropharyngeal or tracheobronchial colonization by gram-negative bacilli begins with the adherence of the microorganisms to the host's epithelial cells.[83,88–90] Adherence may be affected by multiple factors related to the bacteria (presence of pili, cilia, capsule, or production of elastase or mucinase), host cell (surface proteins and polysaccharides), and environment (pH and presence of mucin in respiratory secretions).[82,83,88,91–100] The exact interactions among these factors have not been fully elucidated, but studies indicate that certain substances, such as fibronectin, can inhibit the adherence of gram-negative bacilli to host cells.[91,93,101] Conversely, certain conditions, such as malnutrition, severe illness, or post-operative state, can increase adherence of gram-negative bacteria.[82,91,95,100,102]

Besides the oropharynx, the stomach has been postulated to be an important reservoir of organisms that cause nosocomial pneumonia.[34,103–107] The stomach's role may vary depending on the patient's underlying conditions and on prophylactic or therapeutic interventions.[22,104,108–111] In healthy persons, few bacteria entering the stomach survive in the presence of hydrochloric acid at pH<2.[112,113] However, when gastric pH increases from the normal levels to >4, microorganisms are able to multiply to high concentrations in the stomach.[110,112,114–116] This can occur in patients with advanced age,[114] achlorhydria,[112] ileus, or upper gastrointestinal disease, and in patients receiving enteral feeding, antacids, or histamine-2 [H–2] antagonists.[104,110,111,116–118] The contribution of other factors, such as duodeno-gastric reflux and the presence of bile, to gastric colonization in patients with impaired intestinal motility has been suggested and needs further investigation.[109]

Bacteria can also gain entry into the lower respiratory tract of hospitalized patients through inhalation of aerosols generated primarily by contaminated respiratory-therapy or anesthesia-breathing equipment.[119–122] Outbreaks related to the use of respiratory-therapy equipment have been associated with contaminated nebulizers, which are humidification devices that produce large amounts of aerosol droplets <4μm via ultrasound, spinning disk, or the Venturi mechanism.[119,122,123] When the fluid in the reservoir of a nebulizer becomes contaminated with bacteria, the aerosol produced may contain high concentrations of bacteria that can be deposited deep in the patient's lower respiratory tract.[119,123,124] Because endotracheal and tracheal tubes provide direct access to the lower respiratory tract, contaminated aerosol inhalation is particularly hazardous for intubated patients. In contrast to nebulizers, bubble-through or wick humidifiers mainly increase the water-vapor (or molecular-water) content of inspired gases. Although heated bubble-through humidifiers generate aerosol droplets, they do so in quantities that may not be clinically significant;[120,125] wick humidifiers do not generate aerosols.

Rarely, bacterial pneumonia can result from hematogenous spread of infection to the lung from another infection site, e.g., pneumonia resulting from purulent phlebitis or right-sided endocarditis. Another mechanism, translocation of bacteria via the passage of viable bacteria from the lumen of the gastrointestinal tract through epithelial mucosa to the mesenteric lymph nodes and to the lung has been shown in animal models.[126] Translocation is postulated to occur in patients with immunosuppression, cancer or burns;[126] however data are lacking regarding this mechanism in humans.[127]

V. Risk Factors and Control Measures

Several large studies have examined potential risk factors for nosocomial bacterial pneumonia (Table 3).[7,34,35,128,129] Although specific risk factors may differ between study populations, they can be grouped into the following general categories: (1) Host factors such as extremes of age and severe underlying conditions, including immunosuppression; (2) factors, such as admission to the ICU, underlying chronic lung disease, or coma, that enhance colonization of the oropharynx and/or stomach by microorganisms; (3) conditions favoring aspiration or reflux, including endotracheal intubation or insertion of nasogastric tube; (4) conditions requiring prolonged use of mechanical ventilatory support with exposure to contaminated respiratory equipment and/or contact with colonized hands of healthcare workers; and (5) factors that impede adequate pulmonary toilet, such as surgical procedures involving the head, neck, thorax, or upper abdomen, and immobilization due to trauma or illness.[7,33–35,59,128]

A. Oropharyngeal, Tracheal, and Gastric Colonization

The association between colonization of the oropharynx,[81,130] trachea,[131] or stomach [103,104,110,116] and predisposition to gram-negative bacillary pneumonia prompted attempts to prevent infection either by prophylactic local application of antimicrobial agent(s) [132,133] or utilizing the phenomenon of local bacterial interference.[134,135] Although early work suggested that the former method, aerosolized antimicrobials, could eradicate common gram-negative pathogens from the upper respiratory tract,[131] superinfection occurred in some

patients receiving this therapy.[132–134, 136, 137] The latter method, bacterial interference (with alpha-hemolytic streptococci), has been successfully used by some investigators to prevent oropharyngeal colonization by aerobic gram-negative bacilli.[134] However, the efficacy of this method for use in general has not been evaluated.

The administration of antacids and H2-blockers for prevention of stress bleeding in critically ill, postoperative, and/or mechanically ventilated patients has been associated with gastric bacterial overgrowth in many studies.[34, 105, 106, 111, 115, 116, 138–140] Sucralfate, a cytoprotective agent that has little effect on gastric pH and may have bactericidal properties of its own, has been suggested as a potential substitute for antacids and H2-blockers.[141–143] The results of clinical trials comparing the risk of pneumonia in patients receiving sucralfate to that in patients given antacids and/or H2-blockers have been variable.[105, 111, 140, 141, 144, 145] In most randomized trials, ICU patients receiving mechanically assisted ventilation and antacids with or without H2–b blockers had increased gastric pH, high bacterial counts in the gastric fluid, and increased risk of pneumonia compared with patients given sucralfate.[105, 111, 140, 141, 144] In one report with a large number of study patients, the incidence of early-onset pneumonia (occurring ≤4 days after intubation) did not differ between patient groups, but late-onset pneumonia occurred in 5% of 76 patients who received sucralfate, 16% of 69 given antacids, and 21% of 68 who received an H2-blocker.[140] On the other hand, a meta-analysis of data from eight earlier studies did not show a strong association between nosocomial pneumonia and drugs that raise gastric pH.[146] Further comparative studies are underway in which bronchoscopy with PSB or BAL is utilized for the diagnosis of pneumonia.

Selective decontamination of the digestive tract (SDD) is another strategy designed to prevent bacterial colonization and lower respiratory tract infection in mechanically ventilated patients.[147–170] SDD is aimed at preventing oropharyngeal and gastric colonization with aerobic gram-negative bacilli and *Candida* spp., without altering the anaerobic flora (Table 2).[147–170] A variety of SDD regimens use a combination of locally administered nonabsorbable antibiotic agents such as polymyxin, an aminoglycoside (tobramycin, gentamicin, or, rarely, neomycin), or a quinolone (norfloxacin or ciprofloxacin), coupled with either amphotericin B or nystatin. The local antimicrobial preparation is applied as a paste to the oropharynx and given orally or via the nasogastric tube four times a day. In addition, in many studies, a systemic (intravenous) antimicrobial such as cefotaxime or trimethoprim is administered to the patient.

While most clinical trials,[147–151, 153–160, 162, 164, 169] including two meta-analyses,[163, 170] of SDD have demonstrated a decrease in the rates of nosocomial respiratory infections, these trials have been difficult to assess because they have differed in study design and population, and many have had short follow-up periods (Table 2). In most of these studies, the diagnosis of pneumonia was based on clinical criteria; bronchoscopy with BAL or PSB was used in only a few studies.[152, 153, 164, 167, 169]

Two recently published large double-blind, placebo-controlled trials demonstrated no benefit from SDD.[166, 167] In one, a large French multicenter study by Gastinne et al, a significant decrease in incidence of gram-negative bacillary pneumonia was not accompanied by a decrease in pneumonia from all causes.[167] In the other study, by Hammond et al, no differences were noted between patients randomized to SDD or to placebo; however, both patient groups received intravenous cefotaxime.[166]

Although an earlier meta-analysis suggested a trend toward decreased mortality in patients given SDD,[163] a more recent and more extensive analysis highlights the equivocal effect of SDD on patient mortality, as well as the high cost of using SDD to prevent pneumonia or death (i.e., in order to prevent one case of nosocomial pneumonia, or one death due to nosocomial pneumonia, 6 [range: 5–9] or 23 [range: 13–39] patients, respectively, would have to be given SDD.[170] Furthermore, there are concerns over the development of antimicrobial resistance and superinfection with gram-positive bacteria and other antibiotic-resistant nosocomial pathogens.[148, 149, 152, 155] Thus, currently available data do not justify the routine use of SDD for prevention of nosocomial pneumonia in ICU patients. SDD may be ultimately useful for specific subsets of ICU patients, such as those with trauma or severe immunosuppression, e.g., bone-marrow transplant recipients.

A new approach advocated to prevent oropharyngeal colonization in patients receiving enteral nutrition is to reduce bacterial colonization of the stomach by acidifying the enteral feed.[171] Although the absence of bacteria from the stomach has been confirmed in patients given acidified enteral feeding, the effect on the incidence of nosocomial pneumonia has not been evaluated.[171]

B. Aspiration of Oropharyngeal and Gastric Flora

Clinically significant aspiration usually occurs in patients who have one or more of the following conditions: a depressed level of consciousness, dysphagia due to neurologic or esophageal disorders, an endotracheal (naso- or oro-tracheal) and nasogastric tube in place, and receipt of enteral feeding.[35, 79, 80, 172–176] Placement of nasogastric tube may increase nasopharyngeal colonization, cause reflux of gastric contents, or allow bacterial migration via the tube from the stomach to the upper airway.[173, 176–178] When enteral feedings are administered, gross contamination of the enteral solution during preparation[179–181] and elevated gastric pH[67, 182, 183] may lead to gastric colonization with gram-negative bacilli. In addition, gastric reflux and aspiration may occur because of increased intragastric volume and pressure.[67, 110, 173]

Prevention of pneumonia in such patients may be difficult, but methods that make regurgitation less likely, for example, placing the patient in a semirecumbent position by elevating the head of the bed,[175, 184, 185] administering enteral nutrition intermittently in small boluses rather than continuously,[67, 183] using flexible, small-bore enteral tubes,[176, 186] and witholding enteral feeding when the residual volume in the stomach is large or if bowel sounds are not heard upon auscultation of the abdomen, may be beneficial.[175, 187, 188] On the other hand, placing the enteral tube below the stomach (e.g. in the jejunum) has yielded equivocal results.[189, 190]

C. Mechanically Assisted Ventilation and Endotracheal Intubation

Patients receiving continuous, mechanically assisted ventilation have 6–21 times the risk of developing nosocomial pneumonia compared with patients not receiving ventilatory support.[34, 60, 62, 70] Data from the study by Fagon and co-workers indicate that the risk of developing ventilator-associated pneumonia increases by 1% per day.[6] This increased risk is partly due to carriage of oropharyngeal organisms upon passage of the endotracheal tube into the trachea during intubation, as well as to depressed host defenses secondary to the patient's severe underlying illness.[7, 34, 35, 191] In addition, bacteria can aggregate on the surface of the tube over time and form a glycocalyx (biofilm) that protects the

bacteria from action of antimicrobial agents or host defenses.[192] Some investigators believe that these bacterial aggregates may become dislodged by ventilation flow, tube manipulation, or suctioning, and subsequently embolize into the lower respiratory tract and cause focal pneumonia.[193,194] Removing tracheal secretions by gentle suctioning and using aseptic technique to reduce cross-contamination from respiratory therapy equipment or hands of personnel have been utilized traditionally to help prevent pneumonia in patients receiving mechanically assisted ventilation.

The risk of pneumonia is also increased by the direct access of bacteria to the lower respiratory tract, often because of leakage around the endotracheal cuff,[195,196] which allows pooled secretions above the cuff to enter the trachea.[197] In one recent study, the occurrence of nosocomial pneumonia was delayed and decreased in intubated patients whose endotracheal tubes had a separate dorsal lumen that allowed drainage (by suctioning) of secretions in the space above endotracheal cuff and below the glottis.[197] However, further studies are needed to determine the cost-benefit ratio of using this device.

D. Cross-Colonization Via Hands of Personnel

Pathogens causing nosocomial pneumonia, such as gram-negative bacilli and *Staphylococcus aureus*, are ubiquitous in the hospital, especially in intensive or critical care areas.[198,199] Transmission of these microorganisms to patients frequently occurs via healthcare workers' hands that become contaminated or transiently colonized with the microorganisms.[200-205] Procedures such as tracheal suctioning and manipulation of ventilator circuit or endotracheal tubes increase the opportunity for cross-contamination. The risk of cross-contamination can be reduced by using aseptic technique and sterile or disinfected equipment when appropriate[62] and eliminating pathogens from the hands of personnel.[62,206-208]

In theory, adequate handwashing is an effective way of removing transient bacteria from the hands,[207,208] but personnel compliance with handwashing has been generally poor, despite the best efforts at educating healthcare workers.[209-212] For this reason, the routine use of gloves has been advocated to help prevent cross-contamination.[213,214] Routine gloving (in addition to gowning) was associated with a decrease in the incidence of nosocomial respiratory-syncytial virus (RSV)[215] and other ICU infections.[216] It should be emphasized, however, that nosocomial pathogens can colonize gloves,[217] and that outbreaks have been traced to healthcare workers who did not change gloves after patient contact.[218]

E. Contamination of Devices Used on the Respiratory Tract

Devices used on the respiratory tract for respiratory therapy (e.g., nebulizer), diagnostic examination (e.g., bronchoscope or spirometer), and administration of anesthesia are potential reservoirs or vehicles for infectious microorganisms.[62,219-221] Routes of transmission may be from device to patient,[120,122,221-230] from one patient to another, or from one body site to the lower respiratory tract of the same patient via hand or device.[220,231,232] Contaminated nebulizer reservoirs can allow the growth of hydrophilic bacteria that may be subsequently aerosolized during device use.[119,122,123,228] Gram-negative bacilli such as *Pseudomonas* spp., *Xanthomonas* spp., *Flavobacterium* spp., *Legionella* spp., and nontuberculous mycobacteria can multiply to substantial concentrations in nebulizer fluid[227,233-235] and increase the patient's risk of acquiring pneumonia.[120-123,227,228,236,237]

Proper cleaning and sterilization or disinfection of reusable equipment are important components of a program to reduce infections associated with respiratory therapy and anesthesia equipment.[221-226,238,239] Respiratory therapy devices have been classified as semi-critical because they come into contact with mucous membranes but do not ordinarily penetrate body surfaces, and the associated infection risk following their use in patients is less than that associated with devices that penetrate normally sterile tissues (See Appendix A).[240] There is no evidence that low-level contamination of respiratory therapy device prior to use by a patient, as may occur following high-level disinfection of the device, presents a greater risk of respiratory infection than does sterile equipment. Thus, if after they are thoroughly cleaned, these devices cannot be sterilized by steam autoclave or ethylene oxide,[241] they can be subjected to high-level disinfection by pasteurization at 75°C for 30 min,[242-244] or by using liquid chemical disinfectants approved by the Environmental Protection Agency (EPA) as sterilants/disinfectants.[214,245-247] When rinsing is needed after a respiratory device has been sterilized or disinfected, only sterile water is used because tap or locally-prepared distilled water may harbor microorganisms that can cause pneumonia.[233,234,248-250]

1. Mechanical Ventilators and Anesthesia Machines

The internal machinery of mechanical ventilators and anesthesia machines is not considered an important source of bacterial contamination of inhaled air.[251] Thus, routine sterilization or high-level disinfection of the internal machinery is considered unnecessary. Using high-efficiency bacterial filters at various positions in the breathing circuit had been advocated previously.[252,253] Filters interposed between the machinery and the main breathing circuit can eliminate contaminants from the driving gas and prevent retrograde contamination of the machine by the patient but may also alter the functional specifications of the breathing device by impeding high gas flows.[252,253] In addition, when used with anesthesia equipment, filters placed between the inspiratory-phase circuit and the patient have not been shown to prevent infections.[254,255] Placement of a filter or condensate trap at the expiratory-phase tubing of the mechanical-ventilator circuit may help prevent cross-contamination of the ventilated patient's immediate environment,[231,256] but the importance of such filters in preventing nosocomial pneumonia needs further evaluation.

2. Humidifiers, Breathing Circuits, and Heat-Moisture Exchangers

Most U.S. hospitals currently use ventilators with either bubble-through or wick humidifiers that produce either insignificant[125,257] or no aerosols, respectively, for humidification. Thus, they do not seem to pose an important risk for pneumonia in patients. In addition, bubble-through humidifiers are usually heated to temperatures that reduce or eliminate bacterial pathogens.[257,258] Sterile water, however, is still generally used to fill these humidifiers[259] because tap or distilled water may harbor *Legionella* spp. that are more heat-resistant than other bacteria.[236,250]

The potential risk for pneumonia in patients using mechanical ventilators with heated bubble-through humidifiers stems primarily from the condensate that forms in the inspiratory-phase tubing of the ventilator circuit as a result of the difference in the temperatures of the inspiratory-phase gas and ambient air; condensate formation increases if the tubing is unheated.[260] The tubing and condensate can rapidly become contaminated, usually with bacteria that originate from the patient's oropharynx.[260] In the study

by Craven et al, 33% of inspiratory circuits were colonized with bacteria from patients' oropharynx within 2 hours and 80% within 24 hours of use.[260] Spillage of the contaminated condensate into the patient's tracheobronchial tree, as can occur during procedures in which the tubing may be moved (e.g., suctioning, adjusting the ventilator setting, or feeding or caring for the patient), may increase the risk of pneumonia in the patient.[260] Thus, in many hospitals, healthcare workers are trained to prevent such spillage and to drain the fluid periodically. Microorganisms contaminating ventilator-circuit condensate can be transmitted to other patients via hands of the healthcare worker handling the fluid, especially if the healthcare worker fails to wash his or her hands after handling the condensate.

The role of ventilator-tubing changes in preventing pneumonia in patients using mechanical ventilators with bubble-through humidifiers has been investigated. Initial studies of in-use contamination of mechanical ventilator circuits with humidifiers have shown that neither the rate of bacterial contamination of inspiratory-phase gas nor the incidence of pneumonia was significantly increased when tubings were changed every 24 hours rather than every 8 or 16 hours.[261] Craven et al later showed that changing the ventilator circuit every 48 hours rather than 24 hours did not result in an increase in contamination of the inspiratory-phase gas or tubing of the ventilator circuits.[262] In addition, the incidence of nosocomial pneumonia was not significantly higher when circuits were changed every 48 hours than when changes were done every 24 hours.[262] More recent reports suggest that the risk of pneumonia may not increase when the interval for circuit change is prolonged beyond 48 hours. Dreyfuss and others showed that the risk of pneumonia (8 [29%] of 28) was not significantly higher when the circuits were never changed for the duration of use by the patient, than (11 [31%] of 35) when the circuits were changed every 48 hours.[263]

These findings indicate that the recommended daily change in ventilator circuits may be extended to ≥48 hours. This change in recommendation is expected to result in large savings in device use and personnel time for U.S. hospitals.[259,262] The maximum time, however, that a circuit can be safely left unchanged on a patient has yet to be determined.

Condensate formation in the inspiratory-phase tubing of a ventilator breathing circuit can be decreased by elevating the temperature of the inspiratory-phase gas with a heated wire in the inspiratory-phase tubing. However, in one report, three cases of endotracheal- or tracheostomy-tube blockage by dried-up patient secretions were attributed to the decrease in the relative humidity of inspired gas that results from the elevation of the gas temperature.[264] Until further data are available about the frequency of the occurrence of such cases, users of heated ventilator tubing should be aware of the advantages and potential complications of using heated tubing.

Condensate formation can be eliminated by using a heat-moisture exchanger (HME) or a hygroscopic condenser humidifier ("artificial nose").[265,270] An HME recycles heat and moisture exhaled by the patient, and eliminates the need for a humidifier. In the absence of a humidifier, no condensate forms in the inspiratory-phase tubing of the ventilator circuit. Thus, bacterial colonization of the tubing is prevented, and the need to routinely change tubings periodically is obviated. Some models of HMEs are equipped with bacterial filters, but the advantage of these filters remains unknown. HMEs can increase the dead space and resistance to breathing, may leak around the endotracheal tube, and may result in drying of sputum and blockage of the tracheo-bronchial tree.[271] Although recently developed HMEs with humidifiers increase airway humidity without increasing colonization with bacteria,[267,272] more studies are needed to determine whether the incidence of pneumonia is decreased.[273-276]

3. Large-Volume Nebulizers

Nebulizers with large-volume (>500 cc) reservoirs, including those used in intermittent positive-pressure breathing (IPPB) machines and ultrasonic or spinning-disk room-air "humidifiers," pose the greatest risk of pneumonia to patients, probably because of the total amount of aerosol they generate.[222,225,227,236,277] These reservoirs can become contaminated by hands of personnel, unsterile humidification fluid, or inadequate sterilization or disinfection between uses.[119] Once introduced into the reservoir, various bacteria, including *Legionella* spp., can multiply to sufficiently large numbers within 24 hours to pose a risk of infection in patients who receive inhalation therapy.[121,122,227,237,277] Sterilization or high-level disinfection of these nebulizers can eliminate vegetative bacteria from their reservoirs and make them safe for patient use.[240] Unlike nebulizers attached to IPPB machines, however, room-air "humidifiers" have a high cost-benefit ratio: evidence of clinical benefits from their use in hospitals is lacking, and the potential cost of daily sterilization or disinfection of, and use of sterile water to fill, such devices is substantial.

4. Small-Volume Medication Nebulizers

Small-volume medication nebulizers for administration of bronchodilators, including those that are hand-held and those that are in the inspiratory circuit of mechanical ventilators, can produce bacterial aerosols.[228] Hand-held nebulizers have rarely been associated with nosocomial pneumonia, and only when contaminated by medications from multidose vials.[278] Medication nebulizers inserted in the ventilator circuit ("in-line") may become contaminated by condensate in the inspiratory tubing and increase the patient's risk of pneumonia because the nebulizer aerosol is directed through the endotracheal tube and bypasses many of the normal host defenses against infection.[260]

5. Suction Catheters, Resuscitation Bags, Oxygen Analyzers, and Ventilator Spirometers

Tracheal suction catheters can introduce microorganisms into a patient's lower respiratory tract. Preliminary studies suggest that the risk of pneumonia is not different between patients on whom the single-use suction method is used and those on whom the newly developed closed multi-use catheter system is used.[279] In addition, the advantages of using one system over the other, in terms of oxygen desaturation in patients and less environmental contamination, have not been clearly shown.[280-282]

Resuscitation bags are particularly difficult to clean and dry between uses; microorganisms in secretions or fluid left in the bag may be aerosolized and/or sprayed into the lower respiratory tract of the patient on whom the bag is used; in addition, contaminating microorganisms may be transmitted from one patient to another via hands of staff members.[283-285] Oxygen analyzers and ventilator spirometers have been associated with outbreaks of gram-negative respiratory tract colonization and pneumonia resulting from patient-to-patient transmission of organisms via hands of personnel.[220,286] These devices require sterilization or high-level disinfection between uses on different patients. Education of physicians, respiratory therapists, and nursing staff regarding the associated risks and

appropriate care of these devices is essential.

F. Thoraco-Abdominal Surgical Procedures

Certain patients are at high risk of developing postoperative pulmonary complications, including pneumonia. These persons include those who are more than 70 years of age, are obese, or have chronic obstructive pulmonary disease.[287-290] Abnormal pulmonary function tests (especially decreased maximum expiration flow rate), a history of smoking, the presence of tracheostomy or prolonged intubation, or protein depletion that can cause respiratory-muscle weakness are also risk factors.[59,65,129] Patients who undergo surgery of the head, neck, thorax, or abdomen may suffer from impairment of normal swallowing and respiratory clearance mechanisms as a result of instrumentation of the respiratory tract, anesthesia, or increased use of narcotics and sedatives;[288,291,292] patients who undergo upper abdominal surgery usually suffer from diaphragmatic dysfunction that results in decreased functional residual capacity of the lungs, closure of airways, and atelectasis.[293,294] Interventions aimed at reducing the postoperative patient's risk of pneumonia have been developed.[295] These include deep breathing exercises, chest physiotherapy, use of incentive spirometry, IPPB, and continuous positive airway pressure (CPAP) by face mask.[295-305] Studies evaluating the relative efficacy of these modalities have shown variable results, and have been difficult to compare because of differences in outcome variables assessed, patient populations studied, and study design.[295,297,298,304-307] Nevertheless, many studies have found deep breathing exercises, chest physiotherapy, use of incentive spirometry, and IPPB as advantageous maneuvers, especially in patients with preoperative pulmonary dysfunction.[298,299,301,302,304-306] In addition, control of pain that interferes with cough and deep breathing during the immediate postoperative period has been shown to decrease the incidence of pulmonary complications after surgery; several methods of controlling pain have been used; these include intramuscular or intravenous (including patient-controlled) administration, or regional (e.g., epidural) analgesia.[308-315]

G. Other Prophylactic Measures

1. Vaccination of Patients

Although pneumococci are not a major cause of nosocomial pneumonia, they have been identified as etiologic agents of serious nosocomial pulmonary infection and bacteremia.[316-318] The following factors render patients at high risk of complications from pneumococcal infections: ≥65 years of age, chronic cardiovascular or pulmonary disease, diabetes mellitus, alcoholism, cirrhosis, cerebrospinal fluid leaks, immunosuppression, functional or anatomic asplenia, or HIV infection. Pneumococcal vaccine is effective in preventing pneumococcal disease.[319,320] Because two-thirds or more of patients with serious pneumococcal disease have been hospitalized at least once within 5 years before their pneumococcal illness, offering pneumococcal vaccine in hospitals, e.g., at the time of patient discharge, should contribute substantially to preventing the disease.[319,321]

2. Prophylaxis With Systemic Antimicrobial Agents

Systemic antimicrobial administration has been a prevalent practice in the prevention of nosocomial infections, including pneumonia, especially in patients who are weaned off mechanical ventilators, postoperative, and/or critically ill.[322] However, the efficacy of such practice is questionable; and the potential for superinfection, which may result from any antimicrobial therapy, is a problem.[84,322-326]

3. Kinetic Therapy for the Immobilized State

Continuous lateral rotational therapy (CLRT) or "kinetic" therapy is a recently introduced maneuver for prevention of pulmonary and other complications from prolonged immobilization or bed rest, such as in patients with acute stroke, critical illness, head injury or traction, blunt chest trauma, and/or mechanically assisted ventilation.[327-332] CLRT involves the use of a bed that turns continuously and slowly (about eight full rotations per hour) along its longitudinal axis. Among the hypothesized benefits of CLRT are improved drainage of secretions within the lungs and lower airways, increased tidal volume, and reduction of venous thrombosis with resultant pulmonary embolization.[174,333-335] However, the efficacy of CLRT in preventing pneumonia needs further evaluation because available studies yielded variable results.[327-330] In addition, the studies either involved small numbers of patients,[328] lacked adequate randomization,[327] had no clear definition of pneumonia,[327] did not distinguish between community-acquired and nosocomial pneumonia,[328,332] or did not adjust for possible confounding factors such as mechanical ventilation, endotracheal intubation, nasogastric intubation, and enteral feeding.[327]

LEGIONNAIRES' DISEASE

Legionnaires' disease is a multisystem illness, with pneumonia, caused by *Legionella spp.* In contrast, Pontiac fever is a self-limited influenza-like illness, without pneumonia, that is associated with *Legionella* spp.[336]

I. Epidemiology

Since identification of the etiologic agent, numerous outbreaks of nosocomial Legionnaires' disease have been reported and have provided the opportunity to study the epidemiology of epidemic legionellosis. In contrast, the epidemiology of endemic Legionnaires' disease has not been well elucidated. The overall proportion of nosocomial pneumonias due to *Legionella* spp. in North America has not been determined, although individual hospitals have reported a ranges of 0%–14%.[337-339] Because diagnostic tests for *Legionella spp.* infection are not routinely performed on all patients with hospital-acquired pneumonia in most hospitals, this range probably underestimates the incidence of Legionnaires' disease.

Legionella spp. are commonly found in a variety of natural and man-made aquatic environments[340,341] and may enter hospital water systems in low or undetectable numbers.[342,343] Cooling towers, evaporative condensers, heated potable-water-distribution systems within hospitals, and locally produced distilled water can provide a suitable environment for legionellae to multiply. Factors known to enhance colonization and amplification of legionellae in man-made water environments include temperatures of 25–42°C,[344-349] stagnation,[350] scale and sediment,[346] and the presence of certain free-living aquatic amoebae that are capable of supporting intracellular growth of legionellae.[351,352]

A person's risk of acquiring legionellosis following exposure to contaminated water depends on a number of factors, including the type and intensity of exposure and the exposed person's health status.[353-355] Persons with severe immunosuppression or chronic underlying illnesses, such as hematologic malignancy or end-stage renal disease, are at markedly increased risk for legionellosis.[355-358] Persons in the later stages of acquired immunodeficiency syndrome are also probably at increased risk of

legionellosis, but data are limited because of infrequent testing of patients. Persons with diabetes mellitus, chronic lung disease, or non-hematologic malignancy, those who smoke cigarettes, and the elderly are at moderately increased risk.[336] Nosocomial Legionnaires' disease has also been reported among patients at children's hospitals.[359, 360]

Underlying disease and advanced age are not only risk factors for acquiring Legionnaires' disease but also for dying from the illness. In a multivariate analysis of 3,524 cases reported to CDC from 1980 through 1989, immunosuppression, advanced age, end-stage renal disease, cancer, and nosocomial acquisition of disease were each independently associated with a fatal outcome.[355] The mortality rate among 803 persons with nosocomially acquired cases was 40% compared with 20% among 2,721 persons with community-acquired cases,[355] probably reflecting increased severity of underlying disease in hospitalized patients.

II. Diagnosis

The clinical spectrum of disease due to *Legionella* spp. is broad and ranges from asymptomatic infection to rapidly progressive pneumonia. Legionnaires' disease cannot be distinguished clinically or radiographically from pneumonia caused by other agents,[361, 362] and evidence of infection with other respiratory pathogens does not rule out the possibility of concomitant *Legionella* spp. infection.[363–365]

The diagnosis of legionellosis may be confirmed by any one of the following: Culture isolation of *Legionella* from respiratory secretions or tissues, or microscopic visualization of the bacterium in respiratory secretions or tissue by immunofluorescent microscopy; and, for legionellosis due to *L. pneumophila* serogroup 1, detection of *L. pneumophila* serogroup-1 antigens in urine by radioimmunoassay, or observation of a four-fold rise in *L. pneumophila* serogroup-1 antibody titer to ≥1:128 in paired acute and convalescent serum specimens by use of an indirect immunofluorescent antibody test (IFA).[366] A single elevated antibody titer does not confirm a case of Legionnaires' disease because IFA titers ≥1:256 are found in 1–16% of healthy adults.[364, 367–370]

Because the above tests complement each other, performing each test when Legionnaires' disease is suspected increases the probability of confirming the diagnosis.[371] However, because none of the laboratory tests is 100% sensitive, the diagnosis of legionellosis is not ruled out even if one or more of the tests are negative.[371, 372] Of the available tests, the most specific is culture isolation of *Legionella* sp. from any respiratory tract specimen.[373, 374]

III. Modes of Transmission

Inhalation of aerosols of water contaminated with *Legionella* sp. is believed to be the primary mechanism of entry of these organisms into a patient's respiratory tract.[336] In several hospital outbreaks, patients were considered to be infected through exposure to contaminated aerosols generated by cooling towers, showers, faucets, respiratory therapy equipment, and room-air humidifiers.[227, 375–382] In several studies, aspiration of contaminated potable water has been proposed as the mode of transmission to certain patients.[383–385] Person-to-person transmission, however, has not been observed.

IV. Definition of Nosocomial Legionnaires' Disease

The incubation period for Legionnaires' disease is generally 2–10 days; thus, for epidemiologic purposes, in this document and in the accompanying recommendations by the HICPAC, laboratory-confirmed legionellosis that occurs in a patient who has spent ≥10 days continuously in the hospital prior to onset of illness is considered definite nosocomial Legionnaires' disease, and laboratory-confirmed infection that occurs 2–10 days after hospitalization is possible nosocomial infection.

V. Prevention and Control Measures

A. Prevention of Legionnaires' Disease in Hospitals With No Identified Cases (Primary Prevention)

Prevention strategies in healthcare facilities with no cases of nosocomial legionellosis have varied by institution, depending on the immunologic status of the patients, the design and construction of the facility, resources available for implementation of prevention strategies, and state and local regulations.

There are at least two schools of thought regarding the most appropriate and cost-effective approach to prevent nosocomial legionellosis, especially in hospitals where no cases or only sporadic cases of the illness are detected. However, a study comparing the cost-benefit ratios of these strategies has not been done.

The first approach is based on periodic, routine culturing of water samples from the hospital's potable water system, for *Legionella* spp.[387] When a positive culture is obtained, the hospital's potable water system is decontaminated and diagnostic laboratory tests for legionellosis are made available to clinicians in the hospital's microbiology department, so that active surveillance for cases can be instituted.[388] This approach is based on the premise that no cases of nosocomial legionellosis can occur in the absence of *Legionella* spp. from the potable water system, and, conversely, once *Legionella* spp. are cultured from the water, cases of nosocomial legionellosis may occur.[383, 389] Proponents of this strategy indicate that when physicians are informed that the potable water system of the hospital is culture-positive for *Legionella* spp., they are more inclined to conduct the necessary tests for legionellosis.[388] A potential advantage of this approach is the lower cost of culturing a limited number of water samples, if the testing is done infrequently, compared with the cost of routine laboratory diagnostic testing for legionellosis in all patients with nosocomial pneumonia in hospitals that have had no cases of nosocomial legionellosis.

The main argument against this approach is that in the absence of cases, the relationship between the results of water cultures and the risk of legionellosis remains undefined. The bacterium has been frequently present in hospital water systems,[390] often without being associated with known cases of disease.[250, 338, 391, 392] In a study of 84 hospitals in Quebec, 68% were found to be colonized with *Legionella* spp., and 26% were colonized at >30% of sites sampled; however, cases of Legionnaires' disease were rarely reported from these hospitals.[250] Similarly, at one hospital where active surveillance for legionellosis and environmental culturing for *Legionella* spp. were done, no cases of legionellosis occurred in a urology ward during a 3.5-month period when 70% of water samples from the ward were culture-positive for *L. pneumophila* serogroup 1.[338] Interpretation of the results of routine culturing of water may be confounded by variable culture results among sites sampled within a single water system and by fluctuations in the concentration of *Legionella* spp. in the same site.[393, 394] In addition, the risk of illness following exposure to a given source may be influenced by a number of factors other than the presence or concentration of organisms; these include the degree to which contaminated water is aerosolized into respirable droplets, the proximity of the

infectious aerosol to potential host, the susceptibility of the host, and the virulence properties of the contaminating strain.[395-397] Thus, data are insufficient to assign a level of risk of disease even on the basis of the number of colony-forming units detected in samples from the hospital environment. By routinely culturing water samples, many hospitals will have to be committed to water-decontamination programs to eradicate *Legionella* spp. Because of this problem, routine monitoring of water from the hospital's potable water system and from aerosol-producing devices is not widely recommended.[398]

The second approach to prevent and control nosocomial legionellosis is by: (a) Maintaining a high index of suspicion for legionellosis and appropriately using diagnostic tests for legionellosis in patients with nosocomial pneumonia who are at high risk of developing the disease and dying from the infection,[338, 399] (b) initiating an investigation for a hospital source of *Legionella* spp. upon identification of one laboratory-confirmed case of definite or two laboratory-confirmed cases of possible nosocomial Legionnaires' disease, and (c) routinely maintaining cooling towers and using only sterile water for filling and terminal rinsing of nebulization devices.

In hospitals with no identified cases of legionellosis, further study is needed of the cost-benefit ratio of control measures aimed at creating an environment that is not conducive to survival or multiplication of *Legionella* spp., e.g., routine maintenance of potable water at ≥50°C or <20°C at the tap or chlorination of heated water to achieve 1–2 mg/L free residual chlorine at the tap.[338, 383, 393, 400-403]

B. Prevention of Legionnaires' Disease in Hospitals With Identified Cases (Secondary Prevention)

The indications for a full-scale environmental investigation to search for and subsequently decontaminate identified sources of *Legionella* spp. in hospital environments remain to be elucidated, and probably vary from hospital to hospital. In institutions where as few as 1–3 nosocomial cases are identified over a period of up to several months, intensified surveillance for Legionnaires' disease has frequently detected numerous additional cases.[357, 376, 380, 401] This suggests the need for a low threshold for initiating an investigation following the identification of nosocomial, laboratory-confirmed cases of legionellosis. However, when developing a strategy to respond to such an identification, infection-control personnel should consider the level of risk of nosocomial acquisition of, and mortality from, *Legionella* spp. infection at their particular hospital.

An epidemiologic investigation of the source of *Legionella* spp. involves several important steps, including retrospective review of microbiologic and medical records, active surveillance to identify all recent or ongoing cases of legionellosis, identification of risk factors (including environmental exposures for infection, such as showering or use of respiratory-therapy equipment), collection of water samples from environmental sources implicated by the epidemiologic investigation and from other potential sources of aerosolized water, and subtype-matching between legionellae isolated from patients and environmental samples.[382, 404-406] The latter step can be crucial in supporting epidemiologic evidence of a link between human illness and a specific source.[407]

In hospitals where the heated-water system has been identified as the source of the organism, the system has been decontaminated by pulse (one-time) thermal disinfection or superheating (i.e., flushing for at least 5 minutes each distal outlet of the hot-water system with water at ≥65°C) and hyperchlorination (flushing all outlets of the hot-water system with water containing ≥10 mg/L free residual chlorine).[403, 408-410] Following either of these procedures, most hospitals maintain heated-water at ≥50°C or <20°C at the tap or chlorinate heated water to achieve 1–2 mg/L free residual chlorine at the tap.[338, 383, 393, 400-403] Additional measures, such as physical cleaning or replacement of hot-water storage tanks, water-heaters, faucets, and showerheads, may be required because scale and sediment that provide organisms protection from the biocidal effects of heat and chlorine, may accumulate in them.[346, 403] Alternative methods for control and eradication of legionellae in water systems, such as treatment of water with ozone, ultraviolet light, or heavy metal ions, have limited the growth of legionellae under laboratory,[344, 411, 412] or, in the case of ultraviolet light, operating conditions.[413] However, further data are needed regarding the efficacy of these methods when used in hospital water systems[414] before they can be considered standard. In hospitals where the cooling towers are contaminated, measures for decontamination have been previously published.[415]

For highly immunocompromised patients, other preventive measures have been used. At one hospital, immunosuppressed patients were restricted from taking showers, and, for these patients, only sterile water was used for drinking or flushing nasogastric tubes;[384] In another hospital, a combined approach, consisting of continuous heating, particulate filtration, ultraviolet treatment, and monthly pulse hyperchlorination of the water supply of the bone-marrow transplant unit, was used to decrease the incidence of Legionnaires' disease.[413]

In view of the high cost of an environmental investigation and of instituting control measures to eradicate *Legionella* spp. from sources in the hospital[416, 417] and the differential risk, based on host factors, for acquiring nosocomial legionellosis and of having severe and fatal infection with the microorganism, the decision to search for and the choice of procedures to eradicate hospital environmental sources of *Legionella* spp. should take into account the type of patient population served by the hospital.

ASPERGILLOSIS

I. Epidemiology

Aspergillus spp. are ubiquitous fungi, commonly occurring in soil, water, and decaying vegetation. *Aspergillus* spp. have been cultured from unfiltered air, ventilation systems, contaminated dust dislodged during hospital renovation and construction, horizontal surfaces, food, and ornamental plants.[418]

A. fumigatus and *A. flavus* are the most frequently isolated *Aspergillus* spp. in patients with proven aspergillosis.[419] Nosocomial aspergillosis has been recognized increasingly as a cause of severe illness and mortality in highly immunocompromised patients, e.g., patients undergoing chemotherapy and/or organ transplantation, including bone-marrow transplantation for hematologic and other malignant neoplasms.[420-423]

The most important nosocomial infection due to *Aspergillus* spp. is pneumonia.[424] Hospital outbreaks of pulmonary aspergillosis have occurred mainly in granulocytopenic patients, especially in bone-marrow transplant units.[424-430] Although invasive aspergillosis has been reported in recipients of solid-organ transplants (e.g., heart or kidney),[431-435] the incidence of *Aspergillus* spp. infections in these patients has been lower than in recipients of bone-marrow transplants, probably because of the recent decrease in the use of corticosteroids and the introduction of cyclosporine.[433, 436] In solid-organ transplant recipients, the

efficacy of infection control measures, such as provision of protected environments and prophylaxis with antifungal agents, in preventing aspergillosis has not been well evaluated.[433, 434, 437–439] In one study of heart-transplant recipients, protective isolation of patients alone failed to prevent fungal infections.[440]

The reported attributable mortality from invasive pulmonary aspergillosis has varied, depending on the patient population studied. Rates have been as high as 95% in recipients of allogeneic bone-marrow transplants and patients with aplastic anemia, compared with rates of 13–80% in leukemic patients.[441–443]

II. Pathogenesis

In contrast to most bacterial pneumonias, the primary route of acquiring *Aspergillus* sp. infection is by inhalation of the fungal spores. In severely immunocompromised patients, primary *Aspergillus* spp. pneumonia results from local lung tissue invasion.[419, 444, 445] Subsequently, the fungus may disseminate via the bloodstream to involve multiple other deep organs.[419, 445, 446] A role for nasopharyngeal colonization with *Aspergillus* spp., as an intermediate step before invasive pulmonary disease, has been proposed, but remains to be elucidated.[438, 447, 448] On the other hand, colonization of the lower respiratory tract by *Aspergillus* spp., especially in patients with preexisting lung disease such as chronic obstructive lung disease, cystic fibrosis, or inactive tuberculosis, has predisposed patients to invasive pulmonary and/or disseminated infection.[419, 445, 449]

III. Diagnosis

Diagnosing pneumonia due to *Aspergillus* spp. is often difficult without performing invasive procedures. Bronchoalveolar lavage has been a useful screening test,[450–452] but lung biopsy is still considered the most reliable technique.[453] Histopathologic demonstration of tissue invasion by fungal hyphae has been required in addition to isolation of *Aspergillus* spp. from respiratory tract secretions because the latter, by itself, may indicate colonization.[454] However, when *Aspergillus* spp. is grown from the sputum of a febrile, granulocytopenic patient with a new pulmonary infiltrate, it is highly likely that the patient has pulmonary aspergillosis.[447, 455] Routine blood cultures are remarkably insensitive for detecting *Aspergillus* spp.,[456] and systemic antibody responses in immunocompromised patients are likely to be unreliable indicators of infection.[457–459] Antigen-based serologic assays are now being developed in an attempt to allow for the rapid and specific diagnosis of *Aspergillus* spp. infections; however, their clinical usefulness is presently undefined.[460, 461]

IV. Risk Factors and Control Measures

The major risk factor for invasive aspergillosis is severe and prolonged granulocytopenia, both disease- and therapy-induced.[462] Since bone-marrow transplant recipients experience the most severe degree of granulocytopenia, they probably constitute the population at highest risk of developing invasive aspergillosis.[442, 463] The tendency of bone-marrow transplant recipients to develop severe granulocytopenia (<1,000 polymorphonuclears/μl) is associated with the type of graft they receive. While both autologous and allogeneic bone-marrow transplant recipients are severely granulocytopenic for up to 4 weeks after the transplant procedure, allogeneic-transplant recipients may, in addition, develop acute or chronic graft-versus-host disease. The latter may occur up to several months after the procedure, and the disease and/or its therapy (often with high doses of corticosteroids, cyclosporine, and other immunosuppressive agents) may result in severe granulocytopenia. Consequently, in developing strategies to prevent invasive *Aspergillus* spp. infection in bone-marrow-transplant patients, infection control personnel should consider exposures of the patient to the fungus not only during the patient's immediate posttransplantation period, but also other exposures (e.g., at home or in an ambulatory-care setting) subsequent to the immediate posttransplant period, when the patient (especially allogeneic-transplant recipients) may again manifest severe granulocytopenia. To help address this problem, various studies are now in progress to evaluate newer methods of enhancing host resistance to invasive fungal (and other) infections, and of eliminating or suppressing respiratory fungal colonization of the upper respiratory tract. These methods include, respectively, the use of granulocyte-colony-stimulating factors and intranasal application of amphotericin B, or oral or systemic antifungal drug prophylaxis.[418, 464–467] For solid-organ transplant recipients, risk factors for invasive aspergillosis have not been as extensively studied. In one study of liver-transplant recipients, risk factors for invasive infection with *Aspergillus* sp. identified by univariate analysis included preoperative and postoperative receipt of steroids and antimicrobial agents, and prolonged duration of transplant surgery.[468]

The presence of aspergilli in the hospital environment is the major extrinsic risk factor for the occurrence of opportunistic invasive *Aspergillus* sp. infection.[437, 469] Environmental disturbances due to construction and/or renovation activities in and around hospitals markedly raise the airborne *Aspergillus* spp. spore counts in such hospitals and have been associated with nosocomial aspergillosis.[426, 428, 429, 470–473] In addition, aspergillosis in high-risk immunosuppressed patients has been associated with other hospital environmental reservoirs, including bird droppings in air ducts supplying high-risk patient areas,[474] and contaminated fireproofing material or damp wood.[428, 475]

A single case of nosocomial *Aspergillus* spp. pneumonia is often difficult to link to a specific environmental exposure. However, additional cases may remain undetected without an active search that includes an intensive retrospective review of microbiologic, histopathologic, and postmortem records; notification of clinicians caring for high-risk patients; and establishment of a system for prospective surveillance for additional cases. When additional cases are detected, the likelihood is increased that a hospital environmental source of *Aspergillus* spp. can be identified.[426, 428, 470–475] Previous investigations have shown the importance of construction activities and/or fungal "contamination" of hospital air-handling systems as major sources for outbreaks.[424, 426, 428, 470–474] New molecular typing techniques, namely karyotyping[476] and DNA endonuclease profiling (now available for *A. fumigatus*),[477] may significantly aid in identifying the source of an outbreak.

Outbreaks of invasive aspergillosis reinforce the importance of maintaining an environment as free of *Aspergillus* spp. spores as possible for patients with severe granulocytopenia. To achieve this goal, specialized services in many large hospitals, in particular bone-marrow transplant services, have installed "protected environments" for the care of their high-risk, severely granulocytopenic patients, and increased their vigilance during hospital construction and routine maintenance of hospital air-filtration and ventilation systems, to prevent exposing high-risk patients to bursts of fungal spores.[426, 428, 470–474, 478–483]

While the exact configuration and specifications of the protected environments may vary between hospitals, these patient-care areas are built to minimize fungal spore counts in air by maintaining (a) high-efficiency filtration of incoming air as it enters the room (i.e., at point of use) with HEPA filters that are 99.97% efficient in filtering 0.3μ-sized particles, (b) directed room airflow—from intake on one side of the room, across the patient, and out through the exhaust on the opposite side of the room, (c) positive room-air pressure relative to the corridor, (d) well-sealed rooms, and (e) high rates of room-air changes (range: 15 to >400 per hour).[424, 479–481, 483–485] The oldest and most studied protected environment is a room with laminar airflow, consisting of a bank of HEPA filters along an entire wall through which air is pumped by blowers into the room at a uniform velocity (30–90 feet/minute), forcing the air to move in a laminar, or at least unidirectional, pattern.[486] The air usually exits at the opposite end of the room, and ultra-high (100–400 per hour) air-change rates are achieved.[424] The net effects are: essentially sterile air in the room, minimal air turbulence, minimal opportunity for microorganism build-up, and a consistently clean environment.[424]

The efficacy of a laminar-airflow system in decreasing or eliminating the risk of nosocomial aspergillosis in high-risk patients has been demonstrated.[424, 479, 484, 485] However, such a system is costly to install and maintain.[469] Less expensive alternative systems with lower air-change rates (10–15 per hour) have been utilized in some centers.[480, 481, 487] However, studies comparing the efficacy of these alternative systems with laminar-airflow rooms in eliminating *Aspergillus* spp. spores and preventing nosocomial aspergillosis are limited. One institution employing cross-flow ventilation, point-of-use high-efficiency filters, and 15 air changes per hour reported that cases of nosocomial aspergillosis in patients housed in these rooms have occurred, albeit at a low rate (3.4%).[481, 487] The infections, however, were due to *A. flavus*—a species that was never cultured from the room air, suggesting that the patients were probably exposed to fungal spores when they were allowed outside their rooms.[481]

Copper-8-quinolinolate has been used on environmental surfaces contaminated with *Aspergillus* spp. to control a reported outbreak,[488] and incorporated in fireproofing material of a newly constructed hospital[481] to help decrease the environmental spore burden, but its general applicability is yet to be established.

VIRAL PNEUMONIAS

Viruses can be an important and often unappreciated cause of nosocomial pneumonia.[489, 490] In one prospective study of endemic nosocomial infections, approximately 20% of patients with pneumonia had viral infections.[490] Although early diagnosis and treatment of viral infections have become possible in recent years,[491–494] many hospitalized patients remain at high risk for developing severe and sometimes fatal viral infections.[489, 495–502] Based on these data and on well-documented outbreaks with nosocomial viral transmission,[503–506] measures to prevent viral transmission should be instituted.

Nosocomial respiratory viral infections (1) usually follow community outbreaks that occur during a particular period every year,[505, 507–510] (2) confer only short-term immunity,[511] (3) affect healthy and ill persons,[497, 498, 504, 512–514] and (4) have exogenous sources. A number of viruses, including adenoviruses, influenza virus, measles virus, parainfluenza viruses, respiratory syncytial virus (RSV), rhinoviruses, and varicella-zoster virus can cause nosocomial pneumonia;[498, 505, 506, 515–521] however, adenoviruses, influenza or parainfluenza viruses, and RSV have been reported to account for most (70%) of nosocomial pneumonias due to viruses.[522, 523]

Because influenza and RSV infections account for a substantial portion of morbidity and mortality due to viral pneumonia and have been well studied epidemiologically, this section focuses on the principles and approaches to control these infections. However, because the modes of transmission of RSV (i.e., by large droplets or by contact with contaminated hands or other fomites) are the same as those of parainfluenza viruses and similar to those of adenoviruses and rhinoviruses (i.e., mainly by large droplets or contact with contaminated hands or other fomites, but also possibly by aerosol inhalation), infection-control measures recommended for RSV infection are applicable to infections caused by the other three viruses.[524–529] Prevention of nosocomial infections due to measles and varicella-zoster is addressed in another document.[213]

RSV INFECTION

I. Epidemiology

RSV infection is most common during infancy and early childhood, but may also occur in adults.[134, 512, 515, 530, 531] Infection usually causes mild or moderately severe upper respiratory illness. However, life-threatening pneumonia or bronchiolitis has been reported in children with chronic cardiac and pulmonary disease, immunocompromised patients, and the elderly.[497, 499, 514, 515, 532, 533]

Recent surveillance of 10 U.S. hospital laboratories performing cultures for RSV suggests that community outbreaks occur yearly between December and March, last from 3–5 months, and are associated with increased hospitalization and deaths among infants and young children.[534] During community outbreaks of RSV, children admitted to the hospital with respiratory symptoms often serve as reservoirs for RSV.[503, 505]

II. Diagnosis

The clinical characteristics of RSV infection, especially in neonates, are often indistinguishable from those of other viral respiratory tract infections.[515, 516] Culture of RSV from respiratory secretions remains the "gold standard" for diagnosis. Although rapid antigen-detection kits utilizing direct immunofluorescence or enzyme-linked immunosorbent assay are available and can provide results within hours, the benefit of using these tests to identify infected and susceptible patients depends on the sensitivity and specificity of the test. The reported sensitivity and specificity of RSV enzyme immunoassays vary between 80% and 95%, and may even be lower in actual practice.[535–538] In general, once laboratory-confirmed cases of RSV infection are identified in a hospital, a presumptive diagnosis of RSV infection in subsequent cases with manifestations suggestive of RSV infection may be acceptable for infection control purposes.

III. Modes of Transmission

RSV is present in large numbers in the respiratory secretions of symptomatic persons infected with the virus and can be transmitted directly via large droplets during close contact with such persons, or indirectly via RSV-contaminated hands or fomites.[503, 524, 525] The portal of entry is usually the conjunctiva or the nasal mucosa.[526] Inoculation by RSV-contaminated hands is the usual way of depositing the virus onto the eyes or nose.[503, 524–526] Hands can become contaminated through handling of infected persons' respiratory secretions or contaminated fomites.[524, 525]

In nosocomial RSV outbreaks in which the viral isolates were typed, more than one strain of RSV has often been identified,[504, 513, 539] suggesting multiple sources of the virus. Potential sources include patients, hospital staff,

and visitors. Because infected infants shed large amounts of virus in their respiratory secretions and easily contaminate their immediate surroundings, they are a major reservoir for RSV.[540] Hospital staff may become infected after exposure in the community[541] or in the hospital, and in turn, infect patients, other health-care workers, or hospital visitors.[516, 542]

IV. Control Measures

Various combinations of control measures ranging from the simple to the complex have been effective, to some degree or other, in preventing and controlling nosocomial RSV infection.[215, 542-549] Successful programs have had two elements in common: implementation of contact-isolation precautions, and compliance with these precautions by healthcare personnel. In theory, strict handwashing should prevent most nosocomial RSV infections. However, health-care workers' handwashing practices have always been poor, even in institutions with good educational programs.[210, 211] Thus, other preventive measures are usually relied upon to prevent RSV infection.

The basic precautions that have been associated with decreased incidence of nosocomial RSV infections are gloving and gowning.[215] Gloving has helped decrease transmission probably because gloves remind patient-care personnel to comply with handwashing and other precautions, and deter persons from touching their eyes or noses. The benefits from gloving, however, are offset if gloves are not changed between patients or after contact with contaminated fomites, and if hands are not adequately washed after glove removal.[218] Gowning, in combination with gloving, during contact with RSV-infected infants or their immediate environment has been used successfully to prevent infection.[215] In addition, the use of eye-nose goggles rather than masks has protected healthcare workers from infection; however, eye-nose goggles are not widely available and are inconvenient to wear.[546, 550]

Additional measures may be indicated to control ongoing nosocomial transmission of RSV or to prevent transmission to patients at high risk for serious complications of infections, such as those with compromised cardiac, pulmonary, or immune systems. The following additional control measures have been used in various combinations: (1) Use of private rooms for infected patients OR cohorting of infected patients, with or without pre-admission screening by rapid laboratory diagnostic tests, (2) cohorting of personnel, (3) exclusion of healthcare workers who have symptoms of upper respiratory tract infection from the care of uninfected patients at high risk of severe or fatal RSV infection, e.g., infants, (4) limiting visitors, and (5) postponing admission of patients at high risk of complications from RSV infection.[213, 543, 545, 547, 549] Although the exact role of each of these measures has not been fully elucidated, their use for control of outbreaks seems prudent.

INFLUENZA

I. Epidemiology

Pneumonia in patients with influenza may be due to the influenza virus itself, secondary bacterial infection, or a combination of both.[551-553] Influenza-associated pneumonia can occur in any person, but is more common in the very young or old and in persons in any age group with immunosuppression or certain chronic medical conditions such as severe underlying heart or lung disease.[531, 554-556]

Influenza typically occurs annually in the winter between December and April; peak activity in a community usually lasts from 6 to 8 weeks during this period.[557, 558] During influenza epidemics in the community, nosocomial outbreaks may occur and are characterized by abrupt onset and rapid transmission.[559-561] Most reported institutional outbreaks of influenza have occurred in nursing homes; however, hospital outbreaks have been reported on pediatric and chronic-care wards, as well as on medical and neonatal intensive care units.[506, 562-565]

Influenza is believed to be spread from person to person by direct deposition of virus-laden large droplets onto the mucosal surfaces of the upper respiratory tract of an individual during close contact with an infected person, as well as by droplet nuclei or small-particle aerosols.[566-569] The extent to which transmission may occur by virus-contaminated hands or fomites is unknown; however, it is not the primary mode of spread.[570]

The most important reservoirs of influenza virus are infected persons, and the period of greatest communicability is during the first 3 days of illness; however, the virus can be shed before onset of symptoms, and up to 7 or more days after illness onset.[506, 557, 571]

II. Diagnosis

Influenza is clinically indistinguishable from other febrile respiratory illnesses, but during outbreaks with laboratory-confirmed cases, a presumptive diagnosis of the infection can be made in cases with similar manifestations.[572] In the past, diagnosis of influenza was made by virus isolation from nasopharyngeal secretions or by serologic conversion, but recently developed rapid diagnostic tests that are similar to culture in sensitivity and specificity allow early diagnosis and treatment of cases and provide a basis for prompt initiation of antiviral prophylaxis as part of outbreak control.[573-578]

III. Prevention and Control Measures

Vaccination of persons at high risk for complications of influenza is currently the most effective measure for reducing the impact of influenza, and should be done before the influenza season each year. Such persons include those ≥65 years of age; those in long-term-care units; those with chronic disorders of the pulmonary or cardiovascular systems, those with diabetes mellitus, renal dysfunction, hemoglobinopathies, musculo-skeletal disorders, or immunosuppression; and children 6 months–18 years of age who are receiving long-term aspirin therapy.[564, 579-581] When high vaccination rates are achieved in closed or semi-closed settings, the risk of outbreaks is reduced because of induction of herd immunity.[582, 583]

When an institutional outbreak is due to influenza A, antiviral agents may be used both for treatment of ill persons and as prophylaxis for others.[584] Two related antiviral agents, amantadine hydrochloride and rimantadine hydrochloride, are effective against influenza-A, but not influenza-B, virus.[493, 585-587] These agents can be used (1) for short-term prophylaxis after late vaccination of high-risk persons; (2) as prophylaxis for persons for whom vaccination is contraindicated; (3) as prophylaxis for immunocompromised persons who may not produce protective levels of antibody in response to vaccination; (4) for prophylaxis for unvaccinated healthcare workers who provide care to high-risk patients, either for the duration of influenza activity in the community or until immunity develops after vaccination; and (5) when vaccine strains do not closely match the epidemic viral strain.[584]

Amantadine has been available in the United States for many years; rimantadine has just recently been approved for use. Both drugs protect against all naturally-occurring strains of type A influenza virus; thus, antigenic changes in the virus that may reduce vaccine efficacy do not alter the effectiveness of amantadine or rimantadine. Both are 70–90% effective in preventing illness if taken before

exposure to influenza A virus.[585, 588] In addition, they lessen the severity and duration of illness due to influenza A when administered within 24–48 hours after onset of symptoms.[589, 590] Amantadine can limit nosocomial spread of influenza A if it is administered to all or most patients at the time influenza is recognized in a facility.[562, 591, 592]

Side effects from amantadine are more common than those from rimantadine; they include mild and transitory nervousness, insomnia, impaired concentration, mood changes, light-headedness, anorexia, and nausea. These symptoms have been reported in 5–10% of healthy young adults receiving 200 mg of the drug per day.[493, 585] In the elderly, the symptoms may be more severe; in addition, dizziness and ataxia are more common in this age group.[593, 594] Thus, it is recommended that for persons ≥65 years of age and/or those who have renal insufficiency, amantadine dosage should be reduced to ≤100 mg per day. Further reductions are recommended on the basis of the patient's creatinine clearance.[595, 596] However, because recommended dosages based on creatinine clearance may provide only a rough estimate of the optimal dose for a given patient,[597] such persons should be carefully observed so that adverse reactions can be recognized promptly and the dose further reduced or the drug discontinued, if necessary.

Emergence of amantadine- and rimantadine-resistant strains of influenza A virus has been observed in persons who receive these drugs for treatment of the infection.[598, 599] Because of the potential risk of transmission of resistant viral strains to close contacts of persons receiving amantadine or rimantadine for treatment,[599, 600] to the extent possible, infected persons taking either drug should avoid contact with others during treatment and for 2 days after discontinuing treatment.[600, 601] This is particularly important if the contacts are uninfected persons taking amantadine or rimantadine for prophylaxis.[600, 602]

Vaccination of high-risk patients and of hospital personnel before the influenza season is the primary focus of efforts to prevent and control nosocomial influenza.[581, 584, 603] The decision to use amantadine or rimantadine as an adjunct to vaccination in the prevention and control of nosocomial influenza is based in part on results of virologic and epidemiologic surveillance in the hospital and the community. When outbreaks of influenza A occur in a hospital, and antiviral prophylaxis of high-risk persons and treatment of cases is undertaken, administration of amantadine or rimantadine is begun as early in the outbreak as possible to reduce transmission.[562, 584, 591, 602]

Measures other than vaccination and chemoprophylaxis with amantadine or rimantadine have been recommended for control of nosocomial influenza outbreaks. Because influenza can be transmitted during contact with an infected person, contact-isolation precautions, such as placing a patient symptomatic with influenza in a private room, cohorting of patients with influenza, and masking upon entering a room with persons with influenza have been recommended.[213] Handwashing, gloving, and gowning by healthcare workers during the period of viral shedding by patients have also been recommended, but the exact role of these measures in preventing influenza transmission remains to be elucidated.[213, 561, 604] Although influenza can be transmitted via the airborne route, the efficacy of placing infected persons in rooms with negative pressure in relation to their immediate environment has not been assessed. In addition, this measure may be impractical during institutional outbreaks that occur in the midst of a community epidemic of influenza because many newly admitted patients and healthcare workers may be infected with the virus; thus, the hospital would face the logistical problem of accommodating all ill persons in rooms with special ventilation. Although controlled studies are not available to measure their effectiveness, the following additional measures have been recommended for consideration, particularly during severe outbreaks: (1) Curtailment or elimination of elective admissions, both medical and surgical; (2) restriction of cardiovascular and pulmonary surgery; (3) restriction of hospital visitors, especially those with acute respiratory illnesses; and (4) work restriction for healthcare workers with acute respiratory illness.[604]

PART II. RECOMMENDATIONS FOR PREVENTION OF NOSOCOMIAL PNEUMONIA

Introduction

The recommendations are presented according to the etiology of the infection, in the following order: bacterial pneumonia, including Legionnaires' disease; fungal pneumonia (aspergillosis); and virus-associated pneumonia (RSV and influenza infections). Each topic is subdivided according to the following general approaches for nosocomial infection control, as applicable to the infection:

1. Staff education and infection surveillance;
2. Interruption of transmission of microorganisms by eradicating infecting; microorganisms from their epidemiologically important reservoirs, and/or preventing person-to-person transmission; and
3. Modifying host risk for infection.

As in previous CDC guidelines, each recommendation is categorized on the basis of existing scientific evidence, theoretical rationale, applicability, and economic impact.[213,214,605–609] However, the previous CDC system of categorizing recommendations has been modified as follows:

CATEGORY IA—Strongly recommended for all hospitals and strongly supported by well-designed experimental or epidemiologic studies.

CATEGORY IB— Strongly recommended for all hospitals and viewed as effective by experts in the field and a consensus of HICPAC based on strong rationale and suggestive evidence, even though definitive scientific studies may not have been done.

CATEGORY II—Suggested for implementation in many hospitals. Recommendations may be supported by suggestive clinical or epidemiologic studies, a strong theoretical rationale, or definitive studies applicable to some but not all hospitals.

NO RECOMMENDATION; UNRESOLVED ISSUE. Practices for which insufficient evidence or consensus regarding efficacy exists.

Prevention and Control of Bacterial Pneumonia

I. Staff Education and Infection Surveillance

A. Staff Education

Educate healthcare workers regarding nosocomial bacterial pneumonias and infection control procedures to prevent their occurrence.[610–613]

CATEGORY IA

B. Surveillance

1. Conduct surveillance for bacterial pneumonia in ICU patients at high-risk for nosocomial bacterial pneumonia (e.g., patients with mechanically assisted ventilation, selected postoperative patients) to determine trends and identify potential problems.[7,34,35,59,60,614–616] Include data regarding the causative microorganisms and their antimicrobial susceptibility patterns.[2–4] Express data as rates (e.g., number of infected patients or

infections per 100 ICU days or per 1,000 ventilator-days) to facilitate intra- and inter-hospital comparisons.[63,617-619]

CATEGORY IA

2. Do not routinely perform surveillance cultures of patients or of equipment or devices used for respiratory therapy, pulmonary-function testing, or delivery of inhalation anesthesia.[62,620,621]

CATEGORY IA

II. INTERRUPTION OF TRANSMISSION OF MICROORGANISMS

A. Sterilization or Disinfection, and Maintenance of Equipment and Devices

1. General Measures

a. Thoroughly clean all equipment and devices to be sterilized or disinfected. Decontaminate equipment or device before or during cleaning if it is contaminated with blood and/or marked "contaminated" and received from patients who are on certain types of isolation.[245,246,622]

CATEGORY IA

b. Sterilize semicritical equipment or devices, i.e., items that touch mucous membranes (See device list, Appendix A). If sterilization is not feasible, use high-level disinfection either by wet heat pasteurization (76°C for 30 minutes), or by using liquid disinfectants approved as sterilants or disinfectants by the Environmental Protection Agency.[240,242,244,246,623] Follow disinfection with appropriate rinsing, drying, and packaging, taking care not to contaminate the items in the process.

CATEGORY IB

c. Use sterile (not distilled, nonsterile), pyrogen-free water for rinsing reusable equipment and devices after they have been chemically disinfected.[227,233,234,248]

CATEGORY IB

d. Do not reprocess an equipment or device that is manufactured for single use only, unless data show that reprocessing the equipment or device poses no threat to the patient, is cost-effective, and does not change the structural integrity or function of the equipment or device.[624,625]

CATEGORY IB

2. Mechanical Ventilators, Anesthesia Machines and Circle Systems, and Pulmonary-Function Testing Equipment

a. Do not routinely sterilize or disinfect the internal machinery of mechanical ventilators or anesthesia-breathing machines and their circle systems.[626,627]

CATEGORY IA

b. Do not routinely sterilize or disinfect the internal machinery of pulmonary-function testing machines between uses on different patients.[628,629]

CATEGORY II

3. Ventilator Circuits with Humidifiers

a. Do not routinely change more frequently than every 48 hours the breathing circuit, including tubing and exhalation valve, and the attached bubbling or wick humidifier of a ventilator that is in use on an individual patient.[34,257,262]

CATEGORY IA

b. NO RECOMMENDATION for the maximum length of time after which the breathing circuit and the attached bubbling or wick humidifier of a ventilator in use on a patient should be changed.[263]

UNRESOLVED ISSUE

c. Sterilize reusable breathing circuits and bubbling or wick humidifiers, or subject them to high-level disinfection between their uses on different patients.[240,242,244,246]

CATEGORY IB

d. Periodically drain and discard any condensate that collects in the tubing of a mechanical ventilator or anesthesia machine, taking precautions not to allow condensate to drain toward the patient. Wash hands after performing the procedure or handling the fluid.[256,260]

CATEGORY IB

e. NO RECOMMENDATION for placing a filter or trap at the distal end of the expiratory-phase tubing of the breathing circuit to collect condensate.[231,256]

UNRESOLVED ISSUE

f. Do not place bacterial filters between the humidifier reservoir and the inspiratory-phase tubing of the breathing circuit of a mechanical ventilator, or in the circuit of an anesthesia machine.[254,627,630]

CATEGORY IB

g. Humidifier fluids.

(1) Use sterile water to fill bubbling humidifiers.[125,233,234,260]

CATEGORY II

(2) Use sterile, distilled, or tap water to fill wick humidifiers.[233,234,260]

CATEGORY II

(3) NO RECOMMENDATION for preferential use of a closed, continuous-feed humidification system.

UNRESOLVED ISSUE

4. Ventilator Circuits With Hygroscopic Condenser-Humidifiers or Heat-Moisture Exchangers

a. NO RECOMMENDATION for preferential use of hygroscopic condenser-humidifier or heat-moisture exchanger rather than a heated humidifier to prevent nosocomial pneumonia.[272-276]

UNRESOLVED ISSUE

b. Change the hygroscopic condenser-humidifier or heat-moisture exchanger when evidence of gross contamination or mechanical dysfunction of the device is present.[272]

CATEGORY IB

c. Do not routinely change the breathing circuit attached to a hygroscopic condenser-humidifier or heat-moisture exchanger while it is in use on a patient.[272,275]

CATEGORY IB

5. Wall Humidifiers

a. Follow manufacturers' instructions for use and maintenance of disposable wall oxygen humidifiers unless data show that the modification in their use or maintenance poses no threat to the patient and is cost effective.[631-635]

CATEGORY IB

b. Between patients, change the reservoir, tubing (including any nasal prongs), and any mask used to deliver oxygen from a wall outlet.

CATEGORY IB

6. Small-Volume Medication Nebulizers: "In-Line" and Hand-Held Nebulizers

a. Between treatments on the same patient, disinfect or rinse with sterile water and air-dry small-volume medication nebulizers.[228,378]

CATEGORY IB

b. Replace nebulizers between patients with those that have undergone sterilization or high-level disinfection.[119,121,122,248]

CATEGORY IB

c. Use only sterile fluids for nebulization, and dispense these fluids aseptically.[223,227,233,234,248,278,378]

CATEGORY IA

d. If multi-dose medication vials are used, handle, dispense, and store them

according to directions on the vial label or package insert.[278,636,637]

CATEGORY IB

7. Large-Volume Nebulizers and Mist Tents

a. Do not use large-volume room-air humidifiers that create aerosols (e.g., by venturi principle, ultrasound, or spinning disk) and thus are really nebulizers, unless they can be sterilized or subjected to high level disinfection at least daily and filled only with sterile water.[224,225,227,236,277,638]

CATEGORY IA

b. Sterilize large-volume nebulizers that are used for inhalation therapy, e.g., for tracheostomized patients, or subject them to high-level disinfection between patients and after every 24 hours of use on the same patient.[119,121,122]

CATEGORY IB

c. Use mist-tent nebulizers and reservoirs that have undergone sterilization or high-level disinfection, and replace them between patients and after every 24 hours of use on the same patient.[639]

CATEGORY IB

8. Other Devices

a. Between patients, sterilize or use high-level disinfection on respirometers, oxygen sensors, and other respiratory devices used on multiple patients.[220,286]

CATEGORY IB

b. Sterilize or use high-level disinfection on hand-powered resuscitation bags (for example, Ambu bags) between patients.[239,283–285]

CATEGORY IA

c. Remove faucet aerators.[640]

CATEGORY II

B. Interruption of Person-to-Person Transmission of Bacteria

1. Handwashing

Wash hands after contact with mucous membranes, respiratory secretions, or objects contaminated with respiratory secretions, whether or not gloves are worn. Wash hands before and after contact with a patient who has an endotracheal or tracheostomy tube in place, and before and after contact with any respiratory device that is used on the patient, whether or not gloves are worn.[201,203,207,208,641,642]

CATEGORY IA

2. Barrier Precautions

a. Wear gloves for handling respiratory secretions or objects contaminated with respiratory secretions of any patient.[215,216]

CATEGORY IA

b. Change gloves and wash hands between patients; after handling respiratory secretions or objects contaminated with secretions from one patient and before contact with another patient, object, or environmental surface; and between contacts with a contaminated body site and respiratory tract of, or respiratory device on, the same patient.[215,217,218]

CATEGORY IA

c. Wear a gown when soiling with respiratory secretions from a patient is anticipated, and change the gown after such contact and before providing care to another patient.[215]

CATEGORY IB

3. Care of Patients with Tracheostomy

a. Perform tracheostomy under sterile conditions.

CATEGORY IB

b. When changing a tracheostomy tube, use aseptic technique and replace the tube with one that has undergone sterilization or high-level disinfection.

CATEGORY IB

4. Suctioning of Respiratory Tract Secretions

a. *NO RECOMMENDATION* for wearing sterile rather than clean gloves when suctioning a patient's respiratory secretions.

UNRESOLVED ISSUE

b. If the open suction system is employed, use a sterile single-use catheter.

CATEGORY II

c. Use only sterile fluid to remove secretions from the suction catheter.

CATEGORY IB

d. Change suction-collection tubing and canisters between patients.

Category IB

e. *NO RECOMMENDATION* for using a multi-use closed-system suction catheter in preference to a single-use open-system catheter.[279–282]

UNRESOLVED ISSUE

f. *NO RECOMMENDATION* for routinely using an endotracheal tube with a dorsal lumen above the endotracheal cuff, to allow drainage (by suctioning) of tracheal secretions that accumulate in the patient's subglottic area.[197]

UNRESOLVED ISSUE

III. Modifying Host Risk for Infection

A. Precautions for Prevention of Endogenous Pneumonia

1. Prevention of Aspiration

a. Discontinue enteral-tube feeding and remove devices such as endotracheal and/or nasogastric or other enteral tubes from patients as soon as the clinical indications for these are resolved.[7, 34, 35, 80, 110, 173, 175, 176, 192, 643]

CATEGORY IB

b. If there is no contraindication to the maneuver, elevate at an angle of 30–45° the head of the bed of a patient who is receiving mechanically assisted ventilation and has a nasogastric or other enteral tube in place.[175, 184]

CATEGORY IB

c. Routinely verify appropriate placement of the feeding tube.[175 644–646]

CATEGORY IB

d. Routinely assess the patient's intestinal motility, (e.g., by auscultating for bowel sounds and measuring residual gastric volume or abdominal girth) and adjust the rate and volume of enteral feeding to avoid regurgitation.[175, 188, 643]

CATEGORY IB

e. Use small-bore tubes for enteral feeding;[175, 176, 186, 644, 647]

CATEGORY II

f. Administer enteral feeding intermittently in small quantities, rather than continuously.[2T167, 183, 647, 648]

CATEGORY II

g. NO RECOMMENDATION for preferentially placing the feeding tubes, e.g., jejunal tubes, distal to the pylorus; [189, 190, 649]

UNRESOLVED ISSUE

h. NO RECOMMENDATION for using oro-tracheal rather than naso-tracheal tube.[650]

UNRESOLVED ISSUE

2. Prevention of Gastric Colonization

a. If stress-bleeding prophylaxis is needed for a patient with mechanically assisted ventilation, use an agent that does not raise the patient's gastric pH.[22, 34, 105, 111, 115, 140–142, 144–146]

Category II

b. NO RECOMMENDATION for selective decontamination of an ICU patient's digestive tract with oral and/or intravenous antimicrobials to prevent

gram-negative bacillary (or *Candida* spp.) pneumonia.[147-170]

UNRESOLVED ISSUE

c. NO RECOMMENDATION for routine acidification of gastric feedings.[171]

UNRESOLVED ISSUE

B. Prevention of Postoperative Pneumonia

1. Instruct preoperative patients, especially those at high risk of developing pneumonia, regarding frequent coughing, taking deep breaths, and ambulating as soon as medically indicated in the postoperative period.[302, 304] High-risk patients include those who will receive anesthesia, especially those who will have an abdominal, thoracic, head, or neck operation, or who have substantial pulmonary dysfunction, such as patients with chronic obstructive lung disease, a musculoskeletal abnormality of the chest, or abnormal pulmonary function tests.[287-290, 293, 294]

CATEGORY IB

2. Encourage postoperative patients to cough frequently, take deep breaths, move about the bed, and ambulate unless it is medically contraindicated.[301, 302, 304]

CATEGORY IB

3. Control pain that interferes with coughing and deep breathing during the immediate postoperative period by using systemic analgesia,[309, 652] including patient-controlled analgesia,[310-312] with as little cough-suppressant effect as possible; appropriate support for abdominal wounds, such as tightly placing a pillow across the abdomen; or regional (e.g., epidural) analgesia.[313-315]

CATEGORY IB

4. Use an incentive spirometer or intermittent positive pressure breathing, perform chest physiotherapy on patients at high risk of developing postoperative pneumonia.[295, 298, 299, 302, 304, 305, 307] (See III–B–1 above for definition of high-risk patients.)

CATEGORY II

C. Other Prophylactic Procedures for Pneumonia

1. Vaccination of Patients

Vaccinate patients at high risk for complications of pneumococcal infections with pneumococcal polysaccharide vaccine. High-risk patients include persons ≥65 years old; adults with chronic cardiovascular or pulmonary disease, diabetes mellitus, alcoholism, cirrhosis, or cerebrospinal fluid leaks; and children and adults with immunosuppression, functional or anatomic asplenia, or HIV infection.[319-321]

CATEGORY IA

2. Systemic Antimicrobial Prophylaxis

Do not routinely administer systemic antimicrobial agents to prevent nosocomial pneumonia.[84, 191, 322-325, 653]

CATEGORY IA

3. Use of Rotating "Kinetic" Beds

NO RECOMMENDATION for the use of continuous lateral rotational therapy (i.e., placing patients on "kinetic" beds that turn on their longitudinal axes continuously and slowly) for prevention of nosocomial pneumonia in patients in the ICU, critically ill patients, or patients immobilized by illness and/or trauma.[327-332]

UNRESOLVED ISSUE

Prevention and Control of Legionnaires' Disease

I. Staff Education and Infection Surveillance

A. Staff Education

Educate (1) physicians and nurses to heighten their suspicion for cases of nosocomial Legionnaires' disease and to use appropriate methods for its diagnosis, and (2) patient-care, infection-control, and engineering personnel about measures to control nosocomial legionellosis.[611-613]

CATEGORY IA

B. Surveillance

1. Establish mechanism(s) to provide clinicians with appropriate laboratory tests for the diagnosis of Legionnaires' disease.[339,367,368,372,654]

CATEGORY IA

2. Conduct active search for cases of nosocomial Legionnaires' disease, especially in patients who are at high-risk of acquiring the disease (patients who are immunosuppressed, including organ-transplant patients, patients with AIDS, and patients receiving systemic steroids; are ≥65 years of age; or have chronic underlying disease such as diabetes mellitus, congestive heart failure, and chronic obstructive lung disease).[338,339,353,355-359,365] Refer to the accompanying background document for definition of nosocomial legionellosis.

CATEGORY II

3. *NO RECOMMENDATION* for routinely culturing water systems for *Legionella* spp.[250,338,383,387-389,391-393,408,655]

UNRESOLVED ISSUE

II. Interruption of Transmission of Legionella SPP.

A. Primary Prevention (Preventing Nosocomial Legionnaires' Disease When No Cases Have Been Documented)

1. Nebulization and Other Devices

a. Use only sterile (not distilled, nonsterile) water for rinsing nebulization devices and other respiratory-care equipment after they have been cleaned and/or disinfected.[250,656]

CATEGORY IB

b. Use only sterile (not distilled, nonsterile) water to fill reservoirs of devices used for nebulization.[227,236,250,378,656]

CATEGORY IA

c. Do not use large-volume room-air humidifiers that create aerosols (e.g., by venturi principle, ultrasound, or spinning disk) and thus are really nebulizers, unless they can be sterilized or subjected to high-level disinfection daily and filled only with sterile water.[236,656]

CATEGORY IA

2. Cooling Towers

a. When a new hospital building is constructed, place cooling tower(s) in such a way that the tower drift is directed away from the hospital's air-intake system, and design the cooling towers such that the volume of aerosol drift is minimized.[375,657]

CATEGORY IB

b. For operational cooling towers, install drift eliminators, regularly use an effective biocide, maintain the tower according to manufacturers' recommendations, and keep adequate maintenance records.[375,415,658]

CATEGORY IB

3. Water-Distribution System

a. *NO RECOMMENDATION* for routinely maintaining potable water at the outlet at ≥50°C or <20°C, or chlorinating heated water to achieve 1–2 mg/L free residual chlorine at the tap.[338,383,393,400-403]

UNRESOLVED ISSUE

b. *NO RECOMMENDATION* for treatment of water with ozone, ultraviolet light, or heavy-metal ions.[344,411,412,414]

UNRESOLVED ISSUE

B. Secondary Prevention (Response to Identification of Laboratory-Confirmed Nosocomial Legionellosis)

When a single case of laboratory-confirmed, definite nosocomial Legionnaires' disease is identified, OR if two or more cases of laboratory-confirmed, possible nosocomial Legionnaires' disease occur within 6 months of each other (Refer to background document for definition of definite and possible nosocomial Legionnaires' disease.):

1. Contact the local or state health department or the CDC for consultation.

CATEGORY IB

2. If a case is identified in a severely immunocompromised patient such as an organ-transplant recipient, OR if the hospital houses severely immunocompromised patients, conduct a combined epidemiologic and environmental investigation (as outlined from II–B–3–b–1 through II–B–5, below) to determine the source(s) of *Legionella* sp.

CATEGORY IB

3. If the hospital does not house severely immunocompromised patients, conduct an epidemiologic investigation via a retrospective review of microbiologic, serologic, and postmortem data, and an intensive prospective surveillance for additional cases of nosocomial Legionnaires' disease.

CATEGORY IB

a. If there is no evidence of continued nosocomial transmission, continue the intensive prospective surveillance (as in II–B–3, above) for at least 2 months after surveillance was begun.

CATEGORY II

b. If there is evidence of continued transmission:

(1) Conduct an environmental investigation to determine the source(s) of *Legionella* sp. by collecting water samples from potential sources of aerosolized water, following the methods described in Appendix C and saving and subtyping isolates of *Legionella* spp. obtained from patients and environment.[227,375–382,404,406]

CATEGORY IB

(2) If a source is not identified, continue surveillance for new cases for at least 2 months, and, depending on the scope of the outbreak, decide on either deferring decontamination pending identification of the source(s) of *Legionella* spp., or proceeding with decontamination of the hospital's water distribution system, with special attention to the specific hospital areas involved in the outbreak.

CATEGORY II

(3) If a source of infection is identified by epidemiologic and environmental investigation, promptly decontaminate it.[417]

CATEGORY IB

(a) If the heated-water system is implicated:

i. Decontaminate the heated-water system either by superheating (flushing for at least 5 minutes each distal outlet of the system with water at ≥65°C), OR by hyperchlorination (flushing for at least 5 minutes all outlets of the system with water containing ≥10 mg/L free residual chlorine).[403,408–410] Post warning signs at each outlet being flushed to prevent scald injury to patients, staff, or visitors.

CATEGORY IB

ii. Depending on local and state regulations regarding potable-water temperature in public buildings, maintain potable water at the outlet at ≥50°C or <20°C, or chlorinate heated water to achieve 1–2 mg/L free residual chlorine at the tap in hospitals housing patients who are at high risk of acquiring nosocomial legionellosis (e.g., immunocompromised patients).[338,383,393,400–403] (See appendix B.)

CATEGORY II

iii. NO RECOMMENDATION for treatment of water with ozone, ultraviolet light, or heavy-metal ions.[344,411,412,414]

UNRESOLVED ISSUE

iv. Clean hot-water storage tanks and water-heaters to remove accumulated scale and sediment.[346]

CATEGORY IB

v. Restrict immunocompromised patients from taking showers, and use only sterile water for their oral consumption until *Legionella* spp. becomes undetectable by culture in the hospital water.[384]

CATEGORY II

(b) If cooling towers or evaporative condensers are implicated, decontaminate the cooling-tower system using the protocol outlined in Appendix D.[415]

CATEGORY IB

(4) Assess the efficacy of implemented measures in reducing or eliminating *Legionella* spp. by collecting specimens for culture at 2-week intervals for 3 months.

CATEGORY II

(a) If *Legionella* sp. is not detected in cultures during 3 months of monitoring, collect cultures monthly for another 3 months.

CATEGORY II

(b) If *Legionella* sp. is detected in one or more cultures, reassess the implemented control measures, modify them accordingly, and repeat decontamination procedures. Options for repeat decontamination include the intensive use of the same technique utilized for initial decontamination, or a combination of superheating and hyperchlorination.

CATEGORY II

(5) Keep adequate records of all infection control measures, including maintenance procedures, and of environmental test results for cooling towers and potable-water systems.

CATEGORY II

Prevention and Control of Nosocomial Pulmonary Aspergillosis

I. Staff Education and Infection Surveillance

A. Staff Education

Educate healthcare workers regarding nosocomial pulmonary aspergillosis especially in immunocompromised patients, and about infection control procedures to decrease its occurrence.[611–613]

CATEGORY IA

B. Surveillance

1. Maintain a high index of suspicion for diagnosis of nosocomial pulmonary aspergillosis in high-risk patients (i.e., patients with prolonged, severe granulocytopenia [<1,000 polymorphonuclear cells/mm^3 for 2 weeks or <100 polymorphonuclear cells/mm^3 for 1 week]), such as organ-transplant recipients or patients with hematologic malignancies who are receiving chemotherapy.[435,462,463,659]

CATEGORY IB

2. Maintain surveillance for cases of nosocomial pulmonary aspergillosis by periodically reviewing the hospital's microbiologic, histopathologic, and postmortem data.

CATEGORY IB

3. NO RECOMMENDATION for routine, periodic culturing of the nasopharynx of high-risk patients.[437,438]

or devices, air samples, dust, ventilation ducts, and filters in rooms occupied by high-risk patients.[418,428,437,471–473]

UNRESOLVED ISSUE

II. Interruption of Transmission of Aspergillus SPP. Spores

A. Planning New Specialized-Care Units for High-Risk Patients

1. When constructing new specialized-care units for high-risk patients, ensure that patient rooms have adequate capacity to minimize fungal spore counts via maintenance of (a) high-efficiency air filtration, (b) directed room airflow, (c) positive air pressure in patient's room in relation to the corridor, (d) properly sealed room, and (e) high rates of room-air changes.[424,479–481,484,488,660,661]

CATEGORY IB

a. Air Filtration

Install high efficiency particulate air (HEPA) filters that are 99.97% efficient in filtering 0.3u-sized particles, at the point of use, i.e. at the room-air intake site.[424,479–481,484,488,660,661]

CATEGORY IB

b. Directed Room Airflow

Place air-intake and exhaust ports such that room air comes in from one side of the room, flows across the patient's bed, and exits on the opposite side of the room. In addition, place intake and exhaust ports such that healthcare personnel entering the room to care for the patient would stand between the patient and the exhaust port.[480,481]

CATEGORY IB

c. Well-Sealed Room

Construct windows, doors, and intake and exhaust ports to achieve complete sealing of the room against air leaks.[480,481]

CATEGORY IB

d. Room-Air Pressure

Ensure that room-air pressure can be maintained continuously above that of corridor, e.g., as can be demonstrated by performance of the smoke-tube test, unless there are clinical-care or infection-control contraindications to do so.[480,481]

CATEGORY IB

(1) To maintain positive room-air pressure in relation to the corridor, supply room air at a rate that is 10–20% more than the rate of exhausting air from the room.[480,481]

CATEGORY IB

(2) Construct rooms that have an anteroom with an independent exhaust for placement of patients at high risk of aspergillosis who also have an infection (e.g., varicella or infectious tuberculosis) requiring negative room-air pressure in relation to the corridor.[480]

CATEGORY IB

e. Room-Air Changes

Maintain room-air changes at ≥15 per hour.[480,486,487]

CATEGORY II

2. NO RECOMMENDATION for the preferential installation of a particular system, such as one with ultra-high (100–400 per hour) air change rates, e.g., laminar airflow, over other systems that meet the conditions in II–A–1–a through II–A–1–e above.[424,479–481,484,488,660,661]

UNRESOLVED ISSUE

3. Formulate hospital policies to minimize exposures of high-risk patients to potential sources of *Aspergillus* spp., such as hospital construction and renovation, cleaning activities, carpets, food, potted plants, and flower arrangements.[418,437,662–664]

CATEGORY IB

4. NO RECOMMENDATION for prophylactic use of copper-8-quinolinolate biocide in fireproofing material.[418,427,481,488]

UNRESOLVED ISSUE

B. In Existing Facilities With No Cases of Nosocomial Aspergillosis

1. Place high-risk patients in protected environment that meets the conditions outlined in Section II–A–1–a through II–A–1–e above.[424,437,479,488,660,661,665]

CATEGORY IB

2. Routinely inspect air-handling systems in high-risk patient-care areas, maintain adequate air exchanges and pressure differentials, and eliminate air leakages. Coordinate repairs of the system with relocation of high-risk patients to other areas with optimal air-handling capabilities.[418,428,437]

CATEGORY IB

3. Minimize the time high-risk patients spend outside their rooms for diagnostic procedures and other activities; and when high-risk patients leave their rooms, require them to wear well-fitting masks capable of filtering *Aspergillus* spp. spores.

CATEGORY IB

4. Regularly clean ceiling tiles, air-duct grates, and other surfaces in patient rooms to prevent dust accumulation, and maintain adequate seals on windows to prevent room infiltration by outside air, especially in areas occupied by patients at high-risk for developing aspergillosis. Conduct such cleaning when the rooms are not occupied by patients.[437]

CATEGORY IB

5. Systematically review and coordinate infection-control strategies with personnel in charge of hospital engineering, maintenance, central supply and distribution, and catering.[418,473]

CATEGORY IB

6. When planning hospital construction and renovation activities, assess whether patients at high-risk for aspergillosis are likely to be exposed to high ambient-air spore counts of *Aspergillus* spp. from construction and renovation sites, and develop a plan to prevent such exposures.[418,473]

CATEGORY IB

7. During construction or renovation activities:

(a) Construct barriers between patient-care and construction areas to prevent dust from entering patient-care areas; these barriers (e.g., plastic or drywall) should be impermeable to *Aspergillus* spp.[418,428,472,473]

CATEGORY IB

(b) In construction/renovation areas inside the hospital, create and maintain negative pressure relative to that in adjacent patient-care areas if there are no contraindications for such pressure differential, e.g., there are patients with infectious tuberculosis in the adjacent patient-care areas.[418,428,472,473,488]

CATEGORY II

(c) Direct pedestrian traffic from construction areas away from patient-care areas to limit opening and closing of doors (or other barriers) that may cause dust dispersion, entry of contaminated air, or tracking of dust into patient areas.[418,428,472,473]

CATEGORY IB

(d) Clean newly constructed areas before allowing patients to enter the areas.[418,473]

CATEGORY IB

8. Eliminate exposures of patients at high-risk for *aspergillosis* to activities, such as floor or carpet vacuuming, that may cause spores of Aspergillus spp. and other fungi to be aerosolized.[418,437,473]

CATEGORY IB

9. Eliminate exposures of patients at high-risk for aspergillosis to potential environmental sources of Aspergillus spp., such as *Aspergillus*-contaminated food, potted plants, or flower arrangements.[418,437,473,662-664]

CATEGORY II

10. Prevent birds from gaining access to hospital air-intake ducts.[474]

CATEGORY IB

C. When a Case of Nosocomial Aspergillosis Occurs

1. Begin a prospective search for additional cases in hospitalized patients and an intensified retrospective review of the hospital's microbiologic, histopathologic, and postmortem records.

CATEGORY IB

2. If there is no evidence of continuing transmission, continue routine maintenance procedures to prevent nosocomial aspergillosis, as in Section II–B–1 through II–B–10 above.

CATEGORY IB

3. If evidence of continuing *Aspergillus* spp. infection exists, conduct an environmental investigation to determine and eliminate the source.[424,427,428,472,484,488]

CATEGORY IB

a. Collect environmental samples from potential sources of *Aspergillus* spp., especially those sources implicated in the epidemiologic investigation, by using appropriate methods,[424,427,428,472,484,488,666] e.g., use of a high-volume air sampler rather than settle plates.[424]

CATEGORY IB

b. Perform molecular subtyping of *Aspergillus* spp. obtained from patients and the environment to establish strain identity.[476,477]

CATEGORY IB

c. If air-handling systems supplying high-risk patient-care areas are not optimal, consider temporary deployment of portable HEPA filters until rooms with optimal air-handling systems are available for all patients at high risk of invasive aspergillosis.[469]

CATEGORY II

d. If an environmental source is identified, perform corrective measures as needed to eliminate the source from the high-risk patients' environment.

CATEGORY IB

e. If an environmental source is not identified, review existing infection-control measures, including engineering aspects, to identify potential areas that can be corrected or improved.

CATEGORY IB

III. Modifying Host Risk for Infection

A. Administer cytokines, including granulocyte colony-stimulating factor and granulocyte-macrophage stimulating factor, to increase host resistance to aspergillosis by decreasing the duration and severity of chemotherapy-induced granulocytopenia.[464,465]

CATEGORY II

B. NO RECOMMENDATION for administration of intranasal amphotericin B or oral antifungal agents (including amphotericin B and triazole compounds) in high-risk patients for prophylaxis against aspergillosis.[466,467,667]

UNRESOLVED ISSUE

Prevention and Control of Respiratory Syncytial Virus Infection

(The principles and recommendations below are applicable for prevention and control of nosocomial lower respiratory tract infections due to adenovirus, parainfluenza virus and rhinovirus.)

I. Staff Education and Infection Surveillance

A. Staff Education

Educate personnel about the epidemiology, modes of transmission and means of preventing spread of respiratory syncytial virus (RSV).[215,611-613]

CATEGORY IA

B. Surveillance

1. Establish mechanism(s) by which the appropriate hospital personnel are promptly alerted to any increase in RSV activity in the local community.

CATEGORY IB

2. During periods of increased prevalence of RSV in the community (and during December–March), attempt prompt diagnosis of RSV infection by using rapid diagnostic techniques as clinically indicated in pediatric patients, especially infants, and in immunocompromised adults admitted to the hospital with respiratory illness.[545,549]

CATEGORY IB

II. Interruption of Transmission of RSV

A. Prevention of Person-to-Person Transmission

1. Primary Measures for Contact Isolation

a. *Handwashing.* Wash hands after contact with a patient, or after touching respiratory secretions or fomites potentially contaminated with respiratory secretions, whether or not gloves are worn.[207,503,524-526,547]

CATEGORY IA

b. *Gloving.* (1) Wear gloves for handling patients or respiratory secretions of patients with proven or suspected RSV infection, or fomites potentially contaminated with patient secretions.[215,503,524,525,543,549]

CATEGORY IA

(2) Change gloves between patients, or after handling respiratory secretions or fomites contaminated with secretions from one patient before contact with another patient.[215,217] Wash hands after removing gloves. (See II–A–1–a, above.)

CATEGORY IA

c. *Gowning.* Wear a gown when soiling with respiratory secretions from a patient is anticipated, e.g., when handling infants with RSV infection or other viral respiratory illness, and change the gown after such contact and before caring for another patient.[215,542,544,549]

CATEGORY IB

d. *Staffing.* Restrict healthcare workers in the acute stages of an upper respiratory illness, i.e., those who are sneezing and/or coughing, from taking care of RSV-uninfected infants and other patients at high risk for complications from RSV infection, e.g., children with severe underlying cardiopulmonary conditions, children receiving chemotherapy for malignancy, and patients who are otherwise immunocompromised.[547,549]

CATEGORY IB

e. *Limiting Visitors.* Do not allow persons with symptoms of respiratory infection to visit uninfected pediatric, immunosuppressed, and cardiac patients.[543]

CATEGORY II

2. Control of RSV Outbreaks

a. Use of Private Room, Cohorting, and Patient-Screening

To control ongoing RSV transmission in the hospital, admit young children with symptoms of viral respiratory

illness to single rooms when possible, OR perform RSV-screening diagnostic tests on young children upon admission and cohort them according to their RSV-infection status.[543,545,547,549]

CATEGORY II

b. Personnel Cohorting

During an outbreak of nosocomial RSV, cohort personnel as much as practical, i.e., restrict personnel who give care to infected patients from giving care to uninfected patients, and vice-versa.[543,547,549]

CATEGORY II

c. Postponing Patient Admission

During outbreaks of nosocomial RSV, postpone elective admission of uninfected patients at high risk of complications from RSV infection.

CATEGORY II

d. Wearing Eye-Nose Goggles

NO RECOMMENDATION for wearing eye-nose goggles for close contact with an RSV-infected patient.[546,550]

UNRESOLVED ISSUE

Prevention and Control of Influenza

I. Staff Education and Infection Surveillance

A. Staff Education

Educate personnel about the epidemiology, modes of transmission and means of preventing the spread of influenza.[611–613,668,669]

CATEGORY IA

B. Surveillance

1. Establish mechanism(s) by which the appropriate hospital personnel are promptly alerted of any increase in influenza activity in the local community.

CATEGORY IB

2. Arrange for laboratory tests to be available to clinicians, for use when clinically indicated, to promptly confirm the diagnosis of influenza and other acute viral respiratory illnesses, especially during November-April.[573–578]

CATEGORY IB

II. Modifying Host Risk to Infection

A. Vaccination

1. Patients

Offer vaccine to outpatients and inpatients at high risk of complications from influenza, beginning in September and continuing until influenza activity has begun to decline.[581,584,603,670–672] Patients at high risk of complications from influenza include those ≥65 years of age; in long-term-care units; with chronic disorders of the pulmonary or cardiovascular systems, diabetes mellitus, renal dysfunction, hemoglobinopathies, musculo-skeletal disorders that impede adequate respiration, or immunosuppression; and children 6 months-18 years of age who are receiving long-term aspirin therapy.[581]

CATEGORY IA

2. Personnel

Vaccinate healthcare workers before the influenza season each year, preferably between mid-October and mid-November. Until influenza activity declines, continue to make vaccine available to newly hired personnel and to those who initially refuse vaccination. If vaccine supply is limited, give highest priority to staff caring for patients at greatest risk of severe complications from influenza infection, as listed in Section II-A–1 above.[581]

CATEGORY IB

B. Use of Antiviral Agents (See Section IV Below, Control of Influenza Outbreaks)

III. Interruption of (Person-to-Person) Transmission

A. Keep a patient for whom influenza is suspected or diagnosed in a private room, or in a room with other patients with proven influenza, unless there are medical contraindications to do so.

CATEGORY IB

B. As much as feasible, maintain negative air pressure in rooms of patients for whom influenza is suspected or diagnosed, or place together persons with influenza-like illness in a hospital area with an independent air-supply-and-exhaust system.[566,567,569,673]

CATEGORY II

C. Institute masking of individuals who enter the room of a patient with influenza.[566,567,673]

CATEGORY IB

D. As much as possible during periods of influenza activity in the community, remove patient-care staff who have symptoms of febrile upper respiratory tract infection suggestive of influenza from duties that involve direct patient contact.[604,674]

CATEGORY II

E. When community and/or nosocomial outbreaks are characterized by high attack rates and severe illness:

1. Restrict hospital visitors who have a febrile respiratory illness.

CATEGORY IB

2. Curtail or eliminate elective medical and surgical admissions as necessary.

CATEGORY IB

3. Restrict cardiovascular and pulmonary surgery to only emergency cases.

CATEGORY IB

IV. Control of Influenza Outbreaks

A. Determining the Outbreak Strain

Early in the outbreak, obtain nasopharyngeal-swab or nasal-wash specimens from patients with symptoms suggestive of influenza for influenza virus culture or antigen detection.

CATEGORY IB

B. Vaccination of Patients and Personnel

Administer current influenza vaccine to unvaccinated patients and staff, especially if the outbreak occurs early in the influenza season.[562,581]

CATEGORY IB

C. Amantadine or Rimantadine Administration

1. When a nosocomial outbreak of influenza A is suspected or recognized:

a. Administer amantadine or rimantadine for prophylaxis to all uninfected patients in the involved unit for whom it is not contraindicated. Do not delay administration of amantadine or rimantadine unless the results of diagnostic tests to identify the infecting strain(s) can be obtained within 12 to 24 hours after specimen collection.[584,587]

CATEGORY IB

b. Administer amantadine or rimantadine for prophylaxis to unvaccinated staff members for whom it is not medically contraindicated, and who are in the involved unit or taking care of high-risk patients.[584]

CATEGORY II

2. Discontinue amantadine or rimantadine if laboratory tests confirm or strongly suggest that influenza type A is not the cause of the outbreak.[585,602]

CATEGORY IA

3. If the cause of the outbreak is confirmed or believed to be influenza type A AND vaccine has been administered only recently to susceptible patients and personnel, continue amantadine or rimantadine prophylaxis until 2 weeks after the vaccination.[675]

CATEGORY IB

4. To the extent possible, do not allow contact between those at high risk of complications from influenza and patients or staff who are taking amantadine or rimantadine for treatment of acute respiratory illness; prevent contact during and for two days after the latter discontinue treatment.[586,598-602]

CATEGORY IB

D. Interruption of (Person-to-Person) Transmission (See Section III, A-E Above.)

TABLE 1.—MICROORGANISMS ISOLATED FROM RESPIRATORY TRACT SPECIMENS OBTAINED BY VARIOUS REPRESENTATIVE METHODS FROM ADULT PATIENTS WITH A DIAGNOSIS OF NOSOCOMIAL PNEUMONIA

	Schaber[4]	Bartlett[5]	Fagon[6]	Torres[7]
Hospital Type	NNIS & UMH[A]	Veterans	General	General.
Patients Studied:				
Ventilated or Non-ventilated	Mixed	Mixed	Ventilated	Ventilated.
Number	N/A[B]	159	49	78.
Number of episodes of pneumonia	N/A	159	52	78.
Specimen(s) Cultured	Sputum, Tracheal Aspirate.	Transtracheal Aspirate, Pleural Fluid, Blood.	Protected Specimen Brushing.	Protected Specimen Brushing, Lung Aspirate, Pleural Fluid, Blood.
Culture Results:				
No organism isolated	N/A	0	0	54%[C].
Polymicrobial	N/A	54%[C]	40%[C]	13%[C].
Number of isolates	15,499	314	111	N/A.
Aerobic Bacteria				
Gram-Negative Bacilli	50%[D]	46%[E]	75%[E]	16%[F].
Pseudomonas aeruginosa	17%[D]	9%[E]	31%[E]	5%[F].
Enterobacter sp.	11	4	2	0.
Klebsiella sp.	7	23	4	0.
E. coli	6	14	8	0.
Serratia sp.	5	0	0	1.
Proteus sp.	3	11	15	1.
Citrobacter sp.	1	0	2	0.
Acinetobacter calcoaceticus	N/A	0	15	9.
Others	N/A	0	10	0.
Haemophilus influenza	6%[D]	17%[E]	10%[E]	0%[F].
Legionella sp.	N/A	N/A	2%[E]	2%[F].
Gram-Positive Cocci	17%[D]	56%[E]	52%[E]	4%[F].
Staphylococcus aureus	16%[D]	25%[E]	33%[E]	2%[F].
Streptococcus sp.	1	31	21	2.
Others	0	0	8	0.
Anaerobes	N/A	35%[E]	2%[E]	0.
Peptostreptococcus	N/A	14%[E]	N/A	0.
Fusobacterium sp.	N/A	10	N/A	0.
Peptococcus sp.	N/A	11	N/A	0.
Bacteroides melaninogenicus	N/A	9	N/A	0.
Bacteroides fragilis	N/A	8	N/A	0.
Fungi	4%[D]	N/A	0	1%[F].
Aspergillus sp.	N/A	N/A	0	1%[F].
Candida sp.	4%[D]	N/A	0	0.
Viruses	N/A	N/A	N/A	N/A.

Legend:

[A] NNIS & UMH=National Nosocomial infection Surveillance System and University of Michigan Hospital.
[B] N/A=Not Applicable: Not tested or Not reported.
[C] Percent episodes.
[D] Percent isolates.
[E] Percent episodes (Percentages not additive due to polymicrobial etiology in some episodes).
[F] Percent patients with pure culture.

NOTE: Footnotes appear at the end of the document.

TABLE 2—CONTROLLED STUDIES ON NOSOCOMIAL LOWER RESPIRATORY TRACT INFECTIONS AND OTHER ASSOCIATED OUTCOMES OF SELECTIVE DECONTAMINATION OF THE DIGESTIVE TRACT IN ADULT PATIENTS WITH MECHANICALLY ASSISTED VENTILATION

Author	Study patients	Lower respiratory tract infection			Colonization or infection with resistant [A] microorganisms		Overall mortality in hospital		Mean total number of days in ICU [B]	
		Diagnostic method	Infection rate							
			SDD [C] (%)	Controls (%)	SDD [C] (%)	Controls (%)	SDD [C] (%)	Controls (%)	SDD [C]	Controls
Stouten- beek [147] (1984).	Trauma SDD=63; Controls=59.	Clinical & Radiologic; [D] TS [E] culture.	8	59	"No increase"	"No increase"	3	8	Not reported .	Not reported.
Unertl [148] (1987) .	General ICU SDD=19; Controls=20.	Clinical & Radiologic; [D].	21	70	21 [F]	20 [F]	26	30	18 [G]	23 [G].
Ledingham [149] (1988).	General ICU SDD=163; Controls=161.	Clinical & Radiologic; [D].	2	11	"No increase"	"No increase"	24	24	Not reported .	Not reported.
Kerver [150] (1988)	Surgical ICU SDD=49; Controls=47.	Clinical & Radiologic [D].	12	85	"Not recorded".	"Not recorded".	29 IR [H]=4	32 IR [H]=17	17	20
Ulrich [151] (1989) .	General ICU SDD=48; Controls=52.	Clinical & Radiologic; [D] TS [E] culture.	15	50	GP=78 [I] GN=3 [J]	GP=44 [I] GN=2 [J]	31 IR [H]=0	54 IR [H]=15	17	13.
Brun-Buisson [152] (1989).	Medical ICU SDD=36; Controls=50.	Clinical & Radiologic; [D] TS [E] PSB [K] culture.	20	22	3 [F]	16 [F]	22 IR [H]=9	24 IR [H]=10	14	15.
Godard [153] (1990)	General ICU SDD=97; Controls=84.	Clinical & Radiologic; [D] TS [E] & PSB [K] culture.	2	15	GN=15 [I]	GN=15 [I]	12	18	11	16.
Rodriquez-Roldan [154] (1990).	General ICU SDD=13; Controls=15.	Clinical & Radiologic; [D] TS [E] culture.	Pn-0 [L] TB=23 [M]	Pn=73 [L] TB=20 [M]	"None noticed".	"None noticed".	30 IR [H]=0	33 IR [H]=13	Not reported .	Not reported.
Flaherty [155] (1990).	Cardiac Surgery ICU SDD=51; Controls=56.	Clinical & Radiologic; [D].	2	9	GN=22 [N]	GN=21 [N]	0	2	Not reported .	Not reported.
McClelland [156] (1990).	Renal & Respiratory Failure SDD=15; Controls=12.	TS [E] culture	7	50	Not reported .	"Not reported".	60 IR [H]=27	58 IR [H]=8	Not reported .	Not reported.
Tetteroo [157] (1990).	Esophageal Resection SDD=56; Controls=56.	Clinical & Radiologic; [D] Culture of Bronchial Aspirate.	2	14	2 [F]	4 [F]	5 IR [H]=4	4 ir [H]=0	6	5.
Pugin [158] (1991) .	Surgical ICU SDD=25; Controls=27.	Clinical & Radiologic; [D] TS [E] culture.	16	78	"No New antibiotic resistance".	"No New antibiotic resistance".	28	26	13	15.
Aerdts [159] (1991)	General ICU SDD=17; Controls–A=18 [N] Controls–B=21 [O].	Clinical & Radiologic; [D] TS [E] culture.	6	A=78 B=62	"Not observed".	"Not observed".	12 IR [H]=6	A=22 IR [H]=11 B=10 IR [H]=0	23	A=30 B=25.

Hartenauer [160] (1991).	Surgical ICU ICU–1: SDD=50; Controls=61 ICU–2: SDD=49 Controls=40.	Clinical & Radiologic; [D] TS [E] culture.	ICU–1; 10 ..... ICU–2: 10	46 ..... 45	S=34 [Q] ..... GN=0 [N] ..... S=37 [Q] ..... GN=0 [N]	S=33 [Q] ..... GN=0 [N] ..... S=37 [Q] ..... GN=0 [N]	38 ..... IR [H]=8 ..... 31 ..... IR [H]=6	48 ..... IR [H]=21 ..... 43 ..... IR [H]=25	12 ..... 13	13. 17.
Fox [161] (1991)	Cardiac Bypass SDD=12; Controls=12.	TS [E] culture	66	50	Not reported .	Not reported .	17	66	12	12.
Blair [162] (1991) ...	General ICU SDD=126; Controls=130.	Clinical & Radiologic; [D].	10	35	"No evidence of increased resistance".	"No evidence of increased resistance".	14	19	8	8.
Vandenbroucke-Grauls [163] (1991).	ICUs (Pooled data) [R] SDD–A=488; Controls–A (Historical)=540 SDD–B=225; Control–B (Random)=266.	Clinical & Radiologic; [D] TS [E] culture.	A=7 ..... B=8	A=28 ..... B=45	"No increase in resistant microorganisms in 10 of 11 studies".	"No increase in resistant microorganisms in 10 of 11 studies".	A=25 ..... B=21	A=26 ..... B=26	Not reported .	Not reported.
Winter [164] (1992)	General ICU SDD=91; Control–A=84; Controls–B=92.	Clinical & Radiologic; [D] BAL [S] culture.	3	A=11 ..... B=23	1–8 [T]	A=1–7 [T] ..... B=1–17 [T]	36	A=43 ..... B=43	6	A=7. B=8.
Ferrer [165] (1992) .	General ICU SDD+22; Controls=22.	Clinical & Radiologic; [D] TS [E] Culture.	27	32	Not reported [U]	Not reported [U]	32	23	18	15.
Hammond [166] (1992).	General ICU SDD=114; Controls=125.	Clinical & Radiologic; [D] TS [E] culture.	Pn=15 [L] ..... Br=6 [W]	Pn=15 [L] ..... Br=6 [W]	Not reported [V]	Not reported [V]	18 ..... IR [H]=6	17 ..... IR [H]=6	16	17.
Gastinne [167] (1992).	Medical ICU SDD=220; Controls=225.	Clinical & Radiologic; [D] TS [E] ± PSB [K] culture.	12	15	Not reported .	Not reported .	40 ..... 34 [X]	36 ..... 34 [X]	18	19.
Cockerill [168] (1992).	Surgical and Medical ICUs SDD=75; Controls=75.	Clinical & Radiologic; [D] TS [E±] culture.	Pn=5 [L] ..... TB=4 [M]	Pn=16 [L] ..... TB=5 [M]	16	11	15	21	10	12.
Korinek [169] (1993)	Neurosurgical ICU SDD=63; Controls=60.	Clinical & Radiologic; [D] TS [E] & PSB [K] culture.	24	42	"No evidence of increased resistance".	"No evidence of increased resistance".	8	7	24	29.
SDD Trial- ists [170] (1993).	ICUs (Pooled Data) [R] SDD=2047; Controls=2095.	Variable	Odds Ratio= 0.37; [Y] 95% CI [Z].0.31-0.43	Odds Ratio= 0.37; [Y] 95% CI [Z].0.31-0.43	Not analyzed	Not analyzed	27 ..... Odds Ratio=0.90; 95% CI [Z]:0.79–104	27 ..... Odds Ratio=0.90; 95% CI [Z]:0.79–104	Not analyzed	Not analyzed.

Legend:

[A] Resistant to at least one antimicrobial in the SDD regimen, during the study period.
[B] ICU: Intensive care unit.
[C] SDD: Selective digestive tract decontamination.
[D] Clinical criteria included temperature >38°C, purulent bronchorrhea, WBC >(12,000–15,000/mm [3]) Radiologic criterion was evidence of new and progressive infiltrate(s).
[E] TS: Tracheal secretions.
[F] Percentage of patients infected or colonized with gram-positive (GP) and/or gram-negative bacillary (GN) organisms at any body site.
[G] Median.

[H] IR: Infection-related.
[I] Percentage of gram-positive (GP) isolates.
[J] Percentage of gram-negative bacillary (GN) isolates.
[K] PSB: Protected-specimen brushing.
[L] Pn: Pneumonia.
[M] TB: Tracheo-bronchial infection.
[N] Percentage of patients with GN infection or colonization.
[O] Patients given penicillin (ampicillin, piperacillin or flucloxacillin) for clinical infection(s).
[P] Patients given cephalosporin (cephadrine, cefuroxime, or cefotaxime) for clinical infection(s).
[Q] Percentage of patients with coagulase-negative staphylococcal infection or colonization.
[R] Meta-analysis.
[S] BAL: Broncho-alveolar lavage.
[T] Percentage of isolates.
[U] However, MRSA bronchial colonization occurred in 45% of SDD patients and 21% of controls.
[V] However, at 4 weeks, 13% and 5%, respectively, of oropharyngeal cultures of SDD and control patients had MRSA, and 41% of SDD and control patients were colonized with enterococci.
[W] Br: Bronchial infraction.
[X] In ICU.
[Y] Computed using data from 3,836 patients and 526 events, 260 in SDD- and 366 in control-patients.
[Z] CI: Confidence interval.

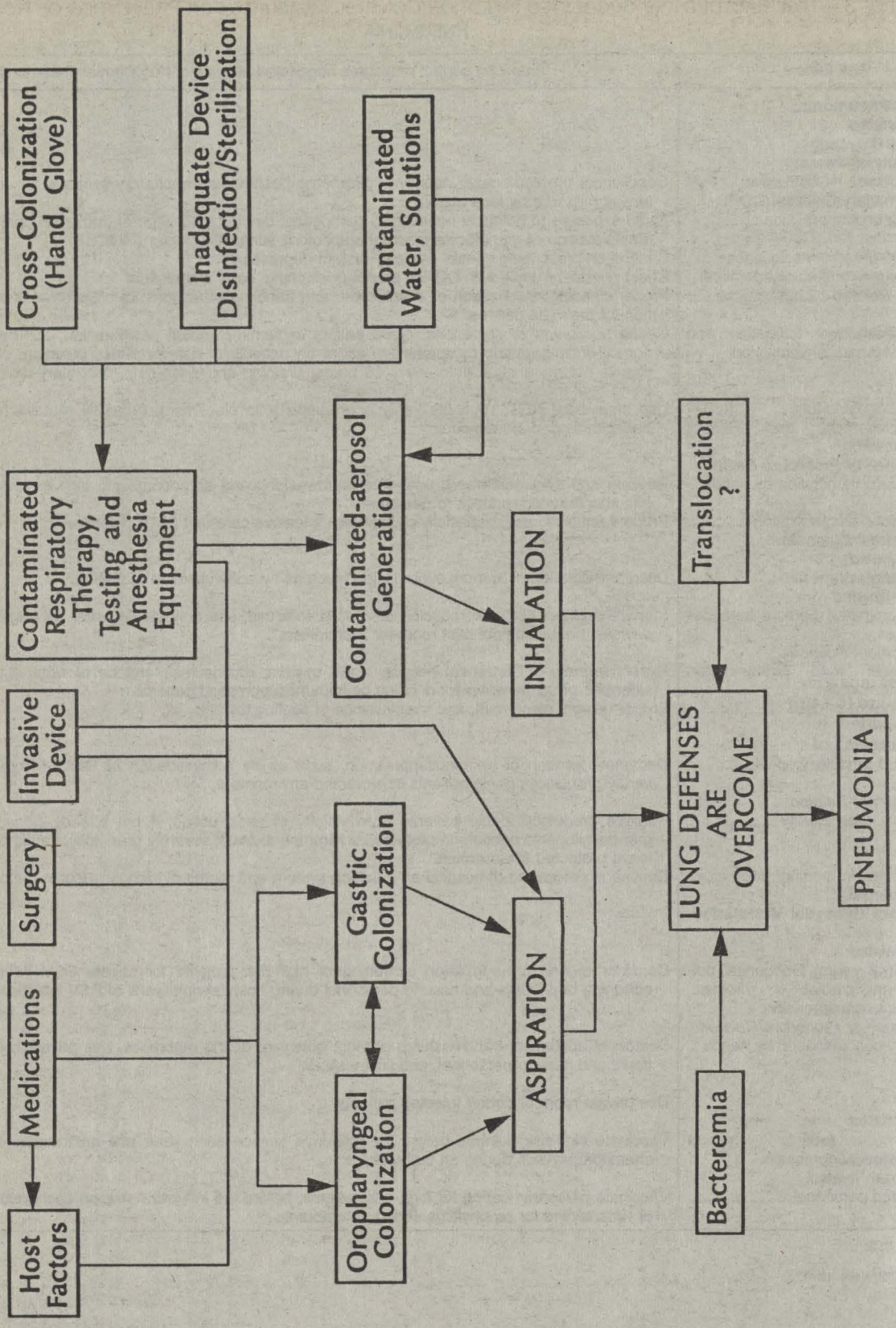
NOTE: Footnotes appear at the end of the document.

TABLE 3.—RISK FACTORS AND SUGGESTED INFECTION CONTROL MEASURES FOR PREVENTION OF NOSOCOMIAL PNEUMONIA

Risk factors	Infection control measures suggested to prevent nosocomial pneumonia
Bacterial Pneumonia:	
Host-Related	
Age (>65 years)	
Underlying illness:	
Chronic Obstructive Pulmonary Disease (COPD).	Good chest physiotherapy: incentive spirometry; positive end expiratory pressure or continuous positive airway pressure by face mask.
Immunosuppression	Avoid exposure to potential nosocomial pathogens; decrease duration of immunosuppression, such as by administration of granulocyte macrophage colony stimulating factor (GMCSF).
Depressed consciousness	Caution on prescribing central nervous system depressants.
Surgery (thoracic/abdominal)	Chest physiotherapy if with COPD; proper positioning; early ambulation.
Device-Related	Proper cleaning, sterilization or disinfection, and handling of devices; remove devices as soon as indication for their use ceases.
Endotracheal intubation and Mechanical ventilation.	Gentle suctioning of secretions; place patient in semirecumbent position, i.e., 30° head-elevation; use nonalkalinizing gastric cytoprotective agent on patients at risk for stress bleeding; changing ventilator circuits not more often than every 48 hours; draining and discarding inspiratory-tubing condensate, or using heat-moisture exchanger if indicated.
Nasogastric-tube (NGT) placement and Enteral feeding.	Use small-bore NGT; routinely verify appropriate tube placement; promptly remove NGT. Avoid large-bolus feeding; drain residual.
Personnel- or Procedure-Related:	
Cross-contamination by hands	Educate and train personnell; adequate handwashing and appropriate gloving; surveillance for cases of pneumonia, and feedback to personnel.
Antibiotic administration	Prudent antibiotic use, especially on high-risk intensive-care unit (ICU) patients.
Legionnaires' Disease:	
Host-Related	
Immunosuppression	Decrease duration of immunosuppression, such as by administration of GMCSF.
Device-Related	
Contaminated aerosol from devices.	Sterilize/disinfect aerosol-producing devices before use; use only sterile water for respiratory humidifying devices; not using cool-mist room-air "humidifiers".
Environment-Related	
Aerosols from contaminated water supply.	Hyperchlorinate or superheat hospital water system; routine maintenance of water-supply system; consider use of sterile water for drinking by immunosuppressed patients.
Cooling-tower draft	Proper design, placement, and maintenance of cooling towers.
Aspergillosis:	
Host-Related	
Severe granulocytopenia	Decrease duration of immunosuppression, such as by administration of GMCSF; consider placing severely granulocytopenic patients in protected environment.
Environment-Related	
Construction activity	Remove granulocytopenic patients from vicinity of construction; if not already done, placing severely granulocytopenic patients in protected environment; mask severely granulocytopenic patients when they leave protected environment.
Other environmental sources of aspergilli.	Routine maintenance of hospital air-handling system and rooms of immunosuppressed patients.
Respiratory Syncytial Virus Infection:	
Host-Related	
Age (<2 years) Congenital pulmonary/cardiac disease, Immunosuppression.	Consider routine pre-admission screening of high-risk patients for severe RSV infection, followed by cohorting of patients and nursing personnel during hospital outbreaks of RSV infection.
Personnel- or Procedure-Related	
Cross-contamination by hands	Personnel education; handwashing; gloving; gowning; during outbreaks, use private rooms or cohort patients and nursing personnel, and limit visitors.
Influenza:	Use private room or cohort infected patients.
Host-Related	
Age (>65 years) Immunosuppression.	Vaccinate high-risk patients before the influenza season each year; use amantadine or rimantadine for chemoprophylaxis during an outbreak.
Personnel-Related	
Infected personnel	Vaccinate personnel caring for high-risk patients, before the influenza season each year; use amantadine or rimantadine for prophylaxis during an outbreak.

BILLING CODE 4160-18-P

Figure 1. Pathogenesis of Nosocomial Bacterial Pneumonia



BILLING CODE 4160-18-C

Appendix A—Semicritical Items Used on the Respiratory Tract

Air-pressure monitors
Anesthesia breathing circuits including:
  inspiratory and expiratory tubings
  y connectors
  right-angle connectors
  face mask
  reservoir bags
Breathing circuits of mechanical ventilators
Bronchoscopes and their accessories
CO_2 analyzers
Endotracheal and endobronchial tubes
Laryngoscope blades
Mouthpieces and tubings of pulmonary-function testing equipment
Oral and nasal airways
Resuscitation bags
Spirometers
Suction catheters

Appendix B—Maintenance Procedures to Decrease Survival and Multiplication of Legionella SPP. In Potable-Water Distribution Systems

I. Providing water at ≥50°C at all points in the heated water system, including the taps

This requires that water in calorifiers (water heaters) be maintained at ≥60°C. In the United Kingdom, where maintenance of water temperatures at ≥50°C in hospitals has been mandated, installation of blending or mixing valves at or near taps to reduce the water temperature to ≤43°C has been recommended in certain settings to reduce the risk of scald injury to patients, visitors, and health care workers.[400] However, *Legionella* spp. can multiply even in short segments of pipe containing water at this temperature. Increasing the flow rate from the hot-water-circulation system may help lessen the likelihood of water stagnation and cooling.[403, 676] Insulation of plumbing to ensure delivery of cold (<20°C) water to water heaters (and to cold-water outlets) may diminish the opportunity for bacterial multiplication.[345] "Dead legs" or capped spurs within the plumbing system provide areas of stagnation and cooling to <50°C regardless of the circulating-water temperature; these segments may need to be removed to prevent colonization.[677] Rubber fittings within plumbing systems have been associated with persistent colonization, and replacement of these fittings may be required for *Legionella* spp. eradication.[678]

II. Continuous chlorination that maintains concentrations of free residual chlorine at 1–2 mg/L at the tap

This requires flow-adjusted, continuous injectors of chlorine throughout the water distribution system. Adverse effects of continuous chlorination include accelerated corrosion of plumbing resulting in system leaks and production of potentially carcinogenic trihalomethanes. However, when levels of free residual chlorine are below 3 mg/L, trihalomethane levels are kept below the maximum "safety level" recommended by the Environmental Protection Agency.[401, 679, 680]

Appendix C—Culturing Environmental Specimens for Legionella SPP

I. Recommended procedure for collecting and processing environmental specimens for *Legionella* spp.

A. Collect water (if possible, one-liter samples) in sterile, screw-top bottles, preferably containing sodium thiosulfate at a concentration of 0.5 cc of 0.1N solution/liter of sample water. (Sodium thiosulfate inactivates any residual halogen biocide).

B. Collect culture-swabs of the internal surfaces of faucets, aerators, and showerheads; in a sterile, screw-top container such as a 50 cc plastic centrifuge tube, submerge each swab in 5–10 cc of sample water taken from the same device from which the sample was obtained.

C. As soon as possible after collection, water samples and swabs should be transported to and processed in a laboratory proficient at culturing water specimens for *Legionella* spp. Samples may be transported at room temperature but must be protected from temperature extremes.

D. Test samples for the presence of *Legionella* spp. by culture onto semi-selective media. Use standard laboratory procedures. (Detection of *Legionella* spp. antigen by the direct fluorescent antibody technique is not suitable for environmental samples.[681–683] In addition, the use of polymerase chain reaction (PCR) for identification of *Legionella* spp. is not recommended until more data on the sensitivity and specificity of this procedure are available.[684])

II. Possible samples and sampling sites for *Legionella* spp. in the hospital

Water Samples

Potable Water System
  Incoming water main
  Water softener
  Holding tanks/cisterns
  Water heater tanks (inflow and outflow sites)
  Potable water outlets (faucets or taps, showers) especially outlets located in or near case-patients' rooms
Cooling Tower/Evaporative Condenser
  Make-up water (water added to system to replace water lost by evaporation, drift, and leakage)
  Basin (area under tower for collection of cooled water)
  Sump (section of basin from which cooled water returns to heat source)
  Heat source (e.g., chillers)
Other Sources
  Humidifiers
  Bubblers for oxygen
  Water used for respiratory therapy equipment
  Decorative fountains
  Irrigation equipment
  Fire sprinkler system (if recently used)
  Whirlpools/spas

Swabs

Potable Water System
  Faucets (proximal to aerators)
  Faucet aerators
  Shower heads
Cooling Towers
  Internal components (e.g., splash bars and other fill surfaces)
  Areas with visible biofilm accumulation

Appendix D—Procedure for Cleaning Cooling Towers and Related Equipment

(Adapted from the Emergency Protocol in *Control of Legionella spp. in Cooling Towers: Summary Guidelines.*[415])

I. Preparatory to Chemical Disinfection and Mechanical Cleaning

A. Provide protective equipment to workers who would perform the disinfection, to prevent their exposure to a) chemicals used for disinfection, and b) aerosolized water containing *Legionella* spp. Protective equipment may include full-length protective clothing, boots, gloves, goggles, and a full- or half-face mask that combines high efficiency particulate air filter and chemical cartridges to protect against airborne chlorine levels of up to 10 mg/L.

B. Shut off cooling-tower.
  1. If possible, shut off heat source.
  2. Shut off fans, if present, on the cooling tower/evaporative condenser (CT/EC).
  3. Shut off the system blowdown (purge) valve. Shut off automated blowdown controller, if present, and set system controller to manual.
  4. Keep make-up water valves open.
  5. Close building air-intake vents within at least 30 meters of the CT/EC until after the cleaning

procedure is complete.

6. Continue operating pumps for water circulation through the CT/EC.

II. Chemical Disinfection

A. Add fast-release, chlorine-containing disinfectant in pellet, granular, or liquid form, and follow instructions on the product label. Examples of disinfectants are sodium hypochlorite (NaOCl) or calcium hypochlorite ($Ca(OCl)_2$, calculated to achieve initial FRC of 50 mg/L, i.e., 3.0 lbs (1.4 kg) industrial grade NaOCl (12–15% available Cl) per 1,000 gallons of CT/EC water; 10.5 lbs (4.8 kg) domestic grade NaOCl (3–5% available Cl) per 1,000 gallons of CT/EC water; or 0.6 lb (0.3 kg) $Ca(OCl)_2$ per 1,000 gallons of CT/EC water. (Other appropriate compounds may be suggested by a water-treatment specialist.) If significant biodeposits are present, add more chlorine. If the water volume in CT/EC is unknown, estimate it (in gallons) to be 10x the recirculation rate in gallons/minute or 30x the refrigeration capacity in tons.

B. Record type and quality of all chemicals used for disinfection, exact time when chemicals are added to the system, and time and results of measurements of free residual chlorine (FRC) and pH.

C. Within 15 minutes of adding disinfectant, add the dispersant by first dissolving it in water and adding the resulting solution to a turbulent zone in the water system. Examples of low or non-foaming, silicate-based dispersants are: automatic-dishwasher compounds, such as Cascade* or Calgonite* or an equivalent product. (Dispersants are added at 10–25 lbs. (4.5–11.25 kg) per 1,000 gallons of CT/EC water.)

* Use of product names is for identification only and does not imply endorsement by the Public Health Service or the U.S. Department of Health and Human Services.

D. After adding disinfectant and dispersant, continue circulating the water through the system. Monitor FRC with an FRC-measuring device, e.g., a swimming pool test kit, and measure pH with a pH meter every 15 minutes for 2 hours. Add chlorine as needed to maintain FRC at ≥10 mg/L. Adjust pH to 7.5–8.0. The pH may be lowered by using any acid (e.g., muriatic acid or sulfuric acid used for maintenance of swimming pools) that is compatible with treatment chemicals.

E. Two hours after adding disinfectant and dispersant or after FRC level is stable at ≥10 mg/L, monitor at 2-hour intervals and maintain FRC at ≥10 mg/L for 24 hours.

F. After FRC level is maintained at ≥10 mg/L for 24 hours, drain the system. CT/EC water may be drained to the sanitary sewer. Municipal water and sewerage authorities should be contacted regarding local regulations. If a sanitary sewer is not available, consult local or state authorities (e.g. Department of Natural Resources) regarding disposal of water. If necessary, drain-off may be dechlorinated by dissipation or chemical neutralization (i.e. with sodium bisulfite).

G. Refill system with water and repeat procedure outlined in steps 2–6.

III. Mechanical Cleaning

A. After water from the second chemical disinfection has been drained, shut down the CT/EC.

B. Inspect all water contact areas for sediment, sludge, and scale. Using brushes and/or a low-pressure water hose, thoroughly clean all CT/EC water contact areas including basin, sump, fill, spray nozzles, and fittings. Replace components as needed.

C. If possible, clean CT/EC water contact areas within the chillers.

IV. After Mechanical Cleaning

A. Fill system with water, and add chlorine to achieve FRC level of 10 mg/L.

B. Circulate water for one hour, then open blowdown valve and flush the entire system until it is free of turbidity.

C. Drain system.

D. Open any air intake vents that were closed prior to cleaning.

E. Fill system with water. CT/EC may be put back into service using an effective water-treatment program.

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Part III

Corporation for National and Community Service

Availability of Funds for Summer of Safety; Notice

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Summer of Safety

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service announces the availability of up to $3 million for grants to support the Summer of Safety, an AmeriCorps project, that will focus on enhancing public safety. These funds must be matched with non-Corporation funds, and will provide opportunities for more than 1000 Americans, especially young people, to serve full time in community-based collaborative efforts to respond to the problems of crime, violence and fear.

DATES: The deadline for the submission of proposals is Monday, March 14, 1994.

FOR FURTHER INFORMATION CONTACT: The Corporation for National and Community Service, (202) 606–4949.

SUPPLEMENTARY INFORMATION:

Background

On September 21, 1993, the President signed into law the National and Community Service Trust Act (the Act), which created the Corporation for National and Community Service. The Corporation's mission is to engage Americans of all ages and backgrounds in service that addresses the nation's educational, public safety, health, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service.

The Corporation is a new federal agency that encompasses the work and staff of two existing independent agencies, the Commission on National and Community Service and ACTION. The Corporation will fund a new national service initiative called AmeriCorps, service-learning initiatives for elementary and secondary schools and institutions of higher education called Learn and Serve America, and the new National Civilian Community Corps, and also engage in efforts to improve the quality of service programs. In addition, the Corporation will continue to support the Volunteers In Service To America (VISTA) program and the senior volunteer programs previously sponsored by ACTION.

The Act authorizes the Corporation to support summer service programs directly (such as the Summer of Safety) and indirectly, in conjunction with the States. Programs that operate during the summer offer an excellent opportunity to experiment with new approaches to solving community problems and to bring new resources and participants into community service efforts.

Program Objectives

"Summer of Safety," the Corporation's 1994 summer service program, is being launched to respond to the growing fear of and frustration over the levels of crime and violence in every part of the country. The 1994 Summer of Safety will demonstrate the potential of national service to respond to these urgent needs by unleashing the talents and energies of Americans of all ages and backgrounds, especially young adults. Summer of Safety will specifically address the public safety needs of communities by achieving the following objectives:

—Make direct and demonstrable impacts on crime, violence and fear by identifying and meeting public safety needs;
—Build new partnerships and collaborations for safety that capitalize on all of the community's resources;
—Demonstrate that every citizen—especially young people—can help make communities safer;
—Provide seed support for innovative service programs that address public safety needs; and
—Stimulate public interest in national service as a means to respond to America's problems.

Program Overview

The Corporation will directly fund Summer of Safety programs in up to 20 locations, both urban and rural, for the summer months. Summer of Safety programs will be run by partnerships that may include law enforcement, other public agencies, non-profit and community-based organizations, institutions of higher education, Indian tribes, and the business community.

Participants will engage in service activities directly related to enhancing public safety. Permissible program activities may range from assisting police officers in community policing initiatives, to escorting seniors in high-crime neighborhoods, to working in victim assistance programs, to supervising recreation activities for children and youth that incorporate safety and violence prevention education. A program may establish terms of participants to carry out a range of different public safety-related activities during the summer, or place participants individually or in small groups in core assignments for the whole summer.

Participants will be selected by local programs, and they must receive training appropriate to their service assignments. Participants will receive living allowances of at least $147.00 per week during their service, and, upon successful completion of the program (and a minimum of 381 hours of service), a postservice benefit of $1000 which may be used for support of higher education programs, certain vocational training and school-to-work programs, or repayment of student loans.

In addition to the programs supported under this grant competition, the Corporation is sponsoring other Summer of Safety initiatives. These are briefly described in Appendix 2.

Eligibility

Public agencies (including law enforcement agencies, local units of government, health/social service agencies, etc.), nonprofit organizations (including youth-servin groups, community based organizations, service organizations, etc.), institutions of higher education, and Indian tribes are eligible to apply. State agencies that intend to operate the program directly are also eligible.

While a single entity may be the actual recipient of the grant thereby responsible for financial administration and program management we expect that the Summer of safety programs will be conducted by working partnerships among any or all of the above types of organizations.

Special Funding Requirements

Summer of Safety grants may be made from one of three sources of funds: Subtitle H of the Act (Investment for Quality and Innovation), Subtitle B–2 of the Act (Learn and Serve America: Higher Education) and Subtitle C of the Act (AmeriCorps Grants). Applicants should specify which type of funding they are seeking. While Subtitle H carries no restrictions, Subtitles B–2 and C contain the following:

Subtitle B–2 requires, among other things, that an applicant be an institution of higher education (or a consortium of such institutions), or a partnership of public or private nonprofit organizations and one or more institutions of higher education. Programs must involve, but are not limited to, current students. Pursuant to the Act, priority will be given to applications that meet certain characteristics, as detailed in Appendix 3.

The Corporation will ensure that at least 50% of the funds awarded under Subtitle C will support projects that will be conducted in areas of need, as detailed in Appendix 4.

Beyond the requirements specific to the Subtitles from which the funding originates, applicants must meet all other requirements in this notice, regardless of the type of funds being requested. Proposals that do not indicate a preferred type of funding will be reviewed as the Corporation deems appropriate. Each of the two types of funds require a non-Corporation match of at least 25% of program costs. The Corporation has the flexibility to ensure that the highest quality proposals are funded, regardless of whether they are submitted under Subtitle B2 or Subtitle C.

Content of Proposal

Summer of Safety applicants should submit program proposals that contain the sections noted below and meet the requirements in this notice. Should you desire further guidance on the format of your proposal, you should contact the Corporation at 202/606–4949.

1. Title Page

List: (1) Name and address of legal applicant (and include the signature of the authorized executive); (2) names of organizations participating in partnership; (3) amount of Federal funds requested, amount of non-federal match (both cash and in-kind); (4) number of stipended participants and number of additional volunteers who will not receive a stipend; and (5) one paragraph describing program activities and target community.

2. Program Narrative

A narrative describing the proposed program should contain sections that respond to the following requirements:

(a) Community Need/Anticipated Impact

The paramount goal of Summer of Safety is to address problems of crime, violence and fear in the communities where programs are conducted. To have such an impact, problems must be identified and defined and strategies developed which have specific objectives. Accordingly, successful proposals will:

(i) Discuss the specific needs or problems that exist in the target community/neighborhood(s) which the project will address. Sources of official data (demographic data, crime offense data, etc.), public opinion surveys, expert analysis, and other sources of local information are all useful.

(ii) Describe specifically how the program will address the identified problem(s). Outcomes must be direct and demonstrable.

While the goal of every project should be the reduction of crime, violence and fear, it may be very difficult to document such accomplishments, given the limited time during which a summer program can operate. Accordingly, as well as quantifiable measures of outcome, there may also be intermediate measures of effort and accomplishment which are appropriate as specific objectives.

Examples of such objectives each of which should address only one activity and include one result may include reduction in reported crime of XX% (generally, or in more limited focus, i.e., robberies of convenience stores, gang-related assaults, attacks against senior citizens, etc.), XX% of neighborhood residents feel safer compared to before program, XX victims of violent crime assisted at court or at home, XX Safe Houses established, XX playgrounds refurbished and supervised, XX "crack houses" rehabilitated, XX youth provided crime prevention/violence reduction training, etc.

(iii) Discuss the appropriateness of a summer program to address the identified needs/problems and to achieve the specified objectives. This should include discussion of long-term effects (i.e., safe houses established during the summer will continue to operate during the school year; vacant lots or abandoned playgrounds will be restored to community use; neighborhood volunteers will continue activities initiated during the summer; etc.)

(b) Participants

Programs must provide quality service opportunities and living allowances (stipends) for between 20 and 150 Summer of Safety participants. The $1000 post-service benefit, which may be used only for higher educational purposes, including loan repayment, or certain types of vocational training, will be administered by the Corporation through the National Service Trust Fund.

Participants must be at least 17 years old, and demonstrate leadership potential. Programs should seek to enroll participants from diverse racial, economic, and educational backgrounds (including entering and current college students, recent graduates, and youth not attending college), and include residents from the community where the program will be conducted. Participant selection decisions are made solely by the program.

Programs should be willing to enroll participants from other parts of the country not simply from the host community. Grant funds may be used for transportation costs for eligible participants. The Corporation may provide names and addresses of potential participants to programs. In addition, programs may be contacted by potential participants who are recruited nationally.

The physical safety of participants must be of paramount concern, and programs that do not take appropriate measures to protect the safety of participants will not be approved. (See Section 2c, Service Activities, for further information).

Accordingly, proposals must include:

(i) A description of plans to recruit, screen, select, and assign a qualified and diverse pool of participants, including individuals from the community served, to carry out the agreed-upon service activities;

(ii) A description of the training that will be provided to participants to ensure successful involvement in the summer program;

(iii) A discussion of how the entire summer experience for participants orientation, training, service activity, etc.—will develop useful skills, teach them about public safety, promote active citizenship, and strengthen their commitment to service;

(iv) A description of policies and practices designed to assure the safety of participants while carrying out service activities;

(v) A description of plans to provide appropriate child care for certain program participants. Preliminary guidance may be found in the Corporation's proposed regulations (See Appendix 5);

These plans may be revised prior to final grant approval, as a result of requirements in these areas that will be set forth in the Corporation's final regulations;

(vi) A description of arrangements that will be made to provide appropriate program and participant liability coverage; and

(vii) A description of arrangements that will be made to cover on-the-job injuries to participants, such as linkage with the State Workers' Compensation Program or other appropriate accident and injury policies.

(c) Service Activities

Summer of Safety projects must have the clear purpose of strengthening the ability of the community to respond to problems of crime, violence and fear through service. Projects must include at least 8 weeks and 381 hours of full-

time service activity for participants, including the period of orientation and training.

The ideal Summer of Safety service program will develop a range of service activities that depends on the community's needs and the resources the various members of the partnership bring to the overall initiative. For example, some activities may involve direct work with police officers or community groups to solve specific crime problems; others may involve work with victim assistance programs, including efforts to help special groups such as victims of family violence or seniors. Still others might involve providing training in crime prevention or conflict resolution to parents and children. An approach to developing a program and examples of possible service activities may be found in Appendix 1.

Participants will be assigned to specific service activities determined by the program based on the needs identified within the community and the skill level of participants. Teams of participants can readily be trained and assigned to take on a number of distinct activities as part of a broad community effort. Individual assignments to appropriate activities are also acceptable. Appropriate training and effective supervision of participant service activity are important to project success.

Accordingly, successful proposals will:

(i) Describe the specific service activities that will be conducted by the program during the summer;

(ii) Identify the number of stipended participants and unstipended volunteers who will serve in each of the identified activities;

(iii) Discuss the background, skills or other factors related to assigning participants to the various service activities;

(iv) Describe the specific training which will be necessary to enable participants to carry out respective service assignments;

(v) Describe procedures for the supervision of participants engaged in the service activities; and

(vi) Discuss the process by which the program will ensure that service participants will not displace paid workers, including considerations with appropriate labor unions.

Limitations

There are activities that are not appropriate for Summer of Safety participants. Concern for the physical safety of participants and the specialized training/skill requirements for certain law enforcement/corrections tasks limit the types of service activities which are appropriate. Certain other activities are not appropriate absent a clear link to a broad community public safety effort. Finally, some tasks are not suitable for national service programs at all. Specifically:

—The Corporation will not support programs that place service participants in situations that: (1) Involve the arrest process, (2) involve the chain of custody of evidence, (3) involve witnessing criminal incidents which may result in participants being called as witnesses in adjudicatory proceedings, (4) result in intentional contact with suspected criminal offenders, (5) involve contact with defendants or convicted offenders unless appropriate safeguards are in place, or (6) otherwise pose significant risk to participant safety (e.g., working alone in a high-crime neighborhood, etc.).

—Although the Corporation recognizes the importance of such activities and their indirect connection to public safety in the long-term, Summer of Safety grant funds may not be used to support programs which provide positive activities for youth (i.e., recreation, field trips, cultural opportunities, social/athletic events, vocational support, academic assistance, mentoring, etc.) unless they are conducted as components of specific public safety initiatives. The program, when taken as a whole, must have a clear, consistent, and visible public safety purpose and target specific crime/violence/fear reduction outcomes.

—Activities that do not provide a direct benefit to the community, such as clerical work or research, may be performed if they support direct service, but may not be the primary activity of a national service program.

—Certain activities are prohibited for participants in all national service programs. These activities include: efforts to influence legislation; organizing protests; petitions; boycotts or strikes; assisting or deterring union organizing; impairing contracts for services or collective bargaining agreements; partisan political activity; religious instruction; or benefitting profit-making businesses, labor unions, partisan political organizations, or non-profit organizations which fail to comply with section 501(c) of the Internal Revenue Code. Further information about these prohibited activities may be found in the Corporation's Proposed Program Regulations, published in the Federal Register on January 7, 1994.

(d) Continuation

While demonstrable impact should be evidenced during the summer, it is not likely that problems will be solved during an 8–10 week period. In addition, efforts with a longer-term horizon, such as the development of plans for action beyond the scope of the summer effort, may also begin during the summer. It is important to ensure that promising community-based activities are not lost at the end of the summer.

Unless a program will achieve its intended impact in the summer only or its impact will be long-term with no further program effort, the continuation of priority program activity should be addressed in the proposal. Among the possibilities for continuation which should be considered are:

—The SOS program is able to institutionalize the conduct of critical service activities with existing resources.

—A combination of local, state and private funds are found which permit the continuation of service and volunteer activities.

—The SOS program partnership may establish (or expand) an effective volunteer cadre to continue its efforts.

Accordingly, proposals must include plans that:

(i) Identify priority activities or strategies which will be sustained following the summer. This may be the entire program, select components, or efforts begun in the summer that will be brought to fruition.

(ii) Describe the resources and approaches that will assure continuation of the program activity.

Programs that will accomplish their objectives by the end of the summer or those that have no need to sustain activity because impact will occur in the long-term as a result of the summer effort need not respond to this section of the Notice.

(e) Workplan/Timeline

Successful applicants will receive notice of tentative selection by April 1 (see Section 6, Selection and Approval Process). Accordingly, proposals must include a timeline that:

(i) Identifies specific steps and milestones in a program development, implementation and management process that begins April 1 and extends through the end of the summer program;

(ii) Incorporates a required national-scope training and technical assistance workshop for Summer of Safety program

leadership (program director and two key supervisory staff) in later April; and

(iii) Absent compelling reason to do otherwise, establishes the week of June 13 for participant orientation and training, uses June 21 as the official date to "launch" their efforts, and sets the program's end at August 24.

(f) Applicant Capacity

The capacity of the applicant to implement and manage the program successfully and the quality of program leadership are of critical importance in the selection process. Accordingly, proposals must:

(i) Describe the applicant's institutional capacity to develop and administer the program, including payment of living allowances of at least $147.00 per week of full-time (40 hours) service to participants and management of the partnership (described below).

(ii) Include brief resumes or other descriptions of experience and background of proposed program director and key supervisory personnel.

(iii) Describe the working relationships that exist with appropriate community organizations and public agencies.

(iv) Describe and document the nature and quality of the relationship with the local law enforcement agency(s) (if the applicant is not a law enforcement agency).

(v) Review the applicant's experience in conducting public safety and/or community service/volunteer programs.

(vi) Certify the applicant's willingness to promote a national identity for the Summer of Safety program, as part of AmeriCorps, through the use of logos and other materials, and participate in activities such as common opening or closing ceremonies and other events.

(g) Partnership

Summer of Safety programs will build and strengthen new partnerships and collaborations for safety that capitalize on all of the community's resources. Given the range of needs that must be met and the variety of possible service activities that may help meet these needs, there are many organizations, institutions and individuals within the community that can meaningfully contribute.

Such entities include law enforcement, schools and other public agencies, private non-profit organizations including victim assistance and youth-serving organizations, community and neighborhood groups, health and welfare programs, senior centers, civic organizations, youth groups, institutions of higher education, and the business sector. Individuals who represent segments of the community not otherwise represented in the partnership should also be included.

To ensure that a program establishes service activities that strengthen the capacity of the community to respond to problems of crime, violence and fear, Summer of Safety programs must be carried out by collaborative partnerships of such organizations. Accordingly, proposals must:

(i) Identify the organizations and agencies (and, as appropriate, individuals) who have committed to participating in the Partnership effort, and identify the leader of the Partnership;

(ii) Describe the commitment each partner has made to carry out specific roles and contribute specific resources (training, expertise, space, supplies, funds, publicity, etc.) to support the Summer of Safety program.

(iii) Identify the number of service participants and type(s) of service activity individual partners propose to carry out as components of the program.

(h) Monitoring and Evaluation

Programs must track progress toward achievement of their program objectives. Programs must also monitor the quality of service activities, the satisfaction of both persons served and program participants, and management effectiveness. Internal evaluation and monitoring should be a continuous process, allowing for frequent feedback and quick correction of weaknesses.

Additionally, programs must cooperate with the Corporation and its evaluators in all Corporation monitoring and evaluation efforts. As part of this effort, programs must collect and submit to the Corporation certain participant data, including the total number of participants in the program, and the number of participants by race, ethnicity, sex, age, economic background, education level, disability classification, and geographic region. The Corporation will provide forms for collecting participant data.

Proposals must:

(i) Describe how progress toward program objectives will be monitored.

(ii) Describe how the quality of service activity and the satisfaction of the participants and the individuals or institutions served will be assessed on an on-going basis.

(iii) Include sound plans for ensuring the required descriptive and demographic data is collected.

(iv) Include the results from previous evaluations.

(v) Commit to cooperating with the Corporation's national evaluation effort.

(3) Budget

The Budget Summary Form included here should be completed. On an attached sheet, please provide brief explanations and/or justifications of each budget item. Please note the following:

(a) "Other expenses" may include other allowable costs (including such things as local training, equipment, transportation, insurance, etc.), related to the operation of the program. Each component of "other expenses" must be explained.

(b) Required Match. Match may include cash and in-kind services. Other federal funds may be used as match for the purposes of this proposal, except as noted below. The amount and type of match provided will be considered in the selection process.

Summer of Safety programs must provide a match[1] of at least:

(i) Twenty-five percent (25%) of the cost of operating the program.

(ii) Fifteen percent (15%) of the cost of the living allowance for participants. This match may not include in-kind services or other federal funds. However, applicants desiring to provide certain living expenses on an in-kind basis (housing, meals or transportation), may apply to the Corporation for a reduction in the amount of the required living allowance for program participants.

(c) Include in your budget an estimate of $700 for the cost of travel and per diem for the program director and two key supervisory staff to attend a three day training program that will be held in late April in a location to be determined by the Corporation.

(d) The Corporation is in the process of determining the advisability of requiring health care coverage for participants (see Appendix 5). For purposes of this budget, please reflect a line item for health care equal to $300 per participant, $255 of which is paid for by the Corporation and $45 of which is paid for by the program.

(e) The educational benefit of $1000 for participants will be administered directly by the Corporation (National Service Trust Fund) and should not be included in the budget submitted for this proposal.

(4) Additional Requirements

Awards made by the Corporation are Federal grants and are subject to the

[1] Applicants submitting proposals under Subtitle B2 (Higher Education are normally required to provide 50% match. Pursuant to the Act, the Corporation is reducing the requirement to 25% match for proposals submitted under this Notice. Nevertheless, match beyond this minimum is strongly encourage.

Corporation's Regulations and applicable OMB Circulars, including Audit Requirements and other appropriate Federal Statutory requirements. These various requirements will be incorporated into the terms and conditions of the grant award.

The Corporation's proposed program regulations were published in the **Federal Register** (Volume 59, No. 5) on January 7, 1994. The Corporation intends to issue its regulations in final form prior to this application submission deadline.

(5) Selection Criteria

Failure to follow the format identified in Sections 2 and 3 (above) or to respond to program requirements discussed in this Notice may result in the removal of a proposal from further consideration.

The Program Narrative (Section 2) may not exceed 20 type-written double-spaced pages. The Budget and accompanying explanation may not exceed 3 pages. Abbreviated resumes are requested. Please do not permanently bind your proposal, in case additional copies must be made.

The criteria noted below, which are based on the guidelines and requirements contained in this Notice, will be used to select applicants for awards. Each criteria will be considered up to the percentage of the total proposal as noted:

(a) Quality (65%)

Plan (30%): The proposal narrative (Section 2, a–h) describes a high quality public safety-focussed service initiative with:

—Direct and demonstrable outcomes;
—Feasible project implementation plans and realistic timetables, which were developed with input from the community;
—A range of service activities appropriate to community needs and participant backgrounds and skills. Discussion of proposed service activities should include description of specific assignments;
—Recruitment and selection plans that will attract a qualified and diverse group of participants, including community residents;
—Plans to involve additional community volunteers of all ages who are not receiving stipends in project service activities;
—Evaluation reports, if available, that support the proposed program; and
—Self-assessment techniques to monitor performance against objectives.

Sponsor and Partnership (35%): The applicant organization evidences:

—Selection of a well-qualified project director and supervisors for participants;
—Experience in operating public safety and/or community service initiatives;
—Track record demonstrating capacity to organize and facilitate partnership of participating agencies and organizations; and
—Ability to conduct fiscal affairs of program.

In addition, the proposal identifies a broad-based working partnership of agencies and organizations to carry out public safety-related service activities that:

—Includes appropriate public and private agencies and organizations with track records of operating public safety programs and youth and community service efforts. If local law enforcement agencies/organizations are not included, proposal must explain why the participation of law enforcement is not necessary;
—Includes residents of communities in which program will be based;
—Evidences specific commitments from participating entities to contribute to and cooperate with activities initiated by community partnership;
—Identifies tasks and roles to be carried about by partnership members during project planning phase (prior to summer) and during operating phase; and
—Defines procedures for the effective operation of a practical working partnership.

(b) Cost Effectiveness (15%)

The proposal evidences a cost effective approach to the use of Corporation and other Federal funds and non-Federal resources (cash, in-kind and human). Specifically:

—The budget is reasonable for the proposed service activities and the identified community needs;
—The match requirement is achieved. Additional match that enhances the cost effectiveness of the proposal is strongly encouraged;
—The extent and type of matching funds and other resources from other public (including Federal) agencies and private sources will be considered; and
—Linkages with other federally funded programs are encouraged.

(c) Sustainability (10%)

The quality and feasibility of plans to sustain especially effective elements of program activity following the completion of the summer program without additional Corporation funding will be considered.

(d) Innovation and replication (10%)

The proposal incorporates innovative approaches to partnerships, community involvement, and service, and evidences strategies and activities potentially replicable in other locations.

(6) Selection and Approval Process

An original and four copies of each proposal must be submitted together, and be received by the Corporation for National and Community Service, 1100 Vermont Ave., NW., 20525, by 6 pm EST on Monday, March 14, 1994.

Proposals that meet the minimum requirements outlined above will be reviewed by panels that include experts from the fields of public safety and service. Publication of this announcement does not obligate the Corporation to award any specific number of grants or obligate the entire amount of funds available.

Additional factors that may be taken into account in the selection process include population density, geographic distribution of programs, and diversity among participants and program strategies.

Notification of tentative selection will be made by April 1, 1994. Selections will be considered tentative until execution of a final grant agreement, which may require discussions between Corporation and program staff to resolve remaining financial or programmatic issues and to refine and/or further develop plans or specific strategies.

In addition, the Corporation anticipates providing extensive technical assistance to successful applicants between the time of selection through the launch of project service activity, and throughout the summer. This assistance will include a mandatory 3 day training/technical assistance workshop to be conducted for all Summer of Safety program directors and key staff in late April.

Appendix 1

This Appendix provides suggestions for how you might approach the development of a Summer of Safety program. It is meant to be thought-provoking and is not a required process.

I. Identify the Crime/Violence Problem To Be Addressed

By working directly with local law enforcement, canvassing door-to-door in neighborhoods, attending community meetings, setting up meetings for law enforcement with community groups, contacting and surveying local businesses, public agencies, service organizations, youth groups, senior groups, etc., your organization can identify specific crime problems which

confront the community and concern residents. The types of issues most readily identified through this kind of analysis include:

—Specific population needs (e.g., seniors who are afraid to go to the market after dark, or children who can't use a playground because of drug activity, debris or disrepair, or teenagers who get in trouble when a facility—theater, club, etc.—closes for the evening, or targets of hate crimes);
—Physical hazards (e.g., drug houses, vacant structures used for drug trade or other illegal or disorderly purpose, abandoned vehicles, missing street lights, broken fences, dangerous vehicle traffic patterns, open-air drug markets);
—Resident safety concerns (e.g., fear of crime and victimization, need for crime prevention information—locks, etc., lack of information about crime within neighborhood); and
—Unreported or undetected criminal activity (e.g., drug use or sales in a neighborhood location, gang activity, prostitution, victims of crime who have not reported the victimization or who continue to be victimized—especially victims of domestic violence or fraudulent solicitors/practices).

II. Pick The Partners

Think broadly about the range of organizations that are already involved in reducing crime and violence in your community, or that may be interested in joining such an effort. Try to determine which ones have missions, resources or experience comparable to yours. City agencies, especially local law enforcement agencies, should be considered. Other possible partners include:

—Schools (including higher education institutions).
—Private non-profit organizations (particularly those that work to prevent crime and violence or that work with youth or victims of crime).
—Community and neighborhood organizations.
—Senior or neighborhood centers.
—Private businesses.

Please read Program Narrative section 2(g) ("Partnership") carefully regarding the delineation of roles and other aspects of creating a useful partnership. Keep in mind that, while effective partnerships will involve many elements in a community, eligibility to receive funds and parameters of allowable activities are limited. (See sections entitled, "Eligibility" and "Limitations".)

III. Craft a Specific Problem Response

After analyzing the community's needs and picking your partners, you will plan and implement a specific program designed to make a direct and demonstrable difference.

It may help to have various activities linked with a common theme. For example, in a victims' assistance program, participants might be engaged in the following activities:

—Supporting victim services within the court, notify victims of court dates and procedures, meet and accompany victims to courtrooms, staff child care centers, follow-up on restitution orders, etc.;
—Accompanying law enforcement on calls to provide immediate crisis intervention support, accompany victims to hospital or police department, make social services referrals (including to battered women's shelters), arrange lock/home repairs, assist with emergency funds, lost documents, public assistance, etc.;
—Maintaining follow-up contact with victims to help identify longer-term needs; and
—Assisting in operation of a victim service program; i.e., work in a family violence shelter providing child care, tutoring, transportation, vocational help; serve with a sexual assault crisis center/hotline or abused children's center.

It is also possible that, within a Summer of Safety Program, there may be a number of different service activities which can positively impact the safety of the community. But make sure that the activities you are contemplating are realistic. Will they make a real difference in your communities within the short time frame of the summer? Clearly, not every problem can be solved in one summer, but appropriate responses can be developed that identify the parties responsible for necessary actions, specify and take initial steps, and evidence impact.

While the range of possible effective activities is potentially limitless, below are additional examples of activities that can be started and have appreciable impact in a short time:

—Involving neighborhood youth in a senior escort service;
—Conducting and disseminating crime prevention surveys and information/advice;
—Undertaking community clean-up efforts, focusing on graffiti, vacant lots, alleys, and other sites where fear of crime and disorder are evident;
—Identifying and boarding-up abandoned properties in which drug use/trade may be occurring;
—Organizing neighborhood watch-type programs;
—Initiating or enhancing relationships between law enforcement and local youth organizations;
—Developing a network of "Safe Houses" or "Safe Corridors" in neighborhood, and training parents and children about the program;
—Developing and conducting anti-violence presentations for youth groups;
—Joining with senior volunteers in intergenerational efforts designed around youth safety themes;
—Developing and supervising youth activities that incorporate age-appropriate personal safety/violence prevention training; e.g., illicit drug use, impaired driving, etc.;
—Establishing conflict resolution programs, including outreach, training, and ongoing activities for youth through schools and community-based youth organizations; and
—Leading public safety-related field trips for youth, with appropriate orientation; e.g., to jails/prisons, police stations, courts, hospitals, family violence shelters, etc.

Appendix 2

The other components of 1994 Summer of Safety which are sponsored by the Corporation for National and Community Service are briefly described below. For further information about any of these Summer of Safety initiatives, please contact the Corporation.

VISTA Summer Associates

The VISTA Summer of Safety Program will support 1,000 full-time VISTA Summer Associates beginning service between June 1 and June 21, and serving from 8–10 weeks on projects which also have full-year VISTA Volunteers assigned. Participants will receive a living allowance, and those who successfully complete the summer term of service are eligible to receive a $1,000 educational award from the National Service Trust.

VISTA Summer Associate activities will address the issues of crime, violence, and fear in low-income communities by working on efforts such as community policing, crime prevention, and victim assistance. Both new and existing VISTA-sponsoring organizations are eligible to apply for VISTA Summer Associates through ACTION State Offices which will

provide technical assistance in developing project applications.

Youth Corps—the Corporation will award grants to operate 10–12 week summer youth corps programs for 1000 youth, ages 16 to 25. Participants will receive a living allowance, and those who successfully complete the program become eligible to receive a $1,000 educational award from the National Service Trust. Service activities during the summer will focus on the areas of public safety and the environment. At least one-half of the available funds will support public safety-related service activities. In selecting programs, the Corporation will give preference to programs that are creatively designed to address both public safety and environmental needs. The Corporation expects to award between 10 and 20 grants ranging in size from $50,000 to $250,000.

Learn and Serve America

Summer of Safety grants of up to $50,000 will be made through the Corporation's Learn & Serve America Program to engage 1500 youth between the ages of five and seventeen in innovative public safety-related community service. Eligible applicants are public or private nonprofit organizations that have experience working with school-age youths, and that have been in existence for at least one year. K–12 Summer of Safety programs must be innovative, and may encompass multiple program sites.

National Senior Volunteer Corps

The National Senior Volunteer Corps will fund 20 grants to existing NSVC sponsors involving the full range of public safety activities. An estimated 2,800 Senior Corp members will be recruited. The Corps will include professionally trained and other seniors interested in serving public safety needs. There will be a targeted recruitment campaign to attract highly skilled senior or retired police officers, sheriff's deputies, correctional officers, military police, social workers, teachers, public defenders and community leaders.

Activities may include: Providing administrative support to police departments, conducting neighborhood crime surveys, providing crime prevention education to seniors, assisting domestic violence victims navigate the court system, coordinating neighborhood watch programs, and serving as mentors, tutors and counselors to juveniles under court supervision.

Guidance to existing sponsors will be issued in late January with projects becoming operational in June.

National Civilian Community Corps

Approximately 200 Corps members, aged 14–17, will do public safety-related service projects with schools, local law enforcement agencies, and community-based organizations. Corps members will receive leadership training and a mix of the best military and civilian youth service programming during their eight weeks at the camp on an underutilized military installation. The site for the NCCC Summer of Safety camp will be selected by March, 1994.

Appendix 3

The Act requires that, for funding under Subtitle B–2, priority will be given to applications that:

(1) Demonstrate the commitment of the institution of higher education, other than by demonstrating the commitment of its students, to supporting the community service projects carried out under the program.

(2) Specify how the institution will promote faculty, administration, and staff participation in the community service projects.

(3) Specify the manner in which the institution will provide service to the community through organized programs, including, where appropriate, clinical programs for students in professional schools.

(4) Describe any partnership that will participate in the community service projects, such as a partnership comprised of the institution, a student organization, a community-based agency, a local government agency, or a nonprofit entity that serves or involves school-age youth or older adults.

(5) Demonstrate community involvement in the development of the proposal.

(6) Specify that the institution will use funds under this part to strengthen the infrastructure in institutions of higher education.

(7) With respect to projects involving delivery of service, specify projects that involve leadership development of school-age youth.

Appendix 4

The Act requires that, in selecting projects for funding under Subtitle C, the Corporation consider whether the project would be conducted in areas of need, which are:

(1) Communities designated by the Federal government or States as empowerment zones or redevelopment areas, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people.

(2) Areas that are environmentally distressed.

(3) Areas adversely affected by Federal actions related to the management of Federal lands that result in significant regional job losses and economic dislocation.

(4) Areas adversely affected by reductions in defense spending or the closure or realignment of military installations.

(5) Areas that have an unemployment rate greater than the national average unemployment rate for the most recent 12 months for which satisfactory data are available.

Appendix 5

The Corporation is in the process of determining the advisability of requiring health care policies for Summer of Safety participants. That determination will be discussed with prospective grantees prior to entering into a final grant agreement.

The Act requires that service programs make child care available or provide an allowance for child care for service participants. The Act further requires the Corporation to issue guidelines for child care and the child care allowance.

Below is the guidance contained in the Corporation's proposed regulations, § 2522.250, published in the **Federal Register** (Volume 59, No. 5) on January 7, 1994. This guidance is subject to change upon issuance of the Corporation's final regulations.

(a) *Child care.* Grantees must provide child care through an eligible provider or a child care allowance in an amount determined by the Corporation to those full-time participants who need child care in order to participate.

(1) *Need.* A participant is considered to need child care in order to participate in the program if he or she:

(i) Is the parent or legal guardian of, or is acting in loco parentis for, a child under 13 who resides with the participant;

(ii) Has a family income that does not exceed 75 percent of the State's median income for a family of the same size;

(iii) At the time of acceptance into the program, is not currently receiving child care assistance from another source, including a parent or guardian, which would continue to be provided while the participant serves in the program; and

(iv) Certifies that he or she needs child care in order to participate in the program.

(2) *Provider eligibility.* Eligible child care providers are those who are eligible

child care providers as defined in the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n(5).

(3) *Child care allowance.* The amount of the child care allowance will be determined by the Corporation based on payment rates for the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(4)(A).

(4) *Federal share.* The Corporation will pay 100% of the child care allowance, or if the program provides child care through an eligible provider, the actual cost of the care or the amount of the allowance, whichever is less.

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BILLING CODE 6820-BA-C

BUDGET SUMMARY FORM

1. **Participant Stipends**

_____ x _____ x _____ = $ _____

# of participants | Minimum $147/week | # of weeks[1]

2. **Total Salaries**

Project Director _____

Project Staff _____ $ _____

3. **Participant Training** $ _____

4. **Other Expenses**[2] _____

_____

_____ $ _____

5. **National Training & Travel** $ 2,100

TOTAL PROJECT COSTS $ _____

6. **NON-CORPORATION CONTRIBUTIONS:**

Matching Funds _____

In-kind contributions _____

Other Federal Funds _____ Total $ _____

7. **FUNDS REQUESTED FROM THE CORPORATION:** $ _____

1. There must be a minimum of 8 weeks of service including local training.

2. Any other expenses should be included and briefly explained.

Dated: January 27, 1994.

Catherine Milton,

Vice President and Director of National and Community Service Programs.

[FR Doc. 94–2255 Filed 2–1–94; 8:45 am]

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federal register

Wednesday
February 2, 1994

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Supportive Housing for the Elderly; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3688; FR–3589–N–01]

Notice of Fund Availability (NOFA) for Supportive Housing for the Elderly

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for FY 94.

SUMMARY: This NOFA announces HUD's funding for supportive housing for the elderly. In the body of this document is information concerning the following: (a) the purpose of the NOFA and information regarding eligibility, submission requirements, available amounts, and selection criteria and (b) application processing, including how to apply and how selections will be made.

APPLICATION PACKAGE: The application package can be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850; telephone 1–800–955–2232. A checklist of steps and exhibits involved in the application process is included in the application package.

DATES: The deadline date for receipt of applications in response to this NOFA is 4 p.m. local time on May 3, 1994. The application deadline is firm as to *date* and *hour*. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. Sponsors should take this into account and submit applications as early as possible to avoid risk brought about by unanticipated delays or delivery-related problems. In particular, Sponsors intending to mail applications must provide sufficient time to permit delivery on or before the deadline date and hour. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applications must be delivered to the Director of the Housing Development Division in the HUD Field Office for your jurisdiction. A listing of HUD Field Offices, their addresses and telephone numbers (including TDD telephone numbers) is attached as appendix A to this NOFA. HUD will date and time stamp incoming applications to evidence timely receipt, and upon request, provide the applicant with an acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–220), the information collection requirements have been assigned OMB Control Number 2502–0267.

I. Purpose and Substantive Description

A. Authority

Section 801 of the Cranston-Gonzalez National Affordable Housing Act (NAHA) amended section 202 of the Housing Act of 1959. Section 202 was also amended by the Housing and Community Development Act of 1992 (HCD Act of 1992). The Secretary is authorized to provide assistance to private nonprofit organizations and nonprofit consumer cooperatives to expand the supply of supportive housing for the elderly. The assistance is provided as capital advances and contracts for project rental assistance in accordance with 24 CFR part 889. This assistance may be used to finance the construction or rehabilitation of a structure, or acquisition of a structure from the Resolution Trust Corporation (RTC), to be used as supportive housing for the elderly in accordance with part 889.

For supportive housing for the elderly, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994, (Pub. L. 103–124, enacted October 28, 1993, (Fiscal Year 1994 Appropriations Act) provides $1,158,000,000 for capital advances, including amendments to capital advance contracts (not procurement contracts), for housing for the elderly as authorized by section 202 of the Housing Act of 1959, (as amended by the NAHA and HCD Act of 1992), and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for the elderly under section 202(c)(2) of the Housing Act of 1959, as amended. Any unreserved balances provided in prior years for such purposes are to be merged with amounts provided in the Fiscal Year 1994 Appropriations Act.

In accordance with an agreement between HUD and the Farmers Home Administration (FmHA) which facilitates the coordination between the two agencies in administering their respective rental assistance programs, HUD is required to notify FmHA of applications for housing assistance it receives. The purpose of this notification is to give FmHA the opportunity to comment if it has concern about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider the FmHA comments in its review and project selection process.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for the elderly. The Department reserves project rental assistance funds sufficient for 20-year project rental assistance contracts in support of the units selected for capital advances, consistent with current operating cost standards.

The allocation formula for section 202 funds consists of a measure of the number of one- and two-person elderly renter households with incomes at or below the very low-income limit (50 percent of area median family income, as determined by HUD, with an adjustment for household size), which have housing deficiencies.

Applicants for capital advances in the area served by the Washington, DC, Field Office are hereby put on notice that the capital advance amount available to the DC Office, as stated in this NOFA, may be reduced or eliminated due to ongoing legal proceedings occurring between HUD and a prior-year applicant, and that the determination of whether to reduce or eliminate those funds is entirely within the discretion of HUD. If such action or actions are taken, a notice to that effect will be published in the **Federal Register**.

Based on this formula, the Department has allocated the available capital advance funds as shown on the following chart:

FISCAL YEAR 1994 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY—FISCAL YEAR 1994 SECTION 202 ALLOCATIONS

Field Offices	Metropolitan capital advance authority	Units	Nonmetropolitan capital advance authority	Units	Totals capital advance authority	Units
Region I:						
*Boston	$18,517,727	236	$3,091,858	40	$21,609,585	276
Hartford	9,563,287	121			9,563,287	121
Manchester	2,811,600	47	2,955,417	50	5,767,017	97
Providence	4,360,974	57			4,360,974	57
Total I	35,253,588	461	6,047,275	90	41,300,863	551
Region II:						
Buffalo	13,228,711	199	2,620,372	40	15,849,083	239
New York	61,481,464	757	3,193,805	40	64,675,269	797
Newark	24,568,887	313			24,568,887	313
Total II	99,279,062	1269	5,814,177	80	105,093,239	1349
Region III:						
Baltimore	5,075,628	82	1,228,801	20	6,304,429	102
Charleston	2,383,393	43			2,383,393	43
Philadelphia	12,412,192	180	2,036,856	30	14,449,048	210
Pittsburgh	7,037,242	118	1,170,676	20	8,207,918	138
Richmond	4,519,456	85	1,838,717	35	6,358,173	120
D.C.	6,249,461	94			6,249,461	94
Total III	37,677,372	602	6,275,050	105	43,952,422	707
Region IV:						
Atlanta	5,387,363	108	2,854,420	58	8,241,783	166
Birmingham	3,577,338	71	1,869,666	38	5,447,004	109
Caribbean	2,287,981	40	1,126,588	20	3,414,569	60
Columbia	2,643,025	51	1,228,771	24	3,871,796	75
Greensboro	6,161,620	106	3,689,574	65	9,851,194	171
Jackson	3,094,819	64			3,094,819	64
Jacksonville	19,372,418	353	2,158,938	40	21,531,356	393
Louisville	2,887,617	54	2,276,143	43	5,163,760	97
Knoxville	2,184,507	44			2,184,507	44
Nashville	3,015,435	62	1,303,035	27	4,318,470	89
Total	50,612,123	953	16,507,135	315	67,119,258	1268
Region V:						
Chicago	23,823,446	347	3,696,465	55	27,519,911	402
Cincinnati	4,780,204	84			4,780,204	84
Cleveland	9,529,447	152	1,213,879	20	10,743,326	172
Columbus	2,239,660	40	1,876,598	34	4,116,258	74
Detroit	9,609,231	152	1,237,936	20	10,847,167	172
Grand Rapids	2,466,015	46	1,310,147	25	3,776,162	71
Indianapolis	6,113,591	108	1,959,977	35	8,073,568	143
Milwaukee	7,061,812	115	2,965,893	49	10,027,705	164
Minn-St. Paul	6,282,998	98	2,802,188	44	9,085,186	142
Total V	71,906,404	1142	17,063,083	282	88,969,487	1424
Region VI:						
Fort Worth (NM)	7,588,323	148	2,530,768	50	10,119,091	198
Houston	4,884,422	94			4,884,422	94
Little Rock	2,376,180	52	884,523	20	3,260,703	72
New Orleans	4,152,676	83	1,066,812	22	5,219,488	105
Oklahoma	2,731,249	56	959,293	20	3,690,542	76
San Antonio	2,925,297	59	973,098	20	3,898,395	79
Total VI	24,658,147	492	6,414,494	132	31,072,641	624
Region VII:						
Des Moines	2,846,598	55	1,010,775	20	3,857,373	75
Kansas City	4,232,977	80	2,040,609	40	6,273,586	120
Omaha			2,000,654	40	2,000,654	40
St. Louis	2,556,300	43	1,184,487	20	3,740,787	63
Total VII	9,635,875	178	6,236,525	120	15,872,400	298
Region VIII:						
Denver	5,927,630	114	2,990,131	60	8,917,761	174
Total VIII	5,927,630	114	2,990,131	60	8,917,761	174
Region IX:						
Honolulu (Guam)			2,258,519	20	2,258,519	20
Los Angeles	40,649,178	549	2,913,050	40	43,562,228	589
Phoenix	3,263,678	65	984,583	20	4,248,261	85

FISCAL YEAR 1994 ALLOCATIONS FOR SUPPORTIVE HOUSING FOR THE ELDERLY—FISCAL YEAR 1994 SECTION 202 ALLOCATIONS—Continued

Field Offices	Metropolitan capital advance authority	Units	Nonmetropolitan capital advance authority	Units	Totals capital advance authority	Units
Sacramento	4,078,500	62	1,289,025	20	5,367,525	82
San Francisco	22,033,435	280	3,030,757	40	25,064,192	320
Total IX	70,024,791	956	10,475,934	140	80,500,725	1096
Region X:						
Anchorage	.....	.....	2,260,745	20	2,260,745	20
Portland	4,275,182	76	1,625,961	30	5,901,143	106
Seattle	7,104,051	108	1,296,765	20	8,400,816	128
Total X	11,379,233	184	5,183,471	70	16,562,704	254
National total	416,354,225	6351	83,007,275	1394	499,361,500	7745

C. Eligibility

The only eligible applicants under this program are private, nonprofit organizations and nonprofit consumer cooperatives. Neither a public body nor an instrumentality of a public body is eligible to participate in the program. No organization shall participate as Sponsor or Co-sponsor in the filing of application(s) for a capital advance in a single region in this fiscal year in excess of that necessary to finance the construction, rehabilitation or acquisition (acquisition permitted only with RTC properties) of 300 units of housing and related facilities for the elderly. This limit shall apply to organizations that participate as Co-sponsors regardless of whether the Co-sponsors are affiliated or non-affiliated entities. In addition, the national limit for any one applicant is 10 percent of the total units allocated in all Regions. Affiliated entities which submit separate applications shall be deemed to be a single entity for the purposes of these limits. No single application may propose more than the number of units allocated to a Field Office or 125 units, whichever is less. Reservations for projects will not be approved for less than 40 units in metropolitan areas or less than 5 units in nonmetropolitan areas.

D. Initial Screening, Technical Processing and Selection Criteria

1. Initial Screening

Applications for section 202 capital advances that are received by HUD at the appropriate address by 4 p.m. local time on May 3, 1994 will be reviewed to determine if all parts of the application are included. HUD will not review the content of the application as part of initial screening. Deficiency letters will be sent informing Sponsors of any missing parts of the application. Sponsors must correct such deficiencies within 14 calendar days from the date of the deficiency letter. The deficiency letter is to be sent by certified mail. Any document requested as a result of the initial screening may be executed or prepared within the deficiency period, except for Forms HUD–92015–CAs, Articles of Incorporation, IRS exemption rulings, Forms SF–424, Board Resolution committing the minimum capital investment, and site control documents (all of these excepted items must be dated no later than the application deadline date).

2. Technical Processing.

All applications will be placed in technical processing upon receipt of the response to the deficiency letter or at the end of the 14-day period. All applications will undergo a complete analysis. If a reviewer finds that clarification is needed to complete the review or an exhibit is missing that was not requested after initial screening, the reviewer shall immediately advise the Multifamily Housing Representative who will: (a) Request, by telephone, that the Sponsor submit the information within five (5) working days, and (b) follow up by certified letter. Communications must be attached to the technical review and findings memorandum. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50. Examples of reasons for technical processing rejection include an ineligible Sponsor, ineligible population to be served, lack of legal capacity, lack of site control and unacceptable site based upon a site visit. The Secretary will not reject an application based on technical processing without giving notice of that rejection with all rejection reasons, and affording the applicant an opportunity to appeal. An applicant will be afforded 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the Field Office. The Field Office must respond within 5 working days to the Sponsor. The Field Office shall make a determination on an appeal prior to making its selection recommendations. All applications will be either rated or technically rejected at the end of technical processing.

Technical processing will also assure that if the Sponsor has been found by a court or by a Federal, State, or local agency, in noncompliance with any of the statutes, regulations, or other requirements listed in the civil rights certification (§ 889.270(b)(8)(i)), HUD will obtain from the Sponsor a statement of the actions taken to correct that noncompliance. There must be no pending civil rights suits against the Sponsor instituted by the Department of Justice and no pending administrative actions for civil rights violations instituted by HUD. Moreover, there must not be a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, the Department's implementing regulations (24 CFR 1.8), procedures (HUD Handbook 8040.1), and the Attorney General's Guidelines (28 CFR 50.3); or under section 504 of the Rehabilitation Act of 1973 and the Department's implementing regulations (24 CFR 8.57), and the Americans with Disabilities Act of 1990.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in § 889.300(d) (also below in I.D.3). Applications which have a total score of 50 points or more will be eligible for selection and will be placed in rank order.

3. Selection Criteria

Applications for section 202 capital advances that successfully complete technical processing will be rated using the following selection criteria:

(a) In determining the Sponsor's ability to develop and operate the

proposed housing on a long-term basis, consider the following (50 points maximum):

(1) The scope, extent and quality of the Sponsor's experience in providing housing or related services to those proposed to be served by the project and the scope of the proposed project (*i.e.*, number of units, services, relocation costs, development, and operation) in relationship to the Sponsor's demonstrated development and management capacity. (32 points);

(2) The scope, extent and quality of the Sponsor's experience in providing housing or related services to minority persons or families (5 points);

(3) The scope, extent and quality of the Sponsor's experience in providing opportunities for minority and women-owned business enterprises participation (3 points); and

(4) The extent of local community support for the Sponsor's activities, including previous experience in serving the area where the project is to be located, and Sponsor's demonstrated ability to enlist volunteers and local funds (10 points);

(b) In determining the need for supportive housing for the elderly in the area to be served and the suitability of the site, consider (25 points maximum):

(1) The extent of the need for the project in the area based on a determination by the Field Office. This determination will be made taking into consideration the Sponsor's evidence of need in the area based on the guidelines in § 889.270(b)(17), as well as other economic, demographic and housing market data available to the Field Office. The data could include the availability of existing Federally assisted housing (HUD and FmHA) (*e.g.*, considering availability and vacancy rates of public housing) for the elderly and current occupancy in such facilities, Federally assisted housing for the elderly under construction or for which fund reservations have been issued, and in accordance with an agreement between HUD and the FmHA, comments from the FmHA on the demand for additional assisted housing and the possible harm to existing projects in the same housing market area (8 points).

(2) The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended occupants, adequacy of utilities and streets, freedom of the site from adverse environmental conditions, compliance with site and neighborhood standards (10 points); and

(3) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority elderly persons/families (7 points);

(c) In determining adequacy of the provision of supportive services and of the proposed facility consider (25 points maximum):

(1) The extent to which the proposed design will meet the special physical needs of elderly persons (4 points);

(2) The extent to which the proposed size and unit mix of the housing will enable the Sponsor to manage and operate the housing efficiently and ensure that the provision of supportive services will be accomplished in an economical fashion (4 points);

(3) The extent to which the proposed design of the housing will accommodate the provision of supportive services that are expected to be needed, initially and over the useful life of the housing, by the category or categories of elderly persons the housing is intended to serve (2 points);

(4) The extent to which the proposed supportive services meet the identified needs of the residents (8 points); and

(5) The extent to which the Sponsor demonstrated that the identified supportive services will be provided on a consistent long-term basis (7 points).

II. Application Process

All applications for Section 202 capital advances submitted by eligible Sponsors must be filed with the appropriate HUD Field Office receiving an allocation and must meet the requirements of this Notice. No application will be accepted after 4 p.m. local time on May 3, 1994, unless that date and time is extended by a Notice published in the **Federal Register**. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Immediately upon publication of this NOFA, if names have not already been provided to the Multifamily Housing Clearinghouse, Field Offices shall notify elderly and minority media, all persons and organizations on their mailing lists and minority and other organizations within their jurisdiction involved in housing and community development and groups with special interest in housing for elderly households.

Organizations interested in applying for a section 202 capital advance should contact the Multifamily Housing Clearinghouse at 1–800–955–2232 for a copy of the application package, and advise the appropriate Field Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices will advise all organizations on their mailing list of the date, time and place of workshops at which the Section 202 Program will be explained.

HUD strongly recommends that prospective applicants attend the local Field Office workshop. Interested persons with disabilities should contact the Field Office to assure that any necessary arrangements can be made for them to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, Application Packages can be obtained from the Multifamily Housing Clearinghouse (see address and telephone number under **SUMMARY** above). However, Sponsors must contact the appropriate Field Office with any questions regarding the submission of applications and for any additional application requirements.

At the workshops, application procedures and requirements will be explained. Also, concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning and housing costs will be addressed.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in section III. B. below, with the exception of applications submitted by Sponsors selected for a Section 202 fund reservation within the last three funding cycles, and must be indexed and tabbed. Previously selected Section 202 Sponsors are not required to submit the information described in B. 2. (a), (b) and (c) below (Exhibit 2, a., b., and c. of the application which are the articles of incorporation, (or other organizational documents), by-laws, and the IRS tax exemption, respectively). The Field Office will base its determination of the eligibility of a new Sponsor for a reservation of section 202 capital advance funds on the information provided in the application. Field Offices will verify a Sponsor's indication of previous HUD approval by checking the project number and approval status with the appropriate Field Office. If there has been a change in any of the eligibility documents since its previous HUD approval, the Sponsor must submit the updated information in its application.

In addition to this relief of paperwork burden in preparing applications,

applicants will be able to utilize information and exhibits previously prepared for prior applications under section 202, section 811 or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the section 202 or section 811 programs; applicant experience in provision of housing and services; supportive services plan; community ties, and experience serving minorities.

B. General Application Requirements

1. Form HUD–92015–CA, Application for Section 202 Supportive Housing Capital Advance.

2. Evidence of *each* Sponsor's legal status as a private, nonprofit organization or nonprofit consumer cooperative, including the following:

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) By-laws;

(c) IRS tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, or a consumer cooperative that is tax exempt under State law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(d) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner and which includes a current listing of all duly qualified and sitting officers and directors by title and the beginning and ending date of each person's term.

[**Note:** Sponsors who have received a section 202 fund reservation within the last three funding cycles are not required to submit the documents described in (a), (b), and (c), above. Instead, sponsors must submit the project number of the most recently selected application and the field office to which it was submitted. If there have been any modifications or additions to the subject documents, indicate such, and submit the new material.]

3. CHAS certification. The Sponsor must submit a certification by the jurisdiction in which the proposed project will be located that the Sponsor's application is consistent with the jurisdiction's HUD-approved CHAS for FY 1994. The certification must be made by the unit of general local government if it is required to have, or has, a complete CHAS. Otherwise the certification may be made by the State, or if the project will be located in a unit of general local government authorized to use an abbreviated strategy, by the unit of general local government if it is willing to prepare such a CHAS.

All CHAS certifications must be made by the public official responsible for submitting the CHAS to HUD. All CHAS certifications must be submitted as part of the application by the application submission deadline set forth in this NOFA, except as provided in the next paragraph. The required CHAS must therefore have been submitted more than 60 days before the application submission deadline, since HUD has 60 days to review and approve the CHAS. Where the certification of consistency is permitted to be submitted after the application submission deadline, as described in the next paragraph, the CHAS must be submitted for approval in time for the certification to be made by the later date. In no event will an application be considered if the CHAS has not been submitted for approval by the application submission deadline.

If the required certification will be made by a unit of general local government with respect to an abbreviated strategy, and such CHAS has been submitted by the application submission deadline but has not yet been approved by HUD, the deadline will not be applied to the certification for consistency. Instead, the application must include a written statement from the public official responsible for submitting the CHAS that the jurisdiction has submitted an abbreviated strategy for FY 1994 for HUD approval and that the application is consistent with the CHAS. If HUD approved the CHAS, the required certification that the application is consistent with a HUD-approved CHAS for FY 1994 must be submitted before June 2, 1994. An application will not be selected for funding unless the CHAS is approved and the required certification is made by June 2, 1994. The CHAS regulations are published in 24 CFR part 91.

4. E.O. 12372. A certification that the Sponsor has submitted a copy of its applications, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

5. SF–424. A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

6. Disclosure of Lobbying Activities. If the amount applied for is greater than $100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. If the amount applied for is greater than $100,000 and the applicant has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include SF–LLL, Disclosure of Lobbying Activities. The applicant determines if the submission of the SF–LLL form is applicable.

7. A statement that (a) identifies all persons (families, individuals, businesses and nonprofit organizations identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for a capital advance; (b) indicates the estimated cost of relocation payments and other services, and (c) identifies the staff organization that will carry out the relocation activities.

[**Note:** If any of the relocation costs will be funded from sources other than the section 202 capital advance, the sponsor must provide evidence of a firm commitment of these funds. When evaluating applications, HUD will consider the total cost of proposals (*i.e.*, cost of site acquisition, relocation, construction and other project costs).]

8. Additional Certifications.

(a) A certification of the Sponsor(s)' intent to comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR parts 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity.

(b) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(c) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100, and the Americans with Disabilities Act of 1990.

(d) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR 889.265(e).

(e) A certification by the Sponsor(s) that it will form an Owner (as defined in § 889.105) after the issuance of the capital advance, will cause the Owner to file a request for determination of eligibility and a request for capital advance under § 889.300, and will provide sufficient resources to the Owner to insure the development and long-term operation of the project, including capitalizing the Owner at conditional commitment processing in an amount sufficient to meet its obligations in connection with the project.

9. A description of Sponsor's purposes and activities, ties to the community and minority support and how long it has been in existence (include any additional related information).

10. A description of any other rental housing projects and/or medical facilities, sponsored, owned and operated by the Sponsor including a description of experience in providing housing and/or medical facilities to the elderly and/or families and minorities.

11. A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving the elderly and/or families and minorities.

12. A description of the Sponsor's experience in contracting with minority and women-owned businesses, including a summary of the total amount awarded in each of the two categories for the preceding three years and the percentage that amount represents of the total contracts awarded by the Sponsor in the relevant time period.

13. A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership. Also, evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of one percent of the HUD-approved capital advance, not to exceed $10,000, if non-affiliated with National Sponsor; one-half of one percent of the HUD-approved capital advance, not to exceed $25,000, for all other Sponsors; see 889.250), and the estimated cost of any amenities or features (and operating costs related thereto) which would not be covered by the approved capital advance.

14. A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to this NOFA or the NOFA for Supportive Housing for Persons with Disabilities (published elsewhere in today's **Federal Register**). Indicate by Field Office, the proposed location by city and State, and the number of units requested for each application. A list of all FY 1993 and prior year projects to which the Sponsor(s) is a party, identified by project number and Field Office, which have not been finally closed.

15. HUD–2880, Applicant/Recipient Disclosure/Update Report, including Social Security Numbers and Employee Identification Numbers.

16. Evidence of need for supportive housing. A description of the category or categories of elderly persons the housing is intended to serve and evidence demonstrating sustained effective demand for supportive housing for that population in the market area to be served, taking into consideration the occupancy and vacancy conditions in existing Federally assisted housing for the elderly (HUD and FmHA) (*e.g.*, public housing), state or local data on the limitations in activities of daily living among the elderly in the area, aging in place in existing assisted rentals; trends in demographic changes in elderly population and households; the numbers of income eligible elderly households by size, tenure and housing condition, and the types of supportive services arrangements currently available in the area and the utilization of such services as evidenced by data from local social service agencies or agencies on aging.

17. Evidence of site control and permissive zoning.

(a) Evidence that the Sponsor has entered into a legally binding option agreement to buy or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold a request with all supporting documentation, submitted either prior to or with the Application for Capital Advance, for a partial release of a site covered by a mortgage under a HUD program or other evidence of legal ownership of the site (including properties to be acquired from the Resolution Trust Corporation). The option agreement period must extend through the end of the current fiscal year and contain a renewal provision so that the option can be renewed for at least an additional six months. The Sponsor must also identify any restrictive covenants, including reverter clauses. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of Section 202 capital advance and identification of any restrictive covenants, including reverter clauses. However, in localities where HUD determines the time constraints of the funding round will not permit all of the required official actions (*e.g.*, approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants, including reverter clauses. For properties to be acquired from the RTC, include a copy of the RTC prepared Transaction Screen Checklist or Phase I Environmental Site Assessment, and applicable documentation, per the RTC Environmental Guidelines.

[**Note:** A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the section 202 project or from any other development team member.]

(b) Evidence that the project as proposed is permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for belief that the proposed action will be completed successfully before the submission of the commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*).

18. Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that impacts on the suitability of the site for the elderly.

19. A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

20. Provision of supportive services and proposed facility.

(a) A detailed description of the supportive services proposed to be provided to the anticipated occupancy.

(b) Form HUD 92013E, Supplemental Application Processing Form—Housing for the Elderly. Identify all supportive services, if any, to be provided to the persons occupying such housing.

(c) A description of public or private sources of assistance that reasonably could be expected to fund the proposed services.

(d) The manner in which such services will be provided to such persons (*i.e.*, on or off-site), including, whether a service coordinator will facilitate the adequate provision of such services, and how the services will meet the identified needs of the residents.

(e) Narrative description of the building design including a description of any special design features and community space, and how this design will facilitate the delivery of services in an economical fashion and accommodate the changing needs of the residents over the next 10–20 years.

(f) Describe if and how the project will promote energy efficiency and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12612, Federalism, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances and project rental assistance for supportive housing for the elderly.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order No. 12606, The Family, has determined that this NOFA does not significantly affect family formation, maintenance, or general well-being, and, thus, is not subject to review under the order.

D. Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

1. Documentation and Public Access

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

E. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

F. Section 103

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

G. Lobbying

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to the Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

I. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Housing for the Elderly or Handicapped.

Authority: Section 202, Housing Act of 1959, as amended (12 U.S.C. 1701q), Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 12, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

Appendix A—HUD Field Offices

Regional and Field Office Directory

HUD Field Offices

Region I

Boston, Massachusetts Regional Office

Jeanne McHallam
Director—Housing Development
HUD-Boston Regional Office
Room 375
Thomas P. O'Neill, Jr. Federal Building
10 Causeway Street,
Boston, Massachusetts 02222–1092
(617) 565–5234 FAX (617) 565–5257

Hartford, Connecticut Office (A)

Ronald Black
Director, Housing Development
HUD-Hartford Office
330 Main Street
Hartford, Connecticut 06106–1860
(203) 240–4523 FAX (203) 240–4674

Manchester, New Hampshire Office (B)

Loren W. Cole
Director, Housing Development
HUD-Manchester Office
Norris Cotton Federal Building
275 Chestnut Street
Manchester, New Hampshire 03103–2487
(603) 666–7681 FAX (603) 666–7736

Providence, Rhode Island Office (B)

Michael Dziok
Director, Housing Development
HUD-Providence Office
330 John O. Pastore Federal Building
and U.S. Post Office—Kennedy Plaza
Providence, Rhode Island 02902–1785
(401) 528–5351 FAX (401) 528–5312

Region II

New York Regional Office

Martin Sckalor
Director, Housing Development
Regional Housing Commissioner
HUD-New York Regional Office
26 Federal Plaza
New York, New York 10278–0068
(212) 264–6500 FAX (212) 264–0246

Buffalo, New York Office (A)

Robert Rifenberick
Director, Housing Development
HUD-Buffalo Office
5th Floor
Lafayette Court
465 Main Street
Buffalo, New York 14203–1780
(716) 846–5755 FAX (716) 846–5752

Newark, New Jersey Office (A)

Geraldine McGann
Director, Housing Development
HUD-Newark Office
1 Newark Center
Newark, New Jersey 07102–5504
(201) 622–7900 Ext. 3102 FAX (201) 645–2323

Region III

Philadelphia Regional Office

Michael J. Perretta
Director, Housing Development
HUD-Philadelphia Regional Office
Liberty Square Building
105 South 7th Street
Philadelphia, Pennsylvania 19106–3392
(215) 597–2560 FAX (215) 597–9627

Baltimore, Maryland Office (A)

Candace L. Simms
Director, Housing Development
HUD-Baltimore Office
5th Floor
City Crescent Building
10 South Howard Street
Baltimore, Maryland 21201–2505
(410) 962–2520 FAX (410) 962–4947

Charleston, West Virginia Office (B)

Robert J. Gibson
Chief, Housing Development
HUD-Charleston Office
Suite 708
405 Capitol Street
Charleston, West Virginia 25301–1795
(304) 347–7000 FAX (304) 347–7050

Pittsburgh, Pennsylvania Office (A)

Edward Palombizio
Director—Housing Development
HUD-Pittsburgh Office
412 Old Post Office Courthouse
7th Avenue & Grant Street
Pittsburgh, Pennsylvania 15219
(412) 644–6428 FAX (412) 644–6499

Richmond, Virginia Office (A)

Charlie Famuliner
Director—Housing Development
HUD-Richmond Office
The 3600 Centre
3600 West Broad Street
P O Box 90331
Richmond, Virginia 23230–0331
(804) 278–4507 FAX (804) 771–2314

Washington, DC Office (A)

Felicia Williams
Director—Housing Development
HUD-Washington, DC Office
Suite 300
Union Center Plaza, Phase II
820 First Street, NE
Washington, DC 20002–4205
(202) 275–9200 FAX (202) 275–0779

Region IV

Atlanta, Georgia Regional Office

Gayle F. Burbidge
Director—Housing Development
Richard B. Russell Federal Building
75 Spring Street, S.W.
Atlanta, Georgia 30303–3388
(404) 331–5136 FAX (404) 331–0845

Birmingham, Alabama Office (A)

Martha K. Andus
Acting Director—Housing Development
HUD-Birmingham Office
Suite 300
Beacon Ridge Tower
600 Beacon Parkway West
Birmingham, Alabama 35209–3144
(205) 290–7617 FAX (205) 290–7593

Caribbean Office (A)

Alberto Rosado
Director—Housing Development
HUD-Caribbean Office
New San Juan Office Building
159 Carlos E. Chardon Avenue
San Juan, Puerto Rico 00918–1804
(809) 766–6121 FAX (809) 766–5995

Columbia, South Carolina Office (A)

Keene R. LaFountain
Director—Housing Development
HUD-Columbia Office
Strom Thurmond Federal Building
1835 Assembly Street
Columbia, South Carolina 29201–2480
(803) 765–5592 FAX (803) 765–5515

Greensboro, North Carolina (A)

Daniel A. McCanless
Director—Housing Development
HUD-Greensboro Office
Koger Building
2306 West Meadowview Road
Greensboro, North Carolina 27407–3707
(919) 547–4001 FAX (919) 547–4015

Jackson, Mississippi Office (A)

Reba G. Cook
Director—Housing Development
HUD-Jackson Office
Dr. A.H. McCoy Federal Building
100 West Capitol Street, Room 910
Jackson, Mississippi 39269–1096
(601) 965–5308 FAX (601) 965–4773

Jacksonville, Florida Office (A)

Donald E. Odenthal
Director—Housing Development
HUD-Jacksonville Office
Suite 2200
Southern Bell Tower
301 West Bay Street
Jacksonville, Florida 32202–5121
(904) 232–2626 FAX (904) 232–3759

Knoxville, Tennessee Office (A)

John E. Robbins
Director—Housing Management
HUD-Knoxville Office
Third Floor
John J. Duncan Federal Building
710 Locust Street, S.W.
Knoxville, Tennessee 37902–2526
(615) 545–4384 FAX (615) 545–4569

Louisville, Kentucky Office (A)

David A. Powell
Director—Housing Development
HUD-Louisville Office
601 West Broadway
P.O. Box 1044
Louisville, Kentucky 40201–1044
(502) 582–5251 FAX (502) 582–6074

Nashville, Tennessee Office (B)

Ed M. Phillips
Director—Housing Development
HUD-Nashville Office
Suite 200
251 Cumberland Bend Drive
Nashville, Tennessee 37228–1803
(615) 736–5213 FAX (615) 736–2018

Region V

Chicago, Illinois Regional Office

Louis Berra
Director—Housing Development
HUD-Chicago Regional Office
Ralph Metcalfe Federal Building
77 West Jackson Boulevard
Chicago, Illinois 60604–3507
(312) 353–5680 FAX (312) 353–0121

Cincinnati, Ohio Office (B)

Loustine Tuck
Director—Housing Development
HUD-Cincinnati Office
Room 9002
Federal Office Building
550 Main Street
Cincinnati, Ohio 45202–3253
(513) 684–2884 FAX (513) 684–6224

Cleveland, Ohio Office (B)

Phillip J. Giaconia
Director—Housing Development
HUD-Cleveland Office
Room 420
One Playhouse Square
1375 Euclid Avenue
Cleveland, Ohio 44114–1670
(216) 522–4065 FAX (216) 522–2975

Columbus, Ohio Office (A)

Don Jakob
Director—Housing Development
HUD-Columbus Office
200 North High Street
Columbus, Ohio 43215–2499
(614) 469–5737 FAX (614) 469–2432

Detroit, Michigan Office (A)

Robert Brown
Director—Housing Development
HUD—Detroit Office
Patrick V. McNamara Federal Building
477 Michigan Avenue
Detroit, Michigan 48226–2592
(313) 226–7900 FAX (313) 226–4394

Grand Rapids, Michigan Office (B)

John Milchick
Director—Housing Development
HUD—Grand Rapids Office
2922 Fuller Avenue, N.E.
Grand Rapids, Michigan 49505–3499
(616) 456–2100 FAX (616) 456–2191

Indianapolis, Indiana Office (A)

Erica Dobreff
Director—Housing Development
HUD—Indianapolis Office
151 North Delaware Street
Indianapolis, Indiana 46204–2526
(317) 226–6303 FAX (317) 226–6317

Milwaukee, Wisconsin Office (A)

Lester Marriner
Director—Housing Development
HUD—Milwaukee Office
Suite 1380
Henry S. Reuss Federal Plaza
310 West Wisconsin Avenue
Milwaukee, Wisconsin 53203–2289
(414) 297–3214 FAX (414) 297–3947

Minneapolis-St. Paul, Minnesota (A)

John Buenger
Director—Housing Development
HUD—Minneapolis-St. Paul Office
220 Second Street, South
Minneapolis, Minnesota 55401–2195
(612) 370–3000 FAX (612) 370–3220

Region VI

Fort Worth, Texas Regional Office

Larry Mumford
Director—Housing Development
HUD—Fort Worth Regional Office
1600 Throckmorton
P.O. Box 2905
Fort Worth, Texas 76113–2905
(817) 885–5401 FAX (817) 885–5629

Houston, Texas Office (B)

Allen J. Novosad
Director—Housing Development
HUD—Houston Office
Suite 200
Norfolk Tower
2211 Norfolk
Houston, Texas 77098–4096
(713) 653–3274 FAX (713) 653–3319

Little Rock, Arkansas Office (A)

Nathan Abernathy
Director—Housing Development
HUD—Little Rock Office
Suite 900
TCBY Tower
425 West Capitol Avenue
Little Rock, Arkansas 72201–3488
(501) 324–5931 FAX (501) 324–5900

New Orleans, Louisiana Office (A)

Jose A. Pagan
Director—Housing Development
HUD—New Orleans Office
Fisk Federal Building
1661 Canal Street
New Orleans, Louisiana 70112–1887
(504) 589–7200 FAX (504) 589–2917

Oklahoma City, Oklahoma Office (A)

Sherry Hunt
Acting Director—Housing Development
HUD—Oklahoma City Office
Murrah Federal Building
200 N.W. 5th Street
Oklahoma 73102–3202
(405) 231–4181 FAX (405) 231–4648

San Antonio, Texas Office (A)

Robert W. Hicks
Acting Director—Housing Development
HUD—San Antonio Office
Washington Square Building
800 Dolorosa Street
San Antonio, Texas 78207–4563
(210) 229–6800 FAX (210) 229–6753

Region VII

Kansas City, Kansas Regional Office

Richard Kluge
Director—Housing Development
HUD—Kansas City Regional Office
Room 200
Gateway Tower II
400 State Avenue
Kansas City, Kansas 66101–2406
(913) 236–2162

Des Moines, Iowa Office (B)

Donna Davis
Director—Housing Development
HUD—Des Moines Office
Room 239
Federal Building
210 Walnut Street
Des Moines, Iowa 50309–2155
(515) 284–4512 FAX (515) 284–4743

Omaha, Nebraska Office (A)

Robert E. Peterson
Director—Housing Development
HUD—Omaha Office
Executive Tower Centre
10909 Mill Valley Road
Omaha, Nebraska 68154–3955
(402) 492–3101 FAX (402) 492–3150

St. Louis, Missouri Office (A)

Joy Miller
Director—Housing Development
HUD—St. Louis Office
Third Floor
Robert A. Young Federal Building
1222 Spruce Street
St. Louis, Missouri 63103–2836
(314) 539–6560 FAX (314) 539–6575

Region VIII

Denver, Colorado Regional Office

Arthur Tonilli
Director—Housing Development
HUD—Denver Regional Office
Executive Tower Building
1405 Curtis Street
Denver, Colorado 80202–2349
(303) 844–4513 FAX (303) 844–2475

Region IX

San Francisco, California Regional Office

Jayne Hulbert Humphrey
Director—Housing Development
HUD—San Francisco Regional Office
Philip Burton Federal Building & U.S. Courthouse
450 Golden Gate Avenue
P.O. Box 36003
San Francisco, California 94102–3448
(415) 556–4752 FAX (415) 556–4176

Honolulu, Hawaii Office (A)

Jill Hurt
Director—Housing Development
HUD—Honolulu Office
Suite 500
Seven Waterfront Plaza
500 Ala Moana Blvd.
Honolulu, Hawaii 96813–4918
(808) 541–1323 FAX (808) 541–3146

Los Angeles, California Office (A)

Joe L. Hirsch
Director—Housing Development
HUD—Los Angeles Office
1615 West Olympic Boulevard
Los Angeles, California 90015–3801
(213) 251–7122 FAX (213) 251–7096

Phoenix, Arizona Office (B)

Laura Massie
Director—Housing Development
HUD—Phoenix Office
Suite 600
Two Arizona Center
400 North 5th Street
Phoenix, Arizona 85004–2361
(602) 379–4434 FAX (602) 379–3985

Sacramento, California Office (B)

Williams F. Bolton
Director—Housing Development
HUD—Sacramento Office
Suite 200
777 12th Street
Sacramento, California 95814–1977
(916) 551–1351 FAX (916) 551–2899

Region X

Seattle, Washington Regional Office

John H. Taylor
Director—Housing Development
HUD—Seattle Regional Office
Suite 200
Seattle Federal Office Building
909 First Avenue
Seattle, Washington 98104–1000
(206) 220–5101 FAX (206) 553–4405

Anchorage, Alaska Office (A)

Gene Dobrzynski
Chief—Housing Development
HUD—Anchorage Office
Suite 401
University Plaza Building
949 East 36th Avenue
Anchorage, Alaska 99508–4135
(907) 271–4170 FAX (907) 271–3667

Portland, Oregon Office (A)

Thomas C. Cusack
Director—Housing Development
HUD—Portland Office
520 S.W. 6th Avenue
Portland, Oregon 97204–1596
(503) 326–2561 FAX (503) 326–3097

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Supportive Housing for Persons With Disabilities; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3689; FR–3590–N–01]

Notice of Fund Availability (NOFA) for Supportive Housing for Persons with Disabilities

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for FY 94.

SUMMARY: This NOFA announces HUD's funding for supportive housing for persons with disabilities. In the body of this document is information concerning the following: (a) the purpose of the NOFA and information regarding eligibility, submission requirements, available amounts, and selection criteria and (b) application processing, including how to apply and how selections will be made.

APPLICATION PACKAGE: The application package can be obtained from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850; telephone 1–800–955–2232. A checklist of steps and exhibits involved in the application process is included in the application package.

DATES: The deadline date for receipt of applications in response to this NOFA is 4 p.m. local time on May 3, 1994. The application deadline is firm as to *date* and *hour*. In the interest of fairness to all applicants, HUD will not consider any application that is received after the deadline. Sponsors should take this into account and submit applications as early as possible to avoid risk brought about by unanticipated delays or delivery-related problems. In particular, Sponsors intending to mail applications must provide sufficient time to permit delivery on or before the deadline date and hour. Acceptance by a Post Office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applications must be delivered to the Director of the Housing Development Division in the HUD Field Office for your jurisdiction. A listing of HUD Field Offices, their addresses and telephone numbers (including TDD telephone numbers) is attached as appendix A to this NOFA. HUD will date and time stamp incoming applications to evidence timely receipt, and upon request, provide the applicant with an acknowledgement of receipt.

FOR FURTHER INFORMATION CONTACT: The HUD Field Office for your jurisdiction.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–220), the information collection requirements have been assigned OMB Control Number 2502–0462.

I. Purpose and Substantive Description

A. Authority

Section 811 of the Cranston-Gonzalez National Affordable Housing Act (the NAHA) (and as amended by the Housing and Community Development Act of 1992) (HCD Act of 1992), authorized a new supportive housing program for persons with disabilities and replaced assistance for persons with disabilities previously covered by section 202 of the Housing Act of 1959 (section 202 continues, as amended by section 801 of the NAHA, and HCD Act of 1992, to authorize supportive housing for the elderly). The assistance is provided as capital advances and contracts for project rental assistance in accordance with 24 CFR part 890. Capital advances may be used to finance the construction, rehabilitation, or acquisition with or without rehabilitation, including acquisition from the Resolution Trust Corporation (RTC), of structures to be developed into a variety of housing options ranging from group homes and independent living facilities, to dwelling units in multifamily housing developments, condominium housing and cooperative housing. Acquisition without rehabilitation is permitted only for group homes or properties acquired from the RTC. This assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for persons with disabilities.

For supportive housing for persons with disabilities, the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (Pub. L. 103–124, enacted October 28, 1993, (Fiscal Year 1994 Appropriations Act) provides $387,000,000 for capital advances, for supportive housing for persons with disabilities, as authorized by section 811 of the NAHA, and for project rental assistance, and amendments to contracts for project rental assistance, for supportive housing for persons with disabilities as authorized by section 811 of the NAHA. Any unreserved balances provided in prior years for such purposes are to be merged with amounts provided in the Fiscal Year 1994 Appropriations Act. It should be noted that although section 623 of the HCD Act of 1992 authorizes tenant-based assistance for persons with disabilities, appropriations have not been provided.

In accordance with an agreement between HUD and the Farmers Home Administration (FmHA) which facilitates the coordination between the two agencies in administering their respective rental assistance programs, HUD is required to notify FmHA of applications for housing assistance it receives. The purpose of this notification is to give FmHA the opportunity to comment if it has concern about the demand for additional assisted housing and possible harm to existing projects in the same housing market area. HUD will consider the FmHA comments in its review and project selection process.

B. Allocation Amounts

In accordance with 24 CFR part 791, the Assistant Secretary will allocate the amounts available for capital advances for supportive housing for persons with disabilities. The Department reserves project rental assistance funds sufficient for 20-year project rental assistance contracts in support of the units selected for capital advances, consistent with current operating cost standards.

The allocation formula for section 811 funds consists of the following two data elements:

1. A measure of the number of non-institutionalized persons age 16 or older with a work disability and a mobility or self-care limitation; and

2. A measure of the number of non-institutionalized persons age 16 or older having a mobility or self-care limitation but having no work disability.

Based on this formula, the Department has allocated the available capital advance funds as shown on the following chart:

Fiscal Year 1993 Allocation for Supportive Housing for Persons With Disabilities

Region	Capital advance	Units
I	$8,714,817	121
II	22,768,105	305
III	16,738,362	280
IV	31,171,649	615
V	26,794,525	449
VI	14,990,460	314
VII	5,869,593	113
VIII	2,583,448	52
IX	24,127,484	345
X	4,110,557	69
National total	$157,869,000	2663

C. Eligibility

The only eligible applicants under this program are nonprofit organizations with section 501(c)(3) tax exemptions from the Internal Revenue Service. A single Sponsor shall not request more units in a given Region than permitted for that Region in the Invitation.

D. Initial Screening, Technical Processing and Selection Criteria

1. Initial Screening

Applications for section 811 capital advances that are received by HUD at the appropriate address by 4 p.m. local time on May 3, 1994, will be reviewed to determine if all parts of the application are included. HUD will not review the content of the application as part of initial screening. Deficiency letters will be sent informing Sponsors of any missing parts of the application. Sponsors must correct such deficiencies within 14 calendar days from the date of the deficiency letter. The deficiency letter is to be sent by certified mail. Any document requested as a result of the initial screening may be executed or prepared within the deficiency period, except for Forms HUD–92016–CAs, Articles of Incorporation, IRS exemption rulings, Forms SF–424, Board Resolution committing the minimum capital investment, and site control documents (all of these excepted items must be dated no later than the application deadline date).

2. Technical Processing

All applications will be placed in technical processing upon receipt of the response to the deficiency letter or at the end of the 14-day period. All applications will undergo a complete analysis. If a reviewer finds that clarification is needed to complete the review or an exhibit is missing that was not requested after initial screening, the reviewer shall immediately advise the Multifamily Housing Representative who will: (a) Request, by telephone, that the Sponsor submit the information within five (5) working days, and (b) follow up by certified letter. Communications must be attached to the technical review and findings memorandum. As part of this analysis, HUD will conduct its environmental review in accordance with 24 CFR part 50 on only those applications containing evidence of site control. Examples of reasons for technical processing rejection include an ineligible Sponsor, ineligible population to be served, lack of legal capacity and insufficient commitments or indications that supportive services will be available. The Secretary will not reject an application based on technical processing without giving notice of that rejection with all rejection reasons, and affording the applicant an opportunity to appeal. An applicant will be afforded 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the Field Office. The Field Office must respond within 5 working days to the Sponsor. The Field Office shall make a determination on an appeal prior to making its selection recommendations. All applications will be either rated or Technically rejected at the end of technical processing.

Technical processing will also assure that if the Sponsor has been found by a court or by a Federal, State, or local agency, in noncompliance with any of the statutes, regulations, or other requirements listed in the civil rights certification (§ 890.265(b)(9)(i)), HUD will obtain from the Sponsor a statement of the actions taken to correct that noncompliance. There must be no pending civil rights suits against the Sponsor instituted by the Department of Justice and no pending administrative actions for civil rights violations instituted by HUD. Moreover, there must not be a deferral of the processing of applications from the Sponsor imposed by HUD under Title VI of the Civil Rights Act of 1964, the Department's implementing regulations (24 CFR 1.8), procedures (HUD Handbook 8040.1), and the Attorney General's Guidelines (28 CFR 50.3); or under section 504 of the Rehabilitation Act of 1973 and the Department's implementing regulations (24 CFR 8.57), and the Americans with Disabilities Act.

Upon completion of technical processing, all acceptable applications will be rated according to the selection criteria in § 890.300(d) (also below in I.D.3). Applications which have a total score of 50 points or more will be eligible for selection and will be placed in rank order.

3. Selection Criteria

Applications for section 811 capital advances that successfully complete technical processing will be rated using the following selection criteria:

(a) The Sponsor's ability to develop and operate the proposed housing on a long-term basis, considering the following (50 points maximum):

(1) The scope, extent and quality of the Sponsor's experience in providing housing or related services to those proposed to be served by the project and the scope of the proposed project (*i.e.*, number of units, services, relocation costs, development, and operation) in relationship to the Sponsor's demonstrated development and management capacity. (32 points);

(2) The scope, extent and quality of the Sponsor's experience in providing housing or related services to minority persons or families (5 points);

(3) The scope, extent and quality of the Sponsor's experience in providing opportunities for minority and women-owned business enterprises participation (3 points); and

(4) The extent of local community support for the Sponsor's activities, including previous experience in serving the area where the project is to be located, and Sponsor's demonstrated ability to enlist volunteers and local funds (10 points);

(b) The need for supportive housing for persons with disabilities in the area to be served, the extent to which the Sponsor has site control, and the suitability of the site, considering (25 points):

(1) The extent of the need for the project in the area based on a determination by the Field Office. This determination will be made by taking into consideration the Sponsor's evidence of need in the area based on the guidelines in § 890.265(b)(18), as well as other economic, demographic and housing market data available to the Field Office. The data could include the availability of existing Federally assisted housing (HUD and FmHA) for persons with disabilities and current occupancy in such facilities, Federally assisted housing for persons with disabilities under construction or for which fund reservations have been issued and, in accordance with an agreement between HUD and FmHA, comments from the FmHA on the demand for additional assisted housing and the possible harm to existing projects in the same housing market area (8 points);

(2) The proximity or accessibility of the site to shopping, medical facilities, transportation, places of worship, recreational facilities, places of employment, and other necessary services to the intended occupants, adequacy of utilities and streets, freedom of the site from adverse environmental conditions, and compliance with the site and neighborhood standards (10 points);

(3) Suitability of the site from the standpoint of promoting a greater choice of housing opportunities for minority persons with disabilities (7 points); and

(4) Likelihood that Sponsor will have site control (if not already in control of an approvable site) within six months of fund reservation (yes or no);

(c) The adequacy of the provision of supportive services and of the proposed facility considering (25 points maximum):

(1) The extent to which the Sponsor demonstrated that the identified supportive services will be provided on a consistent long-term basis (considering any limitations imposed by State or local governments) - strength of commitments to fund or provide the supportive services, or indications of the availability of supportive services to project residents (10 points);

(2) The quality of the services implementation plan (10 points);

(3) The extent to which the proposed design will meet any special needs of persons with disabilities the housing is intended to serve and will accommodate the provision of any necessary on-site supportive services for the proposed residents (5 points).

II. Application Process

All applications for Section 811 capital advances submitted by eligible Sponsors must be filed with the appropriate HUD Field Office receiving an allocation and must meet the requirements of this Notice. No application will be accepted after 4 p.m. local time on May 3, 1994, unless that date and time is extended by a Notice published in the Federal Register. Applications received after that date and time will not be accepted, even if postmarked by the deadline date. Applications submitted by facsimile are not acceptable.

Immediately upon publication of this NOFA, if names have not already been provided to the Multifamily Housing Clearinghouse, Field Offices shall notify minority media and media for persons with disabilities, all persons and organizations on their mailing lists and minority and other organizations within their jurisdiction involved in housing and community development and groups with special interest in housing for disabled households.

Organizations interested in applying for a section 811 capital advance should contact the Multifamily Housing Clearinghouse at 1–800–955–2232 for a copy of the application package and advise the appropriate Field Office whether they wish to attend the workshop described below. HUD encourages minority organizations to participate in this program as Sponsors. Field Offices will advise all organizations on their mailing list of the date, time and place of workshops at which the Section 811 Program will be explained.

HUD strongly recommends that prospective applicants attend the local Field Office workshop. Interested persons with disabilities should contact the Field Office to assure that any necessary arrangements can be made for them to enable their attendance and participation in the workshop. While strongly urged to do so, if Sponsors cannot attend a workshop, Application Packages can be obtained from the Multifamily Housing Clearinghouse (see address and telephone number under SUMMARY above). However, Sponsors must contact the appropriate Field Office with any questions regarding the submission of applications and for any additional application requirements.

At the workshops, application procedures and requirements will be explained. Also, concerns such as local market conditions, building codes, historic preservation, floodplain management, displacement and relocation, zoning, housing costs and service plan requirements will be addressed.

III. Application Submission Requirements

A. Application

Each application shall include all of the information, materials, forms, and exhibits listed in section III. B. below, with the exception of applications submitted by Sponsors selected for a Section 811 fund reservation within the last three funding cycles, and must be indexed and tabbed. Previously selected Section 811 Sponsors are not required to submit the information described in B. 2. (a), (b) and (c) below (Exhibit 2, a. b., and c. of the application which are the articles of incorporation (or other organizational documents), by-laws, and the IRS tax exemption, respectively). The Field Office will base its determination of the eligibility of a new Sponsor for a reservation of section 811 capital advance funds on the information provided in the application. Field Offices will verify a Sponsor's indication of previous HUD approval by checking the project number and approval status with the appropriate Field Office. If there has been a change in any of the eligibility documents since its previous HUD approval, the Sponsor must submit the updated information in its application.

In addition to this relief of paperwork burden in preparing applications, applicants will be able to utilize information and exhibits previously prepared for prior applications under section 811, section 202 or other funding programs. Examples of exhibits that may be readily adapted or amended to decrease the burden of application preparation include, among others, those on previous participation in the section 202 or section 811 programs; applicant experience in the provision of housing and services; supportive services plan; community ties, and experience serving minorities.

B. General Application Requirements

1. Form HUD–92016–CA, Application for Section 811 Supportive Housing Capital Advance.

[Note: A sponsor may apply for a scattered site project provided each site contains the same facility type (e.g., group home, independent living facility, condominium unit). If the sponsor proposes a mix of facility types, it must submit one application per facility type].

2. Evidence of each Sponsor's legal status as a nonprofit organization, including the following:

(a) Articles of Incorporation, constitution, or other organizational documents;

(b) By-laws;

(c) IRS section 501(c)(3) tax exemption ruling (this must be submitted by all Sponsors, including churches). A nonprofit organization organized in the Commonwealth of Puerto Rico and exempt from income taxation under Puerto Rico law, has never been liable for payment of Federal income taxes, and does not pay patronage dividends may be exempt from the requirement set out in the previous sentence if they are not eligible for tax exemption; and

(d) Resolution of the board, duly certified by an officer, that no officer or director of the Sponsor or Owner has or will have any financial interest in any contract with the Owner or in any firm or corporation which has or will have a contract with the Owner and which includes a current listing of all duly qualified and sitting officers and directors by title and the ending date of each person's term.

[Note: Sponsors who have received a section 811 fund reservation within the last three funding cycles are not required to submit the documents described in (a), (b), and (c), above. Instead, sponsors must submit the project number of the most recently selected application and the field office to which it was submitted. If there have been any modifications or additions to the subject documents, indicate such, and submit the new material.]

3. CHAS certification. The Sponsor must submit a certification by the jurisdiction in which the proposed project will be located that the Sponsor's application is consistent with the jurisdiction's HUD-approved CHAS for FY 1994. The certification must be made by the unit of general local government if it is required to have, or has, a complete CHAS. Otherwise the certification may be made by the State, or if the project will be located in a unit of general local government authorized to use an abbreviated strategy, by the unit of general local government if it is willing to prepare such a CHAS.

All CHAS certifications must be made by the public official responsible for submitting the CHAS to HUD. All CHAS certifications must be submitted as part of the application by the application submission deadline set forth in this NOFA, except as provided in the next paragraph. The required CHAS must therefore have been submitted more than 60 days before the application submission deadline, since HUD has 60 days to review and approve the CHAS. Where the certification of consistency is permitted to be submitted after the application submission deadline, as described in the next paragraph, the CHAS must be submitted for approval in time for the certification to be made by the later date. In no event will an application be considered if the CHAS has not been submitted for approval by the application submission deadline.

If the required certification will be made by a unit of general local government with respect to an abbreviated strategy, and such CHAS has been submitted by the application submission deadline but has not yet been approved by HUD, the deadline will not be applied to the certification for consistency. Instead, the application must include a written statement from the public official responsible for submitting the CHAS that the jurisdiction has submitted an abbreviated strategy for FY 1994 for HUD approval and that the application is consistent with the CHAS. If HUD approved the CHAS, the required certification that the application is consistent with a HUD-approved CHAS for FY 1994 must be submitted before June 2, 1994. An application will not be selected for funding unless the CHAS is approved and the required certification is made by June 2, 1994. The CHAS regulations are published in 24 CFR part 91.

4. E.O. 12372. A certification that the Sponsor has submitted a copy of its application, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.

5. Supportive Services Certification. A certification from the appropriate State or local agency that the provision of supportive services is well designed to serve the special needs of persons with disabilities (the name, address, and telephone number of the appropriate agency can be obtained from the Field Office).

6. SF–424. A certification on SF–424, Application for Federal Assistance, that the Sponsor(s) is not delinquent on the repayment of any Federal debt.

7. Disclosure of Lobbying Activities. If the amount applied for is greater than $100,000, the certification with regard to lobbying required by 24 CFR part 87 must be included. If the amount applied for is greater than $100,000 and the applicant has made or has agreed to make any payment using nonappropriated funds for lobbying activity, as described in 24 CFR part 87, the submission must also include SF-LLL, Disclosure of Lobbying Activities. The applicant determines if the submission of the SF-LLL form is applicable.

8. A statement that (a) identifies all persons (families, individuals, businesses and nonprofit organizations (identified by race/minority group, and status as owners or tenants) occupying the property on the date of submission of the application for a capital advance (or date of initial site control, if later); (b) indicates the estimated cost of relocation payments and other services, and (c) identifies the staff organization that will carry out the relocation activities.

[Note: If any of the relocation costs will be funded from sources other than the section 811 capital advance, the sponsor must provide evidence of a firm commitment of these funds. When evaluating applications, HUD will consider the total cost of proposals (i.e., cost of site acquisition, relocation, construction and other project costs).]

9. Additional Certifications.

(a) A certification of the Sponsor(s)' intent to comply with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations at 24 CFR part 8; the Fair Housing Act (42 U.S.C. 3600–3619) and the implementing regulations at 24 CFR part 100, 108, 109, and 110; Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the implementing regulations at 24 CFR part 1; section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135; the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and the implementing regulations at 24 CFR part 146; Executive Order 11246 (as amended) and the implementing regulations at 41 CFR Chapter 60; the regulations implementing Executive Order 11063 (Equal Opportunity in Housing) at 24 CFR part 107; the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) to the extent applicable; the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity.

(b) A certification that the Sponsor(s) will comply with the requirements of the Drug-Free Workplace Act.

(c) A certification that the project will comply with HUD's design and cost standards, the Uniform Federal Accessibility Standards and HUD's implementing regulations at 24 CFR part 40, Section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and for covered multifamily dwellings designed and constructed for first occupancy after

March 13, 1991, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100, and the Americans with Disabilities Act of 1990.

(d) A certification by the Sponsor(s) that it will comply (or has complied) with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), implemented by regulations at 49 CFR part 24, and 24 CFR 890.260(e).

(e) A certification by the Sponsor(s) that it will form an Owner (as defined in § 890.105) after the issuance of the capital advance, will cause the Owner to file a request for determination of eligibility and a request for capital advance under § 890.300, and will provide sufficient resources to the Owner to insure the development and long-term operation of the project, including capitalizing the Owner at conditional commitment processing in an amount sufficient to meet its obligations in connection with the project.

(f) A certification that the Sponsor will comply with the requirements of the Lead-Based Point Poisoning Prevention Act (42 U.S.C. 4821–4846) and implementing regulations at 24 CFR part 35 (except as superseded in § 890.260(f)(2)).

10. A description of Sponsor's purposes and activities, ties to the community (including local disability community), any statements of support for the proposed project from non-governmental organizations familiar with the needs of the population it would serve, any sources of local funds to serve the project, minority support and how long it has been in existence (include any additional related information).

11. A description of any other rental housing projects and/or medical facilities, sponsored, owned and operated by the Sponsor including a description of experience in providing housing and/or medical facilities to persons with disabilities and minorities.

12. A description of the Sponsor's past or current involvement in any programs other than housing (including its provision of services) that demonstrates the Sponsor's management capabilities and experience, including a description of the Sponsor's experience in serving persons with disabilities and minorities.

13. A description of the Sponsor's experience in contracting with minority and women-owned businesses, including a summary of the total amount awarded in each of the two categories for the preceding three years and the percentage that amount represents of the total contracts awarded by the Sponsor in the relevant time period.

14. A certified Board Resolution, acknowledging responsibilities of sponsorship, long-term support of the project(s), willingness of Sponsor to assist the Owner to develop, own, manage and provide appropriate services in connection with the proposed project, and that it reflects the will of its membership. Also, evidence, in the form of a certified Board Resolution, of the Sponsor's willingness to fund the estimated start-up expenses, the Minimum Capital Investment (one-half of one-percent of the HUD-approved capital advance, not to exceed $10,000) (see 890.250), and the estimated cost of any amenities or features (and operating costs related thereto) which would not be coverd by the approved capital advance.

15. A list of the applications, if any, the Sponsor has submitted or is planning to submit to any other Field Office in response to this NOFA or the NOFA for Supportive Housing for the Elderly (published elsewhere in today's **Federal Register**). Indicate by Field Office, the number of units requested, and the proposed location by city and State for each application. A list of all FY 1993 and prior year projects to which the Sponsor(s) is a party, identified by project number and Field Office, which have not been finally closed.

16. HUD–2880, Applicant/Recipient Disclosure/Update Report including Social Security Numbers and Employee Identification Numbers.

17. Evidence of need for supportive housing. An identification of the proposed population and evidence demonstrating sustained effective demand for the housing for the proposed population in the area to be served, such as a description of market conditions in existing Federally assisted housing for persons with disabilities (occupancy, waiting lists, etc.), state or local needs assessments of persons with disabilities in the area, the types of supportive services arrangements currently available in the area, and the utilization of such services as evidenced by data from local social service agencies.

18. Evidence of control of an approvable site, or identification of a site for which the Sponsor provides reasonable assurances that it will obtain control within 6 months from the date of fund reservation (if Sponsor is approved for funding);

(a) If the Sponsor has control of the site, it must submit the following information:

(1) Evidence that the Sponsor has entered into a legally binding option agreement to purchase or lease the proposed site; or has a copy of the contract of sale for the site, a deed, long-term leasehold, a request with all supporting documentation, submitted either prior to or with the Application for Capital Advance, for a partial release of a site covered by a mortgage under a HUD program or other evidence of legal ownership of the site (including properties to be acquired from the RTC). The option agreement period must extend through the end of the current fiscal year and contain a renewal provision so that the option can be renewed for at least an additional six months. The Sponsor must also identify any restrictive covenants, including reverter clauses. In the case of a site to be acquired from a public body, evidence that the public body possesses clear title to the site, and has entered into a legally binding agreement to lease or convey the site to the Sponsor after it receives and accepts a notice of section 811 capital advance and identification of any restrictive covenants, including reverter clauses. However, in localities where HUD determines that the time constraints of the funding round will not permit all of the required official actions (e.g., approval of Community Planning Boards) which are necessary to convey publicly-owned sites, a letter in the application from the Mayor or Director of the appropriate local agency indicating their approval of conveyance of the site contingent upon the necessary approval action is acceptable and may be approved by the Field Office if it has satisfactory experience with timely conveyance of sites from that public body. In such cases, documentation shall also include a copy of the public body's evidence of ownership and identification of any restrictive covenants, including reverter clauses. For properties to be acquired from the RTC, include a copy of the RTC prepared Transaction Screen Checklist or Phase I Environmental Site Assessment, and applicable documentation, per the RTC Environmental Guidelines.

[Note: A proposed project site may not be acquired or optioned from a general contractor (or its affiliate) which will construct the section 811 project or from any other development team member.]

(2) Evidence that the project as proposed is permissible under applicable zoning ordinances or

regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for the belief that the proposed action will be completed successfully before the submission of the commitment application (*e.g.*, a summary of the results of any recent requests for rezoning on land in similar zoning classifications and the time required for such rezoning, preliminary indications of acceptability from zoning bodies, *etc.*).

(3) Narrative description of site and area surrounding the site, characteristics of neighborhood, how the site will promote greater housing opportunities for minorities, and any other information that impacts on the suitability of the site for persons with disabilities and including:

(i) Photographs of the site (four directional views);

(ii) If acquisition, evidence that the structure has been constructed or occupied for at least three years (other than RTC properties);

(iii) A statement that the Sponsor is willing to seek a different site if the preferred site is unapprovable and site control will be obtained within six months of notification of fund reservation; and

(iv) A map showing the location of the site and the racial composition of the neighborhood, with the area of racial concentration delineated.

(v) If the project is to be rehabilitated and an exception of the project size limits is necessary, describe why the site was selected and demonstrate the following:

(A) The increased number of people is necessary for the economic feasibility of the project;

(B) The project is compatible with other residential development and the population density of the area in which the project is to be located;

(C) The increased number of people will not prohibit their successful integration into the community;

(D) The project is marketable in the community;

(E) The size of the project is consistent with State and/or local policies governing similar facilities for the proposed population; and

(F) A statement that the Sponsor is willing to have its application processed at the project size limit should HUD not approve the exception.

(b) If the Sponsor has identified a site, but does not have it under control, it must submit the following information:

(1) A description of the location of the site, including its street address and unit number (if condominium), neighborhood/community characteristics (to include racial and ethnic data), amenities, adjacent housing and/or facilities, how the site will promote greater housing opportunities for minorities, and any other information that impacts on the suitability of the site for persons with disabilities;

(2) A description of the activities undertaken to identify the site as well as what actions must be taken and the estimated time necessary to obtain control of the site, if approved for funding;

(3) An indication as to whether the site is properly zoned. If it is not, an indication of the actions/time necessary for proper zoning;

(4) A status of the sale of the site; and

(5) An indication as to whether the site would involve relocation.

19. Supportive Service plan that includes:

(a) A detailed description of whether the housing is intended to serve persons with physical, mental or emotional impairments, developmental disabilities, or chronic mental illness. Include how and from where persons will be referred and admitted to the project. The Sponsor may, with the approval of the Secretary, limit occupancy within housing developed under this part to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment.

(b) A detailed description of the service needs of the proposed population.

(c) A *detailed description of the supportive services* proposed to be provided to the anticipated occupancy, including:

(1) The name(s) of the agency(s) which will be responsible for providing supportive services and evidence of the service provider's capability and experience in providing such supportive services;

(2) The manner in which such services will be provided (i.e., how, when and how often, where (on/off-site), including assurances that the proposed residents will receive supportive services based on their individual needs.

(3) The staffing plan, including a description of the qualifications of residential staff, if any, and other staff necessary to provide the proposed services.

(d) Identification of the extent of state and local funds available to assist in the provision of supportive services.

(e) Letters of intent from service providers or funding sources, indicating commitments to fund or provide the supportive services or that a particular service will be available to project residents.

(f) If the Sponsor will be the sole service provider using its own funds, a letter indicating its capability and commitment to either provide the supportive services or ensure their provision for the life of the project.

(g) If any state or local government funds will be provided, a description of the state/local agency's philosophy/policy concerning residential facilities for the population to be served as well as a demonstration by the Sponsor that the application is consistent with state or local plans and policies governing the development and operation of facilities for the same disabled population.

(h) Form HUD 92013E, Supplemental Application Processing Form—Housing for Persons with Disabilities. Identify all supportive services, if any, to be provided to the persons occupying such housing.

20. A written description of the design of the proposed housing, including:

(a) The development method;

(b) Identification of the number and type of structure(s), and for an independent living facility, the number of units by bedroom type and the number of residents with disabilities, and for a group home, the number of bedrooms and number of residents with disabilities;

(c) An identification of all community spaces, amenities or features planned for the housing. A description of how the spaces, amenities or features will be utilized and of the extent to which they are necessary to accommodate any special needs of the proposed residents and the provision of any on-site supportive services also must be included. If these community spaces, amenities, or features would not comply with the design and cost standards of § 890.220, the Sponsor must demonstrate its ability and willingness to contribute both the incremental development cost and continuing operating cost associated with the community spaces, amenities or features; and

(d) Describe if and how the project will promote energy efficiency and, if applicable, innovative construction or rehabilitation methods or technologies to be used that will promote efficient construction.

21. For group homes to be licensed as intermediate care facilities (in which funding for the intermediate care is provided under Title XIX of the Social Security Act) that serve persons with developmental disabilities, the following must be submitted:

(a) Evidence demonstrating that the proposed project will primarily provide housing rather than medical facilities, and is or will be licensed by appropriate State agencies;

(b) Description of the medical training of the staff of the proposed facility and any nursing services that will be required by the residents on-site;

(c) Description of the services that will be funded by Medicaid for residents of the proposed project, including their nature, frequency and where the services are to be provided;

(d) Description of any special design features proposed for the group home that are not common to other section 811 group homes for the proposed population and the Sponsor's rationale for including them;

(e) Written evidence that the State Medicaid Office recognizes the need for a tenant contribution to rent and has agreed to pay the cost of the tenant contribution in the Medicaid payment to the Owner; and

(f) statement certifying that the Individual Program Plan for each resident will include participation in an out-of-the-home activity program for at least six hours each work day.

IV. Additional Information

A. Sites

The National Affordable Housing Act requires Sponsors submitting applications for section 811 fund reservations to provide either (a) evidence of site control, or (b) reasonable assurances that it will have control of a site within 6 months of notification of fund reservation. Accordingly, if a Sponsor has control of a site at the time it submits its application, it must include evidence of such as described in § 890.265. If it does not have site control, it must provide the information required in § 890.265 as a reasonable assurance that site control will be obtained within 6 months of fund reservation notification.

Sponsors may select a site different from the one(s) submitted in their original applications if the original site is not approvable. Selection of a different site will require HUD performance of an environmental review on the new site, which could result in rejection of that site. However, if a Sponsor does not have site control for any reason 12 months after notification of fund reservation, the assistance will be recaptured and reallocated.

Sponsors submitting satisfactory evidence of an approvable site (*i.e.*, site control) will compete against each other in Category A. Sponsors submitting proper identification of a site will compete against each other in Category B. HUD first shall select applications in the descending order of funding priority from Category A that most closely approximates the capital advance authority provided to the allocation area. If capital advance authority remains after selecting all approvable applications from Category A, HUD shall then select applications in the descending order of funding priority from Category B that most closely approximates the capital advance authority remaining in the allocation area.

Applications containing evidence of site control where either the evidence or the site is not approvable will *not* be rejected provided the application indicates the Sponsor's willingness to select another site and an assurance that site control will be obtained within six months of fund reservation notification. Such applications will compete for selection in Category B. However, only those applications where the evidence of site control was not approvable will be eligible to receive any of the possible 17 points under selection criteria (b) (2) and (3) (see I.D.3.(b) (2) and (3) above). Applications where the site was rejected will receive 0 points under selection criteria (b) (2) and (3).

In the case of a scattered site application submitted with evidence of site control for all of the sites, the evidence must be satisfactory for each site and all the sites must be approvable for the application to compete in Category A. If such an application does not fulfill this requirement, it will be placed in Category B and will be eligible to receive a prorated share of the 17 points possible under selection criteria (b) (2) and (3) based on the number of sites that are approvable. The same applies to a scattered site application in which the Sponsor has control of some of the sites and has identified others. It would also be considered in Category B and would be eligible for a prorated share of the 17 points as stated above.

V. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410.

B. Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12612, Federalism, has determined that this NOFA does not have substantial direct effects on States or their political subdivisions, or on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. This NOFA merely notifies the public of the availability of capital advances for supportive housing for persons with disabilities.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order No. 12606, The Family, has determined that this NOFA does not significantly affect family formation, maintenance, or general well-being, and, thus, is not subject to review under the order.

D. Accountability in the Provision of HUD Assistance

HUD has promulgated a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act). The final rule is codified at 24 CFR part 12. Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published at 57 FR 1942, additional information that gave the public (including applicants for, and recipients of, HUD assistance) further information on the implementation, public access, and disclosure requirements of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

1. Documentation and Public Access

HUD will ensure documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and

HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

2. Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

E. Documentation and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

F. Section 103

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by Part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (TDD/Voice). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

G. Lobbying

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in Appendix A of the rule.

Any questions regarding the rule should be directed to the Director, Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 708–3815 TDD/Voice). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

H. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

I. Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.181, Supportive Housing for Persons with Disabilities.

Authority: Section 811, National Affordable Housing Act, as amended (42 U.S.C. 8013), Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 12, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

Appendix A—HUD Field Offices

Regional and Field Office Directory

HUD Field Offices—Region I

Boston, Massachusetts Regional Office

Jeanne McHallam, Director—Housing Development, HUD-Boston Regional Office, Room 375, Thomas P. O'Neill, Jr. Federal Building, 10 Causeway Street, Boston, Massachusetts 02222–1092, (617) 565–5234, FAX (617) 565–525

Hartford, Connecticut Office (A)

Ronald Black, Director, Housing Development, HUD-Hartford Office, 330 Main Street, Hartford, Connecticut 06106–1860, (203) 240–4523, FAX (203) 240–467

Manchester, New Hampshire Office (B)

Loren W. Cole, Director, Housing Development, HUD-Manchester Office, Norris Cotton Federal Building, 275 Chestnut Street, Manchester, New

Hampshire 03103–2487, (603) 666–7681, FAX (603) 666–7736

Providence, Rhode Island Office (B)

Michael Dziok, Director, Housing Development, HUD-Providence Office, 330 John O. Pastore Federal Building and U.S. Post Office—Kennedy Plaza, Providence, Rhode Island 02902–1785, (401) 528–5351, FAX (401) 528–5312

Region II

New York Regional Office

Martin Sckalor, Director, Housing Development, Regional Housing Commissioner, HUD-New York Regional Office, 26 Federal Plaza, New York, New York 10278–0068, (212) 264–6500, FAX (212) 264–0246

Buffalo, New York Office (A)

Robert Rifenberick, Director, Housing Development, HUD-Buffalo Office, 5th Floor, Lafayette Court, 465 Main Street, Buffalo, New York 14203–1780, (716) 846–5755, FAX (716) 846–5752

Newark, New Jersey Office (A)

Geraldine McGann, Director, Housing Development, HUD-Newark Office, 1 Newark Center, Newark, New Jersey 07102–5504, (201) 622–7900 Ext. 3102, FAX (201) 645–2323

Region III

Philadelphia Regional Office

Michael J. Perretta, Director, Housing Development, HUD-Philadelphia Regional Office, Liberty Square Building, 105 South 7th Street, Philadelphia, Pennsylvania 19106–3392, (215) 597–2560, FAX (215) 597–9627

Baltimore, Maryland Office (A)

Candace L. Simms, Director, Housing Development, HUD-Baltimore Office, 5th Floor, City Crescent Building, 10 South Howard Street, Baltimore, Maryland 21201–2505, (410) 962–2520, FAX (410) 962–4947

Charleston, West Virginia Office (B)

Robert J. Gibson, Chief, Housing Development, HUD-Charleston Office, Suite 708, 405 Capitol Street, Charleston, West Virginia 25301–1795, (304) 347–7000, FAX (304) 347–7050

Pittsburgh, Pennsylvania Office (A)

Edward Palombizio, Director—Housing Development, HUD-Pittsburgh Office, 412 Old Post Office Courthouse, 7th Avenue & Grant Street, Pittsburgh, Pennsylvania 15219, (412) 644–6428, FAX (412) 644–6499

Richmond, Virginia Office (A)

Charlie Famuliner, Director—Housing Development, HUD-Richmond Office, The 3600 Centre, 3600 West Broad Street, P. O. Box 90331, Richmond, Virginia 23230–0331, (804) 278–4507, FAX (804) 771–2314

Washington, DC Office (A)

Felicia Williams, Director—Housing Development, HUD-Washington, DC Office, Suite 300, Union Center Plaza, Phase II, 820 First Street, NE, Washington, DC 20002–4205, (202) 275–9200, FAX (202) 275–0779

Region IV

Atlanta, Georgia Regional Office

Gayle F. Burbidge, Director—Housing Development, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303–3388, (404) 331–5136, FAX (404) 331–0845

Birmingham, Alabama Office (A)

Martha K. Andus, Acting Director—Housing Development, HUD-Birmingham Office, Suite 300, Beacon Ridge Tower, 600 Beacon Parkway West, Birmingham, Alabama 35209–3144, (205) 290–7617, FAX (205) 290–7593

Caribbean Office (A)

Alberto Rosado, Director—Housing Development, HUD-Caribbean Office, New San Juan Office Building, 159 Carlos E. Chardon Avenue, San Juan, Puerto Rico 00918–1804, (809) 766–6121, FAX (809) 766–5995

Columbia, South Carolina Office (A)

Keene R. LaFountain, Director—Housing Development, HUD-Columbia Office, Strom Thurmond Federal Building, 1835 Assembly Street, Columbia, South Carolina 29201–2480, (803) 765–5592, FAX (803) 765–5515

Greensboro, North Carolina (A)

Daniel A. McCanless, Director—Housing Development, HUD-Greensboro Office, Koger Building, 2306 West Meadowview Road, Greensboro, North Carolina 27407–3707, (919) 547–4001, FAX (919) 547–4015

Jackson, Mississippi Office (A)

Reba G. Cook, Director—Housing Development, HUD-Jackson Office, Dr. A.H. McCoy Federal Building, 100 West Capitol Street, Room 910, Jackson, Mississippi 39269–1096, (601) 965–5308, FAX (601) 965–4773

Jacksonville, Florida Office (A)

Donald E. Odenthal, Director—Housing Development, HUD-Jacksonville Office, Suite 2200, Southern Bell Tower, 301 West Bay Street, Jacksonville, Florida 32202–5121, (904) 232–2626, FAX (904) 232–3759

Knoxville, Tennessee Office (A)

John E. Robbins, Director—Housing Management, HUD-Knoxville Office, Third Floor, John J. Duncan Federal Building, 710 Locust Street, SW., Knoxville, Tennessee 37902–2526, (615) 545–4384, FAX (615) 545–4569

Louisville, Kentucky Office (A)

David A. Powell, Director—Housing Development, HUD-Louisville Office, 601 West Broadway, P.O. Box 1044, Louisville, Kentucky 40201–1044, (502) 582–5251, FAX (502) 582–6074

Nashville, Tennessee Office (B)

Ed M. Phillips, Director—Housing Development, HUD-Nashville Office, Suite 200, 251 Cumberland Bend Drive, Nashville, Tennessee 37228–1803, (615) 736–5213, FAX (615) 736–2018

Region V

Chicago, Illinois Regional Office

Louis Berra, Director—Housing Development, HUD-Chicago Regional Office, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, Illinois 60604–3507, (312) 353–5680, FAX (312) 353–0121

Cincinnati, Ohio Office (B)

Loustine Tuck, Director—Housing Development, HUD-Cincinnati Office, Room 9002, Federal Office Building, 550 Main Street, Cincinnati, Ohio 45202–3253, (513) 684–2884, FAX (513) 684–6224

Cleveland, Ohio Office (B)

Phillip J. Giaconia, Director—Housing Development, HUD-Cleveland Office, Room 420, One Playhouse Square, 1375 Euclid Avenue, Cleveland, Ohio 44114–1670, (216) 522–4065, FAX (216) 522–2975

Columbus, Ohio Office (A)

Don Jakob, Director—Housing Development, HUD-Columbus Office, 200 North High Street, Columbus, Ohio 43215–2499, (614) 469–5737, FAX (614) 469–2432

Detroit, Michigan Office (A)

Robert Brown, Director—Housing Development, HUD-Detroit Office, Patrick V. McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan 48226–2592, (313) 226–7900, FAX (313) 226–4394

Grand Rapids, Michigan Office (B)

John Milchick, Director—Housing Development, HUD-Grand Rapids Office, 2922 Fuller Avenue, N.E., Grand Rapids, Michigan 49505–3499, (616) 456–2100, FAX (616) 456–2191

Indianapolis, Indiana Office (A)

Erica Dobreff, Director—Housing Development, HUD-Indianapolis Office, 151 North Delaware Street, Indianapolis, Indiana 46204–2526, (317) 226–6303, FAX (317) 226–6317

Milwaukee, Wisconsin Office (A)

Lester Marriner, Director—Housing Development, HUD-Milwaukee Office, Suite 1380, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203–2289, (414) 297–3214, FAX (414) 297–3947

Minneapolis-St. Paul, Minnesota (A)

John Buenger, Director—Housing Development, HUD-Minneapolis-St. Paul Office, 220 Second Street, South, Minneapolis, Minnesota 55401–2195, (612) 370–3000, FAX (612) 370–3220

Region VI

Fort Worth, Texas Regional Office

Larry Mumford, Director—Housing Development, HUD-Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, Texas 76113–2905, (817) 885–5401, FAX (817) 885–5629

Houston, Texas Office (B)

Allen J. Novosad, Director—Housing Development, HUD-Houston Office, Suite 200, Norfolk Tower, 2211 Norfolk, Houston, Texas 77098–4096, (713) 653–3274, FAX (713) 653–3319

Little Rock, Arkansas Office (A)

Nathan Abernathy, Director—Housing Development, HUD-Little Rock Office, Suite 900, TCBY Tower, 425 West Capitol Avenue, Little Rock, Arkansas 72201–3488, (501) 324–5931, FAX (501) 324–5900

New Orleans, Louisiana Office (A)

Jose A. Pagan, Director—Housing Development, HUD-New Orleans Office, Fisk Federal Building, 1661 Canal Street, New Orleans, Louisiana 70112–1887, (504) 589–7200, FAX (504) 589–2917

Oklahoma City, Oklahoma Office (A)

Sherry Hunt, Acting Director—Housing Development, HUD-Oklahoma City Office, Murrah Federal Building, 200 N.W. 5th Street, Oklahoma 73102–3202, (405) 231–4181, FAX (405) 231–4648

San Antonio, Texas Office (A)

Robert W. Hicks, Acting Director—Housing Development, HUD-San Antonio Office, Washington Square Building, 800 Dolorosa Street, San Antonio, Texas 78207–4563, (210) 229–6800, FAX (210) 229–6753

Region VII

Kansas City, Kansas Regional Office

Richard Kluge, Director—Housing Development, HUD-Kansas City Regional Office, Room 200, Gateway Tower II, 400 State Avenue, Kansas City, Kansas 66101–2406, (913) 236–2162

Des Moines, Iowa Office (B)

Donna Davis, Director—Housing Development, HUD-Des Moines Office, Room 239, Federal Building, 210 Walnut Street, Des Moines, Iowa 50309–2155, (515) 284–4512, FAX (515) 284–4743

Omaha, Nebraska Office (A)

Robert E. Peterson, Director—Housing Development, HUD-Omaha Office, Executive Tower Centre, 10909 Mill Valley Road, Omaha, Nebraska 68154–3955, (402) 492–3101, FAX (402) 492–3150

St. Louis, Missouri Office (A)

Joy Miller, Director—Housing Development, HUD-St. Louis Office, Third Floor, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, Missouri 63103–2836, (314) 539–6560, FAX (314) 539–6575

Region VIII

Denver, Colorado Regional Office

Arthur Tonilli, Director—Housing Development, HUD-Denver Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, Colorado 80202–2349, (303) 844–4513, FAX (303) 844–2475

Region IX

San Francisco, California Regional Office

Jayne Hulbert Humphrey, Director—Housing Development, HUD-San Francisco Regional Office, Philip Burton Federal Building & U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, California 94102–3448, (415) 556–4752, FAX (415) 556–4176

Honolulu, Hawaii Office (A)

Jill Hurt, Director—Housing Development, HUD-Honolulu Office, Suite 500, Seven Waterfront Plaza, 500 Ala Moana Blvd., Honolulu, Hawaii 96813–4918, (808) 541–1323, FAX (808) 541–3146

Los Angeles, California Office (A)

Joe L. Hirsch, Director—Housing Development, HUD-Los Angeles Office, 1615 West Olympic Boulevard, Los Angeles, California 90015–3801, (213) 251–7122, FAX (213) 251–7096

Phoenix, Arizona Office (B)

Laura Massie, Director—Housing Development, HUD-Phoenix Office, Suite 600, Two Arizona Center, 400 North 5th Street, Phoenix, Arizona 85004–2361, (602) 379–4434, FAX (602) 379–3985

Sacramento, California Office (B)

Williams F. Bolton, Director—Housing Development, HUD-Sacramento Office, Suite 200, 777 12th Street, Sacramento, California 95814–1977, (916) 551–1351, FAX (916) 551–2899

Region X

Seattle, Washington Regional Office

John H. Taylor, Director—Housing Development, HUD-Seattle Regional Office, Suite 200, Seattle Federal Office Building, 909 First Avenue, Seattle, Washington 98104–1000, (206) 220–5101, FAX (206) 553–4405

Anchorage, Alaska Office (A)

Gene Dobrzynski, Chief—Housing Development, HUD-Anchorage Office, Suite 401, University Plaza Building, 949 East 36th Avenue, Anchorage, Alaska 99508–4135, (907) 271–4170, FAX (907) 271–3667

Portland, Oregon Office (A)

Thomas C. Cusack, Director—Housing Development, HUD-Portland Office, 520 S.W. 6th Avenue, Portland, Oregon 97204–1596, (503) 326–2561, FAX (503) 326–3097

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Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 331
Antacid Drug Products for Over-the-Counter Human Use; Amendment to Antacid Final Monograph; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 331

[Docket No. 93N-0164]

RIN 0905-AA06

Antacid Drug Products for Over-the-Counter Human Use; Proposed Amendment of Antacid Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) antacid drug products to require specific indication, warning, and direction statements in the labeling of products containing sodium bicarbonate as an active ingredient. The new labeling would be required only for oral dosage forms intended to be dissolved in liquid prior to administration, such as powders and effervescent granules or tablets. As proposed, no such oral dosage forms containing sodium bicarbonate as an active ingredient would be allowed to make a claim for "relief of overindulgence in food and drink." The proposed warnings would alert consumers to avoid antacid drug products containing sodium bicarbonate when the stomach is overly full from eating or drinking. The proposed directions would inform consumers that sodium bicarbonate should be completely dissolved before drinking and that the recommended dose should not be exceeded. FDA is issuing this notice of proposed rulemaking after receiving reports of gastric (stomach) rupture following ingestion of sodium bicarbonate to relieve gastrointestinal distress. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by April 4, 1994; written comments on the agency's economic impact determination by April 4, 1994. The agency is proposing that any final rule that may issue based on this proposal become effective 6 months after the date of publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 4, 1974 (39 FR 19862), FDA issued a final monograph for OTC antacid drug products that established conditions in part 331 (21 CFR part 331) under which these drug products are generally recognized as safe and effective and not misbranded. Sodium bicarbonate is listed as a permitted active ingredient in § 331.11. Permitted indications for products containing sodium bicarbonate are in § 331.30 and include relief of the symptoms of "heartburn," "sour stomach," and/or "acid indigestion." In the **Federal Register** of August 31, 1982 (47 FR 38481), permitted indications for OTC antacid drug products were changed to the following: "For the relief of" (optional, any or all of the following:) "heartburn," "sour stomach," and/or "acid indigestion" (which may be followed by the optional statement:) "and upset stomach associated with" (optional, as appropriate) "this symptom" or "these symptoms." The agency recognized that "upset stomach" is a general term used by consumers to describe symptoms associated with gastric hyperacidity such as acid indigestion, heartburn, or sour stomach (47 FR 38481 at 38482).

In the **Federal Register** of November 16, 1988 (53 FR 46204), the agency published the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products (internal analgesic tentative final monograph). This proposal permitted combinations of acetaminophen and any monograph antacid ingredient and combinations of aspirin and any monograph antacid ingredient (see proposed § 343.20(b)(1) and (b)(3) (53 FR 46204 at 46255)). As proposed in § 343.60(b)(2) and (b)(4), indications for these combination products included concurrent antacid and internal analgesic symptoms (53 FR 46204 at 46258). In the same issue of the **Federal Register** (53 FR 46190), the agency proposed amendments to the final monograph for OTC antacid drug products so that the antacid and internal analgesic final monographs would be consistent. The agency proposed to revise § 331.15(b) to include antacid/acetaminophen and antacid/aspirin combinations as generally recognized as safe and effective. The agency also proposed to add a new § 331.60 (entitled "*Labeling of permitted combinations of active ingredients*") to reflect that the new combinations included in § 331.15(b) should use the indications that were proposed in § 343.60(b)(2) and (b)(4) of the internal analgesic tentative final monograph.

In the **Federal Register** of October 1, 1982 (47 FR 43540), FDA published an advance notice of proposed rulemaking for OTC orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food. The notice included a report prepared by the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (the Panel). The Panel had reviewed data on drug products containing antacid, analgesic, and stimulant ingredients in various combinations and recommended conditions for their safe and effective use. The Panel concluded that the following combinations of Category I ingredients were safe and effective for use in relief of the symptoms of hangover: (1) Antacids and analgesics, (2) antacids and stimulants, (3) analgesics and stimulants, and (4) antacids, analgesics, and stimulants. The Panel also classified two ingredients, bismuth subsalicylate and sodium citrate in solution, in Category I (generally recognized as safe and effective) for relief of symptoms of upset stomach due to overindulgence in food and drink.

In the tentative final monograph for OTC orally administered drug products for relief of symptoms associated with overindulgence in food and drink, published in the **Federal Register** of December 24, 1991 (56 FR 66742), the agency recognized that the overindulgence rulemaking significantly overlaps other OTC drug monographs, including antacid (21 CFR part 331), stimulant (21 CFR part 340), and internal analgesic (proposed 21 CFR part 343). To avoid unnecessary monograph duplication, the agency proposed to amend the final monographs for OTC antacid and stimulant drug products and to amend the tentative final monograph for OTC internal analgesic drug products to include conditions for relief of hangover symptoms. Similarly, the agency found that the Panel's recommended claim for relief of symptoms of upset stomach due to overindulgence in food and drink overlaps claims in the antacid monograph. Therefore, the agency proposed to amend the final monograph for OTC antacid drug products to include appropriate conditions for relief of the symptoms of upset stomach due to overindulgence in food and drink. In a proposed amendment of § 331.30 of the antacid final monograph (56 FR

66754 at 66756, December 24, 1991), the agency proposed to add a claim for the relief of upset stomach due to overindulgence in food and drink for all antacid ingredients, including sodium bicarbonate.

Likewise, in a proposed amendment to the internal analgesic tentative final monograph (56 FR 66762 at 66764, December 24, 1991), the agency proposed to include a claim for relief of symptoms of hangover and a claim for relief of symptoms of overindulgence in food and drink for internal analgesic/antacid combinations proposed in § 343.60(b)(2) and (b)(4). At that time, the agency was not aware of the number of reports of adverse effects associated with the ingestion of sodium bicarbonate for the relief of gastrointestinal distress. These adverse effects include the possibility of stomach rupture and, in rare cases, death. (See discussion in section II of this document.) Based on a review of these reports of adverse effects, the agency is proposing labeling changes for OTC antacid drug products containing sodium bicarbonate as an active ingredient in dosage forms that are intended to be dissolved in liquid before administration. The agency considers these labeling changes necessary for the safe use of these products.

Elsewhere in this issue of the Federal Register, the agency is also proposing to amend § 343.60(b)(2) and (b)(4) of the internal analgesic tentative final monograph to include labeling indications, warnings, and directions specifically for internal analgesic/antacid combination products containing sodium bicarbonate as an active ingredient in a dosage form intended to be dissolved in liquid before administration.

II. Stomach Rupture Associated With Sodium Bicarbonate

After reviewing the literature and the case reports, the agency concludes that the ingestion of sodium bicarbonate may, under certain circumstances, induce acute gastric dilatation (stretching of the stomach beyond normal dimensions) and rupture.Sodium bicarbonate reacts with gastric acid to form sodium chloride, water, and carbon dioxide. A rapid accumulation of carbon dioxide in the stomach may occur if sodium bicarbonate is ingested before it is fully dissolved (i.e., before all the gas has evolved) (Refs. 1 through 4). In this case, an individual may not have ingested a solution of sodium bicarbonate, but rather a suspension of sodium bicarbonate, that is, partially dissolved material with the complete dissolution likely to occur inside the stomach. As long as the effervescent reaction of sodium bicarbonate continues in the stomach, carbon dioxide is produced. The increased amount of carbon dioxide may induce gastric dilatation. If the stomach is overly full, such as after ingestion of a large meal, especially with large amounts of liquids, there is limited space for expansion and a rupture can occur (Refs. 1 through 4).

A. Summary of Literature Case Reports

In 1986, Lazebnik, Iellin, and Michowitz (Ref. 5) reviewed eight cases of rupture of the normal stomach following ingestion of sodium bicarbonate. The cases had been reported from 1926 to 1986. Seven of these cases had previously been reported individually in the literature (Refs. 6 through 12). Six cases involved overindulgence in food and/or alcoholic beverages, while in two cases, no meal was ingested. However, in one case where no meal was ingested, the subject drank an entire bottle of citrate of magnesia prior to ingestion of sodium bicarbonate. Although in most cases the person took higher than recommended doses of the antacid, in some cases the person took smaller amounts. In some cases, it is not clear whether the sodium bicarbonate was taken directly without mixing with liquid or was taken as a solution or suspension. All of the people who experienced gastric rupture in 1963 or earlier died. In the more recent cases, the people underwent repair of the ruptured stomach. Although serious complications, such as formation of abscesses, atelectasis, and gastric fistula occurred, in all of the cases occurring after 1963, the people survived.

Brismar, Strandberg, and Wiklund (Ref. 13) reported a case of spontaneous stomach rupture after ingestion of sodium bicarbonate that took place in Sweden in 1986. A 43-year-old male consumed a large meal consisting of new potatoes, herring pickled in vinegar, and aerated water. At the end of this meal, the man ingested approximately 30 grams (g) of sodium bicarbonate. (The report does not describe the method of administration.) Immediately afterwards he experienced a rapidly increasing sensation of filling, with abdominal distention, very severe abdominal pain, and a sensation that something had "burst" in his abdomen. He was transported to the hospital and was found to have a 5-centimeter (cm)-long rupture on the posterior aspect of his stomach close to the lesser curvature. The authors state that at the recommended dose of sodium bicarbonate, corresponding to approximately 1.8 g, only 20 milliliters (mL) of gas is released within 3 minutes. However, if 8.4 g of sodium bicarbonate is added to the same volume of gastric juice (1,000 mL with a concentration of 100 milliequivalents (meq) per liter (L)), 470 mL of gas will be produced. The ingestion of 30 g of sodium bicarbonate resulted in enormous gas development with resultant stomach rupture.

In 1989, Downs and Stonebridge (Ref. 14) reported a case of stomach rupture in Scotland in which a 70-year-old man took 2 teaspoons (12 g) of sodium bicarbonate in water following a large meal. His abdomen rapidly distended, becoming tense and uncomfortable. He experienced increasing difficulty in breathing and could neither vomit nor belch. This was followed by a severe, sudden epigastric pain, as though "something had burst." A 6-cm tear on the anterior surface of the lesser curvature of the stomach had occurred. The authors estimated that the approximate volume of gas produced from the chemical reaction of 12 g of sodium bicarbonate is 3.4 L, approaching the 4 L estimate necessary to cause stomach rupture.

B. Summary of Case Reports

The agency has identified a total of 29 cases of adverse effects associated with the ingestion of sodium bicarbonate for the relief of gastrointestinal distress. These cases were obtained from a search of the FDA Spontaneous Reporting System (SRS), a literature review, and voluntary submissions from a manufacturer covering the period from 1926 to May 1993. Included in this total are 21 cases of stomach rupture. Death occurred in five of these cases. All of these case reports are on file in the Dockets Management Branch (Refs. 15 and 16). The agency's summary of these case reports follows.

In August 1979 a 52-year-old male ate a large meal and consumed several alcoholic beverages. Shortly after going to bed, he awakened with indigestion. He then mixed a teaspoon of baking soda with a small amount of water, drank the mixture, and less than a minute later collapsed in agony because of sudden onset of severe abdominal pain. An exploratory laparotomy revealed a 6-cm tear in the stomach extending from the gastroesophageal junction down the lesser curvature of the stomach.

In the second case report (June 1981), a 31-year-old male ingested a large Mexican meal, felt uncomfortable, put one dosage (amount unknown) of baking soda in a glass with water, and quickly drank the mixture. He immediately experienced severe, intense abdominal

pain, could neither vomit nor belch, and his abdomen became markedly distended. Exploratory surgery revealed a 5-cm linear tear along the lesser curvature of the stomach.

The third case report (April 1982) involved a 56-year-old female who had been on a liquid protein diet for 1 month prior to her hospitalization. She ate a large dinner accompanied by champagne and bicarbonate of soda. No information was provided on the amount of the dose or how it was taken. She was admitted to the hospital with acute abdominal pain, and exploratory laparotomy revealed a 12-cm tear extending from the distal esophagus onto the posterior aspect of the lesser curvature of the stomach. The size of the gastric tear was so big that it allowed the extrusion of gastric contents into the peritoneal cavity. It is conceivable that in this case the patient's stomach had been modified and even became atrophic because of the liquid diet and, thereby, sustained more damage as a consequence of the sodium bicarbonate-induced distention.

The fourth case report (December 1983) involved a 37-year-old male who developed progressive abdominal pain after dinner. He drank soda with some sodium bicarbonate and then experienced severe chest and back pain, and shock. At laparotomy, a tear of the stomach just below the gastroesophageal juncture was found. In this case, the ingestion of soda and sodium bicarbonate may have aggravated the situation because soda is very acidic and produces carbon dioxide in addition to that produced by the sodium bicarbonate.

The fifth case report (October 1984) involved a 42-year-old male with a history of slight burning epigastric pain an hour following heavy meals and exacerbated by strong foods such as onions, cabbages, and spicy foods. On the night of his admission to the hospital, he had eaten a large meal of hot, spiced chili and then promptly ingested two beers. He then ingested bicarbonate of soda and experienced a spontaneous onset of abdominal pain. An exploratory laparotomy revealed a perforation along the lesser curvature of the stomach. Initially, this case appeared to be one of a perforated gastric or duodenal ulcer, but during the ensuing operation and under subsequent microscopic examination, no ulcer was found.

The sixth case report (December 1988) describes a 23-year-old male who had increasingly severe abdominal pain with subsequent vomiting after eating a spaghetti dinner. At some time the subject took sodium bicarbonate, but there was no information on how much was ingested, whether it was completely dissolved, how much water was taken with it, or exactly when it was taken. However, on exploratory laparotomy, a 6- to 7-cm linear tear in the lesser curvature of the stomach was found.

The seventh report (June 1989) involved a 37-year-old male who experienced heartburn, for which he took a bismuth subsalicylate-containing product. He then developed severe diffuse abdominal pain. On the trip to the emergency room, he stated that he had eaten a lot of food and had taken some baking soda when the pain became very severe. However, that statement is the only indication in the medical records that the subject ingested sodium bicarbonate prior to his injury. Thus, there is some question whether sodium bicarbonate ingestion actually occurred in this case.

The eighth case report (July 1991) involved a 39-year-old male with no previous history of gastrointestinal disease. He had a large Mexican meal and developed epigastric distress for which he took some sodium bicarbonate. When his sleep was interrupted by continuing epigastric distress, he arose and took at least 2 tablespoons of sodium bicarbonate. (This amount is higher than the recommended dose.) Within 2 minutes, he experienced an acute onset of severe epigastric pain. An exploratory laparotomy revealed a 4-cm perforation on the lesser curvature of the stomach. Neither the surgeon nor the pathologist could definitely document the presence of an ulcer. However, the patient did have a moderate narrowing of the pylorus due to mucosal scarring. Because this condition interfered with gastric emptying, it may have contributed to the reported problem.

C. Additional Data

In December 1990, a probability sample survey was conducted to determine the number of doses of sodium bicarbonate taken by American adults annually to settle an upset stomach (Ref. 17). In this survey, 20 percent of the U.S. adult population 18 years of age and older answered affirmatively when asked if they ever use baking soda or bicarbonate of soda to help settle an upset stomach. Based on an estimated adult population of 186.4 million, the survey indicated that 37.3 ± 6.5 million adults used sodium bicarbonate for an upset stomach. The average (mean) frequency with which these people use bicarbonate is 19.7 times during a 1-year period, which indicates that 734.8 million doses of sodium bicarbonate are taken by American adults annually (S.D. 235.8 million). Further statistical analysis revealed that the median dose frequency was five times per year per user.

An independent estimate of doses of sodium bicarbonate ingested per year calculated from the weight of consumer baking soda sold each year and the amount used by consumers for indigestion, as gauged by consumer surveys, was also provided to the agency (Ref. 18). Although not identical, the number of doses estimated, based on this information, is within the range of the survey discussed above. Regardless of the method of calculation used, the agency concludes that the number of doses-per-year of sodium bicarbonate is very large.

The agency also considers the 21 identified cases of gastric rupture that have occurred in association with sodium bicarbonate to be a very serious but uncommon event. The agency is proposing changes in the labeling of OTC drug products containing sodium bicarbonate so that such products can be used safely and the incidence of untoward effects reduced to the lowest possible levels.

III. Additional Agency Concerns

In addition to the serious adverse reactions described above, the agency has identified several other problems that could occur when sodium bicarbonate is used as an OTC antacid. These include systemic metabolic alkalosis, occurrence of milk-alkali syndrome, increased sodium load for certain susceptible individuals, and the overall risk-to-benefit ratio of sodium bicarbonate as an OTC antacid drug product.

Sodium bicarbonate is readily absorbed and may produce systemic metabolic alkalosis and/or sodium overload, particularly if taken in large doses or for a prolonged period of time. Rapid alkalization may precipitate tetany in people having hypocalcemia and cause cardiotoxicity and paralysis in people having hypokalemia (Refs. 1, 2, 3, and 19 through 24). These occurrences can be life-threatening medical emergencies. The agency is aware of one death attributed to complications resulting from severe metabolic alkalosis caused by ingestion of sodium bicarbonate (Ref. 19). In this case, a 45-year-old man was admitted to an emergency room in alert and stable condition but complaining of burning pain in his arms and legs. He admitted taking baking soda for epigastric pain over the past several days. Although the total amount consumed was not ascertained, the man had a half empty 8-ounce box of baking soda in his

pocket. Shortly after admission, the man had a sudden, unexpected cardiopulmonary arrest. During this period, no medications were given (including sodium bicarbonate). A diagnosis of severe metabolic alkalosis was made after laboratory results revealed a primary elevation in serum bicarbonate concentration. The man remained comatose and died (due to infectious complications) 14 days after admission.

Large doses or chronic administration of sodium bicarbonate with milk or calcium may lead to an increase in calcium absorption and may precipitate the milk-alkali syndrome. This syndrome is characterized by hypercalcemia, reduced secretion of parathyroid hormone, retention of phosphate, precipitation of calcium salts in the kidney, alkalosis, and renal insufficiency or failure. Symptoms include nausea, vomiting, headache, mental confusion, and anorexia. This may be particularly important in pregnancy where milk or calcium intake is emphasized (Refs. 1, 2, 3, and 25).

Each g of sodium bicarbonate contains 12 meq of sodium. This large quantity may cause problems for people who are pregnant, on low-salt diets, receiving diuretics, or have a tendency toward fluid overload (Ref. 2). Even moderate amounts of sodium bicarbonate may expand plasma volume, increase blood pressure, and lead to edema (Ref. 1). The final monograph for OTC antacid drug products limits the daily dosage for sodium to 200 meq for persons up to 60 years old and to 100 meq for persons 60 years or older. Limitations for bicarbonate ion are also 200 meq for persons up to 60 years old and 100 meq for persons 60 years or older. (See § 331.11(b) and (k)(1).)

Because of the potential severity of the adverse effects of sodium bicarbonate, the agency is concerned that the risk to consumers from ingestion of sodium bicarbonate in antacid doses may outweigh the benefit. There are many other OTC antacid ingredients currently available that do not pose the possibility of such serious side effects. Based on the concerns discussed above, the agency is considering the need for additional changes and/or additions to the indications and/or warnings provided for sodium bicarbonate in the antacid monograph (21 CFR part 331).

For example, the agency has concerns how the presently allowed portion of the indications in § 331.30(b) that mentions "upset stomach" may be confusing to consumers in light of the new warning being proposed in this document. The agency questions whether consumers will be able to recognize that sodium bicarbonate should not be used to relieve an "upset stomach" caused by excessive eating or drinking. The agency invites specific comment on how the indications for sodium bicarbonate antacid products might be changed and on any of the other issues discussed above or any additional issues that relate to the safe and effective use of sodium bicarbonate as an OTC antacid drug product. For example, the agency notes that a major manufacturer of baking soda currently voluntarily labels its product with warnings similar to those proposed in this document (Ref. 26).

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(14) Downs, N. M., and P. A. Stonebridge,"Gastric Rupture Due to Excessive SodiumBicarbonate Ingestion," *Scottish Medical Journal*, 34:534–535, 1989.

(15) Medical records submitted by Church & Dwight Co., Inc., included in OTC Vol. 01AM2, Docket No. 93N–0164, Dockets Management Branch.

(16) Memorandum from M. Chen, FDA, to W. Gilbertson, FDA, dated December 1, 1991, in OTC Vol. 01AM2, Docket No. 93N–0164 Dockets Management Branch.

(17) Survey Center, Inc., "Use of Soda Bicarbonate to Settle an Upset Stomach," draft of unpublished consumer survey in OTC Vol. 01AM2, Docket No. 93N–0164, Dockets Management Branch.

(18) Letter from W. Sorenson, Church & Dwight Co., Inc., to H. Gallo-Torres, FDA, dated April 23, 1992, copy included in OTC Vol. 01AM2, Docket No. 93N–0164, Dockets Management Branch.

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(24) "Drug Evaluations," 6th ed., American Medical Association, Chicago, p. 833, 1986.

(25) "Drug Evaluations Subscription,"Vol. 2, American Medical Association, Chicago, p.1–18, Spring 1990.

(26) Copy of labeling for Arm & Hammer Baking Soda in OTC Vol. 01AM2, Docket No. 93N–0164, Dockets Management Branch.

IV. The Agency's Proposal for Revised Labeling for Sodium Bicarbonate in OTC Antacid Drug Products

The case reports have shown that the ingestion of sodium bicarbonate may cause gastric dilatation and rupture of the stomach, particularly if the stomach is overly full from food or drink. The reports indicate that this problem occurs with dosage forms intended to be dissolved in liquid before administration, e.g., powders or effervescent granules or tablets. In some cases, the person drank a solution or suspension of sodium bicarbonate, while in other cases the person ingested the sodium bicarbonate in a dry form. The agency is aware of OTC antacid drug products in chewable tablet dosage form, in which sodium bicarbonate is an inactive ingredient. However, the agency is not aware of any reports of gastric dilatation and stomach rupture resulting from ingestion of these

products. Accordingly, the agency is proposing to amend § 331.30 to include specific indication, warning, and direction statements for all OTC antacid drug products containing sodium bicarbonate as an active ingredient in dosage forms intended to be dissolved in liquid before administration. Separate indications are proposed in § 331.30(b) for products that either do or do not contain sodium bicarbonate as an active ingredient intended to be dissolved in liquid before administration. Antacid products containing sodium bicarbonate as an active ingredient will not be allowed to include a claim for relief of overindulgence in food and drink. In addition, the agency is proposing that these sodium bicarbonate products bear new warnings and directions.

Because of the potential serious health risk involved, the agency is proposing that the new warnings appear after the header "STOMACH WARNING." Portions of the new warnings must appear in bold print and in capital letters. The proposed warnings read as follows:

"To avoid serious injury, do not take until" (insert product dosage form, e.g., "tablet," "powder") "is completely dissolved. It is very important not to take this product when overly full from food or drink. [first two sentences in boldface type and all capital letters] Consult a doctor if severe stomach pain occurs after taking this product."

Additional directions, proposed to appear after the header "DIRECTIONS," read as follows:

"Dissolve completely in water" [*For effervescent dosage forms add*: "and be sure all bubbling has stopped"] "before drinking. Do not exceed recommended dose. [second sentence in boldface type and all capital letters] See Warnings."

The agency has examined the economic consequences of this proposed rulemaking and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12866, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). This rulemaking for OTC antacid drug products containing sodium bicarbonate as an active ingredient is not expected to have an impact on small businesses. The final rule will impose direct one-time costs associated with changing product labels, but that cost is estimated to be less than $1 million. Also, there appears to be a limited number of products involved. Further, a major manufacturer of baking soda currently voluntarily labels its product with statements similar to those proposed in this amendment. Manufacturers will have 6 months after the date of publication of the final rule in which to implement this relabeling. However, manufacturers of OTC antacid drug products are encouraged to voluntarily implement this labeling as of the date of publication of this proposal, subject to the possibility that FDA may change the wording as a result of comments filed in response to this proposal. Because FDA is encouraging the proposed labeling changes to be used on a voluntary basis at this time, the agency advises that manufacturers will be given ample time after publication of a final rule to use up any labeling implemented in conformance with this proposal. The impact of the proposed rule, if implemented, appears to be minimal. Therefore, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12866. Further, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC antacid drug products. Types of impact may include, but are not limited to, costs associated with relabeling or repackaging.

Comments regarding the impact of this rulemaking on OTC antacid drug products should be accompanied by appropriate documentation. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before April 4, 1994, submit written comments on the proposed regulation and the agency's economic impact determination to the Dockets Management Branch (address above). Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 331

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 331 be amended as follows:

PART 331—ANTACID PRODUCTS FOR OVER-THE-COUNTER (OTC) HUMAN USE

1. The authority citation for 21 CFR part 331 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 331.30 is amended by revising paragraph (b), and by adding new paragraphs (c)(8), (e)(1), and (e)(2) to read as follows:

§ 331.30 Labeling of antacid products.

* * * * *

(b) *Indications.* The labeling of the product states under the heading "Indications," any of the phrases listed in this paragraph, as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph, may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing active ingredients identified in § 331.11(a) through (j), (k)(2), (l),* and *(m).* "For the relief of" (select any or all of the following: "heartburn," "sour stomach," and/or "acid indigestion") which may be followed by the statement: "and upset stomach associated with" (select one or more of the following, as appropriate: "this symptom," "these symptoms," or "overindulgence in food and drink.")

(2) *For products containing sodium bicarbonate as an active ingredient in a dosage form intended to be dissolved in liquid before administration identified in § 331.11(k)(1).* "For the relief of" (select any or all of the following: "heartburn," "sour stomach," and/or "acid indigestion") (which may be followed by the statement: "and upset stomach associated with" (select one of the following, as appropriate: "this symptom" or "these symptoms".)) These products may not bear any claims that relate to use for "overindulgence in food and drink."

(c) * * *

(8) For products containing sodium bicarbonate as an active ingredient in a dosage form intended to be dissolved in liquid before administration identified in § 331.11(k)(1), portions of the warning statements must appear in bold print and in capital letters as follows: "STOMACH WARNING: To avoid serious injury, do not take until" (insert product dosage form, e.g., "tablet," "powder") "is completely dissolved. It is very important not to take this product when overly full from food or drink. [first two sentences in bold print and all capital letters] Consult a doctor if severe stomach pain occurs after taking this product."

* * * * *

(e) * * *

(1) The labeling for products containing sodium bicarbonate as an active ingredient in a dosage form intended to be dissolved in liquid before administration identified in § 331.11(k)(1) contains the following additional directions: "Dissolve completely in water" [*For effervescent dosage forms add*: "and be sure bubbling has stopped"] "before drinking. Do not exceed recommended dose. [second sentence in bold print and all capital letters] See Warnings."(2) [Reserved]

* * * * *

Dated: November 3, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–2264 Filed 2–1–94; 8:45 am]

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federal register

Wednseday
February 2, 1994

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 343

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Amendment to Tentative Final Monograph; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 343

[Docket No. 77N-094U]

RIN 0905-AA06

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Proposed Amendment to Tentative Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking amending the tentative final monograph for over-the-counter (OTC) internal analgesic, antipyretic, and antirheumatic drug products. This proposal affects combinations of internal analgesic and antacid ingredients, specifically sodium bicarbonate used as an antacid active ingredient. As proposed, combination drug products intended to be dissolved in liquid prior to administration, such as powders and effervescent granules or tablets, would not be allowed to make a claim for "relief of overindulgence in food and drink" or a claim for "relief of hangover." FDA is issuing this notice of proposed rulemaking after receiving reports of gastric (stomach) rupture following ingestion of sodium bicarbonate to relieve gastrointestinal distress. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by April 4, 1994; written comments on the agency's economic impact determination by April 4, 1994. The agency is proposing that any final rule that may issue based on this proposal become effective 6 months after the date of publication in the **Federal Register**.

ADDRESSES: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-594-5000.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 16, 1988 (53 FR 46204), the agency published the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products (internal analgesic tentative final monograph). This proposal permitted combinations of acetaminophen and any monograph antacid ingredient and combinations of aspirin and any monograph antacid ingredient (see proposed § 343.20(b)(1) and (b)(3) (53 FR 46204 at 46255)). As proposed in § 343.60(b)(2) and (b)(4), indications for these combination products included concurrent antacid and internal analgesic symptoms (53 FR 46258). In the same issue of the **Federal Register** (53 FR 46190), the agency proposed amendments to the final monograph for OTC antacid drug products so that the antacid and internal analgesic final monographs would be consistent. The agency proposed to revise § 331.15(b) (21 CFR 331.15(b)) to include antacid/acetaminophen and antacid/aspirin combinations as generally recognized as safe and effective. The agency also proposed to add a new § 331.60 (entitled "*Labeling of permitted combinations of active ingredients*") to reflect that the new combinations included in § 331.15(b) should use the indications that were proposed in § 343.60(b)(2) and (b)(4) of the internal analgesic tentative final monograph.

In the **Federal Register** of October 1, 1982 (47 FR 43540), FDA published an advance notice of proposed rulemaking for OTC orally administered drug products for relief of symptoms associated with overindulgence in alcohol and food. The notice included a report prepared by the Advisory Review Panel on OTC Miscellaneous Internal Drug Products (the Panel). The Panel had reviewed data on drug products containing antacid, analgesic, and stimulant ingredients in various combinations and recommended conditions for their safe and effective use. The Panel concluded that the following combinations of Category I ingredients were safe and effective for use in relief of the symptoms of hangover: (1) Antacids and analgesics, (2) antacids and stimulants, (3) analgesics and stimulants, and (4) antacids, analgesics, and stimulants. The Panel also classified two ingredients, bismuth subsalicylate and sodium citrate in solution, in Category I (generally recognized as safe and effective) for relief of symptoms of upset stomach due to overindulgence in food and drink.

In the tentative final monograph for OTC orally administered drug products for relief of symptoms associated with overindulgence in food and drink, published in the **Federal Register** of December 24, 1991 (56 FR 66742), the agency recognized that the overindulgence rulemaking significantly overlaps other OTC drug monographs, including antacid (21 CFR part 331), stimulant (21 CFR part 340), and internal analgesic (proposed 21 CFR part 343). To avoid unnecessary monograph duplication, the agency proposed to amend the final monographs for OTC antacid and stimulant drug products and to amend the tentative final monograph for OTC internal analgesic drug products to include conditions for relief of hangover symptoms. Similarly, the agency found that the Panel's recommended claim for relief of symptoms of upset stomach due to overindulgence in food and drink overlaps claims in the antacid monograph. Therefore, the agency proposed to amend the final monograph for OTC antacid drug products to include appropriate conditions for relief of the symptoms of upset stomach due to overindulgence in food and drink. In a proposed amendment of § 331.30 of the antacid final monograph (56 FR 66754 at 66756, December 24, 1991), the agency proposed to add a claim for the relief of upset stomach due to overindulgence in food and drink for all antacid ingredients, including sodium bicarbonate.

Likewise, in a proposed amendment to the internal analgesic tentative final monograph (56 FR 66762 at 66764, December 24, 1991), the agency proposed to include a claim for relief of symptoms of hangover and a claim for relief of symptoms of overindulgence in food and drink for internal analgesic/antacid combinations proposed in § 343.60(b)(2) and (b)(4). At that time, the agency was not aware of the number of reports of adverse effects associated with ingestion of sodium bicarbonate for the relief of gastrointestinal distress. These adverse effects include the possibility of stomach rupture and, in rare cases, death. The agency has identified several other problems that could occur when sodium bicarbonate is used as an OTC antacid. These include systemic metabolic alkalosis, occurrence of milk-alkali syndrome, increased sodium load for certain susceptible individuals, and the overall risk-to-benefit ratio of sodium bicarbonate as an OTC antacid drug product. Stomach rupture and additional agency concerns associated with sodium bicarbonate, the literature review, and the case reports that demonstrate these adverse effects are discussed elsewhere in this issue of the **Federal Register** in the proposed amendment to the antacid final monograph (part 331). Based on a

review of these reports of adverse effects, the agency is amending the tentative final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products so that it is consistent with proposed changes in the antacid final monograph.

II. The Agency's Proposal for Revised Labeling for Sodium Bicarbonate in OTC Internal Analgesic, Antipyretic, and Antirheumatic Combination Drug Products

The case reports have shown that the ingestion of sodium bicarbonate may cause gastric dilatation and rupture of the stomach, particularly if the stomach is overly full from food or drink. The reports indicate that this problem occurs with dosage forms intended to be dissolved in liquid before administration, such as powders or effervescent granules or tablets. Accordingly, the agency is proposing separate indications in § 343.60(b) for OTC internal analgesic/antacid combination drug products that either do or do not contain sodium bicarbonate as an active ingredient intended to be dissolved in liquid before administration. Products containing sodium bicarbonate intended to be dissolved in liquid before administration will not be allowed to include a claim for relief of overindulgence in food and drink or relief of hangover. Proposed labeling that specifically addresses warnings and directions for sodium bicarbonate appears in the amendment to the antacid final monograph, elsewhere in this issue of the **Federal Register**. A cross-reference to that labeling is proposed in the internal analgesic monograph.

The agency has examined the economic consequences of this proposed rulemaking and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12866, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96–354). This rulemaking for OTC internal analgesic/antacid combination drug products containing sodium bicarbonate as an antacid active ingredient is not expected to have an impact on small businesses. The final rule will impose direct one-time costs associated with changing product labels, but that cost is estimated to be less than $1 million. Also, there appears to be a limited number of products involved. Manufacturers will have 6 months after publication of the final rule in which to implement this relabeling. However, manufacturers of OTC internal analgesic/antacid combination drug products are encouraged to voluntarily implement this labeling as of the date of publication of this proposal, subject to the possibility that FDA may change the wording as a result of comments filed in response to this proposal. Because FDA is encouraging the proposed labeling changes to be used on a voluntary basis at this time, the agency advises that manufacturers will be given ample time after publication of the final rule to use up any labeling implemented in conformance with this proposal. The impact of the proposed rule, if implemented, appears to be minimal. Therefore, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12866. Further, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC internal analgesic/antacid combination drug products containing sodium bicarbonate as an antacid active ingredient. Types of impact may include, but are not limited to, costs associated with relabeling or repackaging. Comments regarding the impact of this rulemaking on OTC internal analgesic/antacid combination drug products should be accompanied by appropriate documentation. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Interested persons may, on or before April 4, 1994, submit written comments on the proposed regulation and the agency's economic impact determination to the Dockets Management Branch (address above). Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 343

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 343, as proposed in the **Federal Register** of December 24, 1991 (56 FR 66762), be amended as follows:

PART 343—INTERNAL ANALGESIC, ANTIPYRETIC, AND ANTIRHEUMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 343 is revised to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 343.60 is amended by revising paragraphs (b)(2) and (b)(4), by adding new paragraph (c)(2), by redesignating the heading in paragraph (d) introductory text as paragraph (d), by redesignating the text in existing paragraph (d) introductory text as paragraph (d)(1), by redesignating existing paragraphs (d)(1) and (d)(2) as paragraphs (d)(1)(i) and (d)(1)(ii), respectively, and by adding new paragraph (d)(2) to read as follows:

§ 343.60 Labeling of permitted combinations of active ingredients.

* * * * *

(b) * * *

(2) For permitted combinations identified in *§ 343.20(b)(1)*—(i) *All combinations except those containing sodium bicarbonate as an active ingredient in a dosage form intended to be dissolved in liquid before administration.* The indications are the following: "For the temporary relief of minor aches and pains with" (select one or more of the following: "heartburn," "sour stomach," or "acid indigestion") (which may be followed by: "and upset stomach associated with" (select one or more of the following, as appropriate: "this symptom," "these symptoms," "hangover," or "overindulgence in food and drink.")

(ii) *Any combination containing sodium bicarbonate as an active ingredient in a dosage form intended to be dissolved in liquid before administration.* The indications are the following: "For the temporary relief of minor aches and pains with" (select one or more of the following: "heartburn," "sour stomach," or "acid indigestion") (which may be followed by: "and upset stomach associated with" (select one of the following, as appropriate: "this symptom" or "these symptoms.")) These products may not bear any claims

that relate to use for "overindulgence in food and drink" or "hangover."

* * * * *

(4) *For permitted combinations identified in § 343.20(b)(3)*—(i) *All combinations except those containing sodium bicarbonate as an active ingredient in a dosage form intended to be dissolved in liquid before administration.* The indications are the following: "For the temporary relief of minor aches and pains with" (select one or more of the following: "heartburn," "sour stomach," or "acid indigestion") [which may be followed by: "and upset stomach associated with" (select one or more of the following, as appropriate: "this symptom," "these symptoms," "hangover," or "overindulgence in food and drink")] and "Also may be used for the temporary relief of minor aches and pains alone" [which may be followed by one or more of the following: ("such as associated with" (select one or more of the following: "a cold," "the common cold," "sore throat," "headache," "toothache," "muscular aches," "backache," "the premenstrual and menstrual periods" (which may be followed by: "(dysmenorrhea)"), or "premenstrual and menstrual cramps" (which may be followed by: "(dysmenorrhea)")), ("and for the minor pain from arthritis"), and ("and to reduce fever.")]

(ii) *Any combination containing sodium bicarbonate as an active ingredient in a dosage form intended to be dissolved in liquid before administration.* The indications are the following: "For the temporary relief of minor aches and pains with" (select one or more of the following: "heartburn," "sour stomach," or "acid indigestion") [which may be followed by: "and upset stomach associated with" (select one of the following, as appropriate: "this symptom" or "these symptoms")] and "Also may be used for the temporary relief of minor aches and pains alone" [which may be followed by one or more of the following: ("such as associated with" (select one or more of the following: "a cold," "the common cold," "sore throat," "headache," "toothache," "muscular aches," "backache," "the premenstrual and menstrual periods," (which may be followed by: "(dysmenorrhea)"), or "premenstrual and menstrual cramps" (which may be followed by: "(dysmenorrhea)")), ("and for the minor pain from arthritis"), and ("and to reduce fever.")] These products may not bear any claims that relate to use for "overindulgence in food and drink" or "hangover."

* * * * *

(c) * * *

(2) *For permitted combinations identified in § 343.20(b)(1) and (b)(3) containing sodium bicarbonate as an active ingredient in a dosage form intended to be dissolved in liquid before administration.* The warnings in § 331.30(c)(8) of this chapter should also be used.

(d) *Directions*—(1) The labeling of the product states, under the heading "Directions," directions that conform to the directions established for each ingredient in the directions sections of the applicable OTC drug monographs, unless otherwise stated in this paragraph. When the time intervals or age limitations for administration of the individual ingredients differ, the directions for the combination product:

* * * * *

(2) *For permitted combinations identified in § 343.20(b)(1) and (b)(3) containing sodium bicarbonate as an active ingredient in a dosage form intended to be dissolved in liquid before administration.* The directions in § 331.30(e)(1) of this chapter should also be used.

Dated: November 3, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–2265 Filed 2–1–94; 8:45 am]

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Wednesday, February 2, 1994

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LIST OF PUBLIC LAWS

Note: The list of Public Laws for the first session of the 103d Congress has been completed and will resume when bills are enacted into law during the second session of the 103d Congress, which convenes on January 25, 1994.

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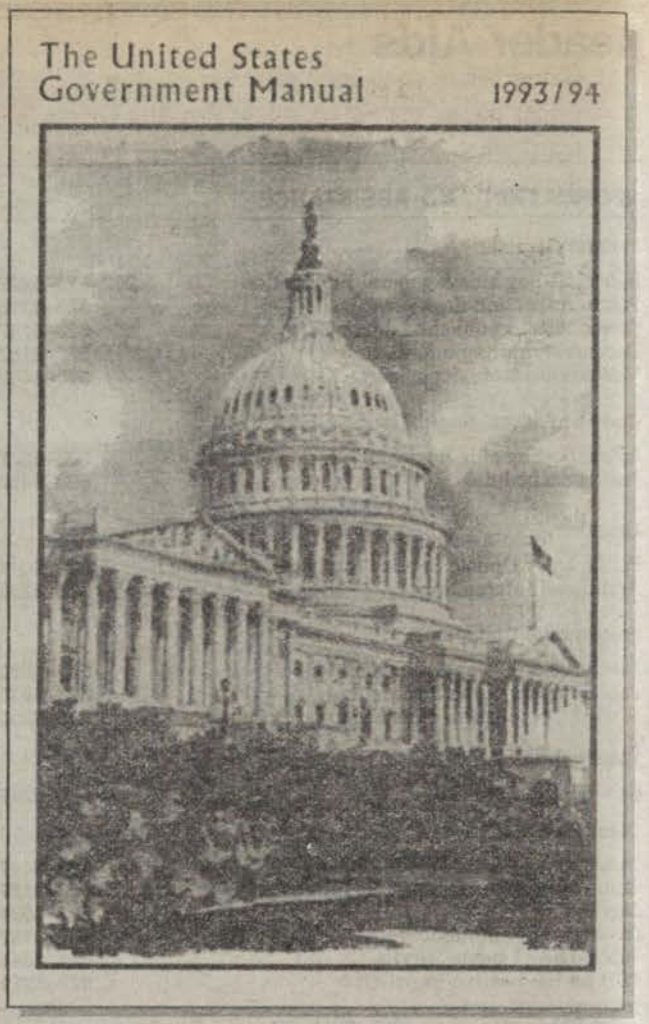
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Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

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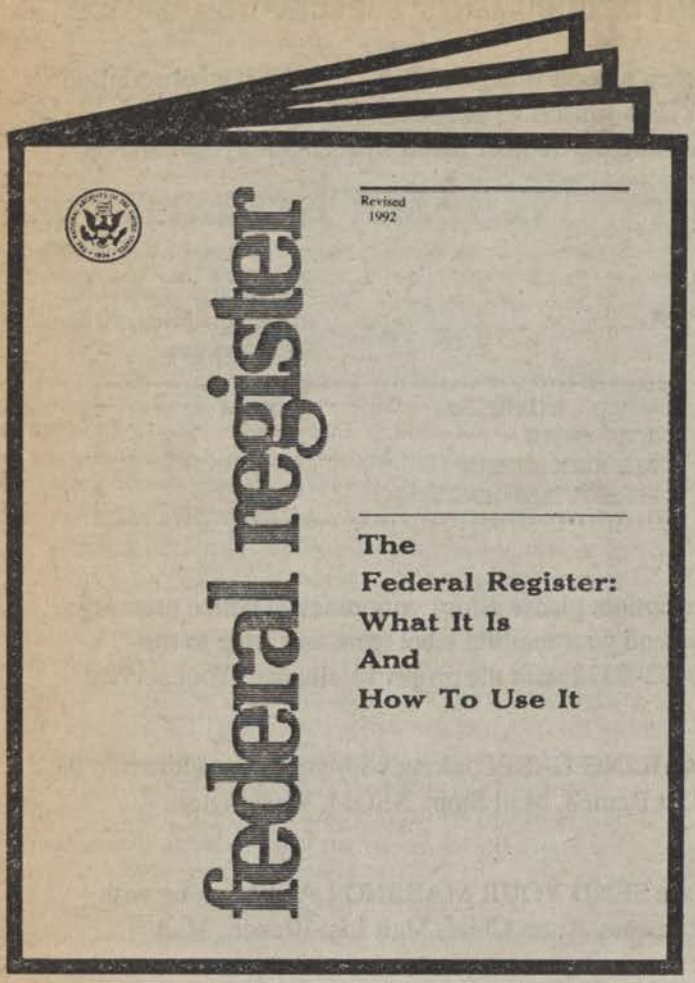
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