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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:

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

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

WASHINGTON, DC
(TWO BRIEFINGS)

WHEN: November 21 at 9:00 am and 1:30 pm

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

RESERVATIONS: 202–523–4538

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

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Presidential Documents

Title 3—

The President

Proclamation 6747 of October 20, 1994

United Nations Day, 1994

By the President of the United States of America

A Proclamation

In this era of extraordinary change, it is increasingly important that we honor the uplifting principles of the United Nations Charter by working tirelessly to bring them closer to reality. Such commitment is especially appropriate as we mark the 49th anniversary of the founding of the United Nations and look forward to beginning its second half-century of service.

Throughout the past year, the United Nations has not wavered in its efforts to safeguard international peace and security. The U.N. Special Commission in Iraq has made progress toward finding and destroying weapons of mass destruction and working to establish a long-term monitoring mechanism. The U.N. has mobilized one of the largest refugee assistance programs in history in response to the humanitarian disaster in Rwanda and is working to bring to justice those guilty of atrocities. United Nations humanitarian relief efforts in Bosnia have continued despite the most trying of circumstances. The U.N. demobilization and repatriation program in Mozambique has helped to end that nation's long and bitter conflict.

While much of humanity advances together toward a bright future of political and economic pluralism, some parts of the world remain mired in failed ideologies or racked by cultural, religious, and ethnic divisions. As these regions endanger international security by their refugee flows and other trans-border impacts, multilateral cooperation has become more important than ever before.

That cooperation is particularly vital in Africa. After years of U.N. support, the people of South Africa finally have eradicated the apartheid system and installed a democratic and nonracial government of national unity. The growing number of conflicts elsewhere in Africa is in stark contrast to that success. In the end, the disputing parties must solve their own differences, but the U.N. continues to promote reconciliation and peace in Rwanda, Burundi, Somalia, Angola, Liberia, Sudan, and Mozambique.

One of the most vital roles of the U.N. is in humanitarian affairs. During the past year, the U.N. High Commissioner for Human Rights has played an important part in calling attention to violations of international humanitarian law. The U.N. High Commissioner for Refugees has worked hard to reduce the suffering of those forced from their own homes by strife.

The growing number and complexity of U.N. peacekeeping operations pose new challenges. In the past year, the United States has worked with the U.N. to improve the U.N. system's effectiveness and efficiency. The recent creation of an inspector general function—the Office of Internal Oversight Services—was an important step toward strengthening the management of U.N. operations. We look forward to the adoption of a system for financing U.N. peacekeeping operations that does not place undue burdens on any one nation.

As the United States works with the U.N. to improve operations, we must rededicate ourselves to promoting diplomacy and crisis prevention in areas of potential conflict. In this regard, the U.N. now has an opportunity to build on the recent breakthroughs in the Middle East peace process by providing tangible support for implementing the agreements.

The United States firmly supports the U.N. efforts to meet global challenges in the area of sustainable development. The U.N. has engaged in a broad spectrum of activities to implement Agenda 21 and other outcomes of the 1992 Earth Summit in Rio. The U.N. Commission on Sustainable Development continues to work on global health and environmental issues. In September, the U.N. Conference on Population and Development in Cairo addressed a comprehensive population growth strategy that includes education and economic opportunity for women. United Nations agencies such as the U.N. Development Program, U.N. Children's Fund, World Health Organization, and the Food and Agriculture Organization continue to make significant strides in improving basic health, increasing global food production, and alleviating poverty for all of the peoples of the Earth.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, October 24, 1994, as "United Nations Day" and urge all Americans to acquaint themselves with the activities and accomplishments of the United Nations.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of October, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.

William J. Clinton

[FR Doc. 94-26675
Filed 10-24-94; 2:40 pm]
Billing code 3195-01-P

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AF88

Cost-of-Living Allowances (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations to increase certain cost-of-living allowance (COLA) rates paid to General Schedule, U.S. Postal Service, and certain other Federal employees in Kauai County, Hawaii; Guam and the Commonwealth of the Northern Mariana Islands; and the U.S. Virgin Islands. The final regulations also consolidate the two nonforeign COLA areas in the U.S. Virgin Islands into a single allowance area, delete obsolete Commissary/Exchange COLA categories in four areas, clarify definitions shown in one of the appendices, and remove from regulations three locations listed as places where nonforeign post differentials are paid. These three locations are no longer territories or possessions of the United States and, therefore, are not covered by the nonforeign area post differential program.

DATES: Effective Date: These regulations are effective October 26, 1994. Applicability Date: These regulations are applicable on the 1st day of the 1st pay period beginning on or after October 26, 1994.

FOR FURTHER INFORMATION CONTACT: Allan G. Hearne, Methodology Development Branch, Office of Compensation Policy, Personnel Systems and Oversight Group, Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415, (202) 606–2838.

SUPPLEMENTARY INFORMATION: Under section 5941 of title 5, United States Code, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances when local living costs are substantially higher than those in the Washington, DC, area. Nonforeign area COLA's are currently paid in Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

OPM contracted with Runzheimer International to conduct living-cost surveys during the summer of 1993 in Hawaii, Guam, Puerto Rico, and the U.S. Virgin Islands. At that time, Runzheimer also surveyed the Washington, DC, area, which is the base or reference area for living-cost comparisons.

According to these surveys, the COLA rates should be increased in three areas and reduced in three other areas. However, a provision in the Treasury, Postal Service, and General Government Appropriations Act, 1992 (Public Law 102–141 as amended), bars OPM from reducing any COLA rate through December 31, 1996. Therefore, only the COLA rate increases are being implemented.

The increases in COLA rates are summarized in the following table:

COLA RATE INCREASES

Allowance area/category	Old rate(s) (percent)	New rate (percent)
County of Kauai, Hawaii All Employees ..	17.5	20.0
Territory of Guam and Commonwealth of the Northern Mariana Islands Commissary/Exchange ...	17.5	20.0
U.S. Virgin Islands All Employees	[1] 12.5/17.5	17.5

[1] Old rates for St. Croix and St. Thomas/St. John, respectively.

In computing the new COLA rate, OPM made two changes relative to the indices published with the proposed rule. The changes were made to correct an error in one survey and to incorporate a methodological change recommended by one of the commenters on the proposed rule. Neither of these changes affected the COLA rates proposed in the **Federal Register** on May 26, 1994 (at 59 FR 27314).

The error OPM corrected was the failure to price a homeowner insurance policy in Maui, Hawaii, that included coverage of damage caused by high winds. Correcting this raised the Maui index slightly.

The methodological change made by OPM was to use the Goods and Services Component index as the cash contributions item index in the Miscellaneous Component. The effect of this change was a slight increase in the living-cost indices in all areas except Puerto Rico. The chart below compares the indices shown in the notice that accompanied the proposed rule and those used in this final rule. As noted above, none of these convert to a different COLA rate under the procedures prescribed in 5 CFR 591.206(b).

PREVIOUS AND FINAL LIVING-COST INDICES

Allowance area/category	Previous index	Final index
City and County of Honolulu, Hawaii: All Employees	122.90	123.32
Hawaii County, Hawaii: All Employees	109.63	109.82
Kauai County, Hawaii: All Employees	119.27	119.69
Maui and Kalawao Counties, Hawaii: All Employees	119.32	120.29
Territory of Guam and Commonwealth of the Northern Mariana Islands: Local Retail	122.25	122.67
Commissary/Exchange	120.81	121.14
Puerto Rico: All Employees	103.00	102.96
U.S. Virgin Islands: All Employees	117.81	118.01

In this final rule, OPM is also consolidating the two allowance areas in the U.S. Virgin Islands into a single allowance area. The two allowance areas were (1) the island of St. Croix and (2) the islands of St. Thomas and St. John. The new allowance area is titled "The U.S. Virgin Islands." In future surveys, OPM will continue to survey living costs on both St. Croix and St. Thomas, but the data will be consolidated to represent the Virgin Islands as a whole.

OPM is eliminating Commissary/Exchange COLA rates in Anchorage, Alaska; Fairbanks, Alaska; Honolulu, Hawaii; and Puerto Rico. OPM is *not* eliminating the Commissary/Exchange COLA rate in the Guam/Commonwealth of the Northern Mariana Islands (CNMI) allowance area.

According to the Department of Defense, Defense Commissary Agency (DeCA), Federal civilian employees in the Anchorage, Fairbanks, Honolulu, and Puerto Rico allowance areas do *not* have access to commissaries by virtue of their Federal civilian employment. Commissary/Exchange COLA rates are payable only to Federal white-collar employees who, by virtue of their Federal civilian employment, have unlimited access to commissaries *and* exchanges in the allowance areas. Since Federal civilian employees in these four areas do not have access to commissaries, the Commissary/Exchange COLA rates are not payable in these areas. Accordingly, OPM is eliminating the Commissary/Exchange COLA rates in these areas.

In Guam/CNMI, on the other hand, DeCA says some Federal civilian employees have access to commissaries by virtue of their Federal civilian employment. OPM believes these employees also have access to exchange facilities. Therefore, OPM is *not* eliminating the Commissary/Exchange COLA rate in Guam/CNMI.

The elimination of the Commissary/Exchange rates in the four areas should have no effect on the COLA paid to any employee. Federal white-collar employees in these areas should be receiving the higher Local Retail COLA rate. Similarly, although OPM does not control access to commissaries and exchanges, OPM believes its action should not affect the commissary or exchange privileges that employees might otherwise enjoy. Therefore, if an employee in one of the four areas finds that his or her COLA rate or access to commissaries or exchanges is adversely affected by the elimination of the Commissary/Exchange COLA rate, the employee should contact his or her agency immediately, and the agency should bring the issue to OPM's attention as quickly as possible.

Consistent with the terminology used in other areas where only one COLA rate is payable, OPM is retitling the "Local Retail" COLA rate as the "All Employees" COLA rate in the four areas affected. The retitling will not affect the COLA rates.

OPM is also clarifying the definitions used in appendix A to subpart B of title 5, Code of Federal Regulations, because the previous definitions were subject to misinterpretation. The new definitions address this problem. The changes do not affect COLA rates or eligibility.

Lastly, OPM is also removing from the regulations three locations listed as places where nonforeign post differentials are paid. The three locations are the Canton, Enderbury, and Christmas Islands. These islands are no longer territories or possessions of the United States and, therefore, are not covered by the nonforeign area post differential program.

Summary and Analysis of Comments

OPM received 127 comments on the proposed regulations and notice it published in the **Federal Register** on May 26, 1994. Nearly all of these were from employees on St. Croix who endorsed the consolidation of the Virgin Islands allowance areas.

OPM received one comment opposing the consolidation. The commenter believed the economies of St. Thomas and St. Croix were significantly different and that living costs are higher on St. Thomas than on St. Croix. The commenter also suggested that OPM survey St. Thomas twice a year, once in the "tourist season" and once in the "off-season" and average the results.

Although there may be differences between St. Thomas and St. Croix, OPM believes consolidation will improve the survey and the administration of the program. Living costs vary among and within many COLA areas, including the Virgin Islands. The issue is whether it is practical to differentiate among the living costs of certain places. Generally, the smaller the area surveyed, the more difficult it is to measure relative differences in living costs. By consolidating areas where appropriate, OPM can improve the surveys and reduce unwarranted fluctuations in COLA's that otherwise might occur. This is the purpose of the consolidation of the Virgin Islands allowance areas. OPM does not believe semi-annual surveys of St. Thomas are necessary. OPM plans, however, to review survey timing in all allowance areas.

One commenter requested that St. Croix employees receive their increase retroactively to the date of the increase in the St. Thomas COLA rate. OPM finds no basis for a retroactive adjustment. The previous St. Croix living-cost surveys were conducted according to regulation and provided adequate measures of local living costs. Therefore, the St. Croix COLA rates set pursuant to previous surveys are appropriate.

Two commenters suggested that OPM review community selection in the City and County of Honolulu, Hawaii, allowance area. The commenters believed some of the communities surveyed were not typical of places where Federal employees live. OPM is reviewing community selections in all of the COLA survey areas in light of the results of the Federal Employee Housing and Living Patterns Survey. OPM revised community selections in several areas prior to the summer 1994 surveys. One of these allowance areas was the City and County of Honolulu.

One commenter believed OPM had not complied with provisions of the Treasury, Postal Service, and General Government Appropriations Act, 1992 (Pub. L. 102–141, as amended by Pub. L. 103–329), as these provisions apply to the COLA program. The law requires OPM to study living-cost issues and submit to Congress a report on possible changes in the COLA methodology. The report is due March 1, 1996. The commenter thought the law directed OPM to make changes in the COLA model before the report due date.

As we stated in our response to comments received on an earlier proposed rule (at 59 FR 13844), OPM carefully reviewed Pub. L. 102–141 and the related Senate Appropriations Committee report. OPM determined that the law has two requirements: (1) COLA rates may not be reduced through December 31, 1995, and (2) OPM must submit a report to Congress on possible changes in the COLA methodology. The law does not direct OPM to implement methodological changes at this time.

The Senate Committee, however, asked OPM to research specific methodological issues. OPM is doing this and plans to include the results of its research in its report to Congress. Although the law does not require OPM to implement changes, OPM will continue to make improvements in the COLA program, as appropriate. We are implementing some of these changes with this final rule.

The commenter said OPM regulations should describe the COLA model and survey in greater detail. OPM believes the COLA regulations are adequately detailed and that subjecting the survey process to a set of overly detailed and inflexible rules would impair, rather than improve, the COLA program. The flexibility results in a more accurate COLA model because improvements can be made from one year to the next. Such changes are made public because, before COLA rates are adjusted, OPM publishes in the **Federal Register** a detailed report on the survey methodology and results. Employees have the opportunity to comment on any changes, and OPM takes these comments into careful consideration.

The commenter believed OPM violated the Administrative Procedure Act (APA) by publishing details after the survey. He said OPM could not "go back and replicate the data if it is subsequently determined that the changes were 'inappropriate.'" The APA does not require OPM to make a change for each comment received. Instead, the APA requires OPM to inform the public of certain proposals and actions, allow the public to comment on these, and take these comments into consideration. This we do.

As evidenced in this final rule, OPM implements recommended changes as appropriate. With this rule, OPM is correcting an error made in the calculation of the Maui index, implementing a new methodology for calculating the Miscellaneous Component index, and eliminating Commissary/Exchange COLA rates in areas where they are no longer payable. OPM also adopted, based in part on comments it received, community changes for the summer 1994 COLA surveys. Therefore, OPM is in compliance with both the letter and spirit of the APA.

The commenter said there was no basis in law for the pledge of confidentiality that is provided on the Background Survey information collection materials, which was part of Appendix 5 of the report. The Freedom of Information Act (FOIA), as codified at 5 U.S.C. 552, allows the Government to withhold information from public release if the information contains trade secrets or commercial or financial information that is privileged or confidential. Generally, the information collected in Background Surveys is privileged commercial information. Background Surveys are used to identify items that will be priced and outlets at which the prices will be collected. To identify commonly purchased items and popular outlets, information on such things as sales volume and market penetration are collected. This information is protected from disclosure under FOIA.

The commenter believed the COLA model was unnecessarily complex and suggested that it be simplified to use only one income level. The commenter said this would reduce survey costs and the number of subjective assumptions required. As we noted in our response to similar comments received on an earlier proposed rule (at 59 FR 13845), OPM's regulations require the measurement of living costs at multiple income levels. This approach recognizes that relative living costs may vary by income level and that the distribution of employees by income level may vary among areas. The multiple income approach, therefore, yields a more accurate measure of overall living-cost differences than a single income approach. Nevertheless, to the extent that multiple income levels require additional subjective assumptions, we agree that the overall integrity of the model might not be impaired by using a single income level. OPM is examining this issue and plans to address it in its report to Congress.

The commenter also objected to Runzheimer's recommendation that OPM include income taxes in the COLA model. He believed this would unduly complicate the model. As stated in previous **Federal Register** notices, OPM is studying issues relating to Federal, State, and local income taxes and plans to include the results of this study in its report to Congress.

The commenter wanted the COLA model to take into account the "objectively determinable" costs of remoteness, isolation, and special needs. He cited increased home maintenance, out-of-area college and university costs, and medical expenses as examples of these extra costs. In comments on previous **Federal Register** notices, many employees identified special "needs" they believed were unique to their area. OPM has and is continuing to research many of these issues, including home maintenance, college and university costs, and medical expenses. We plan to include the results of this research in our report to Congress. At present, however, OPM believes the COLA model reasonably and adequately measures cost differences for the vast majority of expenses that Federal employees typically incur.

Noting the difficulty of comparing colleges and universities of equal quality, the commenter further proposed that OPM measure the cost of higher education solely in the DC area. He said allowance area costs could be computed by adding to the DC costs the extra expense of out-of-state tuition, room and board, and round-trip air travel between the allowance areas and Washington, DC. Although this approach would address the problem of comparing the cost of an education of like quality, we believe measuring costs in this manner would vastly overstate the costs incurred by most Federal employees in the allowance areas. Measuring costs in this manner could also significantly understate the average cost of college and university education incurred by Federal employees in the DC area.

The commenter said items needed only in allowance areas should be priced in the allowance area, but not in DC. OPM is researching the issue of special needs. While there may be consumer requirements unique to living in the allowance areas, there also are consumer requirements unique to living in the Washington, DC, area. For the summer surveys, the model does not address these issues because they are highly subjective, difficult to measure, and vary widely among areas. Instead, the model compares the cost of an item in an allowance area with the cost for the same item in the DC area. OPM believes this is consistent with the settlement of *Hector Arana, et al.* v. *United States,* in which the plaintiffs asked OPM to adopt a methodology that compared specified brands, models, and sizes whenever possible.

We note, however, that the Senate Appropriations Committee asked OPM to research the issue of items required in the allowance area but not in the Washington, DC, area and include this research in its report to Congress. This OPM is doing.

The commenter recommended that OPM add 5 percentage points to all COLA rates to take into account costs that exist but are not objectively determinable. OPM believes intangible factors, such as difficult living conditions, should not be part of the COLA program. There are other programs, such as the post differential program, that compensate Federal employees in such circumstances. OPM believes COLA should compensate employees for measurable differences in living costs.

Even if we agreed conceptually with such changes, significant changes in the law, Executive Order, and regulations would be required to allow the adjustment of COLA for these intangible factors. The Senate Appropriations Committee specifically asked OPM to study factors relating to remoteness and isolation and to report to Congress on *legislative* recommendations on how to calculate COLA's. Therefore, final resolution of these issues must await OPM's report to Congress and subsequent congressional action.

The commenter believed employees in the allowance areas saved at a higher rate to afford the down payment for a house or a car or to pay for college/university education. He said OPM should take this into consideration and adjust savings and investments by the overall index for the area. The COLA model uses the same approach to savings and investments as the Bureau of Labor Statistics uses in the Consumer Expenditure Survey (CES). That approach accounts for savings and investments made for the purpose of future purchases in the category or

component associated with the item to be purchased. For example, savings made for the down payment or purchase of an automobile are accounted for in the private transportation category. Therefore, if automobiles cost more in an allowance area and the purchaser must save more to afford the car, the COLA model already takes this additional savings requirement into account. No additional adjustments are required.

On the other hand, the savings and investment category in the Miscellaneous Component covers long-term savings and investments, such as those made for retirement purposes. The category also includes life insurance. For Federal employees, the cost of life insurance and required contributions to a Federal retirement system do not vary by geographic area. Any additional insurance or contributions to the retirement systems are a matter of personal preference. Therefore, it is appropriate to hold the index constant for these items.

The commenter objected to trimming high and low values in the housing component and use of trend analyses. The commenter believed housing market price anomalies should be tolerated or that only "obvious errors or anomalies" should be eliminated. The purpose of trimming and trend analyses is to stabilize the housing price data from one year to the next. As OPM stated in its response to comments received on an earlier proposed rule (at 59 FR 13846), trimming is essentially a nonparametric technique similar to using the median rather than the average. OPM and Runzheimer considered using the median but rejected it because the limited number of observations obtained in some smaller allowance areas could cause the median to be erratic from one year to the next. Trimming provides stability; and because equal numbers of high and low values are trimmed, no bias is introduced. Eliminating "obvious anomalies" would be a more subjective process with a potential for bias.

The commenter thought the age of the home should be included in home sales analyses. He recommended comparing prices of homes of a similar age, size, and room count. Numerous factors influence home sale prices, but data on many of these factors are not readily available. Runzheimer uses home size and room count as the major criteria in housing comparisons because data on these factors are usually available in all areas and because these factors typically have a significant influence on home prices. Age is not used because data on it frequently are not available and because OPM's initial research indicates that its use may be problematic. Moreover, as noted in the report, the number of home sales observations is limited in many areas. Stratifying these small quantities into age groups for purposes of comparison would complicate the model—something the commenter wished to avoid. It would also probably introduce unwarranted fluctuations in the housing index from one year to the next—something OPM wants to avoid.

The commenter said the survey failed to take into consideration the use of solar water heaters in Hawaii and Guam. The commenter believed the model did not account for the capital cost of such heaters or the possible reduction in overall utility consumption.

As OPM stated in its response to comments received on an earlier proposed rule (at 59 FR 13847), significant home features and improvements generally are reflected in the selling price of the home. Therefore, living-cost surveys reflect the cost of solar water heaters to the extent that such items influence home market values and are commonly found in homes in any area, including Hawaii and Guam. If solar water heaters are so common that their use generally reduces the consumption of utilities, the survey results will reflect lower utility costs. This is as it should be. The COLA model compares overall living costs in the allowance area with overall living costs in the DC area. If housing is more expensive and utility costs are lower because solar heaters are common, the final comparison of overall housing costs will be equitable. No special consideration of capital improvement costs or reduced utility consumption is appropriate.

The commenter said employees in the allowance areas face extreme weather disturbances, particularly typhoons or hurricanes. He believed these weather disturbances and other climatic conditions result in higher costs, particularly home insurance and maintenance costs.

The cost of homeowner's insurance is part of the COLA model. The policies priced include coverage of damage caused by high winds (e.g., hurricane winds). As shown in Appendix 7 of the report, these policies are relatively expensive in areas where severe weather is a problem. Other costs, such as the cost of repairing storm damage, are more difficult to address in the surveys. Although it may be possible to price the cost of repairing or replacing an item such as a window or a roof, it is difficult to know how often this must be done in each allowance area compared with the Washington, DC, area. The same is true with other types of maintenance, such as painting. It is difficult to know what tasks, if any, must be performed more often in the allowance areas than in the Washington, DC, area. OPM is researching these issues and plans to discuss them in its report to Congress.

The commenter objected to the selection of Los Angeles as the common destination point for comparing airfares. He said the Los Angeles routes were highly competitive and resulted in lower fares compared with other destinations. The commenter suggested pricing round-trip tickets from each area to Kansas City. As stated in the report, Los Angeles was selected because it is a common point within the continental United States that is roughly equidistant from each of the allowance areas and the Washington, DC, area. The route may be highly competitive, but that does not invalidate cost comparisons. OPM is measuring the *relative* cost of air travel. If competition reduces fares, the reductions will be reflected in the Washington, DC, to Los Angeles fares as well as in the allowance area to Los Angeles fares. Therefore, OPM believes the comparisons are appropriate.

The commenter also felt that the COLA model did not measure true air transportation costs. He said inter-island travel and travel to the contiguous 48 States required more frequent use of air transportation. The COLA model does not account for regional differences in the frequency of transportation. It assumes the typical Federal employee uses air travel occasionally but mainly travels by private automobile, putting 15,000 miles per year on a car. The model may underestimate the cost of air travel for some allowance area residents, but it probably overestimates private transportation costs for others because it is unlikely that most island residents would put 15,000 miles per year on their cars. Needless to say, OPM would prefer to employ better usage estimates for both private and air transportation. To this end, OPM is researching transportation issues and plans to include the results of this research in its report to Congress.

The commenter believed the medical expense portion of the Miscellaneous Component failed to reflect the higher out-of-pocket expenses that some Federal employees in the allowance areas incur. The commenter cited as examples the higher price of medical service, the absence of Health Maintenance Organizations (HMO's), and the need to travel outside the area to obtain some medical services. The COLA model takes into consideration relative differences in medical costs. For

example, the report indicated that medical costs in Honolulu are roughly 10 percent above those in the Washington, DC, area. OPM notes that HMO's are very popular in Hawaii and Puerto Rico and that all of the allowance areas have medical facilities that provide commonly required medical services. Nevertheless, OPM is researching issues relating to medical expenses. The results of that research will be incorporated in our report to Congress.

The commenter criticized the methodology used for catalog pricing. He assumed DC employees do not purchase by catalog but that allowance areas employees do because certain items were not locally available. Consequently, he recommended comparing allowance area catalog prices with over-the-counter prices in the Washington, DC, area.

As stated in the report, catalogs are a popular form of retailing in both the allowance areas and in the Washington, DC, area. The COLA model includes catalog sales to reflect this common type of shopping and to allow the comparison of the prices of certain items for which the same brands, models, and sizes are difficult to find in the allowance areas and in the Washington, DC, area. OPM does not agree with the commenter's assumption that people only purchase from catalogs when the item is not available locally. People make catalog purchases for a variety of reasons, including price, convenience, and availability. Numerous catalog merchandisers compete in the allowance areas and in the Washington, DC, area. It would be inappropriate, therefore, to compare allowance area catalog prices with over-the-counter prices in the DC area. In the employee survey, OPM asked employees about their purchasing patterns, including whether they typically purchase various types of items by catalog. OPM plans to include the results of this survey in its report to Congress.

The commenter criticized OPM for using old consumer expenditure information to weight commissary and exchange prices. OPM acknowledges it is using older information. As evidenced in this final rule, however, OPM has been researching commissary and exchange usage to discern which Federal employees have such access and in which areas. OPM plans to continue and expand this research, as appropriate.

The commenter assumed that employees who are paid the commissary and exchange COLA rate would have commissary and exchange access if stationed in the Washington, DC, area. He recommended, therefore, comparing commissary and exchange prices in the allowance areas with commissary and exchange prices in the DC area.

Executive Order 10000 requires OPM to "* * * make appropriate deductions when * * * commissary or other purchasing privileges are furnished as a result of Federal civilian employment at a cost substantially lower than the prevailing costs in the allowance area concerned." Commissary and exchange prices in Guam are significantly lower than prevailing prices. Therefore, a reduction in the COLA rate is warranted. The methodology used to calculate the Commissary and Exchange COLA rate involves the comparison of a weighted average of local retail prices and commissary and exchange prices in the allowance area with local retail prices only in the Washington, DC, area. This methodology was reviewed and upheld by the court in *Joseph E. Curlott, Jr., et al.* v. *Robert E. Hampton, et al.* and *Charles R. Kester, et al.* v. *Alan K. Campbell.*

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. In § 591.204, paragraph (b)(4) is revised to read as follows:

§ 591.204 Establishment of allowance areas.

* * * * *

(b) * * *

(4) The U.S. Virgin Islands.

* * * * *

3. In § 591.208, paragraph (b) is revised to read as follows:

§ 591.208 Post differential.

* * * * *

(b) The places at which differentials are paid are—

(1) American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171 degrees west of Greenwich, together with Swains Island);

(2) Guam;

(3) The Commonwealth of the Northern Mariana Islands;

(4) Johnston Island and Sand Island; and

(5) Midway Islands and Wake Island.

* * * * *

4. Appendix A of subpart B is revised to read as follows:

Appendix A of Subpart B—Places and Rates At Which Allowances Shall Be Paid

This appendix lists the places where a cost-of-living allowance has been approved and shows the allowance rate to be paid to employees along with any special eligibility requirements for the allowance payment. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic coverage/allowance category	Authorized allowance rate (percent)
State of Alaska	
City of Anchorage and 80-kilometer (50-mile) radius by road:	
All Employees	25.0
City of Fairbanks and 80-kilometer (50-mile) radius by road:	
All Employees	25.0
City of Juneau and 80-kilometer (50-mile) radius by road:	
All Employees	25.0
Rest of the State:	
All Employees	25.0
State of Hawaii	
City and County of Honolulu:	
All Employees	22.5
County of Hawaii:	
All Employees	15.0
County of Kauai:	
All Employees	20.0
County of Maui and County of Kalawao:	
All Employees	22.5
Territory of Guam and Commonwealth of the Northern Mariana Islands	
Local Retail	22.5
Commissary/Exchange	20 0
Commonwealth of Puerto Rico	
All Employees	10.0

Geographic coverage/allowance category	Authorized allowance rate (percent)
U.S. Virgin Islands	
All Employees	17.5

Definitions of Allowance Categories

The following are definitions of the allowance categories used in the tables in this appendix.

All Employees: This category covers all Federal employees eligible for an allowance under 5 U.S.C. 5941.

Local Retail: This category covers all Federal employees eligible for an allowance who do *not* have unlimited access to commissary and exchange facilities by virtue of their Federal civilian employment.

Commissary/Exchange: This category covers all Federal employees eligible for an allowance who have unlimited access to commissary and exchange facilities by virtue of their Federal civilian employment.

Note: Eligibility for access to military commissary and exchange facilities is determined by the appropriate military department. If an employee is furnished these privileges for reasons associated with his or her Federal civilian employment, he or she will receive an identification card that authorizes access to such facilities. Possession of such an identification card is sufficient evidence that the employee uses the facilities.

5. Appendix B of subpart B is revised to read as follows:

Appendix B of Subpart B—Places and Rates At Which Differentials Shall Be Paid

This appendix lists the places where a post differential has been approved and shows the differential rate to be paid to eligible employees. The differential percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic coverage	Percentage differential rate
American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171° west of Greenwich, together with Swains Island)	25.0
Johnston Island and Sand Island	25.0
Midway Islands	25.0
Territory of Guam and Commonwealth of the Northern Mariana Islands	20.0
Wake Island	25.0

[FR Doc. 94–26556 Filed 10–25–94; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1036

[DA–94–20]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Temporary Revision of Rule; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correction to temporary revision of rule.

SUMMARY: This document contains a correction to a temporary revision of rule which was published Wednesday, September 28, 1994 (59 FR 49344). The temporary revision related to supply plant shipping standards for the months of September 1994 through February 1995. The document contained an inadvertent error regarding the expiration date for amendment number 2.

EFFECTIVE DATE: September 1, 1994, through February 28, 1995.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the temporary revision of rule contained an error regarding the expiration date of the action.

Correction of Publication

Accordingly, the publication on September 28, 1994, of the temporary revision of rule, which was the subject of FR Doc. 94–23921, is corrected as follows:

§ 1036.7 [Corrected]

On page 49345, in the third column, § 1036.7, amendment 2, "February 28, 1994" is corrected to read "February 28, 1995".

Dated: October 20, 1994.

Silvio Capponi, Jr.,

Acting Director, Dairy Division.

[FR Doc. 94–26460 Filed 10–25–94; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

9 CFR Part 391

[Docket No. 94–013F]

Fee Increase for Inspection Services

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry products inspection regulations to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees reflect the increased costs of providing these services primarily as a result of Federal salary increases allocated by Congress under the Federal Employees Pay Comparability Act of 1990.

EFFECTIVE DATE: October 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. William L. West, Director, Budget and Finance Division, Administrative Management, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700, (202) 720–3367.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) provide for mandatory inspection by Federal inspectors of meat and poultry slaughtered and/or processed at official establishments. Such inspection is required to ensure the safety, wholesomeness, and proper labeling of meat and poultry products. The costs of mandatory inspection (excluding such services performed on holidays or on an overtime basis) are borne by FSIS.

In addition to mandatory inspection, FSIS provides a range of voluntary inspection services (9 CFR 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5). The costs of voluntary inspection are totally recoverable by the Federal Government. These services, set forth in Subchapter B—Voluntary Inspection and Certification Service, are provided under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*) to assist in the orderly marketing of various animal products and byproducts not subject to the Federal Meat Inspection Act or the Poultry Products Inspection Act.

The fees charged by FSIS for voluntary inspection services provided

to operators of official meat and poultry establishments, importers, or exporters are reviewed annually and a cost analysis [1] is performed to determine whether they remain adequate to recover the costs FSIS incurs in providing the services. The fees charged are for overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services.

Based on the projected Fiscal Year 1994 cost analysis, FSIS is increasing the fees for voluntary services. These increased costs are attributable to the average FSIS locality pay raise of 3.2 percent for Federal employees effective January 1994; the increasing number of employees covered by the Federal Employees Retirement System and subject to the Federal Insurance Contributions Act tax; and increased health insurance costs.

On June 27, 1994, FSIS published a proposed rule in the **Federal Register** (59 FR 32940) to increase the fees charged by FSIS to provide overtime and holiday inspection, voluntary inspection, identification, certification, or laboratory services to meat and poultry establishments.

FSIS received one comment in response to the proposal. The comment was from the owner of a small meat establishment who felt that the current fee of $30.72 per hour was excessive and a burden on his company. After analyzing the available data relating to costs of providing these services, FSIS has determined that these rates reflect the cost of providing inspection services. The new rates reflect only an incremental increase in the costs currently borne by those entities electing to utilize overtime and holiday inspection services and certain other voluntary inspection services.

To recover these increased costs in an expeditious manner, the Administrator has determined that these amendments should be effective less than 30 days after publication in the **Federal Register**.

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. The fees provided for in this rule reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain voluntary inspection services. As discussed in the background of this document, the increase in fees reflects the increased costs of providing these services primarily as a result of Federal salary increases allocated by Congress under the Federal Employees Pay Comparability Act of 1990.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions, all applicable administrative procedures must be exhausted. Under the Federal Meat and Poultry Products Inspection Acts, the administrative procedures are set forth in 7 CFR Part 1.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The fees reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

List of Subjects in 9 CFR Part 391

Fees and charges, Meat inspection, Poultry products inspection.

Accordingly, Part 391 of the Federal meat and poultry products inspection regulations is amended as follows:

PART 391—FEES AND CHARGES FOR INSPECTION SERVICES

1. The authority citation for Part 391 continues to read as follows:

Authority: 21 U.S.C. 601 *et seq.*, 460 *et seq.*; 7 CFR 2.17 [g] and [i], 2.55; 7 U.S.C. 394, 1622, and 1624.

2. Sections 391.2, 391.3, and 391.4 are revised to read as follows:

§ 391.2 Base time rate.

The base time rate for inspection services provided pursuant to §§ 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $31.12 per hour, per program employee.

§ 391.3 Overtime and holiday rate.

The overtime and holiday rate for inspection services provided pursuant to §§ 307.5, 350.7, 351.8, 351.9, 352.5, 354.101, 355.12, 362.5, and 381.38 shall be $31.80 per hour, per program employee.

§ 391.4 Laboratory services rate.

The rate for laboratory services provided pursuant to §§ 350.7, 351.9, 352.5, 354.101, 355.12, and 362.5 shall be $52.04 per hour, per program employee.

Done at Washington, DC, on: October 19, 1994.

Michael R. Taylor,

Administrator.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–26458 Filed 10–25–94; 8:45 am]

BILLING CODE 3410–DM–P

[1] The cost analysis is on file with the Docket Clerk. Copies may be requested free of charge from the Docket Clerk, Room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 27664]

The High Density Rule

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: On September 20, 1994, the FAA published a notice of public meeting in the **Federal Register**, announcing that public meetings on the High Density rule would be held in Washington, DC, New York, and Chicago. On October 11, 1994, the FAA published a notice announcing the locations of the public meetings in Washington, DC and New York. This notice announces the location of the Chicago meeting.

DATES: The public meeting in Chicago will be held on November 17, 1994, from 12 p.m. to 4 p.m. and from 6 p.m. to 8 p.m. Pursuant to the September 20, 1994, Notice of public meeting, written comments are also invited and must be received on or before November 23, 1994.

ADDRESSES: The public meeting in Chicago will be held at the Holiday Inn O'Hare International, 5440 N. River Road, Rosemont, IL 60018. Persons unable to attend the meeting may mail their comments in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Rules Docket (AGC–200), Docket No. 27664, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the Chicago meeting or questions regarding the logistics of the meeting should be directed to Cindy Herman, Office of Rulemaking, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7627.

Questions concerning the subject matter of the meeting should be directed to Larry Barry, Federal Aviation Administration, Office of Aviation Policy, Plans, and Management Analysis, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3305

SUPPLEMENTARY INFORMATION:

Participation at the Meeting

Pursuant to the September 20, 1994, Notice of public meeting, requests from persons who wish to present oral statements at the Chicago public meeting should be received by the FAA no later than November 1, 1994. Requests received after the date specified above will be scheduled if there is time available during the meeting. Such requests should be submitted to Cindy Herman as listed in the section titled FOR FURTHER INFORMATION CONTACT, should include a written summary of oral remarks to be presented, and should include an estimate of time needed for the presentation. Requests to present oral statements may be made on the day of the public meeting during the registration period, although time constraints may not permit the accommodation of such requests. The DOT will prepare an agenda of speakers that will be available at the meeting. The names of those individuals whose requests to present oral statements are received after the date specified above may not appear on the written agenda. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested.

Background

On September 20, 1994, the FAA published in the **Federal Register** a notice of public meeting regarding the High Density Rule (59 FR 48165). Specifically, the DOT seeks comment on the following key issues:

[1] The economic, environmental, competitive, and operational aspects of the High Density Rule at the four airports.

[2] The projected air traffic environment.

[3] The process for allocating domestic and international slots.

[4] Access for small communities at High Density Rule airports.

[5] Potential alternatives to the current regulatory scheme at the High Density Rule airports.

These issues are intended to help focus public comments on areas that will be useful to the DOT in completing its review of the High Density Rule. The comments at the meetings need not be limited to these issues, and the DOT invites comments on any other aspect of the High Density Rule.

Meeting Procedures

The following meeting procedures, as established in the September 20, 1994, **Federal Register** are to facilitate the meetings:

(1) There will be no admission fee or other charge to attend or to participate in the meetings. The meetings will be open to all persons who are scheduled to present statements or who register on the day of the meeting (between 10:45 a.m. and 11:45 a.m.) subject to availability of space in the meeting rooms. The meetings may adjourn early if scheduled speakers complete their statements in less time than is scheduled for the meetings.

(2) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(3) The DOT will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the DOT reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(4) Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

(5) Representatives of the DOT will preside over the meeting. A panel of DOT and FAA personnel involved in this issue will be present.

(6) The meeting will be recorded by a court reporter. A transcript of the meeting and any material accepted by the DOT representatives during the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. Additional transcript purchase information will be available at the meeting.

(7) The DOT will review and consider all material presented by participants at the meeting. Position papers or material presenting views or arguments related to the High Density Rule may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The DOT requests that persons participating in the meeting provide five copies of all materials to be presented for distribution to the DOT representatives; other copies may be provided to the audience at the discretion of the participant.

(8) Statements made by DOT representatives are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a DOT representative is not intended to be, and should not be construed as, a position of the DOT.

(9) The meetings are designed to solicit public views and more complete information on the High Density Rule. Therefore, the meetings will be conducted in an informal and nonadversarial manner. No individual will be subject to cross-examination by any other participant; however, DOT representatives may ask questions to clarify a statement and to ensure a complete and accurate record.

Issued in Washington, DC, on October 20, 1994.

Dale E. McDaniel,

Deputy Assistant Administrator for Policy, Planning & International Aviation.

[FR Doc. 94–26496 Filed 10–25–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

17 CFR Parts 402 and 405

RIN 1505–AA48

Implementing Regulations for the Government Securities Act of 1986

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Department") is issuing in final form amendments to the regulations issued under the Government Securities Act of 1986 (the "Government Securities Act" or "GSA").[1] Section 405.3 of the GSA regulations requires registered government securities brokers and dealers to comply with the requirements of Securities and Exchange Commission (the "Commission" or "SEC") Rule 17a–11 under the Securities Exchange Act of 1934 (the "Exchange Act"), with certain modifications. The SEC has amended Rule 17a–11 and the Department's amendments parallel the SEC's changes.

The amendments will, among other things, ease the regulatory and reporting burdens on registered government securities brokers and dealers by eliminating the requirement that they submit certain supplemental financial

[1] Pub. L. No. 99–571, 100 Stat. 3208 (1986).

reports previously required by § 405.3 of the GSA regulations. Registered government securities brokers and dealers will remain obligated to transmit notice of a capital deficiency or certain other events.

EFFECTIVE DATE: October 26, 1994.

FOR FURTHER INFORMATION CONTACT: Ken Papaj (Director) or Ron Couch (Government Securities Specialist), Bureau of the Public Debt, Government Securities Regulations Staff, 999 E Street NW., Room 515, Washington, DC 20239–0001. (202) 219–3632.

SUPPLEMENTARY INFORMATION:

I. Background

When the Department first adopted rules and regulations affecting government securities brokers and dealers, it took into consideration the already existing regulation of securities brokers and dealers registered with the SEC under sections 15 or 15B of the Exchange Act, with a view toward preventing overly burdensome or duplicative regulations. In that regard, the GSA regulations incorporated, by reference, many of the SEC's rules regulating brokers and dealers, including, with modification, Rule 17a–11.

On July 7, 1993, the SEC adopted amendments to 17 CFR 240.17a–11 (Rule 17a–11), which became effective August 12, 1993.[2] The primary purpose of Rule 17a–11 is to provide the SEC and other regulatory bodies with advance warning and information regarding brokers and dealers that are experiencing financial or operational difficulty. Prior to the SEC's amendments, Rule 17a–11 required a broker or dealer to give notice and transmit supplemental reports to the Commission and other regulatory bodies when its net capital declined below its required minimum level or when its total outstanding principal amount of satisfactory subordination agreements exceeded allowable levels for more than 90 days. The SEC's amendments, among other things, eliminated the requirement that brokers and dealers file Part II or Part IIA of Form X–17A–5, Financial and Operational Combined Uniform Single Report ("FOCUS Report") after a net capital deficiency. Brokers and dealers, however, remain obligated to transmit same-day notice of such a capital deficiency. Additionally, prior to the amendments to Rule 17a–11, brokers and dealers whose net capital fell below certain "early warning levels"[3] were required to file monthly FOCUS Report for at least three successive months. This requirement was eliminated by the amendments and replaced with the requirement that brokers and dealers promptly notify the Commission and their designated examining authority ("DEA") of the triggering event. However, the changes to SEC Rule 17a–11 did not apply to registered government securities brokers and dealers because the Treasury is the rulemaker for these firms.

Section 405.3 of the GSA regulations requires, with certain modifications, every registered government securities broker or dealer to comply with Rule 17a–11. Consistent with the SEC's pre-amendment Rule 17a–11, § 405.3 has required registered government securities brokers and dealers, including interdealer brokers and futures commission merchants (FCMs), to provide notice of capital deficiencies, to submit financial reports within 24 hours of a capital deficiency, and to file supplemental reports for three successive months when capital falls below early warning levels. Since the SEC's amendments to Rule 17a–11, without conforming amendments to § 405.3 of the GSA regulations, the rules applicable to government securities brokers and dealers have been unclear. At the time of the amendments to SEC Rule 17a–11, Treasury was unable to revise the GSA regulations accordingly because its rulemaking authority had expired in October 1991 and reauthorization legislation was still being considered by the Congress.

The Treasury supported the SEC changes to Rule 17a–11 and took action to relieve registered government securities brokers and dealers of the requirement to file supplemental financial reports under § 405.3, pending the reauthorization of Treasury's rulemaking authority and the issuance of conforming amendments. Accordingly, on August 27, 1993, at the request of Department staff, the SEC staff issued to no-action letter[4] stating that no action would be recommended to the Commission if a DEA waived the financial report filing requirements of SEC Rule 17a–11, as modified and made applicable to registered government securities brokers and dealers by § 405.3, provided that:

(1) a registered government securities broker or dealer gives notice the same day of the event in accordance with Rule 17a–11:

(a) if the liquid capital of a government securities broker-dealer subject to the financial responsibility requirements of § 402.2 under the GSA declines below the minimum amount required by § 402.2, or

(b) if the net capital of a government securities interdealer broker subject to the financial responsibility requirements of § 402.1(e) of the GSA declines below the minimum amount required by § 402.1(e), or

(c) if the net capital of a registered government securities broker or dealer that is also an FCM registered with the Commodity Futures Trading Commission ("CFTC") falls below the greater of (i) the minimum amount required by Rule 15c3–1 (17 CFR 240.15c3–1) or (ii) the minimum amount required by CFTC Rule 1.17 (17 CFR 1.17); or

(2) a registered government securities broker or dealer gives notice promptly (within 24 hours) in accordance with Rule 17a–11 upon the occurrence of an event that would require under § 405.3 the filing of a Report on Finances and Operations of Government Securities Brokers and Dealers ("FOGS Report") or FOCUS Report.

The no-action letter also noted that Treasury's rulemaking authority had expired, but that Treasury staff intended, upon reauthorization of its rulemaking authority, to amend its regulations under the GSA to conform to the SEC's amendments to Rule 17a–11. The Treasury's rulemaking authority was reauthorized on December 17, 1993, with the enactment of the Government Securities Act Amendments of 1993,[5] thus enabling the Department to make this rule change.

II. Amendments

A. Section 405.3

The new rule eliminates the prior requirement that registered government securities brokers or dealers file financial reports within 24 hours after a liquid or net capital deficiency by adopting paragraph (b) of SEC Rule 17a–11.[6] Registered government securities brokers and dealers will remain

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[2] Securities Exchange Act Release No. 32586 (July 7, 1993), 58 FR 37655–58 (July 13, 1993).

[3] Early warning levels are capital levels set at amounts that are higher than the minimum capital requirement. In situations where the capital level of a broker or dealer is declining, the early warning level serves the purpose of alerting regulatory agencies that the firm may be experiencing financial or operational difficulty. This early notification enables the regulatory agencies to monitor the activities of a broker-dealer and assess its financial condition while there is still time to take action to prevent the broker-dealer from falling out of compliance with the minimum capital requirement.

[4] Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, U.S. Securities and Exchange Commission, to Raymond J. Hennessy, Vice President, New York Stock Exchange, and to John F. Pinto, Executive Vice President, National Association of Securities Dealers, dated August 27, 1993.

[5] Pub. L. 103–202, 107 Stat. 2344 (1993).

[6] 17 CFR 240.17a–11(b).

obligated to transmit notice of a liquid or net capital deficiency on the same day of the occurrence. However, unlike the previous rule, the amendments require the notice to specify the registered government securities broker's or dealer's capital requirement and its current amount of capital. This latter requirement does not impose any additional burdens on registered government securities brokers and dealers because they are required to continually monitor their minimum capital requirement and their current amount of capital to ensure compliance with the Department's capital rule.

Section 405.3 also adopts the requirement of SEC Rule 17a–11(b) that a broker or dealer must give notice of a capital deficiency when it is informed by its DEA or the Commission that it is, or has been, in violation of the capital requirements, even if it does not agree with that determination. In the event of such a dispute, the broker or dealer may state in its notice the arguments for its disagreement with the capital deficiency determination.

The requirement that registered government securities brokers and dealers file Part II or Part IIA of the FOGS Report, or in limited cases the FOCUS Report, within 15 calendar days after the end of the next three months if their capital falls below certain early warning levels is also eliminated. In lieu of this requirement, and consistent with the SEC's Rule, § 405.3(a)(5) requires that, in the event a registered government securities broker's or dealer's capital falls below certain early warning levels, it is required to file notice of such event promptly (within 24 hours).

Section 405.3(a)(5) also adds a new early warning level based on minimum capital after haircuts for registered government securities brokers or dealers other than government securities interdealer brokers and government securities brokers and dealers that also are FCMs. In addition to sending prompt notice any time their liquid capital is less than 150 percent of haircuts, such government securities brokers and dealers also have to send a notice when their liquid capital after deducting total haircuts is less than 120 percent of their minimum capital requirement. This is consistent with the SEC early warning level for net capital and especially important for a registered government securities broker or dealer that may have no haircuts.

These amendments to § 405.3 of the GSA regulations conform the notification provisions applicable to registered government securities brokers and dealers to the requirements applicable to diversified brokers and dealers registered with the SEC. The Department is conforming the regulations under the GSA to SEC Rule 17a–11 to ensure consistent regulatory treatment for all classes of government securities brokers and dealers registered with the Commission and to reduce the reporting burdens on registered government securities brokers and dealers.

The Department believes that there is no reason for registered government securities brokers or dealers to file reports in circumstances where other brokers or dealers registered with the SEC are not filing reports. Further, the same-day notice requirement provides the Commission and the DEAs adequate warning of financial or operational problems, thereby enabling them to increase the surveillance of a registered government securities broker or dealer experiencing difficulty and to obtain any additional information necessary to assess the broker's or dealer's financial condition.

Due to the revisions of SEC Rule 17a–11, the Department is also making minor housekeeping changes to § 405.3(a) by deleting paragraphs 405.3(a) (4) and (5), which are no longer applicable, and redesignating the remaining paragraphs. To correct an oversight, the Department is adding new paragraph 405.3(c)(7) that indicates that references in SEC Rule 17a–11 to § 240.17a–3, relating to records, mean § 404.2 of the GSA regulations. This provision, which appears in paragraphs 405.3 (a) and (b), was inadvertently excluded from paragraph 405.3(c) when the implementing GSA regulations were adopted in July 1987.

B. Technical Amendments to Section 402.2d

The Department is also making a technical amendment to paragraph (j) of § 402.2d of the GSA regulations. Currently, paragraph (j) of § 402.2d, which modifies § 240.15c3–1d(c)(5)(i), prohibits a registered government securities broker or dealer from entering into a temporary subordinated loan during any period in which the broker or dealer is subject to "any of the reporting provisions" of § 405.3. Although the requirement in § 405.3 to file supplemental financial reports (i.e., FOGS or FOCUS Reports) in the event of a capital deficiency or the breaching of early warning levels is being eliminated, the Department is retaining the capital rule's prohibition against a registered government securities broker or dealer obtaining a temporary subordinated loan during a period of financial or operational difficulty. Accordingly, paragraph (j) is being amended to prohibit a registered government securities broker or dealer from obtaining a temporary subordinated loan if it has given notice under § 405.3 within the preceding thirty days. This amendment will enable the DEAs to prevent a registered government securities broker or dealer from obtaining temporary loans during periods in which the broker or dealer may be experiencing financial or operational difficulties.

III. Special Analysis

Because this final rule is merely a conforming amendment, the Department has determined that it is not a "significant regulatory action" as defined in Executive Order 12866.

In addition, in accordance with the Administrative Procedure Act (5 U.S.C. 553(b)), the Department for good cause finds that issuing a notice of proposed rulemaking and requesting comment are unnecessary. This rulemaking merely makes corrections to the existing GSA rule to conform it to the amendments to the SEC rule upon which it is based. The rule makes no independent substantive changes in the treatment of government securities brokers and dealers—they have previously been subject to reporting requirements parallel to other registered brokers and dealers, and they will continue to be subject to reporting requirements parallel to other registered brokers and dealers. This rule change imposes no additional burdens or requirements on government securities brokers and dealers. For these reasons, the Department is issuing the rule in final form, with an immediate effective date, pursuant to 5 U.S.C. 553(d)(3).

Because no notice and public comment are required for this rulemaking, the provisions of the Regulatory Flexibility Act (5 U.S.C 601, *et seq.*), do not apply. In addition, the information collections concerning this rule have been previously reviewed and approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3504(h)) and assigned control number 1535–0089. This rulemaking makes no substantive change to the information collection requirements except to delete the requirement that a registered government securities broker or dealer file a FOGS or FOCUS Report after experiencing a capital deficiency or triggering the early warning level notice requirements.

List of Subjects

17 CFR Part 402

Brokers, Government securities.

17 CFR Part 405

Brokers, Government securities, Reporting and recordkeeping requirements.

For the reasons set out in the Preamble, 17 CFR Parts 402 and 405 are amended as follows:

PART 402—FINANCIAL RESPONSIBILITY

1. The authority citation for Part 402 is revised to read as follows:

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209; Sec. 4(b), Pub. L. 101–432, 104 Stat. 963; Sec. 102, Sec. 106, Pub. L. 103–202, 107 Stat. 2344 (15 U.S.C. 78o–5 (b)(1)(A), (b)(4)).

2. Section 402.2d is amended by revising the second sentence of paragraph (j) to read as follows:

§ 402.2(d) Appendix D—Modification of § 240.15c3–1d of this title, relating to satisfactory subordination agreements, for purposes of § 402.2.

* * * * *

(j) * * *

"(i) * * * This temporary relief shall not apply to a government securities broker or dealer if, within the preceding thirty calendar days, it has given notice pursuant to § 405.3, or if immediately prior to entering into such subordination agreement, the liquid capital, as defined in § 402.2(d) of this title, of such broker or dealer would be less than 150% of total haircuts, as defined in § 402.2(g) of this title, or the amount of its then outstanding subordination agreements exceeds the limits specified in § 240.15c3–1(d).

* * *

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PART 405—REPORTS AND AUDIT

3. The authority citation for Part 405 is revised to read as follows:

Authority: Sec. 101, Pub. L. 99–571, 100 Stat. 3209; Sec. 4(b), Pub. L. 101–432, 104 Stat. 963; Sec. 102, Sec. 106, Pub. L. 103–202, 107 Stat. 2344 (15 U.S.C. 78o–5 (b)(1)(B), (b)(1)(C), (b)(4)).

4. Section 405.3 is amended by revising the section title; by deleting paragraphs (a)(4) and (a)(5); by redesignating paragraphs (a)(6), (a)(7) and (a)(8) as (a)(4), (a)(5) and (a)(6), respectively; by revising newly redesignated (a)(5); by redesignating and revising paragraph (c)(5) as (c)(6); and adding new paragraphs (c)(5) and (c)(7) to read as follows:

§ 405.3 Notification provisions for certain registered government securities brokers and dealers.

(a) * * *

(5) Section 240.17a–11(c), for the purposes of this section, is modified to read as follows:

"(c) Every registered government securities broker or dealer shall send notice promptly (but within 24 hours) in accordance with paragraph (g) of this section if a computation made pursuant to the requirements of § 402.2 of this title shows, at any time during the month, that its liquid capital is less than 150 percent of total haircuts, determined in accordance with § 402.2 of this title, or that its capital after deducting total haircuts from liquid capital is less than 120 percent of the registered government securities broker or dealer's minimum capital requirement specified in § 402.2 (b) or (c) of this title as applicable."

* * * * *

(c) * * *

(5) § 240.17a–11(c) for the purposes of this section is modified to read as follows:

"(c) Every broker or dealer shall send notice promptly (but within 24 hours) after the occurrence of the events specified in paragraphs (c)(1), (c)(2), (c)(3), or (c)(4) of this section in accordance with paragraph (g) of this section:"

(6) A new paragraph 240.17a–11(c)(4) is added to read as follows:

"(4) If a computation made by a government securities broker or dealer that is not a registered broker or dealer but that is also a futures commission merchant registered with the Commodity Futures Trading Commission shows that:

"(i) The adjusted net capital of such entity is less than the greater of:

"(A) 150 percent of the appropriate minimum dollar amount required by § 1.17(a)(1)(i), or

"(B) 6 percent of the following amount: The customer finds required to be segregated pursuant to § 4d(2) of the Commodity Exchange Act and § 1.17 of this title, less the market value of commodity options purchased by option customers on or subject to the rules of a contract market, provided, however, the deduction for each option customer shall be limited to the amount of customer funds in such option customer's account; or

"(ii) At any point during the month, aggregate indebtedness is in excess of 1200 percent of net capital or total net capital is less than 120 percent of the minimum net capital required."

(7) References to § 240.17a–3, relating to records, mean § 404.2 of this chapter.

(Approved by the Office of Management and Budget under control number 1535–0089.)

Date: October 11, 1994.

Frank N. Newman,

Under Secretary for Domestic Finance.

[FR Doc. 94–26545 Filed 10–25–94; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 207, 213, 221, and 236

[Docket No. R–94–1660; FR–3342–N–02]

RIN 2502–AG04

Deletion of the 90 Percent-of-Value Criterion in Section 223(a)(7) Refinancing; Extension of Effectiveness

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of extended effective period.

SUMMARY: This notice extends the effectiveness of the interim rule, published October 26, 1993 (58 FR 57558), which deletes the value criterion in section 223(a)(7) refinancing. The rule will remain in effect until April 26, 1995. The final rule is currently in the last stages of review by HUD and the Office of Management and Budget (OMB) and will be published when approved.

EFFECTIVE DATE: As of October 26, 1994, the interim rule published October 26, 1993 (58 FR 57558), is effective until April 26, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Luton, Acting Director, Policies and Procedures Division, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 6142, Washington, D.C. 20410. Telephone numbers: (202) 708–2556; and TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n(a)(7)) (the Act) authorizes HUD to insure mortgages given to refinance existing HUD-insured mortgages under any section or title of the Act. HUD has implemented Section 223(a)(7) in each of its regulations authorizing the insurance of mortgage refinancing, including 24 CFR parts 207, 213, 220, 221, 231, 232, 236, 241, and 242.

Due to requirements of the Act, each of these parts limits the principal amount of the refinanced mortgage to the lower of: (a) the original principal amount of the existing mortgage, or (b) the unpaid balance of the existing mortgage, to which certain HUD-approved items may be added. Additionally, each of these parts, except parts 241 (supplemental loans) and 242 (hospitals), prohibited the refinanced mortgage amount from exceeding a stated percentage of the Federal Housing Commissioner's estimate of value of the project after completion of any repairs, improvements, or additions to the property. Unlike the limitation noted above, the value criterion was not a statutory requirement.

The value criterion precluded many troubled projects from refinancing their HUD-insured mortgages, thus preventing them from lowering their debt service payments and gaining a sounder financial footing. Because Section 223(a)(7) mortgages are already limited by the amount of the original insured mortgage, HUD felt the public interest and HUD's Insurance Fund would be better served by allowing these loans to be refinanced to take advantage of lower interest rates. Accordingly, on October 26, 1993, HUD published an interim rule (58 FR 57558) removing the value criterion from these sections of HUD's regulations implementing Section 223(a)(7).

The preamble to the interim rule stated that the rule would cease to be effective after October 26, 1994, unless before that date HUD published it as a final rule. The final rule is currently in the last stages of review by HUD and the Office of Management and Budget (OMB) and will be published upon approval.

To prevent a period during which there is no rule in effect on this subject, the Department is extending the effective date of the interim rule deleting the value criterion in Section 223(a)(7) refinancing, from October 26, 1994, until April 26, 1995. This action extends the potential effective period from 11 months to 18 months which is in accordance with internal Departmental guidelines on interim rules. However, the Department anticipates that a final rule will be published well before the expiration of the 18-month period. The final rule would supersede the interim rule.

Consistent with the extension of the interim rule, the Department also is extending the Expedited Section 223(a)(7) Processing Instructions (issued November 24, 1993 for use by the Department). The instructions will now be effective until April 26, 1995, unless otherwise superseded.

Dated: October 20, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–26525 Filed 10–21–94; 3:04 pm]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Abandoned Mine Land Reclamation Plan

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Indiana Abandoned Mine Land Reclamation (AMLR) Plan (hereinafter referred to as the "Indiana plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise the Indiana plan to allow the State to assume responsibility for administering an emergency response reclamation program in Indiana on behalf of OSM.

EFFECTIVE DATE: October 26, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Plan

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana plan. Background information on the Indiana plan, including the Secretary's findings, the disposition of comments, and the approval of the Indiana plan can be found in the July 26, 1982, **Federal Register** (47 FR 32110). Subsequent actions concerning the conditions of approval and amendments to the plan can be found at 30 CFR 914.20 and 914.25.

II. Submission of the Proposed Amendment

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. On September 29, 1982 (47 FR 42729), OSM invited States to amend their AMLR Plans for the purpose of undertaking emergency reclamation programs on behalf of OSM. States would have to demonstrate that they have the statutory authority to undertake emergencies, the technical capability to design and supervise the emergency work, and the administrative mechanisms to quickly respond to emergencies either directly or through contractors.

Under the provisions of 30 CFR 884.15, any State may submit proposed amendments to its approved AMLR Plan. If the proposed amendments change the scope or major policies followed by the State in the conduct of its AMLR program, the Director must follow the procedures set out in 30 CFR 884.14 in reviewing and approving or disapproving the proposed amendments.

The proposed assumption of the AMLR emergency program on behalf of OSM is a major addition to the Indiana AMLR plan. Therefore, to asume the emergency program, Indiana must revise the Indiana Plan to include conducting the AML emergency program.

By letter received November 17, 1992 (Administrative Record No. IND–1171), the Indiana Department of Natural Resources (IDNR), Division of Reclamation, submitted a proposed Program Amendment to the Indiana Program. The amendment describes the specific procedures which Indiana will follow to investigate, reclaim and document emergency reclamation activities in the State. The amendment also describes the realty and environmental compliance activities that will support this function of the State's AMLR program.

OSM published an announcement of proposed rulemaking on the Indiana amendment and requested public comment on January 14, 1993 (58 FR 4374). The public comment period closed on February 16, 1993.

On March 26, 1993 (58 FR 16379), OSM published a correction of the address of the Indiana Department of Natural Resources (IDNR) which was printed in the January 14, 1993, proposed rule document.

On October 29, 1993 (Administrative Record Number IND–1303), OSM

received from Indiana a revised version of the Indiana plan amendment. The proposed revisions were intended to address OSM's comments on the original amendment. OSM published an announcement of the proposed revisions to the initial submittal of the Indiana plan amendment and reopened the public comment period on December 6, 1993 (58 FR 64212). The public comment period closed on December 20, 1993.

By letter dated June 27, 1994 (Administrative Record Number IND–1381) Indiana submitted a second revised version of the Indiana plan amendment. The proposed revision contains two changes which are intended to address OSM's comments on the October 29, 1993 revised version of the Indiana plan amendment.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are the Director's findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

The following information is contained in Indiana's formal submission to OSM pursuant to the guidelines published in the **Federal Register**, 47 FR 42729 (September 29, 1982), as to its authority and procedures for implementing an emergency response reclamation program based on the provisions in Section 410 of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95–87 (SMCRA).

1. The agency designated by the Governor as authorized to receive grants and administer an emergency program.

2. A legal opinion from the chief legal officer that the designated agency has the authority under State law to conduct the emergency program in accordance with the requirements of Section 410 of Title IV of the Act.

3. A description of the policies and procedures to be followed by the designated agency in conducting the reclamation program including:

a. The purpose of the emergency response reclamation activities to be undertaken by the Indiana Department of Natural Resources, Division of Reclamation is to enter upon any land where an emergency exists and on any other land to have access to the land where the emergency exists and restore, reclaim, abate, control or prevent the adverse effect of coal mining practices and to do all things necessary or expedient to protect the public health, safety, or general welfare. For the purposes of this plan amendment emergency is defined as a sudden danger or impairment that presents a high probability of substantial physical harm to the health, safety, or general welfare of people before the danger can be abated under normal program operation procedures.

b. The Indiana Department of Natural Resources will assume authority for all emergency projects within Indiana and will coordinate work with the Federal Office of Surface Mining Reclamation and Enforcement (OSM). Coordination with other state or local agencies will be on a project specific basis. The Department of Administration will be a key component in the procurement of goods and services for emergency work. Assistance is also available from the Indiana Department of Transportation and the Indiana State Emergency Management Agency.

All investigations and eligibility findings required by Title IV of SMCRA will be conducted by the Division of Reclamation. This information on emergency investigations will be provided to OSM. Once OSM makes a finding of fact that an emergency situation exists, the state will undertake the specific construction efforts approved by OSM to abate the declared emergency situation.

c. Land acquisition for emergency projects will follow the guidelines as stated in Indiana's approved State Plan. The state will acquire lands in emergency situations where no other practical means are available to abate an immediate threat to the health, safety or general welfare of its citizens. Policies, procedures and authority to acquire lands is clearly detailed in the approved State Plan in the sections entitled Land Acquisition, Management and Disposal. Indiana does not consider land acquisition to be a preferred step in reclamation projects and will therefore proceed with this option only under unique circumstances.

d. The policies and procedures for emergency reclamation on private and public lands will be the same as for other AML reclamation activities and detailed in the approved State Plan at 884.13(c)(5) and (6).

e. The Indiana Department of Natural Resources may enter on any land where an emergency exists or on adjacent lands for access, in order to protect the public health, safety or general welfare from adverse effects of coal mining. It is the policy of the State of Indiana to respect the rights of private ownership, and the state will make all reasonable efforts to obtain a written consent from the owner of record in advance of emergency reclamation. The consent for right of entry shall be in the form of a signed agreement with the land owner or the authorized agent.

f. The Indiana Department of Natural Resources will publish a legal notice in a general circulation newspaper within each county potentially affected by this emergency program assumption. These legal notices will provide for a thirty-day comment period and will include the possibility of conducting public meetings in order to resolve any issues of general concern. Each notice will include a statement of availability of this emergency reclamation amendment package. All comments received on this amendment will be incorporated by reference to this document and made available to any interested parties.

4. A description of the administrative and managerial structure to be used in conducting the emergency reclamation program including:

a. The organizational and management structure to be utilized by the Division of Reclamation for the emergency program will be the same as established for the other Title IV AML program operations and is contained within the approved State Plan. Key positions in the emergency program operations and their responsibilities are detailed below.

Inventory Specialist—responsible for initial investigation of all potential emergency situations. Compiles all pertinent information at each site to allow for consistent evaluation of the degree of seriousness and level of response necessary. Conducts initial coordination with other Division of Reclamation employees as well as other organizations and/or individuals necessary to insure proper response, protection and control.

Assistant Director for Restoration Program—makes final determination for the State on the status of each potential emergency. Will act as primary contact point for the Division of Reclamation in relations with the Department of Administration and the Federal Office of Surface Mining.

Project Manager Supervisor—responsible for insuring that all emergency abatement contract work is performed by the contractor in accord with the agreed terms and conditions of the contract. Will conduct pre-bid meetings with potential contractors if time permits.

Emergency Program Coordinator—The Division of Reclamation intends to fill this position with a registered professional engineer who will be capable of coordinating all emergency program activities as well as providing expert testimony for those program situations that become subject to litigation. This position will insure that all requirements of the emergency program are executed consistently and in accord with all declared policies, plans and procedures. Additional responsibilities of this position may include, but will not be limited to: coordination with the Department of Insurance and the insurance industry on all matters related to the subsidence insurance program, design engineer for emergency reclamation, contract and bid officer for securing emergency reclamation, and field inspector for approval of reclamation work.

b. The Division of Reclamation does anticipate the need for additional staff in order to conduct the emergency reclamation program. The State also reserves the right to add staff in the future if through practical experience it becomes apparent that need exists.

Technical skills currently available at the Division of Reclamation that will be available and utilized in the emergency reclamation program include: field investigation staff, realty professionals, subsidence and

structural engineers, hydrologists, soils professionals, construction inspectors, and geologists. Any and all staff of the Division of Reclamation will be used as needed.

c.i. Administrative procedures for investigating and reporting emergency complaints will include on-site visitation by a qualified staff member to make findings of fact and to document through a written report and photograph the current status of the complaint. A complaint information gathering guide will aid in complaint investigation. Emergency response will entail having a qualified staff member on-site as soon as is practicable. Urgency of the response time will be determined by the initial description of the complaint received.

c.ii. As soon as is practical, eligibility information will be obtained and reported for each potential emergency. This information will include written determination of: (1) whether the site was mined for coal; (2) the dates, types, and operations of any and all mines at the site, and (3) the existence of any continuing reclamation responsibility at the site. This information will be provided to the appropriate legal staff in order to allow them to make an eligibility determination for emergency reclamation. It is desirable but not necessary to have all required legal documents completed prior to initiating emergency reclamation activities.

c.iii. All rights of entry and necessary appraisals will be executed according to the procedures outlined above and as described in the approved State Plan. It is desirable but not necessary to have all required realty documents completed prior to initiating emergency reclamation activities.

c.iv. Administrative procedures for project supervision will be the responsibility of the assigned project manager and will fit within the approved administrative structure of the Division of Reclamation as outlined in the approved State Plan.

c.v. Final project inspection and preparation and submission of final project reports will be conducted in conjunction with the OSM Indianapolis field office. The assigned project manager and the pertinent grants staff of the division of Reclamation will be responsible for the preparation of all technical, programmatic and financial reports and documents. Approval by administrative staff of the Division of Reclamation of all reports to OSM will be required.

d. The purchasing and procurement systems to be used by the Department of Natural Resources, Division of Reclamation under the emergency reclamation program will be those currently used for securing goods and services under other aspects of the AML program, with the following special conditions:

1. Emergency reclamation will have priority over all other requests originating within the Division of Reclamation.

2. Purchase orders for emergency work will be "hand carried" through the administrative system to allow approval within the shortest time frame possible.

3. A list of potential contractors and/or suppliers will be maintained for ready reference quick contact by the Restoration Section. This list will be updated as necessary to include all capable potential contractors.

4. In most cases, work will be allowed to proceed on the basis of verbal approval and a commitment for written follow-up.

5. The Division of Reclamation has developed, and is using, an emergency reclamation contracting system that expedites the securing of abatement work.

e. The accounting system to be used by the Division of Reclamation for the emergency program projects will be the same as currently utilized for all other AML reclamation projects. Emergency program accounting will be on a project basis. All emergency project obligations, payments and drawdowns will be tracked individually and separately and will be done in accord with Federal requirements.

f. The Division of Reclamation has expertise in the disciplines necessary to implement the emergency program. Staff engineers have a great deal of experience in reclamation designs for all types of problems anticipated to be encountered in the emergency program. These may include, but are not limited to: filling and/or sealing mine openings or subsidence, monitoring, grouting under or stabilizing ground affected by area subsidence or slides, refuse fires, roadway failures, and flooding due to clogged streams. The Emergency Program Coordinator will specialize in correction of emergency events and will be the lead staff person with support from the expertise of other Division of Reclamation specialists. Technical consultation will be available to staff from OSM, U.S. Bureau of Mines, consultants, and the Indiana Division of Engineering among others.

Technical capability to supervise emergency work is the same as the Division of Reclamation's project managers currently use to perform on-site supervision and inspection of other AML projects. Procedures for field supervision will evolve as Indiana's experience in emergency reclamation grows. However, the existing field operations manual provides an excellent starting point of all emergency reclamation supervision.

5. A general description, derived from available data, of emergency reclamation activities to be conducted, including known or suspected geographical areas within the State, including:

a. The OSM has been conducting emergency reclamation for almost twelve years in the State of Indiana. There have been approximately 190 emergency investigations, with 85 declared or given emergency status. The majority of all emergency projects have been related to subsidence (71), while shaft openings (9), slides (4), and refuse fires (1) account for the balance of declared emergencies. The distribution by county of both emergency projects and investigations has been documented.

b. Emergencies related to subsidence have been primarily the result of small pit type subsidence. This subsidence is customarily associated with shallow underground mining. The potential for future emergency reclamation due to subsidence is very large and widespread in the Indiana coal fields.

6. Narrative description which supports the State's position that the procedures, personnel and other proposed aspects of its program give evidence of its abilities to promptly and effectively mitigate the full range of anticipated emergency conditions:

The objectives of the Indiana abandoned mine land program are to fulfill the general reclamation objectives set out in Section 403 of P.L. 95–87. The highest priorities of the program are the protection of public health, safety and general welfare from dangers resulting from the adverse effects of past coal mining. The emergency response program described in this document provides an additional means whereby the State of Indiana will be able to protect its citizens from these adverse effects consistent with the intent of Section 410 of P.L. 95–87. Indiana has the procedures, personnel, and administrative functions within the Department of Natural Resources to capably and effectively manage the emergency program as described in the previous sections, and is willing and able to work with OSM to insure its success.

An additional objective of the State of Indiana in assuming the administration of the emergency program from OSM is to provide continued protection to the citizens of this state. The State of Indiana must secure cooperation from OSM in providing prompt emergency declaration as well as complete and adequate grant funding to carry out the work.

In accordance with section 405 of SMCRA, OSM finds that Indiana submitted an amendment to its AMLR plan, subsequently revised and clarified, and it has been determined, pursuant to 30 CFR 884.15, that:

1. The State provided adequate notice and opportunity for public comment in the development of the amendment and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies having an interest in the plan have been solicited and considered.

3. The State has the legal authority, policies and administrative structure necessary to implement the amendment.

4. The proposed plan amendment meets all requirements of the OSM AMLR program provisions.

5. The State has an approved Surface Mining Regulatory Program.

6. The amendment is in compliance with all applicable State and Federal laws and regulations.

The Director finds therefore, that the proposed Indiana plan amendment allowing the State to assume responsibility for an emergency response reclamation program on behalf of OSM is no less stringent than SMCRA

and no less effective than the Federal regulations and can be approved.

IV. Summary and Disposition of Comments

Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to speak at a public hearing, no hearing was held.

Federal Agency Comments

Pursuant to 30 CFR 884.14(a)(2) and 884.15(a), the Director solicited comments on the proposed amendment from various other Federal agencies with an actual or potential interest in the Indiana plan.

In response to the original submittal (November 17, 1992), the U.S. Department of Agriculture (USDA), Forest Service responded and stated that it had no comments.

In response to the December 6, 1993, reopening of the public comment period, the USDA, Soil Conservation Service (SCS) responded and stated that they did not see where the proposed language would impact the Rural Abandoned Mine Program administered by the SCS. The U.S. Bureau of Mines responded and stated that it has no comment.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the 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.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. IND–1303). EPA did not respond to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves the proposed AMLR plan amendment as submitted by Indiana on November 17, 1992, and revised on October 29, 1993, and on June 27, 1994.

The Federal regulations at 30 CFR 914.25, codifying decisions concerning the Indiana plan, are being amended to implement this decision. This final rule is being made effective October 26, 1994.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

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 and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the Federal regulations at 30 CFR Parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior [516 DM 6, appendix 8, paragraph 8.4B(29)].

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 submittal which is the subject of this rule is based upon corresponding 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. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 19, 1994.

Ed Kay,

Deputy Director.

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 914—INDIANA

1. The authority citation for Part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In Section 914.25, paragraph (c) is added to read as follows:

§ 914.25 Amendments to approved Indiana abandoned mine land reclamation plan.

* * * * *

(c) The Indiana plan amendment allowing the State to assume responsibility for an emergency response reclamation program on behalf of OSM, as submitted on November 17, 1992, and revised on October 29, 1993, and June 27, 1994, is approved effective October 26, 1994.

[FR Doc. 94–26464 Filed 10–25–94; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 90 and 91

RINs 0790–AF61 and 0790–AF62

Revitalizing Base Closure Communities and Community Assistance

AGENCY: Department of Defense, DoD.

ACTION: Interim final rule; amendments.

SUMMARY: The interim final rule amendment promulgates guidance required by Section 2903 of the National Defense Authorization Act for Fiscal Year 1994. This guidance clarifies the application process and the criteria that will be used to evaluate an application for property under this section.

DATES: This document is effective October 26, 1994. Any pending written request for economic development

conveyances, pursuant to § 91.7(e)(5), will be subject to the terms and conditions of this rule amendment. Comments on this amendment must be received by December 27, 1994.

ADDRESSES: Comments should be forwarded to the Office of the Assistant Secretary of Defense for Economic Security, Room 3D814, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Robert Hertzfeld, telephone (703) 604–5690.

SUPPLEMENTARY INFORMATION:

A. Summary of Amendment

In response to public comments regarding the interim final rule implementing Title XXIX of the National Defense Authorization Act for FY 1994 published in the **Federal Register** on April 6, 1994 (59 FR 16123), the Department of Defense is amending the Rule to:

1. Delete section 91.7(d) and the accompanying "Market Test."
2. Establish the requirements for an Economic Development Conveyance (EDC) application for real property in a revised section 91.7(e).
3. Establish criteria that will be used to evaluate EDC applications in a revised section 91.7(e).
4. Provide guidance for greater flexibility on the compensation to the Federal Government for property conveyed under an EDC in a revised section 91.7(e).

The scope of the following amendment is limited to the real property conveyance section of the rule §§ 91.7 (d), (e), and (f), and not the entire April 6, 1994, interim final rule. A final rule addressing all of the elements of the interim final rule will be published in early 1995. The Department of Defense will also publish a guidebook describing the base conversion process.

B. Background

On July 2, 1993, President Clinton announced a major new policy to speed the economic recovery of communities affected by base closures or realignments. The President requested that Congress provide additional authority to expedite the reuse of closing military bases. Congress agreed, and passed this new authority, Title XXIX of the National Defense Authorization Act for FY 1994.

Section 2903 of Title XXIX gave the Secretary of Defense the authority to transfer property to local redevelopment authorities at or below fair market value. The Department of Defense implemented this authority by creating an additional tool for local communities to help foster economic development through the creation of a new form of conveyance, referred to as the "Economic Development Conveyance" (EDC). Under an EDC, the Department may transfer property to a Local Redevelopment Authority ("LRA") at or below estimated fair market value for purposes of economic development. (Property may also be transferred under a series of other existing public benefit conveyances.)

On April 6, 1994, (59 FR 16123), the Department of Defense published an interim final rule that provided base closure communities with guidance on how to use the new authority. During the public comment process, the Department of Defense learned that some of the procedures contained in the interim final rule may be impractical and not assist in reaching the rapid economic redevelopment goals. As a result, they are being revised by this amendment.

Specifically, the interim final rule established a "market test" or "market survey" as a precondition to any EDC. This approach was designed to help determine whether immediate private development of a property was possible by advertising its availability and soliciting private interest. Many comments suggested that private developers would not spend the time and money necessary to prepare a detailed expression of interest until after a community redevelopment plan was approved, if at all. Additionally, the interim final rule was perceived to encourage private developers to "cherry-pick" valuable parcels for private sector sales and leave the less attractive parcels for the community redevelopment. This effort was said to be inconsistent with proper planning methods and not in the long-term interest of enhancing local economic recovery.

With the assistance of comments received during the public comment period of the interim final rule, the Department of Defense has been persuaded that such solicitation is unlikely to be fruitful unless and until the local community provides the necessary investment and infrastructure for development: zoning, public utilities, etc. As a result, the Department is eliminating the "market test" and creating with this Amendment a new process for an EDC that will consider such information, as addressed by the local redevelopment plan.

The interim final rule also prescribed procedures and guidelines for recoupment of value by the Federal Government if and when net proceeds were realized by development. Based upon experience since its publication and public comment, the Department of Defense is persuaded that greater flexibility is needed in this area.

C. Discussion

The interim final rule amendment being published today addresses some of the concerns raised by affected communities and others. This amendment eliminates the "market test" requirements, includes a new application and review process for an EDC, and establishes criteria to evaluate the applications as a substitute for the "market test." Greater flexibility is given to the Military Departments and the communities to negotiate the terms and conditions of the EDC. A detailed application, including the approved community redevelopment plan, will now be the basis for a determination of whether or not an LRA will be eligible for an EDC. The application and review process will also be used to help determine the terms and conditions of such a conveyance.

This Amendment is an intermediate step before the April 6, 1994, interim final rule is reissued as a final rule.

• What is an Economic Development Conveyance (EDC)?

An EDC is a new process for transferring real property to a Local Redevelopment Authority (LRA) to help spur local economic development and job creation. An EDC may be with or without initial payment or with only partial payment at time of transfer, may be at or below the estimated fair market value of the property, and allows for negotiated terms and conditions of payment (consideration) to the Department of Defense. These negotiations must be fair and reasonable to both parties and strike a balance between compensation to the Federal taxpayer and the need for the EDC to spur redevelopment. The EDC offers LRAs an additional tool to use in the acquisition of former military base property.

• When should an EDC be used?

The Federal Property and Administrative Services Act (FPASA) of 1949 (40 U.S.C. 484) and airport public benefit authorities (49 U.S.C. 47151–47153) allow for public benefit transfers to units of government or non-profit institutions that maintain the use of property for a public purpose including, but not limited to, parks, public health, education, aviation, historic monuments, and prisons. Transfers of property under public benefit transfers must be in accordance with the sponsoring Federal agency regulations. The FPASA also allows for negotiated

sales at fair market value to public entities for public purposes or direct sales through a public bid process.

The EDC should be used when the LRA wants to obtain property for job generating purposes and it is not practicable to pay fair market value at the time of transfer. However, the EDC is not intended to supplant other Federal property disposal authorities and cannot be used if the intended land use can be accomplished through another authority unless unusual circumstances are presented that demonstrate that the needed economic development and job generation cannot occur under the other allowable federal transfer authority.

SURPLUS FEDERAL PROPERTY TRANSFER METHODS AVAILABLE TO LRAS

Type of property, purpose, or method	Transfer type [1]	Federal agency with authority	FMV discount	Statutory and regulatory authority
Public Airport Conveyance	Approved	Federal Aviation Administration	100%	49 U.S.C. §§47151–47153, 41 CFR 101–47.308–2
Public Benefit Conveyance Categories:				
Historic Monument	Approved	Department of the Interior	100%	FPASA §203(k)(3), 41 CFR 101–47.308–3
Education	Sponsored	Department of Education	Up to 100%	FPASA §203(k)(1), 41 CFR 101–47.308–4
Public Health	Sponsored	Department of Health and Human Services.	Up to 100%	FPASA §203(k)(1), 41 CFR 101–47.308–4
Public Park or Recreation	Sponsored	Department of the Interior	Up to 100%	FPASA §203(k)(2), 41 CFR 101–47.308–7
Non-Federal Correctional Facility.	Approved	Department of Justice	100%	FPASA §203(p)(1), 41 CFR 101–47.308–9
Port Facility	Sponsored	Department of Transportation	100%	FPASA §203(q)
Shrines, Memorials, or Religious Uses [only as part of another public benefit conveyance] [2].	Sponsored	Department of Education or Department of Health and Human Services.	Up to 100%	41 CFR 101–47.308–5
Homeless Assistance [Public Health] [3].	Sponsored	Department of Health and Human Services.	Up to 100%	42 U.S.C. §11411, FPASA §203(k)
Other Specific Conveyance Categories:				
Power Transmission Lines	Approved	Military Department	None	SPA §13(d), 41 CFR 101–47.308–1
Housing for Displaced Persons	Requested [4]	Military Department	Up to 100%	URARPAPA §218, 41 CFR 101–47.308–8
Wildlife Conservation	Approved	Department of the Interior	Up to 100%	16 U.S.C. §667b–d
Federal-Aid or Other Highways [to States].	Sponsored	Department of Transportation	100%	23 U.S.C. §§107, 317
Widening of Public Highways or Streets.	Approved	Military Department	Up to 100%	40 U.S.C. §345c
Negotiated Sale	Sale	Military Department	None	FPASA §203(e), 41 CFR 101–47.304
Public Sale	Sale	Military Department	None	FPASA §203(e), 41 CFR 101–47.304
Economic Development Conveyance.	Approved	Military Department	Up to 100%	NDAA 94, Title XXIX, §2903

[1] Public benefit and other specific conveyances are typically either approved or sponsored by the authorized Federal agency. In approved transfers, the Federal agency must grant its approval but property conveyance is accomplished by the Military Department. In sponsored transfers, the Military Department assigns the property to the Federal agency, upon request, and the Federal agency is responsible for conveyance of the property to its recipient.

[2] Property for shrines, memorials or other religious purposes is eligible for public benefit conveyance (PBC) only as part of a parcel transferred under another PBC mechanism.

[3] 42 U.S.C. §11411 designates uses for homeless assistance as a specific public health category under FPASA §203(k) and gives priority to such uses when considering PBCs.

[4] When the activities of a Federal agency result in the displacement of persons from their housing, the Federal agency may request surplus property for replacement housing. Transfer of property is directly from the Military Department to an eligible State agency.

ACRONYMS

CFR *Code of Federal Regulations*
FMV Fair Market Value
FPASA Federal Property and Administrative Services Act, 40 U.S.C. §483 et seq.
LRA Local Redevelopment Authority
NDAA 94 National Defense Authorization Act for Fiscal Year 1994, P.L. 103–160
SPA Surplus Property Act, 50 U.S.C. App. §1622(d) and 49 U.S.C. §§47151–47153
U.S.C. *United States Code*
URARPAPA Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

• Who Can Receive an Economic Development Conveyance?

An LRA is the only entity eligible to receive property under an Economic Development Conveyance. An LRA should have broad-based membership, including, but not limited to, representatives from those jurisdictions with zoning authority over the property. The Secretary of Defense shall officially recognize an LRA for planning and/or implementation through the Office of

Economic Adjustment. Consequently, applications submitted by entities other than LRAs will not be considered.

• When should an application for an Economic Development Conveyance be made?

First, an LRA must be organized and a redevelopment plan created. The Department of Defense's Office of Economic Adjustment can provide guidance and technical and financial support in these efforts. Once a redevelopment plan has been developed and adopted, the LRA can then submit an EDC application to the Military Department responsible for the property. The application should be submitted by the LRA after consultation with the Military Department which shall establish a reasonable time period for submission of the application.

The LRA always has the option of acquiring property under the FPASA and thus it may not be necessary to complete an application for an EDC within the stated timetables. LRAs can discuss the various transfer options with the Military Department.

• How much property should be included in an Economic Development Conveyance application?

The EDC should be used by LRAs to obtain large parcels of the base rather than merely individual buildings. The income received from some of the higher value property should be used to offset the maintenance and marketing costs of the less desirable parcels. In order for this conveyance to spur redevelopment, large parcels must be used to provide an income stream to assist the long-term development of the property.

• Why is an application necessary?

This Amendment to the interim final rule prescribes that an application be prepared by an LRA as the formal request for property, to better assist the Military Department in considering requests for property under the Economic Development Conveyance (EDC). This information also will provide the basis for the Military Department to respond to its obligations under Title XXIX, taking into account the best community-based information on the proposed conveyance action. A great deal of information necessary for an application is readily available to the LRA through the community planning process and supported through existing DoD technical and financial resources.

Beyond the standard planning information collected to date, LRAs should incorporate a business and development component into their overall base reuse planning process as a basis for receiving and managing the real property. This supplemental effort will assist LRAs in identifying necessary implementation resources and establish a community-based proposal for the Military Department's consideration. The Military Departments and the Office of Economic Adjustment will continue to work closely with the affected LRA to ensure that an adequate planning effort is undertaken.

• What must an application contain?

The application should explain why an EDC is necessary for economic redevelopment and job creation. The application should contain the following elements.

1. A copy of the adopted Redevelopment Plan.

2. A project narrative including the following:

—A general description of property requested.
—A description of the intended uses.
—A description of the economic impact of closure on the local communities.
—A description of the financial condition of the community and the prospects for redevelopment of the property.
—A statement of how the EDC is consistent with the overall Redevelopment Plan.

3. A description of how the EDC will contribute to short- and long-term job creation and economic redevelopment of the base and community, including projected number, and type, of new jobs it will assist in creating.

4. A business and development plan for the EDC parcel, including such elements as:

—A development timetable, phasing plan and cash flow analysis.
—A market and financial feasibility analysis describing the economic viability of the project, including an estimate of net proceeds over a fifteen-year period, the proposed consideration or payment to the Department of Defense, and the estimated fair market value of the property.
—A cost estimate and justification for infrastructure and other investments needed for the development of the EDC parcel.
—Local investment and proposed financing strategies for the development.

5. A statement describing why other authorities—such as negotiated sale and public benefit transfers for education, parks, public health, aviation, historic monuments, prisons, and wildlife conservation—cannot be used to accomplish the economic development and job creation goals.

6. If a transfer is requested for less than the estimated fair market value—with or without initial payment at the time of transfer—then a statement should be provided justifying a discount. The statement should include the amount and form of the proposed consideration, a payment schedule, the general terms and conditions for the conveyance, and projected date of conveyance.

7. A statement of the LRA's legal authority to acquire and dispose of the property.

Additional information may be requested by the Military Departments to allow for a better evaluation of the application. LRAs are encouraged to use site information available from the Military Departments, including maintenance and caretaking expenses.

• What criteria will be used to make a determination on the application?

After receipt of an application for an EDC, the Secretary of the Military Department will determine whether an EDC is appropriate to spur economic development and job creation and examine whether the terms and conditions proposed are fair and reasonable. The Military Department may also consider information independent of the application, such as views of other Federal agencies, appraisals, caretaker costs and other relevant information.

The following criteria and factors will be used, as appropriate, to determine whether a community is eligible for an EDC and to evaluate the proposed terms and conditions of the EDC, including price, time of payment and other relevant methods of compensation to the Federal Government.

• Adverse economic impact of closure on the region and potential for economic recovery after an EDC.

• Extent of short- and long-term job generation.

• Consistency with the overall Redevelopment Plan.

• Financial feasibility of the development, including market analysis and the need and extent of proposed infrastructure investment.

• Extent of State and local investment and level of risk incurred.

• Current local and regional real estate market conditions.

• Incorporation of other Federal agency interests and concerns, and applicability of, and conflicts with, other Federal property disposal authorities.

• Relationship to the overall Military Department disposal plan for the installation.

• Economic benefit to the Federal Government, including protection and maintenance cost savings and

anticipated consideration from the transfer.

• Compliance with applicable Federal, State, and local laws and regulations.

• What are the guidelines for determining the terms and conditions of consideration?

• The individual circumstances of each community and each base mean that the amount and type of consideration may vary from base to base. This amendment gives greater discretion and flexibility to the Military Departments to negotiate with the LRA to arrive at an appropriate arrangement. Due to the circumstances of a particular site, the base's value may be high or low, and the range of the estimated present fair market value may be broad or narrow. Where there is value, the Department of Defense has an obligation under Title XXIX of the National Defense Authorization Act for FY 1994 to obtain consideration within the estimated range of present fair market value, or to justify why such consideration was not realized.

• Taking into account all information provided in the EDC application and any additional information considered relevant, the Military Department will contract for or prepare an estimate of the fair market value of the property, which may be expressed as a range of values. The Military Department shall consult with the LRA on valuation assumptions, guidelines and on instructions given to the person(s) making the estimation of value.

• As stated above, the EDC application must contain a statement that proposes general terms and conditions of the conveyance, as well as the amount and type of the consideration, a payment schedule, and projected date of conveyance. After reviewing the application, the Military Department has the discretion and flexibility to enter into one of two types of agreements:

1. *Consideration within the estimated range of present fair market value, as determined by the Secretary of the Military Department.* The Military Department can be flexible about the terms and conditions of payment, and can provide financing on the property. The payment can be in cash or in-kind, and can be paid at time of transfer or at a time in the future. The Military Departments will have the discretion and flexibility to enter into agreements that specify the form and amount of consideration and ensures that consideration is within the estimated range of fair market value at the time of application. Such methods of payment could include: participation in the gross or net cash flow, deferred payments, mortgages or other financing arrangements.

2. *Consideration below the estimated range of fair market value, where proper justification is provided.* If a discount is found by the Secretary of the Military Department to be necessary to foster local economic redevelopment and job creation, the amount of consideration can be below the estimated range of fair market value. Again, the terms and conditions of payment will be negotiated between the Military Department and the LRA.

(a). *Justification.* Proper justification for a discount shall be based upon the findings in the business and development plan contained in the EDC application.

Development economics, including absorption schedules and legitimate infrastructure costs, would provide a basis for such justification. The ability to pay at time of conveyance or to obtain financing would not be a proper justification, since payment terms and conditions can be negotiated.

• In negotiating the terms and conditions of consideration with the LRA, the Secretary of the Military Department must determine that a fair and reasonable compensation to the Federal Government will be realized from the EDC. Where property is transferred under an EDC at an amount less than the estimated range of fair market value, the Military Department shall prepare a written explanation of why the consideration was less than the estimated range of present fair market value.

D. Executive Order 12866

It has been determined that these amendments are a significant regulatory action. The amendments to the rule raise novel policy issues arising out of the President's priorities.

E. Regulatory Flexibility Act

This rule amendment is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*,) because the amendment will not have a significant economic impact on a substantial number of small entities. The primary effect of this amendment will be to reduce the burden on local communities of the Government's property disposal process at closing military installations and to accelerate the economic recovery of the relatively small number of communities that will be affected by the closure of nearby military installations.

F. Paperwork Reduction Act

The Rule amendment is not subject to the Paper Reduction Act because it imposes no obligatory information requirements beyond internal DoD use.

List of Subjects in 32 CFR Parts 90 and 91

Community development, Government employees, Military personnel, Surplus Government property.

PART 90—REVITALIZING BASE CLOSURE COMMUNITIES

1. The authority citation for 32 CFR part 90 continues to read as follows:

Authority: 10 U.S.C. 2687 note.

§ 90.4 [Removed and Reserved]

2. Section 90.4(a)(1)(iii) is removed and reserved.

3. Section 90.4(b) is revised to read as follows:

§ 90.4 Policy.

* * * * *

(b) In implementing Title XXIX of Public Law 103–160, it is DoD policy to convey property to a Local Redevelopment Authority (LRA) to help foster economic development and job creation when other federal property disposal options cannot achieve such objectives. Conveyances to the LRA will be made under terms and conditions designed to facilitate local economic redevelopment and job creation, and may be made at less than fair market value, with proper justification.

* * * * *

PART 91—REVITALIZING BASE CLOSURE COMMUNITIES—BASE CLOSURE COMMUNITY ASSISTANCE

4. The authority citation for part 91 continues to read as follows:

Authority: 10 U.S.C. 2687 note.

4A. Section 91.4 is revised to read as follows:

§ 91.4 Policy.

It is DoD policy to convey property to a Local Redevelopment Authority (LRA) to help foster economic development and job creation when other federal property disposal options cannot achieve such objectives. Conveyances to the LRA will be made under terms and conditions designed to facilitate local economic redevelopment and job creation, and may be made at less than fair market value, with property justification. This regulation does not create any rights and remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Pub. L. 103–160, Title XXIX.

§ 91.7 [Removed and Reserved]

5. Section 91.7(d) is removed and reserved.

6. Sections 91.7 (e) and (f) are revised to read as follows:

§ 91.7 Procedures.

* * * * *

(e) *Economic Development Conveyances*

(1) Section 2903 of Public Law 103–160 gives the Secretary of Defense the authority to transfer property to local redevelopment authorities for consideration in cash or in kind, with or without initial payment or with only partial payment at time of transfer, at or below the estimated fair market value of the property. This authority creates an additional tool for local communities to help spur economic opportunity through a new real property conveyance method specifically designed for economic development, referred to as the "Economic Development Conveyance" (EDC).

(2) The EDC should only be used when other Federal property disposal authorities for the intended land use cannot be used to accomplish the necessary economic redevelopment.

(3) Before making an EDC, the Military Department must prepare an estimate of the present fair market value of the property, which may be expressed as a range of values. The Military Department shall consult with the Local Redevelopment Authority on valuation assumptions, guidelines and on instructions given to the person(s) making the estimation of value, but shall be fully responsible for completion of the valuation.

(4) A Local Redevelopment Authority (LRA) is the only entity able to receive property under an Economic Development Conveyance. An LRA should have broad-based membership, including, but not limited to representatives from those jurisdictions with zoning authority over the property. The Secretary of Defense shall officially recognize an LRA for planning and/or implementation through the Office of Economic Adjustment.

(5) A properly completed application will be the basis for a decision on whether an LRA will be eligible for an Economic Development Conveyance. An application should be submitted by the LRA after a Redevelopment Plan is adopted by the LRA. The Secretary of the Military Departments shall establish a reasonable time period for submission of the EDC application after consultation with the LRA. The Services will review the applications and make a decision whether to make an EDC based on the criteria specified in paragraph (e)(7) of this section. The terms and conditions of the EDC will be negotiated between the Military Departments and the LRA. Bases in rural areas shall be conveyed with no consideration if they meet the standards in paragraph (f)(3) of this section.

(6) The application should explain why an EDC is necessary for economic redevelopment and job creation.

In addition to the elements in paragraph (e)(6) of this section, after Military Department review of the application, additional information may be requested to allow for a better evaluation of the application. The application should contain the following elements:

(i) A copy of the adopted redevelopment plan.

(ii) A project narrative including the following:

(A) A general description of property requested.

(B) A description of the intended uses.

(C) A description of the economic impact of closure on the local communities.

(D) A description of the financial condition of the community and the prospects for redevelopment of the property.

(E) A statement of how the EDC is consistent with the overall Redevelopment Plan.

(iii) A description of how the EDC will contribute to short- and long-term job creation and economic redevelopment of the base and community, including projected number, and type of new jobs it will assist in creating.

(iv) A business and development plan for the EDC parcel, including such elements as:

(A) A development timetable, phasing plan and cash flow analysis.

(B) A market and financial feasibility analysis describing the economic viability of the project, including an estimate of net proceeds over a fifteen-year period, the proposed consideration or payment to the Department of Defense, and the estimated fair market value of the property.

(C) A cost estimate and justification for infrastructure and other investments needed for the development of the EDC parcel.

(D) Local investment and proposed financing strategies for the development.

(v) A statement describing why other authorities—such as negotiated sale and public benefit transfers for education, parks, public health, aviation, historic monuments, prisons, and wildlife conservation—cannot be used to accomplish the economic development and job creation goals.

(vi) If a transfer is requested for less than the estimated fair market value ("FMV"), with or without initial payment at the time of transfer, then a statement should be provided justifying the discount. The statement should include the amount and form of the proposed consideration, a payment schedule, the general terms and conditions for the conveyance, and projected date of conveyance.

(vii) A statement of the LRA's legal authority to acquire and dispose of the property.

(7) After receipt of an application for an EDC, the Secretary of the Military Department will determine whether an EDC is needed to spur economic development and job creation and examine whether the terms and conditions proposed are fair and reasonable. The Military Department may also consider information independent of the application, such as views of other Federal agencies, appraisals, caretaker costs and other relevant material. The Military Department may propose and negotiate any alternative terms or conditions that it considers necessary.

(8) The following factors will be considered, as appropriate, in evaluating the application and the terms and conditions of the proposed transfer, including price, time of payment and other relevant methods of compensation to the Federal Government.

(i) Adverse economic impact of closure on the region and potential for economic recovery after an EDC.

(ii) Extent of short- and long-term job generation.

(iii) Consistency with overall Redevelopment Plan.

(iv) Financial feasibility of the development, including market analysis and need and extent of proposed infrastructure and other investments.

(v) Extent of State and local investment and level of risk incurred.

(vi) Current local and regional real estate market conditions.

(vii) Incorporation of other Federal agency interests and concerns, and applicability of, and conflicts with, other Federal property disposal authorities.

(viii) Relationship to the overall Military Department disposal plan for the installation.

(ix) Economic benefit to the Federal Government, including protection and maintenance cost savings and anticipated consideration from the transfer.

(x) Compliance with applicable Federal, State, and local laws and regulations.

(f) *Consideration.*

(1) For conveyances made pursuant to section 91.7(e), *Economic Development Conveyances*, the Secretary of the Military Department will review the application for an EDC and negotiate the terms and conditions of each transaction with the LRA. The Military Departments will have the discretion and flexibility to enter into agreements that specify the form, amount, and payment schedule. The consideration may be at or below the estimated fair market value, with or without initial payment, in cash or in-kind and paid over time. An EDC must be one of the two following types of agreements:

(i) Consideration within the estimated range of present fair market value, as determined by the Secretary of the Military Department. Payments must be made to ensure consideration is within the estimated range of fair market value at the time of application.

(ii) Consideration can be below the estimated range of fair market value, when proper justification is provided. The amount of consideration can be below the estimated range of fair market value, if the Secretary of the Military Department determines that a discount is necessary for economic redevelopment and job creation.

(2) The amount of consideration paid in the future shall equal the present value of the agreed-upon fair market value or discounted fair market value. Additional provisions may be incorporated in the conveyance documents to protect the Department's interest in obtaining the agreed upon consideration. Also, the standard GSA excess profits clause, appropriately tailored to the transaction, will be used in the conveyance documents to the LRA.

(3) In a rural area, as defined by this rule, any EDC approved by the Secretary of the Military Department shall be made without consideration when the base closure will have a substantial adverse impact on the economy of the communities in the vicinity of the installation and on the prospect for their economic recovery. The Secretary of the Military Department concerned will determine if these two conditions are met based on all the information considered in the application for an Economic Development Conveyance. Specific attention will be placed on the business and development plan submitted as part of the EDC application and the criteria listed in section 91.7(e)(8) will be used.

(4) In those instances in which an EDC is made for consideration below the range of the estimated present fair market value of the property—or if the estimated fair market value is expressed as a range of values, below the lowest value in that range—the Military Department shall prepare a written explanation why the estimated fair market value was not obtained. Additionally, the Military Departments must prepare a written statement explaining why other Federal property transfer authorities could not be used to generate economic redevelopment and job creation.

* * * * *

Dated: October 20, 1994.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 94-26504 Filed 10-25-94; 8:45 am]

BILLING CODE 5000-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TN 132-1-6436a; FRL-5087-9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Due to an adverse comment, EPA is removing the approval of a marginal nonattainment area state implementation plan (SIP) revision for Memphis/Shelby County, Tennessee, submitted by the State of Tennessee for the purpose of bringing about attainment of the national ambient air quality standards (NAAQS) for ozone. The original action was published in the **Federal Register** on August 4, 1994, as a direct final rule. 59 FR 39692. As stated in the **Federal Register** document, if adverse or critical comments were received by September 6, 1994, the effective date would be delayed and timely notice would be published in the **Federal Register**. Therefore, due to receiving an adverse comment within the comment period, EPA is removing amendments relating to the SIP revision for Memphis/Shelby County, TN, in the final rule and will address all public comments received in a subsequent final rule based on the proposed rule also published on August 4, 1994. 59 FR 39715. EPA will not institute a second comment period on this document.

EFFECTIVE DATE: October 26, 1994.

FOR FURTHER INFORMATION CONTACT: Karen C. Borel, Regulatory Planning and Development Section, Air Programs Branch, United States Environmental Protection Agency, Region IV, 345 Courtland Street NE, Atlanta, Georgia 30365, (404) 347-3555, x4197.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the final rules section of the August 4, 1994, **Federal Register**, and in the short informational notice located in the proposed rule section of the August 4, 1994, **Federal Register**.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 23, 1994.

John H. Hankinson, Jr.,

Regional Administrator.

Parts 52 and 81 of chapter I, title 40, *Code of Federal Regulations*, are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

Subpart RR—Tennessee

§ 52.2220 [Amended]

2. Section 52.2220 is amended by removing paragraph (c)(122).

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

2. Section 81.343 is amended by removing the entry for "Shelby County" from the attainment status designation table for ozone and by adding a new entry as the second entry in the table to read as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—OZONE

Designation area	Designated		Classification	
	Date[1]	Type	Date[1]	Type
* * * * *				
Memphis Area: Shelby County		Nonattainment		Marginal.
* * * * *				

[1] This date is November 15, 1990, unless otherwise noted.

[FR Doc. 94–26427 Filed 10–25–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 112

[FRL–5086–4]

Request for Data and Comment on Response Strategies for Facilities That Handle, Store, or Transport Certain Non-Petroleum Oils

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice and request for data.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is publishing a notice and request for data regarding issues concerning the Clean Water Act section 311 (as amended by the Oil Pollution Act of 1990) requirements for facility response plan preparation as applied to non-transportation-related, onshore facilities that handle, store, or transport animal fats and vegetable oils. This notice is, in part, in response to a Petition for reconsideration of EPA's final facility response plan rule (Final Rule), (59 FR 34070, July 1, 1994), submitted to EPA by seven agricultural organizations. The Petition asserts that EPA does not adequately treat these oils differently from petroleum and toxic non-petroleum oils in the Final Rule. In support of their Petition, these organizations rely on studies that draw several conclusions concerning the physical, toxicological, and chemical properties of animal fats and vegetable oils compared with other types of oil. This notice summarizes the Petition, and asks for data and comment to assist EPA in determining whether and how the differences in properties of various oils warrant further different treatment, including possibly creating separate facility response plan regulatory regimes for these oils beyond the regime established in the July 1, 1994 Final Rule.

DATES: Submit written comments on this notice on or before January 24, 1995.

ADDRESSES: Address comments on this notice to the docket clerk at the following address: U.S. Environmental Protection Agency, SPCC–3, 401 M Street, SW., Washington, DC 20460. Send one original and two copies to the regulatory docket and identify the copies by regulatory docket reference number SPCC–3. The docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Docket materials, including any materials referenced in this notice, may be reviewed by appointment by calling (202) 260–3046. (The titles of docket materials referenced in this notice are listed in Section VI.) Interested persons may copy a maximum of 266 pages from any one regulatory docket at no cost. Additional copies are $0.15 per page, plus a $25.00 administrative fee.

FOR FURTHER INFORMATION CONTACT: Bobbie Lively-Diebold, Oil Pollution Response and Abatement Branch, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, at (703) 356–8744; the ERNS/SPCC Information line at (202) 260–2342; or the RCRA/Superfund Hotline at (800) 424–9346 (in the Washington, DC metropolitan area, [703] 412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is (800) 553–7672 (in the Washington, DC metropolitan area, [703] 412–3323).

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

On July 1, 1994, EPA published its Final Rule amending the Oil Pollution Prevention regulation (40 CFR part 112) to incorporate new requirements to implement section 4202(a)(6) of the Oil Pollution Act of 1990 (OPA), amending section 311(j)(5) of the Clean Water Act (CWA). (See 33 U.S.C. 1321(j)(5).) (Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities; Final Rule, 59 FR 34070, July 1, 1994.) The Final Rule directs certain facility owners and operators to prepare plans for responding to a worst case discharge of oil, and to a substantial threat of such a discharge. Under authority of section 311(j)(1)(C) of the CWA, the Final Rule requires planning for a small and medium discharge of oil, as appropriate.

Under section 4202(a)(6) of the OPA, these planning requirements apply to owners and operators of all offshore facilities and any onshore facility that, "because of its location, could reasonably be expected to cause substantial harm to the environment by discharging into or on the navigable waters, adjoining shorelines, or the exclusive economic zone." OPA directs owners and operators of these facilities to prepare a plan for responding "to the maximum extent practicable, to a worst case discharge, and to a substantial threat of such a discharge of oil or a hazardous substance." The July 1, 1994, Final Rule establishes requirements for plans for responding to discharges of oil from certain onshore facilities within EPA's jurisdiction.

EPA published the proposed facility response plan rule on February 17, 1993 (58 FR 8824). One of the issues on which the Agency received comment was whether EPA should establish separate response plan requirements and selection criteria for owners or operators of facilities that handle, store, or transport non-petroleum oils. Among other things, some commenters argued that fundamental chemical and physical differences between petroleum and non-petroleum oils indicate the necessity for different response techniques and equipment. At least two comments on the proposed rule asserted that lack of toxicity was a property distinguishing some non-petroleum oils both from petroleum and other non-petroleum oils. (See letters commenting on the February 17, 1993, proposed rule from the National Renderers Association [SPCC–2P–2–1248]; and on behalf of the American Soybean Association, the Corn Refiners Association, the National Corn Growers Association, the Institute of Shortening & Edible Oils, the National Cotton Council, the National

Cottonseed Products Association, and the National Oilseed Processors Association, [SPCC–2P–2–L34].) The letter on behalf of the seven agricultural organizations [SPCC–2P–2–L34] asked EPA to "provide for a different approach to response and removal methodologies for these substances than that required for petroleum oil."

EPA's Final Rule for non-transportation-related facility response plans provides a strategy for petroleum oils and non-petroleum oils that gives a considerably greater degree of flexibility to owners and operators of non-petroleum oil facilities than to owners and operators of petroleum oil facilities in designing their plans. The Petitioners contend that EPA should avoid treating the category animal fats and vegetable oils with the category toxic, non-petroleum oils. EPA addressed the likely differences in responding to petroleum oil as opposed to non-petroleum oil, and created an approach that allows owners or operators of facilities that handle, store, or transport non-petroleum oils flexibility to determine appropriate response equipment levels within the framework established by the regulation (See Section 7.7 of Appendix E to 40 CFR part 112). The Agency provided further flexibility by allowing the Regional Administrators (RA) to assess the adequacy of response plans including those for non-petroleum facilities, recognizing the greater knowledge RAs have about facilities and geographic-specific environmental areas within their Regions.

EPA's approach for the identification of response resources for non-petroleum oil facilities is adapted from, and consistent with, the U.S. Coast Guard's (USCG) interim final rule establishing response plan requirements under the OPA for owners and operators of marine-transportation-related, non-petroleum oil facilities. (See 33 CFR part 154. The docket includes a chart comparing USCG plan resource requirements for petroleum and non-petroleum oil facilities, and referencing the applicable sections of the USCG facility response plan rule.) As with the USCG Interim Final Rule, the EPA approach gives these facility owners and operators substantial latitude in calculating required response resources for their non-petroleum facilities.

To calculate resources for non-petroleum oil facilities, an owner or operator is not limited to using emulsification or evaporation factors in Appendix E (the Equipment Appendix) of the Final Rule, as required for petroleum oil facilities. Rather, these owners and operators must: (1) show procedures and strategies for responding to the maximum extent practicable to a worst case discharge; (2) show sources of equipment and supplies necessary to locate, recover, and mitigate discharges; (3) demonstrate that the equipment identified in the plan will work under the conditions and in the areas that the plan covers, and reach the area within required times; and (4) ensure the availability of required resources by contract or other approved means. EPA does not prescribe the type and amount of equipment that response plans for non-petroleum oil discharges must identify (See Section 7.7 of Appendix E to 40 CFR part 112).

EPA's Final Rule is consistent with the CWA section 311(j)(5) (as amended by section 4202(a) of the OPA), which requires facility response plans to "remove to the maximum extent practicable" a worst case discharge of oil or a hazardous substance. In many responses to discharges of oil, response personnel may need to employ containment boom, skimmers, or other equipment to contain oil and remove oil from water. Responders also may employ other strategies appropriate for the area. These strategies apply to all oils and do not distinguish among types of oil (i.e., petroleum and non-petroleum or toxic and non-toxic oils).

As EPA stated in the Final Rule (59 FR 34088), when results from research on such factors as emulsification or evaporation of non-petroleum oil are available, the Agency may change the rule regarding the type of response resources for which an owner or operator of a non-petroleum oil facility must plan.

II. The Organizations' Petition

By a letter dated August 12, 1994, EPA received a "Petition for Reconsideration and Stay of Effective Date" of the OPA-mandated facility response plan Final Rule as that rule applies to facilities that handle, store, or transport animal fat or vegetable oils. The Petition was submitted on behalf of seven agricultural organizations ("the Organizations" or "Petitioners"): the American Soybean Association, the Corn Refiners Association, the National Corn Growers Association, the Institute of Shortening & Edible Oils, the National Cotton Council, the National Cottonseed Products Association, and the National Oilseed Processors Association.

To support their Petition, the Organizations reference an industry-sponsored study titled "Environmental Effects of Release of Animal Fats and Vegetable Oils to Waterways" (prepared by ENVIRON Corporation, June 28, 1993) and an associated study titled "Diesel Fuel, Beef Tallow, RBD Soybean Oil and Crude Soybean Oil: Acute Effects on the Fathead Minnow, *Pimephales Promelas*" (prepared by Aqua Survey, Inc., May 21, 1993). Both of these studies had been submitted to EPA during the facility response plan rulemaking as enclosures to a comment filed over nine months after the close of the comment period.

The ENVIRON study concludes that "animal fats and vegetable oils are significantly different from petroleum oils in their effects on the aquatic environment and so merit separate treatment in environmental regulations." Among other things, ENVIRON concludes that "animal fat and vegetable oils are orders of magnitude less toxic than petroleum oils to aquatic life;" that "there are no accumulating or otherwise harmful components in animal fats and vegetable oils that are irritating, toxic or carcinogenic;" and that "animal fats and vegetable oils are easily biodegraded by bacteria using them as food." The study also concludes that these oils can coat aquatic biota and foul wildlife, causing hypothermia when fur or feathers mat; and that these oils have a high "Biological Oxygen Demand" (or BOD), which may result in oxygen deprivation where there is a large spill in a confined body of water with a low flow and low dilution rate. The ENVIRON study's ultimate conclusion is that animal fats and vegetable oils are sufficiently different from petroleum oils and other hazardous materials that they merit separate treatment in environmental regulations.

The Aqua Survey, Inc. study presents the results of Aqua Survey's tests of the acute toxicity of the test substances on the Fathead minnow at five concentrations of each test substance. Based on the study results, the Organizations assert that animal fats and vegetable oils—unlike petroleum-based oil and toxic non-petroleum oils—"are non-toxic, readily biodegradable, not persistent in the environment, and, in fact, are essential components of human and wildlife diet."

Based, in part, on these studies, the Petitioners ask EPA to create a regulatory regime for response planning for non-petroleum, "non-toxic" oils separate from the regime established for petroleum oils and "toxic," non-petroleum oils. The Petitioners further submitted, as an Appendix to their Petition, specific suggested language to amend the July 1, 1994, facility response plan rule to allow mechanical dispersal and "no action" options for responding

to a spill of animal fats and vegetable oils.

III. Addressing Issues Presented in the ENVIRON and Aqua Survey Studies

EPA acknowledged in the Final Rule that response strategies for petroleum and non-petroleum oils may differ (59 FR 34088). However, because the Agency was aware of little data to support developing a separate regulatory regime for non-petroleum oils and because the OPA calls for resources to remove "oil" (broadly defined in section 311 of the Clean Water Act), the Agency adopted the regime described in the Final Rule (see 59 FR 3470 at 34087, 34088) and summarized above.

The U.S. Fish and Wildlife Service (FWS) took issue with many statements in the ENVIRON Report in a letter to the Research and Special Projects Administration (U.S. Department of Transportation). (See Letter from Michael J. Spear, Assistant Director, Ecological Services, FWS to Ms. Ana Sol Gutierrez, Research and Special Projects Administration, U.S. Department of Transportation, April 11, 1994.) The FWS expressed concern with ENVIRON statements suggesting that edible oils and fats pose no real risk to fish and wildlife. FWS states that although petroleum oils may pose greater risks than vegetable oils for acute toxicity to fish and wildlife from ingestion and inhalation of petroleum oil's hydrocarbon component, both types of oil pose chronic effects from the fouling of coats and plumage in wildlife, which often leads to death. FWS also stated that in some circumstances, edible oils can persist in the environment for extended periods of time, forming mat and encrustation similar to petroleum products, potentially causing chronic adverse effects to fish.

NOAA also has evaluated the effects on the environment of spilled non-petroleum oils, including coconut, corn, cottonseed, fish, and palm oils. (See a Memorandum for the Record, date June 3, 1993, from NOAA Hazardous Materials Response and Assessment Division.) The NOAA assessment, based on literature research, addresses physical and chemical properties and toxicity of these and other oils, and indicates that some edible oils, when spilled, may have adverse environmental effects. Some of these effects seem to contradict conclusions in the ENVIRON study. According to NOAA, coconut and palm oils are very viscous; in most coastal waters, these oils probably would persist for over a decade. By contrast, ENVIRON concluded that animal fats and vegetable oils "are easily biodegraded by bacteria," and that the physical impacts of non-recoverable animal fats and vegetable oils "would be of limited duration."

Tri-State Bird Rescue and Research (TSBR) made a statement on the ENVIRON study in response to a request for comment from the Department of the Interior. (TSBR provides contingency planning, training workshops, and emergency response for wildlife affected by oil spills.) A summary of the TSBR statement was published in its "Wildlife & Oil Spills." (See Vol. 4, No. 1-Winter/Spring 1994.) In the summary, TSBR makes the following observation: "While edible oils do not contain the toxic components of many of the polyaromatic hydrocarbons, they do have many of the same physical properties as petroleum oils; the animals and birds will suffer the same physical effects from edible oils as they would from contamination with petroleum products."

Among the studies reviewed by USCG (for the USCG rule referenced above) attesting to the harmful effects of non-petroleum oils in the environment is an International Maritime Organization (IMO) study titled "Harmful Effects on Birds of Floating Lipophilic Substances Discharged from Ships." The IMO study underscores ENVIRON's findings of the physical hazards associated with non-petroleum oil.

IV. Request for Public Comment

In view of the differing scientific conclusions reached by the Petitioners, the FWS, and other groups and agencies, EPA requests broader public comment on issues raised by the Petitioners. These include whether to have different specific response approaches for releases of animal fats and vegetable oils (rather than increased flexibility), and the effects on the environment of releases of these oils. EPA also asks for information regarding the following specific questions.

What data are there on both the probability that spilled animal fats and vegetable oils will persist in the environment, and the physical effects of these substances on wildlife and aquatic biota? To what extent do environmental factors such as water temperature affect the physical characteristics of animal fats and vegetable oils and the strategies for cleaning up the oil?

Both the ENVIRON and Aqua Survey Inc. studies imply that there is some level or concentration at which animal fats and vegetable oils are hazardous to wildlife when ingested. Are there additional further studies, scientific papers, or other data that bear on the issue? Are there data showing at what concentrations animal fat, vegetable oil, and other non-toxic oils have adverse effects on animals that ingest such oils? How critical is the matter of an oil's toxicity in determining what kind of equipment resources and strategies responders should use in containment and recovery?

The Agency also requests comment on whether there are data to demonstrate that the response approach set out in the rule for non-petroleum oils is either unnecessary or harmful. Does spill size or location affect whether a response can be more harmful than leaving the oil in the environment? If so, how and to what degree? Are there circumstances where response techniques like containing and removing a discharge of animal fats and vegetable oils are more harmful than dispersing these oils through use of chemical or mechanical dispersants? Are there effective, available, and authorized chemical dispersants that responders can use for discharged animal fats and vegetable oils?

Are there data on emulsification and evaporation factors for non-petroleum oils that EPA can use to determine whether to revise the facility response plan rule for facilities that handle, store, or transport non-petroleum oils, including animal fats and vegetable oils?

Is there research in-progress or planned research on the issues raised in this notice?

V. Further Action

After review and evaluation of the public comments on this notice, EPA will decide whether data support creating a new facility response plan regulatory regime for facilities that handle, store, or transport non-petroleum oils which Petitioners assert are non-toxic. EPA's determination may take the form of no further action, guidance, or some other regulatory action.

VI. List of Documents Available for Review in the Docket

"Comparison of CG Response Planning Regulations for Petroleum and Non-petroleum Oils," United States Coast Guard, undated

"Diesel Fuel, Beef Tallow, RBD Soybean Oil and Crude Soybean Oil: Acute Effects on the Fathead Minnow, Pimephales Promelas," Aqua Survey, Inc., May 21, 1993

"Environmental Effects of Releases of Animal Fats and Vegetable Oils to Waterways," ENVIRON Corporation, June 28, 1993

"Harmful Effects on Birds of Floating Lipophilic Substances Discharged from Ships," International Maritime Organization (IMO)

"Final Rule on Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities, Docket No. SPCC–2P; Petition for Reconsideration and Stay of Effective Date," August 12, 1994

"Non-Petroleum Oils," National Oceanic and Atmospheric Administration (NOAA) Memorandum for the Record, June 3, 1994

"Oil & Chemical Spills," Wildlife & Oil Spills, Vol. 4 No. 1—Winter/Spring, 1994

"Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities; Final Rule," 59 FR 34070, July 1, 1994

"Oil Pollution Prevention; Non-Transportation-Related Onshore Facilities; Proposed Rule," 58 FR 8824, February 17, 1993

"Oil Pollution Prevention, Applicability of 40 CFR part 112 to Non-Petroleum Oils; Notice" 40 FR 28849, July 9, 1975.

"SPCC–2P–2–1248," Philip H. Kimball, National Renderers Association, Inc., April 19, 1993

"SPCC–2P–2–L34," Duncan C. Smith III and Warren L. Dean, Jr., January 24, 1994

"U.S. Fish and Wildlife Service Letter from Michael J. Spear," Assistant Director, Ecological Services, to Ms. Ana Sol Gutierrez, Research and Special Projects Administration, U.S. Department of Transportation, dated April 11, 1994

List of Subjects in 40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

Dated: October 14, 1994.

Elliott P. Laws,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 94–26511 Filed 10–25–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300296A; FRL–4908–2]

RIN 2070–AB78

Acrylonitrile Butadiene Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of acrylonitrile-butadiene copolymer when used as an inert ingredient (component of ear tags and similar slow-release devices) in pesticide formulations applied to animals. Y-Tex Corp. requested this regulation.

EFFECTIVE DATE: This regulation becomes effective October 26, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [OPP–300296A], may be submitted to: Hearing Clerk (1900), 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: Kerry Leifer, Registration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308–8323.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 27, 1994 (59 FR 38151), EPA issued a proposed rule that gave notice that the Y-Tex Corp., P.O. Box 1450, 1825 Big Horn Ave., Cody, WY 82414, had requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for acrylonitrile-butadiene copolymer, FD & C Yelow No. 6 aluminum lake, 2-(2'-hydroxy-5'-methylphenyl)benzotriazole and octadecyl 3,5-di-tert-butyl-4-hydroxyhydrocinnamate when used as components of ear tags and similar slow-release devices in pesticide formulations applied to animals. The proposal was a reissuance of the original proposal that appeared in the **Federal Register** of February 3, 1989 (54 FR 5502), and responded to a comment by including a revised calculation of lifetime risk from exposure to monomeric acrylonitrile.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

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

The data submitted on 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 tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or 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 this rule is not "significant" and is 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 Part 180

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

Dated: September 20, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Acrylonitrile-butadiene copolymer (CAS Reg. No. 9003–18–3) conforming to 21 CFR 180.22, minimum average molecular weight 1,000.	.....	Carrier in animal tag and similar slow-release devices.
* * * * * * *		

[FR Doc. 94–26549 Filed 10–25–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 180

[PP 8F3689/R2081; FRL–4912–8]

RIN 2070–AB78

Pesticide Tolerances for Aluminum Tris(O-Ethylphosphonate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the fungicide fosetyl-Al, aluminum tris(O-ethylphosphonate), in or on pome fruit at 10 parts per million (ppm). This regulation to establish the maximum permissible level of residues of the fungicide in or on this commodity was requested in petitions submitted by Rhone-Poulenc Ag Co.

DATES: This regulation becomes effective October 26, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 8F3689/R2081], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., Washington, DC 20460. A copy of any objections and hearing request 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 (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20450. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 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: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)- 305-5540.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of October 20, 1988 (53 FR 41238), which announced that Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide tolerance petition (PP 8F3689), and a food/feed additive petition (FAP 8H5567) to EPA requesting that the Administrator, pursuant to sections 408(d) and 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish a tolerance for the fungicide fosetyl-Al, aluminum tris(O-ethylphosphonate), in or on pome fruit at 10 ppm and pome fruit juice and pome fruit pomace (wet and dry) at 12 ppm, respectively. Subsequently, the Agency reviewed an apple-processing study and concluded that section 409 tolerances for pome fruit juice and pome fruit pomace were unnecessary, and the food/feed additive petition was withdrawn.

EPA issued a notice, published in the **Federal Register** of August 3, 1994 (59 FR 39568), which announced that EPA was reissuing the pesticide petition (PP 8F3689) for the fungicide, aluminum tris(O-ethylphosphonate), in or on pome fruit at 10 ppm. EPA reissued the petition because more than 5 years had passed since the first notice of filing.

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

The data submitted in the petitions and all other relevant material have been evaluated. The toxicology data considered in support of the tolerances include:

1. A rat acute oral study with an LD_{50} of 5.4 grams (g)/kilogram (kg).
2. A mouse acute oral study with an LD_{50} of 3.4 gm/kg.
3. A 90-day rat-feeding study with a no-observed-effect level (NOEL) of 5,000 ppm (500 milligrams (mg)/kg/day).
4. A 90-day dog feeding study with a NOEL of 10,000 ppm (250 mg/kg/day).
5. A 21-day rabbit dermal study with a NOEL of 1.5 g/kg/day [the highest dose tested (HDT)].
6. A carcinogenicity study in mice with no carcinogenic effects observed at any dose level under the conditions of the study (the highest dose tested was 2,857/4,286 mg/kg body weight (bwt)/day).
7. A rat chronic feeding/carcinogenicity study with a NOEL of 8,000 ppm (400 mg/kg bwt/day) for systemic effects (carcinogenic effects observed are discussed below).
8. A 2-year dog feeding study with a NOEL of 10,000 ppm (250 mg/kg bwt/day) and a Lowest Effect Level (LEL) of 20,000 ppm (500 mg/kg bwt/day) based on a slight degenerative effects on the testes.
9. A reproduction study in rats with a NOEL of 300 mg/kg bwt/day and a LEL of 600 mg/kg bwt/day based on effects on animal weights in some groups and urinary tract changes in some groups.
10. Teratology studies in rabbits and rats with teratogenic NOELs of 500 mg/kg/day and 1,000 mg/kg/day, respectively.
11. Ames mutagenicity assays, *E. coli* phage induction tests, micronucleus tests in mice, DNA repair tests using *E. coli*, and *Saccharomyces cervisiae* yeast assay that were negative.

As stated in a notice, published in the **Federal Register** of November 2, 1983 (48 FR 50532), carcinogenic effects were noted in the rat chronic feeding/carcinogenicity study. In this study, Charles River CD rats were dosed with aluminum tris(O-ethylphosphonate) at levels of 0, 2,000, 8,000, and 40,000/30,000 ppm (0, 100, 400, and 2,000/1,500 mg/kg bwt/day). The 40,000 ppm dose was reduced to 30,000 ppm after 2 weeks following observations of staining of the abdominal fur and red coloration of the urine at 40,000 ppm (2,000 mg/kg bwt/day).

The highest dose level of the chemical tested in the male Charles River CD-1 rats (2,000/1,500 mg/kg bwt/day) in this study appears to approximate a maximum tolerated dose (MTD) based on the finding of urinary bladder hyperplasia at this dose. Similarly, an MTD level appeared to be satisfied in the female Charles River CD-1 rats at the high-dose level of 2,000 mg/kg bwt/day, during the first 2 weeks of the carcinogenicity/chronic feeding study, before the dose level was reduced to 1,500 mg/kg bwt/day.

The study demonstrated a significantly elevated incidence of urinary bladder tumors (adenomas and carcinomas combined) at the highest dose level tested (2;000/1,500 mg/kg) in male Charles River CD-1 rats. The tumors were mainly seen in surviving males at the time of terminal sacrifice. The original pathological diagnosis of these tumors was independently confirmed by another consulting pathologist, who also reported an elevated incidence of urinary bladder hyperplasia in high-dose male rats. No increase in the incidence of urinary bladder tumors was observed in female rats.

In 1986, the Health Effects Division Peer Review Committee for Carcinogenicity of the Office of Pesticide Programs concluded that the available data provided limited evidence of the carcinogenicity of fosetyl-Al in male rats and classified the pesticide as a Category C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with proposed Agency guidelines, published in the **Federal Register** of November 23, 1984 (49 FR 46294). The Health Effects Division Peer Review Committee for Carcinogenicity determined that a quantitative risk assessment was not appropriate for the following reasons:

1. The carcinogenic response observed with this chemical was confined solely to the high-dose males at one site (urinary bladder) in rats.
2. The tumor response was primarily due to an increase in benign tumors.
3. The tumors were seen only in surviving animals at the time of terminal sacrifice.
4. The carcinogenic effects were observed only at unusually high doses which exceed the commonly used limit dose of 1,000 mg/kg/day recommended as an upper-limiting dose for bioassays.
5. The chemical was not carcinogenic when administered in the diet to Charles River CD-1 mice at dose levels ranging from 2,500 to 30,000 ppm (357 to 4,286 mg/kg bwt/day).
6. Fosetyl-Al was not mutagenic in eight well conducted genotoxic assays.

In 1993, the Health Effects Division Peer Review Committee (PRC) for Carcinogenicity revisited the carcinogenicity classification of fosetyl-Al due to a recent 90-day feeding study of fosetyl-Al in rats which showed a strong association between the presence of uroliths in the urinary bladder and the incidence of urinary bladder tumors in treated rats. The PRC concluded that fosetyl-Al is not amenable to classification using the current Agency cancer guidelines. Based on a mechanistic evaluation of the only tumors seen, those that occurred at exceptionally high doses in the bladder of male rats, it appears that humans are not likely to be exposed to doses of fosetyl-Al that produce the urinary tract toxicity that precedes and seems to lead to the tumor response in rats. In particular, anticipated human dietary and occupational exposures to fosetyl-Al are far below the NOEL in rats for the apparent urinary tract tumor precursors (stone formation and attendant epithelial irritation). These effects are produced in rats at extremely high doses, under conditions not anticipated to occur outside of the experimental laboratory. The PRC concludes that pesticidal use of fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, the standard risk assessment approach of using the Reference Dose (RfD) based on systemic toxicity was applied to fosetyl-Al.

Using a 100-fold safety factor and the NOEL of 250 mg/kg bwt/day determined by the most sensitive species from the 2-year dog feeding study, the RfD is 3.0 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from the established and proposed tolerances is 0.058818 mg/kg bwt/day and utilizes 2 percent of the RfD for the overall U. S. population. For exposure of the most highly exposed subgroup in the population, nonnursing infants, the TMRC is 0.130051 mg/kg bwt/day and utilizes 4 percent of the RfD. Previous tolerances have been established for fosetyl-Al, aluminum tris(O-ethylphosphonate), in asparagus, avocadoes, brassica vegetable crop group, caneberries, citrus, cucurbit vegetables group, dried hops, dry bulb onions, fresh ginseng root, leafy vegetables crop group, pineapples, pineapple forage and fodder, and strawberries.

The metabolism of aluminum tris(O-ethylphosphonate) in plants is adequately understood. There is no reasonable expectation of secondary residues occurring in milk, eggs, and meat of livestock or poultry as a result of this use on pome fruit. Based on an apple-processing study, a concentration of fosetyl-Al into process fractions did not occur and food/feed additive tolerances are not needed in

conjunction with these uses on pome fruit.

An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-305-4432).

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or 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 fees provided 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, and the requestor's contentions on each such issue, and a summary of the evidence relied upon by the objection (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 on or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: September 30, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.415, by amending paragraph (a) in the table therein by adding and alphabetically inserting the following entry, to read as follows:

§ 180.415 Aluminum tris(O-ethylphosphonate); tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Pome fruit	10
* * * * *	

* * * * *

[FR Doc. 94-26468 Filed 10-25-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 1F4014/R2068; FRL-4898-8]

RIN 2070-AB78

Pesticide Tolerances for Aluminum Tris(O-Ethylphosphonate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of the fungicide fosetyl-Al, aluminum tris(*O*-ethylphosphonate), in or on tomatoes at 3 parts per million (ppm). This regulation to establish the maximum permissible level of residue of the fungicide in or on the commodity was requested in a petition submitted by Rhone-Poulenc Ag Co.

EFFECTIVE DATE: This regulation becomes effective October 26, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 1F4014/R2068], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

A copy of any objections and hearing request 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 (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20450. 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: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)- 305-5540.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of August 18, 1994 (59 FR 42594), which announced that Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted a pesticide tolerance petition (PP 1F4014) to EPA requesting that the Administrator, pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), establish a tolerance for the fungicide fosetyl-Al, aluminum tris(*O*-ethylphosphonate), in or on tomatoes at 3 ppm.

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

The data submitted in the petitions and all other relevant material have been evaluated. The toxicology data considered in support of the tolerances include:

1. A rat acute oral study with an LD_{50} of 5.4 grams (g)/kilogram (kg).

2. A mouse acute oral study with an LD_{50} of 3.4 gm/kg.

3. A 90-day rat feeding study with a no-observed-effect level (NOEL) of 5,000 ppm (500 milligrams (mg)/kg/day).

4. A 90-day dog feeding study with a NOEL of 10,000 ppm (250 mg/kg/day).

5. A 21-day rabbit dermal study with a NOEL of 1.5 g/kg/day (the highest dose tested (HDT)).

6. A carcinogenicity study in mice with no carcinogenic effects observed at any dose level under the conditions of the study (the highest dose tested was 2,857/4,286 mg/kg body weight (bwt)/day).

7. A rat chronic feeding/carcinogenicity study with a NOEL of 8,000 ppm (400 mg/kg bwt/day) for systemic effects (carcinogenic effects observed are discussed below).

8. A 2-year dog feeding study with a NOEL of 10,000 ppm (250 mg/kg bwt/day) and a lowest effect level (LEL) of 20,000 ppm (500 mg/kg bwt/day) based on a slight degenerative effects on the testes.

9. A reproduction study in rats with a NOEL of 300 mg/kg bwt/day and a LEL of 600 mg/kg bwt/day based on effects on animal weights in some groups and urinary tract changes in some groups.

10. Teratology studies in rabbits and rats with teratogenic NOELs of 500 mg/kg/day and 1,000 mg/kg/day, respectively.

11. Ames mutagenicity assays, *E. coli* phage induction tests, micronucleus tests in mice, DNA repair tests using *E. coli*, and *Saccharomyces cervisiae* yeast assay that were negative.

As stated in a notice, published in the **Federal Register** of November 2, 1983 (48 FR 50532), carcinogenic effects were noted in the rat chronic feeding/carcinogenicity study. In this study, Charles River CD rats were dosed with aluminum tris(*O*-ethylphosphonate) at levels of 0, 2,000, 8,000, and 40,000/30,000 ppm (0, 100, 400, and 2,000/1,500 mg/kg bwt/day). The 40,000 ppm dose was reduced to 30,000 ppm after 2 weeks following observations of staining of the abdominal fur and red coloration of the urine at 40,000 ppm (2,000 mg/kg bwt/day).

The highest dose level of the chemical tested in the male Charles River CD-1 rats (2,000/1,500 mg/kg bwt/day) in this study appears to approximate a maximum tolerated dose (MTD) based on the finding of urinary bladder hyperplasia at this dose. Similarly, an MTD level appeared to be satisfied in the female Charles River CD-1 rats at the high-dose level of 2,000 mg/kg bwt/day, during the first 2 weeks of the carcinogenicity/chronic feeding study, before the dose level was reduced to 1,500 mg/kg bwt/day.

The study demonstrated a significantly elevated incidence of urinary bladder tumors (adenomas and carcinomas combined) at the highest dose level tested (2,000/1,500 mg/kg) in male Charles River CD-1 rats. The tumors were mainly seen in surviving males at the time of terminal sacrifice. The original pathological diagnosis of these tumors was independently confirmed by another consulting pathologist, who also reported an elevated incidence of urinary bladder hyperplasia in high-dose male rats. No increase in the incidence of urinary bladder tumors was observed in female rats.

In 1986, the Health Effects Division Peer Review Committee for Carcinogenicity of the Office of Pesticide Programs concluded that the available data provided limited evidence of the carcinogenicity of fosetyl-Al in male rats and classified the pesticide as a Category C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with proposed Agency guidelines, published in the **Federal Register** of November 23, 1984 (49 FR 46294). The Health Effects Division Peer Review Committee for Carcinogenicity determined that a quantitative risk assessment was not appropriate for the following reasons:

1. The carcinogenic response observed with this chemical was confined solely to the high-dose males at one site (urinary bladder) in rats.

2. The tumor response was primarily due to an increase in benign tumors.

3. The tumors were seen only in surviving animals at the time of terminal sacrifice.

4. The carcinogenic effects were observed only at unusually high doses which exceed the commonly used limit dose of 1,000 mg/kg/day recommended as an upper-limiting dose for bioassays.

5. The chemical was not carcinogenic when administered in the diet to Charles River CD-1 mice at dose levels ranging from 2,500 to 30,000 ppm (357 to 4,286 mg/kg bwt/day).

6. Fosetyl-Al was not mutagenic in eight well conducted genotoxic assays.

In 1993, the Health Effects Division Peer Review Committee (PRC) for Carcinogenicity revisited the carcinogenicity classification of fosetyl-Al due to a recent 90-day feeding study of fosetyl-Al in rats which showed a strong association between the presence of uroliths in the urinary bladder and the incidence of urinary bladder tumors in treated rats. The PRC concluded that fosetyl-Al is not amenable to classification using the current Agency cancer guidelines. Based on a mechanistic evaluation of the only tumors seen, those that occurred at exceptionally high doses in the bladder of male rats, it appears that humans are not likely to be exposed to doses of fosetyl-Al that produce the urinary tract toxicity that precedes and seems to lead to the tumor response in rats. In particular, anticipated human dietary and occupational exposures to fosetyl-Al are far below the NOEL in rats for the apparent urinary tract tumor precursors (stone formation and attendant epithelial irritation). These effects are produced in rats at extremely high doses, under conditions not anticipated to occur outside of the experimental laboratory. The PRC concludes that pesticidal use of fosetyl-Al is unlikely to pose a carcinogenic hazard to humans. Therefore, the standard risk assessment approach of using the Reference Dose (RfD) based on systemic toxicity was applied to fosetyl-Al.

Using a 100-fold safety factor and the NOEL of 250 mg/kg bwt/day determined by the most sensitive species from the 2-year dog feeding study, the RfD is 3.0 mg/kg bwt/day. The theoretical maximum residue contribution (TMRC) from the established and proposed tolerances is 0.058818 mg/kg bwt/day and utilizes 2 percent of the RfD for the overall U. S. population. For exposure of the most highly exposed subgroup in the population, nonnursing infants, the TMRC is 0.130051 mg/kg bwt/day and utilizes 4 percent of the RfD. Previous tolerances have been established for fosetyl-Al, aluminum tris(*O*-ethylphosphonate), in asparagus, avocadoes, brassica vegetable crop group, caneberries, citrus, cucurbit vegetables group, dried hops, dry bulb onions, fresh ginseng root, leafy vegetables crop group, pineapples, pineapple forage and fodder, and strawberries.

The metabolism of aluminum tris(O-ethylphosphonate) in plants is adequately understood. There is no reasonable expectation of secondary residues occurring in milk, eggs, and meat of livestock or poultry as a result of this use on tomatoes. Based on a tomato-processing study, concentration of fosetyl-Al into process fractions did not occur and food/feed additive tolerances are not needed in conjunction with this use on tomatoes.

An adequate analytical method, gas-liquid chromatography, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone

interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 242, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-4432.

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or 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 fees provided 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, and the requestor's contentions on each such issue, and a summary of the evidence relied upon by the objection (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 on or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: September 30, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.415, by amending paragraph (a) in the table therein by adding and alphabetically inserting the raw agricultural commodity tomatoes, to read as follows:

§ 180.415 Aluminum tris(O-ethylphosphonate); tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Tomatoes	3
* * * * *	

[FR Doc. 94-26467 Filed 10-25-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300354A; FRL-4913-8]

RIN 2070-AB78

Methyl-1-Alkylamido Ethyl-2-Alkyl-2-Imidazolinium Methyl Sulfate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes an exemption from the requirement of a tolerance for residues of methyl-1-alkylamido ethyl-2-alkyl-imidazolinium methyl sulfate, where the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, tallow, or hogfat fatty acids, when used as an inert ingredient (metal corrosion inhibitor, spreader-sticker) in propionic acid formulations applied to various grains, grasses, and hays. Witco Corp. requested this regulation.

EFFECTIVE DATE: This regulation becomes effective October 26, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300354A], may be submitted to: Hearing Clerk (1900), 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: Tina Levine, Registration Support Branch, Registration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 18, 1994 (59 FR 42560), EPA issued a proposed rule that gave notice that the Witco Corp., 3200 Brookfield St., Houston, TX 77045, had submitted pesticide petition (PP) 2E4123 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) by establishing an exemption from the requirement of a tolerance for methyl-1-alkylamido ethyl-2-alkyl-imidazolinium methyl sulfate, where the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, tallow, or hogfat fatty acids, when used as an inert ingredient (metal corrosion inhibitor, spreader-sticker) in propionic acid formulations applied to various grains, grasses, and hays, as specified in 40 CFR 180.1023.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing

agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

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 tolerance exemption will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the Federal Register, file written objections and/or 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 this rule is not "significant" and is 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 Part 180

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

Dated: September 30, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. In subpart D, by adding new § 180.1133, to read as follows:

§ 180.1133 Methyl-1-alkylamido ethyl-2-alkyl-imidazolinium methyl sulfate; exemption from the requirement of a tolerance.

Methyl-1-alkylamido ethyl-2-alkyl-imidazolinium methyl sulfate, where the alkyl group (C_8-C_{18}) is derived from coconut, cottonseed, soya, tallow, or hogfat fatty acids, is exempted from the requirement of a tolerance when used as an inert ingredient (metal corrosion inhibitor, spreader-sticker) in propionic acid formulations applied to various grains, grasses, and hays, as specified in 40 CFR 180.1023.

[FR Doc. 94-26466 Filed 10-25-94; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 180

[OPP-300330C; FRL-4913-9]

RIN 2070-AB78

Methyl Vinyl Ether-Maleic Acid Copolymer and Methyl Vinyl Ether-Maleic Acid Copolymer Calcium Sodium Salt; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document modifies the uses and categories of exemptions included in the recent regulation establishing an exemption from the requirement of a tolerance for residues of methyl vinyl ether-maleic acid copolymer (CAS Reg. No. 25153-40-6) and methyl vinyl ether-maleic acid copolymer calcium sodium salt (CAS Reg. No. 62386-95-2) in order to correctly list the exemptions and uses for these polymers. EPA is establishing exemptions from the requirement of a tolerance for residues of these polymers when used as inert ingredients (dispersants, seed-coating adhesives) in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. International Specialty Products requested this regulation.

EFFECTIVE DATE: This regulation becomes effective October 26, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300330C], may be submitted to: Hearing Clerk (1900), 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: Tina Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8393.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 24, 1994 (59 FR 43526), EPA issued a proposed rule that gave notice that International Specialty Products (ISP), 1361 Alps Rd., Wayne, NJ 07470, had submitted petitions (PPs 3E4260 and 3E4261) to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(c) and (e) by establishing an exemption from the requirement of a tolerance for residues of methyl vinyl ether-maleic acid copolymer (CAS Reg No. 25153-40-6) and methyl vinyl ether-maleic acid copolymer calcium sodium salt (CAS Reg. No. 62386-95-2) when used as inert ingredients (dispersants, seed-coating adhesives) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, or animals. For simplicity, the exemption from tolerance under 40 CFR 180.1001(c) was requested for the seed-coating adhesive use, which is only applicable to growing crops, as well as the dispersant use, which could include post-harvest uses. The exemption from tolerance under 40 CFR 180.1001(e) would apply to the use of the inerts as dispersants in formulations applied to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

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 tolerance exemptions will protect the public health. Therefore, the tolerance exemptions are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or 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 this rule is not "significant" and is 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 Part 180

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

Dated: September 28, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1001 is amended in paragraph (c) in the table therein by revising the entry for methyl vinyl ether-maleic acid copolymer and adding immediately thereafter the entry for methyl vinyl ether-maleic acid copolymer calcium sodium salt and in paragraph (e) in the table therein by adding and alphabetically inserting the entry for methyl vinyl ether-maleic acid copolymer and revising the entry for methyl vinyl ether-maleic acid copolymer calcium sodium salt, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Methyl vinyl ether-maleic acid copolymer (CAS Reg. No. 25153-40-6), minimum number-average molecular weight 75,000.	....	Dispersant, seed-coating adhesive
Methyl vinyl ether-maleic acid copolymer calcium sodium salt (CAS Reg. No. 62386-95-2), minimum number-average molecular weight 900,000.	....	Dispersant, seed-coating adhesive
* * *	* * *	* * *

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* * *	* * *	* * *
Methyl vinyl ether-maleic acid copolymer (CAS Reg. No. 25153-40-6), minimum number-average molecular weight 75,000.	.....	Dispersant
Methyl vinyl ether-maleic acid copolymer calcium sodium salt (CAS Reg. No. 62386-95-2), minimum number-average molecular weight 900,000..	.....	Dispersant
* * *	* * *	* * *

[FR Doc. 94-26470 Filed 10-25-94; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 271

[FRL-5095-4]

Florida; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Florida has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Florida's revisions consist of the provisions contained in the rules promulgated between July 1, 1987, and June 30, 1990, otherwise known as HSWA Cluster II. These requirements are listed in Section B of this notice. The Environmental Protection Agency (EPA) has reviewed Florida's application and has made a decision, subject to public review and comment, that the Florida hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Florida's hazardous waste program revisions. Florida's application for program revisions is available for public review and comment.

DATES: Final authorization for Florida's program revisions shall be effective December 27, 1994 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Florida's program revision application must be received by the close of business, November 25, 1994.

ADDRESSES: Written comments should be sent to A.R. Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. EPA, 345 Courtland Street, NE, Atlanta, Georgia 30365. Copies of Florida's program revision application are available during normal business hours at the following addresses for inspection and copying: Florida Department of Environmental Protection, 2600 Blair Stone Road, Tallahassee, Florida 32399-2400, phone (904) 488-0300; U.S. EPA Region IV, Library, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347-4216.

FOR FURTHER INFORMATION CONTACT: Al Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365; (404) 347-2234.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260-268 and 124 and 270.

B. Florida

Florida initially received final authorization for its base RCRA program effective on February 12, 1985, (50 FR 3908, January 29, 1985). Florida received authorization for revisions to its program on April 6, 1992, for Non-HSWA III, IV, and V, and on January 10, 1994 for HSWA I without Corrective Action. Today, Florida is seeking approval of its program revisions in accordance with 40 CFR 271.21(b)(3).

EPA has reviewed Florida's application and has made an immediate final decision that Florida's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Florida. The public may submit written comments on EPA's immediate final decision up until November 25, 1994. Copies of Florida's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice

Approval of Florida's program revisions shall become effective December 27, 1994, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Florida is today seeking authority to administer the following Federal requirements.

Checklist	Description	FR date and page	Florida rule
39	CA List Waste Restrictions	7/8/87, 52 FR 25760	403.704(15), 403.721(2) 17–730.021, 730.180, 730.183.
42	Exception Reporting for SQGs of Hazardous Waste	9/23/87, 52 FR 35894	403.704, 403.721, 17–730.160.
44A	Permit Application Requirements RE: Corrective Action.	12/1/87, 52 FR 45788	403.721, 403.722, 17–730.220.
44E	Permit as a Shield Provision	12/1/87, 52 FR 45788	403.721, 17–730.220.
44F	Permit Conditions	12/1/87, 52 FR 45788	403.704, 403.721, 403.722, 17–730.220, 17–730.280.
44G	Post Closure Permits Equivalency Determination	12/1/87, 52 FR 45788	403.721, 403.722, 17–730.220, 17–730.260.
50	LDR for 1st Third Scheduled Waste	8/17/88, 53 FR 31138; 2/27/89, 54 FR 8264.	403.703, 403.721, 17–730.180, 17–730.181, 17–730.183.
62	LDR Amendments to 1st Third Scheduled Waste	5/2/89, 54 FR 18836	403.703, 403.721, 17–730.183.
63	LDR for 2nd Third Scheduled Waste	6/23/89, 54 FR 26594	403.703, 403.721, 17–730.183.
66	LDR; Correction to 1st Third Scheduled Wastes	9/6/89, 54 FR 36967	403.703, 403.721, 17–730.181, 17–730.183.
68	Reportable Quantity Adjustment Methyl Bromide Production Wastes.	10/6/89, 54 FR 41402	403.72, 17–730.030.
69	Reportable Quantity Adjustment	12/11/89, 54 FR 50968	403.72, 17–730.030.
75	Listing of 1,1-Dimethylhydrazine Production Wastes	5/2/90, 55 FR 18496	403.72, 17–730.030.
78	LDR for 3rd Third Scheduled Wastes	6/1/90, 55 FR 22520	403.704, 403.72, 403.721, 17–730.030, 17–730.180, 17–730.183.
79	Organic Air Emission Standards for Process Vents and Equipment Leaks.	6/21/90, 55 FR 25454	403.087, 403.721, 403.722, 17–730.021, 17–730.030, 17–730.180.

C. Decision

I conclude that Florida's application for these program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Florida is granted final authorization to operate its hazardous waste program as revised.

Florida now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application, its previously approved authorities and where otherwise noted in this Notice. Florida also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Florida's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: October 13, 1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–26249 Filed 10–25–94; 8.45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10 and 15

[CGD 94–041]

RIN 2115–AE92

Radar-Observer Endorsement for Operators of Uninspected Towing Vessels

AGENCY: Coast Guard, DOT.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is amending the rules that require a radar-observer endorsement. The amended rules will require radar-training for licensed masters, mates, and operators of radar-equipped uninspected towing vessels 8 meters (approximately 26 feet) or more in length, either toward an endorsement or, in the short run, toward a certificate. The amended rules are necessary to ensure that vessels equipped with radar are manned by mariners with the skills and knowledge to operate them.

DATES: *Effective Date:* This rule is effective on November 25, 1994.

Comments: Comments must be received on or before January 24, 1995.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 94–041], 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, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Spears, Jr., Project Manager, Office of Marine Safety, Security, and Environmental Protection (G–MVP–3), (202) 267–0224, between 9 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays.

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 94–041] and the specific section of this rule to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments.

The Coast Guard conducted a study entitled *Review of Marine Safety Issues Related to Uninspected Towing Vessels.* The *Review* recommended, among other initiatives, establishment of a radar-training requirement for certain operators of towboats. The Coast Guard held a public meeting on April 4, 1994, to examine the *Review.* The public comments, both offered then and submitted afterward, figured in the development of this rule. Consequently, the Coast Guard plans no public hearing. Persons may ask for one by writing to the Marine Safety Council at the address under **ADDRESSES.** The request should include the reasons why one would be beneficial. If the Coast Guard determines that another opportunity for oral presentations will aid this rulemaking, it will schedule a hearing at a time and place announced by a later notice in the **Federal Register.**

Drafting Information

The principal persons involved in the drafting of this document are Mr. Robert S. Spears, Jr., Project Manager, Office of Marine Safety, Security, and Environmental Protection, and Mr. Patrick J. Murray, Project Counsel, Office of the Chief Counsel.

Regulatory Information

This rule is being published as an interim rule and will be effective on November 25, 1994. The Coast Guard has determined that it would be contrary to the public interest to delay publication of this rule, which applies current statutory law [46 U.S.C. 2103, 7101, and 8904(a)], establishes an overdue regulatory requirement at a minimal cost, and shows great potential for improving public safety. For these good reasons, the Coast Guard finds under 5 U.S.C. 553(b)(3)(B) that no public notice is necessary.

Background and Purpose

The derailment of the Amtrak Sunset Limited, a passenger train, on September 22, 1993, with extensive injury and loss of life, resulted in a study entitled *Review of Marine Safety Issues Related to Uninspected Towing Vessels.* This study, based on an investigation conducted jointly by the Offices of Navigation Safety and Waterway Services (G–N) and of Marine Safety, Security, and Environmental Protection (G–M), provided the Commandant of the Coast Guard with a number of recommendations to enhance safety in the towing industry. One of these recommendations called for a regulatory project to amend 46 CFR parts 10 and 15 to require radar-observer training and endorsements for operators of radar-equipped towing vessels more than 8 meters (approximately 26 feet) in length. The Commandant concurred, and directed the Merchant Vessel Personnel Division (G–MVP) to initiate the project.

Discussion of Rule

This interim rule amends the current rules in two basic ways. First, it adds to 46 CFR part 15 language that extends the requirement of a radar-observer endorsement to licensed operators of radar-equipped towboats 8 meters (approximately 26 feet) or more in length. Second, it adds to part 10 two courses: A Radar-Observer (Rivers) course and a Radar-Operation course, the latter temporary. Because operators with unlimited and inland-waters endorsements may navigate on rivers, the Coast Guard also found it necessary to add rivers-related topics to the list of subjects for the courses encompassing broader routes. ("River" means any river, canal, or similar body of water designated by the Officer in Charge, Marine Inspection; "Inland Waters" means the navigable waters of the United States shoreward of the Boundary Lines as described by 46 CFR part 7, excluding the Great Lakes [46 CFR 10.103].)

To provide a reasonable opportunity for affected personnel to complete full radar-observer courses and obtain radar-observer endorsements, this interim rule requires these courses and endorsements only of personnel receiving original licenses, renewing licenses, or upgrading licenses, on or after February 15, 1995. (Since licenses are valid for five years, some OUTVs will not have to complete these courses until January, 2000.) However, because of the urgent need to improve safety, this rule requires the Radar-Operation course of all affected personnel not yet required to hold the radar-observer endorsement.

Because of the large number of personnel required to attend radar-training by February 15, 1995, and the importance of their getting basic training as soon as possible, the Radar-Operation course may be conducted by individuals, companies, or other organizations without prior approval of the Coast Guard. However, offerors must state on their course-completion certificates that the courses conform to rules of the Coast Guard. Each such certificate is valid until the holder's license is renewed or upgraded, whichever occurs first. By then, a holder of this certificate must have completed an approved radar-observer course to

obtain the endorsement on his or her license. No mariner who renews or upgrades his or her license on or after February 15, 1995, without having attended a radar-observer course, may serve as the master, mate, operator, or pilot of any vessel identified by 46 CFR 15.815—among which are radar-equipped uninspected towing vessels of at least 8 meters (approximately 26 feet) in length.

The radar-observer endorsement on a license expires after five years. To renew, an applicant must present a certificate of training from an approved course: radar-observer renewal or original. Like the original course, the renewal course will contain two principal components: a demonstration of skills on a radar simulator, and a radar-theory examination. Any applicant successfully completing the appropriate approved course and presenting the certificate of training to the OCMI may have his or her endorsement renewed.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, "Regulatory Planning and Review," and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that Order. It is nonsignificant under the Regulatory Policies and Procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)].

The requirements announced by this rule will apply to licensed operators of radar-equipped towing vessels 8 meters (approximately 26 feet) or more in length operating in U.S. waters.

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the Regulatory Policies and Procedures of DOT is unnecessary.

There are about 12,300 licensed operators of uninspected towing vessels (OUTV) in the U.S. Although some may operate towboats on ocean (domestic-trade) waters, many of those vessels are manned by licensed masters or mates. OUTVs on ocean waters already must complete radar-observer courses [see 46 CFR 10.464(e)(2)], but they must do this only once. This rule will require certain licensed OUTVs to obtain radar-observer endorsements, which must be renewed five years after the month of issue [see 46 CFR 10.480(f), below]. Roughly 15,000 masters, mates, and OUTVs will each need to complete a radar-observer course or a Radar-Operation course sometime during the five years after the effective date of this rule to comply with 46 CFR 15.815(c), below. Those completing the radar-observer course will need to renew their endorsements every five years to continue to work on radar-equipped towboats of at least 8 meters (approximately 26 feet) in length. Certificates from Radar-Operation courses will not be valid with licenses dated after February 15, 1995. Consequently, persons using the Radar-Operation certificate to satisfy 46 CFR 15.815(c) will need to complete radar-observer courses when they renew or upgrade their licenses—if they intend to continue working on radar-equipped towboats of 8 meters (approximately 26 feet) or more in length. A Radar-Operation course, at least four hours in length, is designed to indoctrinate operators with regard to basic uses and interpretation of radar. Radar-observer courses, courses approved by the Coast Guard and completed by applicants seeking radar-observer endorsements on their licenses, range in length from four hours (renewal only) to five or more days. The radar-observer courses and corresponding endorsements are separated by area of operation: Rivers, Inland Waters, and Unlimited (any waters). Expenses to complete the different courses will vary, depending on the courses selected, the sources of training, and the applicants' abilities. In-house courses should cost less than courses offered by independent schools. Unless their employers offer the courses, OUTVs likely will bear the expense for the training, and complete it on their own time. Tuition might cost up to $100.00 a day, and miscellaneous expenses for travel, meals, and lodging will sometimes accrue too, at $20.00 to $100.00 a day. Since the endorsement is valid for five years, the expense may be spread over five years as well.

For example, if the typical OUTV completes a Radar-Operation course before February 15, 1995, for $50.00 and then two years later, when renewing his or her license, completes a Radar-Observer (Rivers) course at a cost of $480.00 (three days of training, lodging, meals, and miscellaneous expenses), the expense for the first seven years will be about $530.00, or $76.00 a year. For subsequent five-year intervals, the expense will fall to about $14.00 a year, due to the shorter length of the renewal course ($50.00 tuition + $20.00 miscellaneous expenses = $70.00 divided by five years = $14.00). Hence, over 30 years, training 15,000 licensed individuals will cost about $440,000.00 a year. Since about 450 new OUTVs are added each year (at $480.00 each), $216,000.00 must also be added each year to arrive at the total expense for the towing industry—$656,000.00 a year.

Statistical research has shown that American society is willing to pay $2,600,000.00 to save even just one life. Therefore, even if only one life is saved each year by this rule, the benefit outweighs the expense by about $2,000,000.00 a year.

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

This interim rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the provisions of the Act. Although this rule is exempt, however, the Coast Guard has reviewed it for potential impact on small entities.

This interim rule places its burden on individual OUTVs, not on their employers, which may, but need not, take it on themselves. The Coast Guard expects that, of the employers that will take it on themselves, few if any will be small entities. Therefore, the Coast Guard has determined that it will have no adverse economic impact on small entities. If you nonetheless think that your business or organization qualifies as a small entity and that this rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and to what degree this rule will economically affect it.

Collection of Information

This interim rule contains no new collection-of-information requirements under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*].

Federalism

The Coast Guard has analyzed this interim rule under the principles and criteria contained in Executive Order 12612 and has determined that the rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this interim rule and concluded that, under § 2.B.2

of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. The rule is an administrative matter within the meaning of sub-§ 2.B.2.1. of Commandant Instruction M16475.1B that clearly has no environmental impact. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

46 CFR Part 10

Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR parts 10 and 15 as follows:

PART 10—LICENSING OF MARITIME PERSONNEL

1. The citation of authority for part 10 continues to read as follows:

Authority: 14 U.S.C. 633, 31 U.S.C. 9701, 46 U.S.C. 2103, 7701; 49 CFR 1.45, 1.46; § 10.107 also issued under the authority of 44 U.S.C. 3507.

2. Section 10.305 is revised to read as follows:

§ 10.305 Radar-observer certificates and qualifying courses.

(a) A student who takes an approved course of training, which includes passing both a radar-theory examination and a practical demonstration on a simulator, and who meets the requirements of this section is entitled to an appropriate radar-observer certificate—

(1) In a form prescribed by the school and acceptable to the Coast Guard; and

(2) Signed by the head of the school.

(b) The following radar-observer certificates are issued under this section:

(1) Radar Observer (Unlimited).

(2) Radar Observer (Inland Waters).

(3) Radar Observer (Rivers).

(4) Radar Observer (Unlimited Renewal).

(5) Radar Observer (Inland Waters Renewal).

(6) Radar Observer (Rivers Renewal).

(c) A school with an approved radar-observer course may issue a certificate listed in paragraph (b) of this section after the student has successfully completed the appropriate curriculum as follows:

(1) Radar Observer (Unlimited). Classroom instruction—including demonstration and practical exercises using simulators—and examination, in the following subjects:

(i) Fundamentals of radar:

(A) How radar works.

(B) Factors affecting the performance and accuracy of marine radar.

(C) Purposes and functions of the main components that constitute a typical marine radar system.

(ii) Operation and use of radar:

(A) Purpose and adjustment of controls.

(B) Detection of malfunctions, false and indirect echoes, and other radar phenomena.

(C) Effects of sea return and weather.

(D) Limitations of radar resulting from design factors.

(E) Precautions to observe in performing maintenance of radar equipment.

(F) Measurement of ranges and bearings.

(G) Effect of size, shape, composition, and distance of vessels and terrestrial targets on echo.

(iii) Interpretation and analysis of radar information:

(A) Radar navigation—determining the position and direction of movements of a vessel.

(B) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(C) Determining the course and speed of another vessel.

(D) Determining the time and distance of closest point of approach of a crossing, meeting, overtaking, or overtaken vessel.

(E) Detecting changes of course and/or speed of another vessel after its initial course and speed have been established.

(F) Factors to consider when determining changes of course and/or speed of a vessel to, on the basis of radar observation, prevent collisions with other vessels.

(iv) Plotting (by any graphically-correct method):

(A) Principles and methods of plotting relative and true motion.

(B) Practical-plotting problems.

(2) Radar Observer (Inland Waters). Classroom instruction—with emphasis on situations and problems encountered on inland waters, including demonstration and practical exercises using simulators—and examination, in the following subjects:

(i) Fundamentals of radar:

(A) How radar works.

(B) Factors affecting the performance and accuracy of marine radar.

(C) Purpose and functions of the main components that constitute a typical marine radar system.

(ii) Operation and use of radar:

(A) Purpose and adjustment of controls.

(B) Detection of malfunctions, false and indirect echoes, and other radar phenomena.

(C) Effects of sea return and weather.

(D) Limitations of radar resulting from design factors.

(E) Precautions to observe in performing maintenance of radar equipment.

(F) Measurement of ranges and bearings.

(G) Effect of size, shape, composition, and distance of vessels and terrestrial targets on echo.

(iii) Interpretation and analysis of radar information:

(A) Radar navigation—determining the position and direction of movements of a vessel.

(B) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(C) Determining the course and speed of another vessel.

(D) Determining the time and distance of closest point of approach of a crossing, meeting, overtaking, or overtaken vessel.

(E) Detecting changes of course and/or speed of another vessel after its initial course and speed have been established.

(F) Factors to consider when determining changes of course and/or speed of a vessel to, on the basis of radar observation, prevent collisions with other vessels.

(3) Radar Observer (Rivers). Classroom instruction—with emphasis on situations and problems encountered on rivers including demonstration and practical exercises using simulators—and examination, in the following subjects:

(i) Fundamentals of radar:

(A) How radar works.

(B) Factors affecting the performance and accuracy of marine radar.

(C) Purpose and functions of the main components that constitute a typical marine radar system.

(ii) Operation and use of radar:

(A) Purpose and adjustment of controls.

(B) Detection of malfunctions, false and indirect echoes, and other radar phenomena.

(C) Effects of sea return and weather

(D) Limitations of radar resulting from design factors.

(E) Precautions to observe in preforming maintenance of radar equipment.

(F) Measurement of ranges and bearings.

(G) Effect of size, shape, composition, and distance of vessels and terrestrial targets on echo.

(iii) Interpretation and analysis of radar information:

(A) Radar navigation—determining the position and direction of movements of a vessel.

(B) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(C) Factors to consider when determining changes of course and/or speed of a vessel to, on the basis of radar observation, prevent collisions with other vessels.

(4) Radar Observer (Unlimited Renewal). Classroom Instruction)—including demonstration and practical exercises using simulators—and examination, in the following subjects:

(i) Interpretation and analysis of radar information:

(A) Radar navigation—determining the position and direction of movements of a vessel.

(B) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(C) Determining the course and speed of another vessel.

(D) Determining the time and distance of closest point of approach of a crossing, meeting, overtaking , or overtaken vessel.

(E) Detecting changes of course and/or speed of another vessel after its initial course and speed have been established.

(F) Factors to consider when determining changes of course and/or speed of a vessel to, on the basis of radar observation, prevent collisions with other vessels.

(ii) Plotting (by any method that is graphically correct):

(A) The principles and methods of plotting relative and true motion.

(B) Practical-plotting problems.

(5) Radar Observer (Inland Waters Renewal). Classroom instruction—including demonstration and practical exercises using simulators—and examination, in the interpretation and analysis of radar information, including:

(i) Radar navigation—determining the position and direction of movements of a vessel.

(ii) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(iii) Determining the course and speed of another vessel.

(iv) Determining the time and distance of closest point of approach of a crossing, meeting, overtaking, or overtaken vessel.

(v) Detecting changes of course and/or speed of another vessel after its initial course and speed have been established.

(vi) Factors to consider when determining changes of course and/or speed of a vessel to, on the basis of radar observation, prevent collisions with other vessels.

(6) Radar Observer (Rivers Renewal). Classroom instruction—including demonstration and practical exercises using simulators—and examination, in the interpretation and analysis of radar information, including:

(i) Radar navigation—determining the position and direction of movements of a vessel.

(ii) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(iii) Factors to consider when determining changes of course and/or speed of vessel to, on the basis of radar observation, prevent collisons with other vessels.

3. New § 10.306 is added to read as follows:

§ 10.306 Radar-Operation certificate and course.

(a) A certificate of training from a Radar-Operation course may, as provided by 46 CFR 15.815(c)(2), suffice instead of a radar-observer endorsement. It is valid until the holder's license is renewed or upgraded, or expires, whichever occurs first.

(b) Each Radar-Operation course must contain at least four hours of instruction on the following subjects:

(1) Fundamentals of radar:

(i) How radar works.

(ii) Factors affecting the performance and accuracy of marine radar.

(iii) Purpose and functions of the main components that constitute a typical marine radar system.

(2) Operation and use of radar:

(i) Purpose and adjustment of controls.

(ii) Detection of malfunctions, false and indirect echoes, and other radar phenomena.

(iii) Effects of sea return and weather.

(iv) Limitations of radar resulting from design factors.

(v) Precautions to observe in performing maintenance of radar equipment.

(vi) Measurement of ranges and bearings.

(vii) Effect of size, shape, composition, and distance of vessels and terrestrial targets on echo.

(3) Interpretation and analysis of radar information:

(i) Radar navigation—determining the position and direction of movements of a vessel.

(ii) Collision-avoidance, including visual techniques, appropriate to the circumstances and the equipment in use.

(iii) Factors to consider when determining changes of course and/or speed of a vessel to, on the basis of radar observation, prevent collisions with other vessels.

(c) Each Radar-Operation course must be conducted by an individual who possesses the knowledge and skills taught in the course, with at least one year of experience in their practical application, except that—

(1) A marine instructor or company official may substitute a currently valid certificate from an approved Radar-Observer (Unlimited or Inland Waters) course for the one year of experience; and

(2) An instructor of any approved radar-observer course may teach a Radar-Operation course without further seagoing experience.

(d) A holder of the Radar-Operation certificate seeking a radar-observer endorsement is considered an applicant for an original endorsement rather than an applicant for renewal of the endorsement.

4. Section 10.480 is revised to read as follows:

§ 10.480 Radar observer.

(a) This section contains the requirements that an applicant must meet to qualify as a radar observer. (Part 15 of this chapter specifies who must qualify as a radar observer.)

(b) If an applicant meets the requirements of this section, one of the following radar-observer endorsements will be added to his or her deck officer's license:

(1) Radar Observer (Rivers).

(2) Radar Observer (Inland Waters).

(3) Radar Observer (Unlimited).

(c) Endorsement as Radar Observer (Rivers) is valid only on any river, canal, or similar body of water designated by the Officer in Charge, Marine Inspection. Endorsement as Radar Observer (Inland Waters) is valid only for those waters covered by the Inland Navigational Rules other than the Great Lakes. Endorsement as Radar Observer (Unlimited) is valid on all waters.

(d) Except as provided by paragraphs (e) and (f) of this section, each applicant for a radar-observer endorsement or for renewal of an endorsement must complete the appropriate course approved by the Coast Guard, receive the appropriate certificate of training, and present the certificate to the Officer in Charge, Marine Inspection.

(e) An applicant who possesses a radar-observer endorsement, resides in a remote geographic area, and can substantiate to the satisfaction of the

Officer in Charge, Marine Inspection, that the applicant's absence would disrupt normal movement of commerce, or that the applicant cannot attend an approved radar-observer renewal course, any have his or her endorsement renewed upon successful completion of an examination administered by the Coast Guard.

(f) An endorsement as radar observer issued under this section is valid for five years after the month of issuance of the certificate of training from a course approved by the Coast Guard. The endorsement is not terminated by the issuance of a new license during these five years.

(g) The month and year of the expiration of the radar-observer endorsement are printed on the license.

(h) A radar-observer endorsement may be renewed at any time.

(i) An applicant for renewal of a license that does not need a radar-observer endorsement may renew the license without meeting the requirements for a radar-observer endorsement.

(j) An applicant seeking to raise the grade of a license or increase its scope, where the increased grade or scope requires a radar-observer certificate, may use an expired radar-observer certificate to fulfill that requirement.

PART 15—MANNING REQUIREMENTS

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

Authority: 46 U.S.C. 2103, 3703, 8502; 49 CFR 1.45, 1.46.

6. In § 15.815, new paragraph (c) is added:

§ 15.815 Radar observers.

* * * * *

(c) On or after February 15, 1995, each person having to be licensed under 46 U.S.C. 8904(a) for employment or service as master, mate, or operator on board an uninspected towing vessel of 8 meters (approximately 26 feet) or more in length shall, if the vessel is equipped with radar, hold—

(1) A valid endorsement as radar observer; or,

(2) If the person holds a valid license dated before February 15, 1995, a valid certificate from a Radar-Operation course.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–26506 Filed 10–25–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 94–258]

Ex Parte Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its *ex parte* rules to provide an exemption for presentation between the Commission and the Department of Justice or the Federal Trade Commission, the other principal agencies responsible for promoting or ensuring competition in the telecommunications industry. This exemption will promote the public interest through the exchange of information and ideas between the Commission and lead to more effective enforcement and protection of the public interest.

EFFECTIVE DATE: October 26, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION:

Order

Adopted: October 7, 1994.

Released: October 21, 1994.

By the Commission:

1. By this Order, we amend our *ex parte* rules to provide an exemption for presentations between the Commission and the Department of Justice or Federal Trade Commission relating to telecommunications competition matters. The rules are further amended to provide for disclosure of any new factual information obtained by the Commission in such presentations if such information is relied on by the Commission in the decision-making process. This exemption would not apply if the Department of Justice or Federal Trade Commission becomes a party to the proceeding, e.g., by the filing of comments in the proceeding. Nor would it apply if the proceeding is designated for hearing.

2. We believe that this exemption will promote the public interest through the exchange of information and ideas between the Commission and the other principal agencies responsible for promoting or ensuring competition in the telecommunications industry. It should lead to more effective enforcement and protection of the public interest, development and application of more consistent analytical methodologies, an improved, expedited license transfer process, and the possible avoidance of unnecessarily duplicative efforts. At the same time, the requirement for disclosure of any factual information relied on by the Commission will protect the rights of the parties.

3. Because the amendment adopted herein relates to agency practice and procedure, notice and comment is not required. 5 U.S.C. § 553(b)(A).

4. Accordingly, *it is ordered*, that Part 1 of the Rules and Regulations of the Federal Communications Commission *are amended* as set forth below.

5. *It is further ordered* that these amendments to the Commission's Rules *shall become effective* upon publication in the **Federal Register**. *See* 5 U.S.C. § 553(d).

6. Authority for this action is contained in Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 303(r).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Change

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURES

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

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303: Implement 5 U.S.C. § 552 and 21 U.S.C. § 853a, unless otherwise noted.

2. Section 1.1204 is amended by adding paragraph (b)(8) to read as follows:

§ 1.1204 General exemptions.

* * * * *

(b) * * *

(8) The presentation is to or from the United States Department of Justice or Federal Trade Commission and involves a telecommunications competition matter in a proceeding which has not been designated for hearing and in which the relevant agency (Department of Justice or Federal Trade Commission) is not a party; *provided that*, any new factual information obtained through such a presentation that is relied on by the Commission in its decision-making process will be disclosed by the

Commission no later than at the time of issuance of the Commission's decision.

[FR Doc. 94–26486 Filed 10–25–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 94–23; RM–8439]

Radio Broadcasting Services; Mabton, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of First Love Ministries, Inc., allots Channel 254A at Mabton, Washington, as the community's first local aural transmission service. *See* 59 FR 13918, March 24, 1994. Channel 254A can be allotted to Mabton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 254A at Mabton are North Latitude 46–12–42 and West Longitude 120–00–18. Since Mabton is located with 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence by the Canadian government has been obtained. With this action, this proceeding is terminated.

DATES: Effective: December 5, 1994. The window period for filing applications for Channel 254A at Mabton, Washington, will open on December 5, 1994, and close on January 5, 1995.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 94–23, adopted October 12, 1994, and released October 21, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Mabton, Channel 254A.

John A. Karousos,

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

[FR Doc. 94–26487 Filed 10–25–94; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 59, No. 206
Wednesday, October 26, 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.

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R-0851]

Revisions Regarding Tying Restrictions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board is seeking public comment on a proposed exception to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 and the Board's Regulation Y. The proposed amendment would establish a "safe harbor" permitting a bank to offer a discount on any product or package of products if a customer maintains a combined minimum balance in deposits and other products specified by the bank.

DATES: Comments must be submitted on or before December 9, 1994.

ADDRESSES: Comments should refer to Docket No. R-0851, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments also may be delivered to room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding availability of information.

FOR FURTHER INFORMATION CONTACT: Gregory A. Baer, Managing Senior Counsel (202/452-3236), or David S. Simon, Attorney (202/452-3611), Legal Division; or Anthony Cyrnak, Economist, (202/452-2917), Division of Research and Statistics, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544).

SUPPLEMENTARY INFORMATION:

Background

Section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972) generally prohibits a bank from tying a product or service to another product or service offered by the bank or by any of its affiliates.[1] A bank engages in a tie for purposes of section 106 by: (1) offering a discount on a product or service (the "tying product") on the condition that the customer obtain some additional product or service (the "tied product") from the bank or from any of its affiliates; or (2) allowing the purchase of a product or service only if the customer purchases another product or service from the bank or from any of its affiliates. Violations of section 106 can be addressed by the Board through an enforcement action, by the Department of Justice through a request for an injunction, or by a customer or other party through an action for damages. 12 U.S.C. 1972, 1973, and 1975.

Section 106 contains an explicit exception (the "statutory traditional bank product exception") that permits a bank to tie a product or service to a loan, discount, deposit, or trust service offered by that bank. The Board has recently extended this exception by providing that a bank or any of its affiliates also may vary the consideration for a traditional bank product on condition that the customer obtain another traditional bank product from an affiliate (the "regulatory traditional bank product exception").[2]

Section 106 authorizes the Board to grant exceptions to its restrictions by regulation or order. On October 19, 1994, the Board granted an exemption permitting the subsidiary banks of Fleet Financial Group, Inc., Providence, Rhode Island (Fleet) to offer a discount on the monthly service fee charged for the "Fleet One Account" to a customer who maintains a combined minimum balance of $10,000 in one or more products selected by the customer from a menu of eligible Fleet products. The Board decided that, to the extent that Fleet's combined-balance discount was prohibited by section 106, an exemption was warranted given the public benefits and absence of anti-competitive concerns generated by the arrangement.

The Fleet One Account provides a customer, for a $14 monthly fee, discounts and premiums on various Fleet services, such as free checking and lower installment loan rates. Under the Board's order, Fleet may waive the $14 fee for any customer who maintains a $10,000 combined balance among the following eligible products: (1) deposits and certain loans at the Fleet bank at which the customer establishes the Fleet One Account;[3] (2) credit card balances at a Fleet bank; (3) investment securities held at Fleet's brokerage subsidiary and (4) shares held in a family of mutual funds advised by a Fleet subsidiary. All products offered as part of these arrangements are separately available to customers at competitive prices.

Proposed Rule

The Board is proposing to use its statutory authority to grant a regulatory exception to section 106 for combined-balance discount arrangements akin to that offered by Fleet. The Board is proposing the exception in order to provide certainty as to the general permissibility of combined-balance discounts, and because it believes that such discounts are pro-consumer and not anti-competitive.

Applicability of Section 106

The combined-balance discount offered by Fleet appears to be covered by section 106, which prohibits a bank from offering a discount on a product or service on the condition that the customer obtain some additional product or service from the bank or from any of its affiliates. Although the discount on the Fleet One Account fee is not conditioned on any *particular* product being purchased, the customer is required to purchase *some* product or products from the menu of eligible products in order to receive the discount.[4] Furthermore, the packaging

[1] Although section 106 applies only when a *bank* offers the tying product, the Board in 1971 extended the same restrictions to bank holding companies and their nonbank subsidiaries. *See* 12 CFR 225.7(a).

[2] *See* 12 CFR 225.7(b)(2).

[3] These products include: checking, savings, cash reserve and sweep accounts; certificates of deposit; installment and home equity lines of credit and certain loans.

[4] Coverage of combined-balance discounts also appears to be consistent with the purposes of section 106. Section 106 was enacted because of

Continued

of some of those products in the form proposed by Fleet does not appear to qualify for the statutory or regulatory traditional bank product exception.[5]

In addition, although the discount plan offered by Fleet is structured so as to avoid any anti-competitive effects, the Board notes that in other cases the number and attractiveness of traditional bank products offered in such an arrangement could be substantially less than those offered by Fleet, and the effect of the tie to non-traditional products that much stronger. In addition, there is the potential for such discount plans to be manipulated in order to have the same effect as a classic tie—that is, structured so that the customer is effectively required to purchase one product in order to receive, or to receive a discount on, another product.

Exception

In deciding to permit Fleet to offer the Fleet One Account, the Board concluded that the combined-balance discount on the Fleet One Account was consistent with the type of banking relationships that section 106 recognized were important to preserve.[6] Section 106 preserves such relationships through the statutory traditional bank product exception, which permits a bank to tie a product or service to a loan, discount, deposit, or trust service offered by that bank. The legislative history of section 106 notes that this exception was intended to preserve a customer's ability to negotiate the price of multiple banking services with the bank on the basis of the customer's entire relationship with the bank. The proposed exception serves the same purpose.

Moreover, under the statutory and regulatory traditional bank product exceptions, a bank already could offer a combined-balance discount on an account where all the products in the arrangement were traditional bank products (loans, discounts, deposits, and trust services). Granting an exception for a combined-balance discount would simply permit the bank to increase customer choice by adding a customer's securities brokerage account or other non-traditional products to the menu of traditional products that count toward the minimum balance.

For these reasons, the Board is proposing to establish, through a regulatory exception, a safe harbor for arrangements offering benefits similar to those in Fleet. The proposed safe harbor is not only consistent with the statute's goal of preserving traditional banking relationships, but also its concerns about anti-competitive behavior. The proposal requires that the offering bank offer deposits and that all such deposits be considered in determining whether the customer has reached the minimum balance required to waive the relevant fee. Furthermore, all products offered as part of the arrangement would be required to be separately available for purchase at competitive prices.[7] Because a customer could qualify for a combined-balance discount based solely on deposit balances and because the bank would be required to offer customers all products involved in the arrangement separately and at competitive prices, a customer would not have an incentive to establish a brokerage account, or obtain any other product, that the customer did not want in order to obtain the discount. For this reason, the Board does not believe that the proposed rule would allow coercive or anticompetitive practices, or otherwise contravene the purposes of section 106.[8]

Finally, the Board believes that the proposed rule would benefit the public. Bank customers would be presented with lower costs.

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) are contained in the proposed rule.

Regulatory Flexibility Act

It is hereby certified that this proposed rule, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR Part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for 12 CFR part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. In section 225.7, as proposed to be amended at 59 FR 39711, August 4, 1994, a new paragraph (b)(4) is added to read as follows:

§ 225.7 Tying restrictions.

* * * * *

(b) * * *

(4) *Safe harbor for combined-balance discounts.* A bank may vary the consideration for any product or package of products offered by the bank or its affiliates based on a customer maintaining a combined minimum balance in certain products specified by the bank ("eligible products"), provided that:

(i) The bank offers deposits, and all such deposits are eligible products; and

(ii) Balances in all eligible products count equally toward the minimum balance.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 20, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–26478 Filed 10–25–94; 8:45 am]

BILLING CODE 6210–01–P

Congress's concern that banks would use their power over credit to gain a competitive advantage in other markets. Ordinarily, a tying arrangement involves an attempt to gain a competitive advantage in one product market, but the fact that a bank is attempting to gain a smaller advantage in a larger number of product markets raises similar concerns.

[5] Under the Board's regulations, a bank or nonbank could offer a discount on brokerage services on condition that a customer purchase a traditional bank product from the bank or company offering the brokerage services or from an affiliate. However, no exception allows the reverse case, where discounts on bank products are being used to induce customers to purchase brokerage services.

[6] The Board also granted Fleet an exemption allowing Fleet banks to condition the Fleet One Account on a customer's obtaining two products from Fleet, but the Board is not proposing to make this exemption broadly available through regulation. Rather, the Board has concluded that such exemptions should be granted on a case-by-case basis.

[7] The Board's anti-tying regulation currently conditions all regulatory exceptions on all products involved in the tying arrangement being separately available for purchase, and that condition would apply to the proposed exception. The Board has sought comment on an amendment to this condition providing that products be separately available for purchase "at competitive prices." 59 FR 39709 (August 4, 1994).

[8] Under antitrust precedent, concerns over tying arrangements are substantially reduced where the buyer is free to take either product by itself even though the seller also may offer the two items as a unit at a single price.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–ASO–22]

Proposed Establishment of Class E Airspace; Mobile, AL; Fort Myers, FL; Tallahassee, FL; Columbus, GA; Savannah, GA and Greer, SC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace areas at Mobile, AL; Fort Myers, FL; Tallahassee, FL; Columbus, GA; Savannah, GA and Greer, SC. Presently, these areas are designated as Class C airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control towers at these locations are closed. The intended effect of the action is to be provided adequate Class E Airspace for instrument flight rule (IFR) operations when these control towers are closed.

DATES: Comments must be received on or before: November 8, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 94–ASO–22, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 530, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5200.

FOR FURTHER INFORMATION CONTACT: Ralph C. Bixby, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5589.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ASO–22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 530, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments.

A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Mobile, AL; Fort Myers, FL; Tallahassee, FL; Columbus, GA; Savannah, GA and Greer, SC. Currently, this airspace is designated Class C when the associated control tower is in operation at these locations. Controlled airspace to the surface is needed when the control towers are closed at Mobile, AL; Fort Myers, FL; Tallahassee, FL; Columbus, GA; Savannah, GA and Greer, SC. The intended effect of this proposal is to provide adequate Class E airspace for IFR operations at these airports when these control towers are closed. The coordinates for this airspace docket are based on North American Datum 83. Designations for Class E airspace extending upward from above the surface are published in Paragraph 6002 of FAA Order 7400.9B dated July 18, 1994 and effective September 16, 1994 which is incorporated by reference in CFR 71.1 effective September 16, 1994. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994 and effective September 16, 1994, is amended as follows:

Para. 6002 Class E airspace areas designated as surface area for an airport.

* * * * *

ASO AL E2 Mobile Regional Airport, AL [New]

Mobile Regional Airport, AL
(lat. 30°41'29" N., long. 88°14'34" W.)

Within a 5-mile radius of Mobile Regional Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and time will

thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL E2 Fort Myers Southwest Florida Regional Airport, FL [New]

Southwest Florida Regional Airport, FL
(lat. 26°32'11" N., long. 81°45'17" W.)

Within a 5-mile radius of the Southwest Florida Regional Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL E2 Tallahassee Regional Airport, FL [New]

Tallahassee Regional Airport, FL
(lat. 30°23'47" N., long. 84°21'01" W.)

Within a 5-mile radius of the Tallahassee Regional Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO GA E2 Columbus Metropolitan Airport, GA [New]

Columbus Metropolitan Airport, GA
(lat. 32°30'59" N., long. 84°56'20" W.)

Within a 5-mile radius of Columbus Metropolitan Airport, excluding that airspace within Restricted Area R-3002. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO GA E2 Savannah International Airport, GA [New]
(lat. 32°07'40" N., long. 81°12'08" W.)

Within a 5-mile radius of the Savannah International Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO SC E2 Greer, Greenville-Spartanburg Airport, SC [New]
(lat. 34°53'47" N., long. 82°13'06" W.)

Within a 5-mile radius of the Greenville-Spartanburg Airport. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on October 7, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94-26502 Filed 10-25-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 94-ASO-17]

Proposed Establishment and Alteration of Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would establish new jet routes and modify existing jet routes in the Miami, FL, area. Establishing new jet routes and realigning existing routes are necessary as a result of the commissioning of the Virginia Key, FL, Very High Frequency Omnidirectional Range and Distance Measuring Equipment (VOR/DME).

DATES: Comments must be received on or before December 9, 1994.

ADDRESSES: Send comments on the proposal in triplicate to:
Manager, Air Traffic Division, ASO-500
Docket No. 94-ASO-17,
Federal Aviation Administration,
P.O. Box 20636,
Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94-ASO-17." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish and to alter various jet routes in the Miami, FL, area.

In 1992, Hurricane Andrew rendered the Biscayne Bay, FL, Very High Frequency Omnidirectional Range (VOR) inoperative. The Biscayne Bay VOR was a navigational aid serving air traffic in the Miami terminal airspace. Consequently, several of the jet routes previously based on the Biscayne Bay Very High Frequency Omnidirectional Range had to be realigned with other navigational aids. The Virginia Key VOR/DME is being commissioned to replace the Biscayne Bay VORTAC to support the air traffic operations in the Miami, FL, area. Commissioning of the new, Virginia Key VOR/DME, navigational aid will necessitate the realignment of existing routes. Additionally, the establishment of several new jet routes is necessary to provide additional support for air traffic operations in the Miami area. Jet routes are published in paragraph 2004 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is

incorporated by reference in 14 CFR 71.1. The jet routes listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore - (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

ICAO Considerations

As part of this proposal relate to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Rules and Procedures Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promote the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil aircraft operations on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp.; p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–20 (Revised)

From Seattle, WA, via Yakima, WA; Pendleton, OR; Donnelly, ID; Pocatello, ID; Rock Springs, WY; Denver, CO; Kiowa, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Will Rogers, OK, 284° radials; Will Rogers; Shreveport, LA; Jackson, MS; Montgomery, AL; Meridian, MS; Tallahassee, FL; INT Tallahassee 129° and Orlando, FL, 306° radials; Orlando; INT Orlando 140°T(140°M) and Virginia Key, FL, 344°T(348°M) radials; Virginia Key.

* * * * *

J–43 (Revised)

From Miami, FL, INT Miami 313°T(313°M) and LaBelle, FL, 137°T(136°M) radials; LaBelle; St. Petersburg, FL; Tallahassee, FL; Atlanta, GA; Volunteer, TN; Falmouth, KY; Rosewood, OH; Carleton, MI; to Sault Ste. Marie, MI.

* * * * *

J–45 (Revised)

From Virginia Key, FL, INT 015°T(019°M) and Vero Beach, FL, 143° radial; Vero Beach; INT Vero Beach 330° and Ormond Beach, FL, 183° radials; Ormond Beach; Craig, FL; Alma, GA; Macon, GA; Atlanta, GA; Nashville, TN; St Louis, MO; Des Moines, IA; Sioux Falls, SD; to Aberdeen, SD.

* * * * *

J–53 (Revised)

From Miami, FL; INT Miami 020°T(020°M) and Pahokee, FL, 157°T(157°M) radials; Pahokee; INT Pahokee 342°T(342°M) and Orlando, FL, 162°T(162°M) radials; Orlando; Craig, FL; INT Craig 347° and Colliers, SC, 174° radials; Colliers; Spartanburg, SC; Pulaski, VA; INT of Pulaski 015° and Ellwood City, PA, 177° radials; to Ellwood City.

* * * * *

J–55 (Revised)

From Miami, FL; INT Miami 332°T(332°M) and Gainesville, FL, 157°T(156°M), radials; INT Gainesville 157°T(156°M) and Craig, FL, 192°T(195°M), radials; Craig; INT Craig 004° and Savannah, GA, 197° radials; Savannah; Charleston, SC; Florence, SC; INT Florence 003° and Raleigh-Durham, NC, 224° radials; Raleigh-Durham; INT Raleigh-Durham 035° and Hopewell, VA, 234° radials; Hopewell; to INT Hopewell 030° and Nottingham, MD, 174° radials. From Sea Isle, NJ; INT Sea Isle 050° and Hampton, NY, 223° radials; Hampton; Providence, RI; Boston, MA; Kennebunk, ME; Presque Isle, ME; to Mont Joli, PQ, Canada, excluding the portion within Canada.

* * * * *

J–73 (Revised)

From Miami, FL, INT Miami 313°T(313°M) and LaBelle, FL, 137°T(136°M) radials; LaBelle; Lakeland, FL; Tallahassee, FL; La Grange, GA; Nashville, TN; Pocket City, IN; to Northbrook, IL.

* * * * *

J–81 (New)

From Miami, FL; INT Miami 020°T(020°M) and Pahokee, FL, 157°T(157°M) radials; Pahokee; INT Pahokee 342°T(342°M) and Orlando, FL, 162°T(162°M) radials; Orlando; Cecil; INT Cecil 007°T(010°M) and Craig, FL, 347°T(350°M) radials; INT Craig 347°T(350°M) and Colliers, SC, 174°T(178°M), radials; Colliers.

* * * * *

J–85 (Revised)

From Miami, FL; INT Miami 332°T(332°M) and Gainesville, FL, 157°T(156°M) radials; Gainesville; Taylor, FL; Alma, GA; Colliers, SC; Spartanburg, SC; Charleston, WV; INT of the Charleston 357° and the DRYER, OH, 172° radials; DRYER. The portion within Canada is excluded. J–86 (Revised) From Boulder City, NV, via Peach Springs, AZ; Winslow, AZ; El Paso, TX; Fort Stockton, TX; Junction, TX; Austin, TX; Humble, TX; Leeville, LA; INT of Leeville 104° and Sarasota, FL, 286° radials; Sarasota; INT of Sarasota 103° and La Belle, FL, 313° radials; La Belle; INT La Belle 137°T(136°M) and Miami, FL, 313°T(313°M) radials; to Miami.

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J–113 (New)

From Virginia Key, FL, INT Virginia Key 344°T(348°M) and Craig, FL, 168°T(171°M) radials; Craig.

* * * * *

Issued in Washington, DC, on October 17, 1994.

Reginald C. Matthews,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–26497 Filed 10–25–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 71

[Airspace Docket No. 94–ASO–16]

Proposed Establishment and Alteration of VOR Federal Airways; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would establish new Federal airways and modify existing airways in the Miami, FL, area. Establishing new airways and realigning existing airways are necessary because of the commissioning of the Virginia Keys, FL (VKZ) Very High Frequency Omnidirectional Range and Distance Measuring Equipment (VOR/DME).

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

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 94–ASO–16, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–ASO–16." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish and alter various Federal airways in the Miami, FL, area.

In 1992, Hurricane Andrew rendered the Biscayne Bay, FL, Very High Frequency Omnidirectional Range (VOR) inoperative. Biscayne Bay VOR was a significant navigational aid serving air traffic in the Miami terminal airspace. Consequently, several of the airways previously based, in part, on the Biscayne Bay VOR had to be realigned with other navigational aids. The Virginia Key VOR/DME is being commissioned to replace the Biscayne Bay VORTAC to support the air traffic operations in the Miami, FL, area. Commissioning of the new, Virginia Key VOR/DME, navigational aid will necessitate the realignment of existing routes. Also, a new airway would be established to provide additional support for air traffic operations in the Miami area. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Domestic VOR Federal airways listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore - (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) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

Applicability of International Standards and Recommended Practices by the Air Traffic Rules and Procedures Service, FAA, in areas outside domestic airspace of the United States is governed by Article 12 of, and Annex 11 to, the Convention on International Civil Aviation, which pertains to the establishment of air navigational facilities and services necessary to promote the safe, orderly, and expeditious flow of civil air traffic. Their purpose is to ensure that civil aircraft operations on international air routes is carried out under uniform conditions designed to improve the safety and efficiency of air operations.

The International Standards and Recommended Practices in Annex 11 apply in those parts of the airspace under the jurisdiction of a contracting

state, derived from ICAO, wherein air traffic services are provided and also whenever a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting such responsibility may apply the International Standards and Recommended Practices in a manner consistent with that adopted for airspace under its domestic jurisdiction.

In accordance with Article 3 of the Convention on International Civil Aviation, Chicago, 1944, state aircraft are exempt from the provisions of Annex 11 and its Standards and Recommended Practices. As a contracting state, the United States agreed by Article 3(d) that its state aircraft will be operated in international airspace with due regard for the safety of civil aircraft.

Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp.; p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–3 (Revised)

From Key West, FL; INT Key West 083°T(082°M) and Miami, FL, 185°T(185°M) radials; Miami; Ft. Lauderdale, FL; Palm Beach, FL; Vero Beach, FL; Melbourne, FL; Ormond Beach, FL; Brunswick, GA; Savannah, GA; Vance, SC; Florence, SC; Sandhills, NC; Raleigh-Durham, NC; INT Raleigh-Durham 016° and Flat Rock, VA, 214° radials; Flat Rock; Gordonsville, VA; INT Gordonsville 331° and Martinsburg, WV, 216° radials; Martinsburg; Westminster, MD; INT Westminster 048° and Modena, PA, 258° radials; Modena; Solberg, NJ; INT Solberg 044°T and Carmel, NY, 243° radials; Carmel; Hartford, CT; INT Hartford 084° and Boston, MA, 224° radials; Boston; INT Boston 014° and Pease, NH, 185° radials; Pease; INT Pease 004° and Augusta, ME, 233° radials; Augusta; Bangor, ME; INT Bangor 039° and Houlton, ME, 203° radials; Houlton; Presque Isle, ME; to PQ, Canada. The airspace within R–2916, R–2934, R–2935 and within Canada is excluded.

* * * * *

V–7 (Revised)

From INT Miami, FL, 222° and Lee County, FL, 120° radials; Lee County; Lakeland, FL; Cross City, FL; Tallahassee, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; Vulcan, AL; Muscle Shoals, AL; Graham, TN; Central City, KY; Pocket City, IN; INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute; Boiler, IN; Chicago Heights, IL; INT Chicago Heights 358° and Falls, WI, 170° radials; Falls; Green Bay, WI; Menominee, MI; Marquette, MI. The airspace below 2,000 feet MSL outside the United States is excluded. The portion outside the United States has no upper limit.

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V–51 (Revised)

From Pahokee, FL; INT Pahokee 009° and Vero Beach, FL, 193° radials; Vero Beach; INT Vero Beach 330° and Ormond Beach, FL, 183° radials; Ormond Beach; Craig, FL; Alma, GA; Dublin, GA; Athens, GA; INT Athens, GA, 340° and Harris, GA, 148° radials; Harris; Hinch Mountain, TN; Livingston, TN; Louisville, KY; Nabb, IN; Shelbyville, IN; INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL.

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V–97 (Revised)

From Miami, FL; INT Miami 313°T(313°M) and La Belle, FL, 137°T(136°M) radials; La Belle; St. Petersburg, FL; Tallahassee, FL; Pecan, GA; Atlanta, GA; INT Atlanta 001° and Volunteer, TN, 197° radials; Volunteer; London, KY; Lexington, KY; Cincinnati, OH; Shelbyville, IN, INT Shelbyville 313° and Boiler, IN, 136° radials; Boiler; Chicago Heights, IL; to INT Chicago Heights 358° and Chicago O'Hare, IL, 127° radials. From INT Northbrook, IL, 290° and Janesville, WI, 112° radials; Janesville; Lone Rock, WI; Nodine, MN; to Gopher, MN. The airspace below 2,000 feet MSL outside the United States is excluded.

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V–157 (Revised)

From Key West, FL; Miami, FL; INT Miami 332°T(332°M) and La Belle, FL, 113°T(112°M) radials; La Belle; Lakeland, FL; Ocala, FL; Gainesville, FL; Taylor, FL; Waycross, GA; Alma, GA; Allendale, SC; Vance, SC; Florence, SC; Fayetteville, NC; Kinston, NC; Tar River, NC; Lawrenceville, VA; Richmond, VA; INT Richmond 039° and Patuxent, MD, 228° radials; Patuxent; Smyrna, DE; Woodstown, NJ; Robbinsville, NJ; INT Robbinsville 044° and LaGuardia, NY, 213° radials; LaGuardia; INT LaGuardia 032° and Deer Park, NY, 326° radials; INT Deer Park 326° and Kingston, NY, 191° radials; Kingston, NY; to Albany, NY. The airspace within R–2901A and R–6602A is excluded. The airspace at and above 7,000 feet MSL which lies within the Lake Placid MOA is excluded during the time the Lake Placid MOA is activated. The airspace within R–4005 and R–4006 is excluded.

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V–159 (Revised)

From Virginia Key, FL; INT Virginia Key 344°T(348°M) and Vero Beach, FL, 178°T(182°M) radials; Vero Beach; INT Vero Beach 319°T(323°M) and Orlando, FL, 140°T(140°M) radials; Orlando; Ocala, FL; Cross City, FL; Greenville, FL; Pecan, GA; Eufaula, AL; Tuskegee, AL; Vulcan, AL; Hamilton, AL; Holly Springs, MS; Gilmore, AR; Walnut Ridge, AR; Dogwood, MO; Springfield, MO; Napoleon, MO; INT Napoleon 336° and St. Joseph, MO, 132° radials; St. Joseph; Omaha, NE; Sioux City, IA; Yankton, SD; Mitchell, SD; to Huron, SD.

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V–267 (Revised)

From Miami, FL; INT Miami 020°T(020°M) and Pahokee, FL, 157°T(157°M) radials; Pahokee; Orlando, FL; Craig, FL; Dublin, GA; Athens, GA; INT Athens 340° and Harris, GA, 148° radials; Harris; Volunteer, TN.

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V–295 (Revised)

From Virginia Key, FL; INT Virginia Key 015°T(019°M) and Vero Beach, FL, 143° radial; Vero Beach; INT Vero Beach 296° and Orlando, FL, 162° radials; Orlando; Ocala, FL; Cross City, FL; to Tallahassee, FL. The portion outside the United States has no upper limit.

* * * * *

V–437 (Revised)

From Miami, FL; INT Miami 020°T(020°M) and Pahokee, FL, 157°T(157°M) radials; Pahokee; Melbourne, FL; INT Melbourne 322° and Ormond Beach, FL, 211° radials; Ormond Beach; Savannah, GA; Charleston, SC; Florence, SC. The airspace within R–2935 is excluded.

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V–492 (Revised)

From La Belle, FL; Pahokee, FL; INT Pahohee 115°T(115°M) and Palm Beach, FL, 270°T(273°M) radials; Palm Beach; INT Palm Beach 356° and Melbourne, FL, 146° radials; to Melbourne.

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V–509 (Revised)

From St. Petersburg, FL; INT St. Petersburg 110°T(109°M) and Lakeland, FL, 140°T(139°M) radials.

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V–511 (Revised)

From Lakeland, FL; INT Lakeland 140°T(139°M) and Miami, FL, 332°T(332°M) radials; Miami.

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V–521 (Revised)

From Miami, FL; INT Miami 313°T(313°M) and La Belle, FL, 137°T(136°M) radials; INT La Belle 137°T(136°M) and Lee County, FL, 099°T(101°M) radials; Lee County; INT Lee County 014° and Lakeland, FL, 154° radials; Lakeland; Cross City, FL; INT Cross City 287°

and Marianna, FL, 141° radials; Marianna; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; INT Montgomery 357° and Vulcan, AL, 139° radials; Vulcan.

* * * * *

V–537 (Revised)

From Vero Beach, FL, via INT Vero Beach 318°T(322°M) and Melbourne, FL, 298° radials; INT Melbourne 298° and Ocala, FL, 145° radials; Ocala; Gainesville, FL; Greenville, FL; Moultrie, GA; Macon, GA.

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V–599 (New)

From Lee County, FL; INT Lee County 083°T(085°M) and Miami, FL, 332°T(332°M) radials; Miami.

* * * * *

Issued in Washington, DC, on October 14, 1994.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–26498 Filed 10–25–94; 8:45 am]

BILLING CODE 4910–13–p

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14 CFR Part 93

[Docket No. 27941]

Study of Child Restraint Systems

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of Study and Request for Comments.

SUMMARY: On August 23, 1994, Public Law (Pub. L.) 103–305 was enacted and requires that the FAA conduct a study on the availability, effectiveness, cost, and usefulness of restraint systems that may offer protection to children, who presently do not use child restraint systems and who are presently carried on the laps of adults, aboard air carrier aircraft. The report to Congress is due February 23, 1995. This document requests comments from the public on the issues surrounding child restraint systems.

DATES: Comments must be received on or before November 11, 1994.

ADDRESSES: Send or deliver other comments in triplicate to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27941, 800 Independence Avenue, SW., Washington, DC 20591. Comments must be marked Docket No. 27941. They will be on display in Room 915G weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Becker, APO–310, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone No. 202–267–7766.

SUPPLEMENTARY INFORMATION:

Background

United States air carriers have a superb safety record that has continued to improve over time and now ranks among the best in the world. The risk of injury or death when traveling on an airline is low. Air carrier accidents are infrequent. Even identifying the causes of these accidents (e.g., severe inflight turbulence) requires thorough and wide-ranging research.

Children under the age of two (infants) are permitted to travel aboard airlines on the laps of their parents, guardians, or attendants. Air carriers decide whether to charge for the transportation of infants who are held on adult laps. Infants traveling in this manner, however, are not secured by any safety/restraint systems. In the rare event of a crash or rapid aircraft movements such as those caused by severe in-flight turbulence, forces may be too great for the accompanying adult, guardian, or attendant to protect the infant from injury. In these circumstances, infants are at higher risk of death or injury than all other travelers who must fasten safety belts.

Infants may also be placed in acceptable child/infant safety seats. However, most air carriers require that a ticket be purchased for those children under two in order to reserve a seat to which the safety seat can be attached. The added ticket cost, and the generally perceived low rate of accidents and injuries, results in many parents, guardians or attendants opting to hold infants in their laps. The alternative of incurring an added cost to reserve a seat for use with an infant safety seat may divert some air travelers to other less costly modes of transportation. Infants and adults may be at a higher risk of death or injury when traveling in alternative modes than if they flew.

Congress, in Public Law 103–305, amended the Airport and Airway Improvement Act of 1982. This amendment directs the FAA to conduct a study of child restraint systems on air carrier aircraft. The study is due to Congress on February 23, 1995. The purpose of this study is to determine the availability, effectiveness, cost, and usefulness of restraint systems that may offer protection to a child, carried in the lap of an adult aboard an air carrier aircraft or provide for the attachment of a child restraint device to the aircraft. Congress has directed the FAA to study the following issues:

1. The direct cost to families of requiring air carriers to provide restraint systems and requiring infants to use them, including whether airlines will charge a fare for use of seats containing restraining systems.

2. The impact on air carrier aircraft passenger volume by requiring use of infant restraint systems, including whether families will choose to travel to destinations by other means, including automobiles.

3. The impact on fatalities and fatality rates of infants and adults using airplanes, automobiles, and other modes of transportation.

4. The efficacy of infant restraints currently marketed as able to be used for air carrier aircraft.

There are at least four additional issues that are related to the Congressional issues described above:

1. What cost might airlines incur if the use of child safety seats was required by regulation? There are several subordinate issues related to cost. For example:

(a) Would air carriers provide child safety seats?

(b) What would it cost air carriers to purchase and maintain child safety seats?

(c) How often would child safety seats have to be replaced?

(d) How many times annually would child safety seats be used on air carrier aircraft?

(e) How many child safety seats would be purchased during a year by air carriers?

2. For a family traveling with infants, what is the price elasticity of demand for air travel?

(a) What fares doe air carriers now charge for infants currently seated in child safety seats?

(b) If parents had to purchase a ticket for their child under the age of two and the price of the seats on their flight of choice was such that their only alternatives would be to (1) drive or (2) fly paying discount fares during off-peak hours (or a non-direct flight), which alternative would they choose?

(c) Is there a difference in the elasticity of short versus long trips—(less than 300 miles and 300 miles or greater)?

(d) Is 300 miles the appropriate demarcation for a short versus a long trip for a family traveling with infants? What, if any, is a relevant demarcation?

(e) What is the cross-price elasticity of demand for air and automobile travel for families traveling with infants?

3. What are the profiles of families with infants who drive? What are the profiles of families with infants who fly? For example:

(a) How many infants are enplaned annually aboard domestic air carriers?

(b) How many infants would be represented in an average size family that flies?

(c) What is the average number of individuals in a family that flies?

(d) How many families fly annually?

(e) Of those families with infants who fly, what percent of families currently use child safety seats?

4. What are the infant and adult mortality rates for air travel, automobile travel, and other modes of transportation? There are several subordinate issues related to mortality rates. For example:

(a) What are the appropriate units of measure to use to compare infant fatalities/injuries from automobile travel to infant fatalities/injuries from air travel?

(b) What is the infant automobile passenger fatality, serious injury, and minor injury incidence rate for families with infants traveling by automobile? How does this incidence rate compare with those of families traveling by air?

(c) What is the non-infant automobile passenger fatality, serious injury, and minor injury incidence rate for families with infants traveling by automobile? How does this incidence rate compare with those of families traveling by air?

(d) How does the automobile accident rate for parents and guardians of infants compare with the automobile accident rate for the general population?

(e) When is the passenger seat and safety belt that is available to an adult passenger (without the child safety seat) safe enough for a child?

(f) When should seats not manufactured to federal motor vehicle safety standards be used (if at all)?

With regard to the issue of the efficacy of infant restraints, the FAA has completed a study entitled "The Performance of Child Restraint Devices in Transport Airplane Passenger Seats." A notice of availability was published in the **Federal Register** on September 27, 1994 (59 FR 49276). The FAA is continuing to study child restraint systems and to work with the National Highway Traffic Safety Administration to develop revised standards for child safety seat testing and labeling.

The FAA will be seeking data from some individually selected air carriers, air taxis, and commercial operators or their representatives concerning anticipated pricing policies if child safety seats are mandated for infants. This data is needed to respond to the Congressional request for a report and would constitute competitive commercial information. To avoid any improper exchange of competitive price or marketing information the FAA will maintain the confidentiality of such information. Raw data of this nature will not be disclosed; rather, any presentation of such data will be aggregated to avoid any competitive concerns.

Comments Invited

Parties interested in the congressionally mandated study of child safety seats are invited to submit such written data, views, or arguments as they may desire. Comments that provide a factual basis which support the views and suggestions presented are particularly helpful in analyzing the child safety seat issues. Comments are specifically invited on the overall regulatory, economic, competitive, and small business aspects of child safety seat use and of potential alternatives. Written submissions should identify the docket number and be submitted in triplicate to the Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), 800 Independence Avenue, SW., Washington, DC 20591. Comments should not be sent or directed to any of the contractors that have been engaged by the FAA to provide information for the study.

All comments received on or before the closing date for comments will be fully considered. To the extent possible, all comments received after the closing date will be considered also. All comments submitted, will be available for examination in the Rules Docket both before and after the closing date for comments.

Issued in Washington, DC, on October 20, 1994.

Dale E. McDaniel,

Deputy Assistant Administrator for Policy, Planning, and International Aviation.

[FR Doc. 94–26441 Filed 10–25–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–None Assigned

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Signature Requirements for State Agency Medical and Psychological Consultants in Disability Determinations

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rules.

SUMMARY: We propose to revise the requirements of the Social Security and Supplemental Security Income (SSI) regulations regarding the certifications required on disability determination forms. Determinations of disability are generally made by disability determination services (DDS), which are agencies of each State. Present regulations require that, unless the disability determination is made by a State agency disability hearing officer, disability determinations made by a DDS will be made by a State agency medical or psychological consultant and a State agency disability examiner, including those in which the determination is made on technical, non-medical, rather than medical, grounds. We propose to remove the requirement that a medical or psychological consultant make the determination jointly with the disability examiner when there is no medical evidence to be evaluated.

DATES: To be sure that your comments are considered, we must receive them no later than December 27, 1994.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P. O. Box 1585, Baltimore, Maryland 21235, sent by telefax to (410) 966–0869, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Harry J. Short, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965–6243.

SUPPLEMENTARY INFORMATION: The Social Security Act (the Act) provides, in title II, for the payment of disability benefits to individuals insured under the Act. Title II also provides for the payment of child's insurance benefits based on disability and widow's and widower's insurance benefits for disabled widows, widowers, and surviving divorced spouses of insured individuals. In addition, the Act provides, in title XVI, for SSI payments to persons who are aged, blind, or disabled and who have limited income and resources. For adults under both the title II and title XVI programs and for persons claiming child's insurance benefits based on disability under the title II program, "disability" means the inability to engage in any substantial gainful

activity by reason of any medically determinable impairment. For a child under age 18 claiming SSI benefits based on disability, "disability" means that the child's impairment(s) is of comparable severity to one that would disable an adult (i.e., the impairment(s) substantially reduces the child's ability to function independently, appropriately, and effectively in an age-appropriate manner such that the child's impairment(s) and resulting limitations are comparable to those that would disable an adult). Under both title II and title XVI, disability must be the result of a medically determinable physical or mental impairment(s) which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

Sections 404.1503 and 416.903 of the Social Security Administration's regulations provide that State agencies make disability and blindness determinations for the Secretary of Health and Human Services for most persons living in the State. Sections 404.1615(c) and 416.1015(c) of the regulations provide that disability determinations will be made by either: (1) A State agency medical or psychological consultant *and* a State agency disability examiner or (2) a State agency disability hearing officer. Sections 404.1615(e) and 416.1015(e) of the regulations require the State agency to certify each determination of disability to the Social Security Administration (SSA) on forms provided by SSA. The term "determination of disability" is defined in §§ 404.1602 and 416.1002 of the regulations to mean one or more of the following decisions: whether or not a person is under a disability; the date a person's disability began; or the date a person's disability ended.

When a disability determination is made jointly by a State agency medical or psychological consultant and a State agency disability examiner, the medical or psychological consultant is responsible for the medical portion of the determination and the disability examiner is responsible for the remainder of the determination. Under our current procedures, both the disability examiner and the medical or psychological consultant must certify the determination on forms which we provide as required in the regulations.

In some instances, however, the requirement for the medical or psychological consultant's certification is unnecessary because the decision is made on technical, non-medical grounds alone, without consideration of any medical evidence. Many medical and psychological consultants who work with the State agencies do so on a part-time basis and are not always available to sign disability determination forms. This can result in delays of cases that are otherwise complete because no medical input or expertise is necessary.

This happens, for example, when an individual who has no history of medical treatment or examination—and, hence, no existing medical records that we can obtain—refuses to attend a consultative examination purchased at our expense. In such a case, the State agency makes its determination on technical, non-medical, rather than medical, grounds. It denies such a claim because, without the individual's cooperation, the evidence needed to determine whether the individual is disabled cannot be obtained. Nevertheless, our current rules require that a medical or psychological consultant sign the standard disability determination form in such a case, even though there is no medical evidence and consequently, no medical finding can be made.

We propose to address this issue by revising §§ 404.1615 and 416.1015 of the regulations to provide, in a new paragraph (c)(2), that a State agency disability examiner alone may make the disability determination when there is no medical evidence to be evaluated, such as when there is no existing medical evidence and the individual refuses to attend a consultative examination. We also propose to redesignate current paragraph (c)(2), which provides that a State agency disability hearing officer may also make disability determinations, as paragraph (c)(3).

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Therefore they are not subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect individuals' eligibility for program benefits under the Social Security Act. Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

These proposed regulations will, if promulgated, impose no additional reporting or recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security-Disability Insurance; and 93.807, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Death Benefits, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

Dated: September 9, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Approved: October 20, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

For the reasons set out in the preamble, chapter III, part 404, subpart Q, of Title 20, Code of Federal Regulations, is proposed to be amended as set forth below:

1. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 421, and 1302.

2. Section 404.1615 is amended by removing the "or" in paragraph (c)(1) and adding a semicolon in its place; by redesignating paragraph (c)(2) as paragraph (c)(3); and by adding a new paragraph (c)(2) to read as follows:

§ 404.1615 Making disability determinations.

* * * * *

(c) * * *

(2) A State agency disability examiner alone when there is no medical evidence to be evaluated, e.g., when there is no existing medical evidence and the individual refuses to attend a consultative examination; or

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PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

For the reasons set out in the preamble, chapter III, part 416, subpart

J, of Title 20, Code of Federal Regulations, is proposed to be amended as set forth below:

3. The authority citation for subpart J continues to read as follows:

Authority: Secs. 1102, 1614, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c, 1383, and 1383b.

4. Section 416.1015 is amended by removing the "or" in paragraph (c)(1); by redesignating paragraph (c)(2) as paragraph (c)(3); and by adding a new paragraph (c)(2) to read as follows:

§ 416.1015 Making disability determinations.

* * * * *

(c) * * *

(2) A State agency disability examiner alone when there is no medical evidence to be evaluated, e.g., when there is no existing medical evidence and the individual refuses to attend a consultative examination; or

* * * * *

[FR Doc. 94–26508 Filed 10–25–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IL–0064–93]

RIN 1545–AS40

Conduit Arrangements Regulations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains a correction to the notice of proposed rulemaking and notice of public hearing, which was published in the **Federal Register** for Friday, October 14, 1994 (59 FR 52110). The proposed regulations provide guidance with regard to conduit financing arrangements.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez, (202) 622–6803 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of this correction contains proposed amendments to Income Tax Regulations (26 CFR part 1) under §§ 1.871–1, 1.881–0, 1.881–3, 1.881–4, 1.1441–3, 1.1441–7, 1.6038–2, 1.6038A–2, 1.6038A–3 and 1.7701(l)–1.

Need for Correction

As published the notice of proposed rulemaking and notice of public hearing contains typographical errors that are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking and notice of public hearing which is the subject of FR Doc. 94–25403, is corrected as follows:

1. On page 52110, column 2, in the preamble following the **DATES:** caption, the paragraph is corrected as follows: **DATES:** Written comments must be received by December 13, 1994. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for December 16, 1994, must be received by December 2, 1994.

2. On page 52110, column 2, in the preamble following the **FOR FURTHER INFORMATION CONTACT:** caption, the language "Christina Vasquez, (202) 622–7782 (not a toll-free number)." is corrected to read "Christina Vasquez, (202) 622–6803 (not a toll-free number).".

3. On page 52114, column 2, in the preamble following the paragraph heading *"Comments and Public Hearing"*, third full paragraph from the top of the column, last line, the language "December 13, 1994." is corrected to read "December 2, 1994.".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 94–26490 Filed 10–25–94; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 0E3907/P588; FRL–4907–4]

RIN 2070–AC18

Pesticide Tolerance for 3,5-Dichloro-N-(1,1-Dimethyl-2-Propynyl)Benzamide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish a tolerance for combined residues of the herbicide 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide and its metabolites in or on the raw agricultural commodity radicchio greens (tops). The Interregional Research Project No. 4 (IR–4) submitted to EPA the petition requesting the maximum permissible level for residues of the herbicide.

DATES: Comments, identified by the document control number [PP 0E3907/P588], must be received on or before November 25, 1994.

ADDRESSES: By mail, submit written comments 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 comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document 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. 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, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703)–308–8783.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition (PP) 0E3907 to EPA on behalf of the Agricultural Experiment Station of California. This petition requests that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), establish a tolerance for combined residues of the herbicide 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide (also referred to in this document as pronamide) and its metabolites (calculated as 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide) in or on the raw agricultural commodity radicchio greens (tops) at 2 parts per million (ppm).

The scientific data submitted in the petition and other relevant material have been evaluated. The toxicological

data considered in support of the proposed tolerance include:

1. A 90-day feeding study with rats administered pronamide in the diet at concentrations of 0, 40, 200, 1,000, or 4,000 ppm (equivalent to 0, 2.5, 12.3, 60.0, or 254.0 milligrams (mg)/kilogram (kg)/day in males; 0, 3.1, 15.0, 74.6, or 289.2 mg/kg/day in females). A systemic no-observed-effect level (NOEL) was established at 200 ppm (12.3 mg/kg/day/male; 15 mg/kg/day/female). A systemic lowest-effect level (LEL) was established at 1,000 ppm (60.0 mg/kg/day/male; 74.6 mg/kg/day/female), based on increased liver relative weight and incidence of liver histopathology in both sexes, decreased body/weight gain and feed consumption in females, and increased blood cholesterol level in males. Effects observed at the high dose (4,000 ppm) include decreases in body weight/weight gain and feed consumption in both sexes, and increases in liver-related effects and in the histopathology of the thyroid (both sexes) and anterior pituitary (males).

2. A 52-week chronic feeding study with dogs fed diets containing 0, 300, 875, or 1,750 ppm (equivalent to 0, 11.9, 33.1, or 67.7 mg/kg/day in males; or 0, 11.9, 36.1, or 69.0 mg/kg/day in females) with a NOEL established at 300 ppm, based on increases in serum alkaline phosphatase in males and thyroid weight in females, and in liver pathology in both sexes at the 875-ppm dose level. Additional effects observed at the highest dose tested (1,750 ppm) include decreases in body weight/feed consumption, increases in serum alkaline phosphatase and gamma glutamyl transferase in both sexes, increases in serum alanine aminotransferase in females, and increases in testes relative weight in males.

3. An 18-month carcinogenicity study with B6C3F1 mice fed diets containing 0, 1,000, or 2,000 ppm (approximately 0, 150, or 300 mg/kg/day) with a dose-related increase in incidence of hepatocellular carcinomas in male mice sacrificed at 18 months. The increases in tumor rates observed at 1,000 and 2,000 ppm were statistically significant by pair-wise comparison with the control. There were no carcinogenic effects observed in female mice under the conditions of the study.

4. A 24-month chronic feeding/carcinogenicity study with rats fed diets containing 0, 40, 200, or 1,000 ppm (equivalent to 0, 1.73, 8.46, or 42.59 mg/kg/day/male and 0, 2.13, 10.69, or 55.09 mg/kg/day/female). The NOEL for systemic (nonneoplastic) effects was established at 8.46 mg/kg/day/males and 10.69 mg/kg/day females, based on decreased body weight/body weight gain and increased liver weight, as well as an increased incidence of hepatic centrilobular hypertrophy, eosinophilic cell alterations, and thyroid follicular cell hypertrophy in both sexes at the high-dose level. Rats fed at the high-dose level also showed an increased incidence of thyroid tumor (thyroid follicular cell adenomas) and testicular tumor (benign testicular interstitial cell tumors) rates, which exceeded historical control ranges. There was no progression from thyroid and testicular tumors to carcinomas.

5. A two-generation reproduction study with rats fed diets containing 0, 40, 200, or 1,500 ppm (approximately 0, 3.0, 15.4, or 114.0 mg/kg/day/P1 males and 0, 3.2, 16.5, or 127.3 mg/kg/day/P2 males during pre-mating period; group time-weighted average approximately 0, 4.1, 20.2, and 158.2 mg/kg/day/P1 females and 0, 4.0, 19.8, or 157.4 mg/kg/day/P2 females). The reproductive NOEL was established at 200 ppm, based on decreased combined male/female pup weight per litter at the 1,500-ppm dose level. A NOEL for parental systemic effects was established at 200 ppm, based on decreased body weight and food consumption and histopathology of the liver and adrenal in both sexes, the thyroid in females, and the anterior pituitary in males at the 1,500-ppm dose level. These effects were observed in both P1 and P2 generations.

6. A developmental toxicity study with rabbits given gavage doses of 0, 5, 20, or 80 mg/kg/day during gestation days 7 through 19 with a developmental NOEL established at 20 mg/kg/day, based on late resorption (2 of 5 abortions at the 80 mg/kg/day dose level each showed one incidence of late resorption). The maternal NOEL was established at 20 mg/kg/day, based on one mortality, abortions in 5 of 16 animals, body weight loss, and liver histopathology at the 80 mg/kg/day dose level.

7. A developmental toxicity study with rats given gavage doses of 0, 5, 20, 80, or 160 mg/kg/day on gestation days 6 through 15 with no clinical signs of toxicity under the conditions of the study.

8. Mutagenicity tests, including gene mutation (Ames test), forward gene mutation (CH V79 cells), structural chromosome aberration in vitro (CHO cells), structural chromosome aberration in vivo (mouse bone marrow cells), and UDNA synthesis (primary hepatocytes of rats), were all negative. The results of the mutagenicity test indicate that pronamide does not appear to be mutagenic.

The Office of Pesticide Programs' Carcinogenicity Peer Review Committee has classified pronamide as a Group B2 carcinogen (a probable human carcinogen), based on the findings of two types of tumors in the rat (uncommon benign testicular interstitial cell tumors and thyroid follicular cell adenomas) and one type (liver carcinomas) in the mouse. The upper limit on the carcinogenic risk from dietary exposure resulting from established uses of pronamide and the proposed use on radicchio is estimated at 4.9×10^{-7} for the general population. The carcinogenic risk assessment for pronamide was calculated based on a potency estimator (Q^*) of 1.54×10^{-2} $(mg/kg/day)^{-1}$ and an Anticipated Residue Contribution (ARC) calculated at 0.000032 mg/kg/body weight/day.

The reference dose (RfD) is established at 0.080 mg/kg of body weight/day. The RfD is based on an NOEL of 8.46 mg/kg/day from the rat 2-year feeding study and an uncertainty factor of 100. The ARC from established uses and the proposed use of pronamide utilizes less than 1 percent of the RfD for the U.S. population and all subgroups of the population currently evaluated by EPA's Dietary Risk Evaluation System.

The nature of the residue in plants is adequately understood. The residues of concern are pronamide and its metabolites containing the 3,5-dichlorophenyl moiety. An adequate analytical method, gas chromatography, is available for enforcement purposes. The analytical method for enforcing this tolerance has been published in the Pesticide Analytical Manual, Vol. II (PAM II). There is no reasonable expectation that secondary residues will occur in milk, eggs, or meat of livestock and poultry: radicchio greens are not considered to be livestock feed items.

There are presently no actions pending against the continued registration of this chemical.

Based on the information and data considered, the Agency has determined that the tolerance established by amending 40 CFR part 180 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory

Committee in accordance with section 408(e) of the FFDCA.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 0E3907/P588]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to 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 known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is 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 Part 180

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

Dated: October 3, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.317, by amending paragraph (a) in the table therein by adding and alphabetically inserting the commodity radicchio greens (tops), to read as follows:

§ 180.317 3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide; tolerances for residues.

(a) * * *

Commodity	Parts per million
. . . . .	.
Radicchio greens (tops)	2.0
. . . . .	.

* * * * *

[FR Doc. 94-26469 Filed 10-26-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 300

[FRL-5095-9]

National Oil and Hazardous Substances Pollution Contingency Plan; The National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Boise Cascade/Onan/Medtronics Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA), Region V announces its intent to delete the Boise Cascade/Onan/Medtronics Site from the National Priorities List (NPL) and requests public comments on this action. The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken, because all Fund-financed response actions under CERCLA have been implemented and EPA, in consultation with the State of Minnesota, has determined that no further response is appropriate. Moreover, EPA and the State have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion may be submitted November 25, 1994.

ADDRESSES: Comments may be mailed to Gladys Beard (HSRM-6J) Associate Remedial Project Manager, Office of Superfund, USEPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604. Information on the site is available at USEPA and at the local information repository located at: Minnesota Pollution Control Agency Public Library, 520 Lafayette RD, St. Paul, MN 55155–4194. Requests for comprehensive copies of documents should be directed formally to Region V's Docket Officer. The address for the Region V Docket Office is Jan Pfundheller (H-7J), USEPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Gladys Beard (HSRM-6J) Associate Remedial Project Manager, Office of Superfund, USEPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253; or Cherly Allen (P-19J), Office of Public Affairs, USEPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–6196.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The U.S. Environmental Protection Agency (USEPA) Region V announces its intent to delete the Boise Cascade/Onan/Medtronics Site from the National Priorities List (NPL), appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300 (NCP), and requests comments on the proposed deletion. The EPA identifies sites which appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Superfund (Fund) financed remedial actions. Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for additional Fund-financed remedial actions in the unlikely event that

conditions at the site warrant such action.

The USEPA will accept comments on this proposal for thirty (30) days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, USEPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response actions under CERCLA have been implemented, and no further response action by responsible parties is appropriate;

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) has been met and if the State has concurred with the intent to delete EPA may formally begin deletion procedures. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announces, the initiation of a thirty day comment period. The public is asked to comment on USEPA's intention to delete the site from the NPL. All critical documents needed to evaluate EPA's decision are generally included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If USEPA then determines that deletion from the NPL is appropriate, a final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The Boise Cascade/Onan/Medtronics Superfund Site covers 183 acres and is located in the City of Fridley in Anoka County in the state of Minnesota. From approximately 1921 through 1961, National Pole and Treating Company and its affiliate, Minnesota and Ontario Paper Company (M&O) operated a wood treating facility at the site. Initial operations included the use of creosote treatment of wood for the manufacture of railroad ties and utility poles. In approximately 1958, pentachlorophenol (PCP), another wood preservative, was also used for treating lumber. Wood-treating operations ceased in early 1961. In 1964, M&O merged with the Boise Cascade Corporation (Boise). Boise sold the site in 1967. Subsequently, Medtronics, Inc. acquired 50 acres of the Boise Cascade property located to the west and south, and Onan, Inc. acquired 133 acres of the site to the north and east.

In 1979, Onan began excavation for construction purposes and encountered large quantities of creosote and PCP saturated soil. Similar deposits were subsequently discovered on the Medtronics portion of the Site. Wood-treating operations had contaminated soils and groundwater with creosote and PCP by spillage, dripping, and wastewater disposal.

The Boise Cascade site was placed on the National Priorities List on September 21, 1984, at 49 FR 37066–37090. In conjunction with the Minnesota Pollution Control Agency (MPCA), Boise conducted extensive soil and groundwater investigations from 1979 through 1982. Because the Site's ownership is divided between two different companies, Site investigations at the Boise Cascade Site were conducted separately within the individual property boundaries.

On the Onan property the analyses verified that the major contaminants of concern were creosote derived polynuclear aromatic hydrocarbons (PAHS) and phenolic compounds (phenolics are also derived from PCP). The heaviest concentrations of these substances were found on two areas where significant aspects of the tie treating process had been conducted: (1) The area where the ties were pressure treated in the retorts; and (2) the area where the ties were left to cool and dry after they were removed from the retorts and before they were loaded onto railroad cars for shipment.

Seven shallow monitoring wells were installed at locations to sample surficial groundwater in the coarse Fridley Formation to determine the Glacial Drift Stratigraphy in the Site area. Heavy concentrations of PAHs were found in the vicinity of the Retort building in an area where tanks were removed in mid-1979. A plume of PAH compounds was found to extend to the southwest of the Retort area; however, the concentrations of PAH compounds decreased by more than two orders of magnitude by the time the plume reached the southern boundary of the Onan property, which was likely due to the attenuation of the PAH compound in the soil system. Phenolics were not present in the samples from the shallow groundwater beneath the Onan property at concentrations above the detection limits with the one exception of 4-methylphenol which was detected in the Retort area.

The Hillside sand aquifer was sampled and found to contain insignificant levels of PAHs and no phenolics compounds. An eight inch diameter bedrock well, uncovered in 1979 during earth moving activities, was investigated. Approximately two feet of creosote sludge was discovered at the bottom of the well. All contaminated soil was excavated and placed in a vault formed by slurry wall and a cap consisting of clean soil and a vegetative cover was constructed over the vault.

The direction of groundwater movement in the surficial groundwater system in the upper portion of the Fridley Formation beneath the Onan property is southwesterly toward Rice and Norton Creeks. Water and sediment samples were collected from two monitoring stations along Norton Creek and from three monitoring stations along Rice Creek. PAH samples were measured above detection limits in the surface water and sediment samples from all sampling stations on Rice and Norton Creeks, including stations upstream of the site, therefore it was impossible to attribute an impact from the Site to the Creeks.

At the Medtronic Property the waste water treatment lagoons were utilized for disposal of the waste waters generated by operations. The waste waters contained quantities of creosote and PCP which subsequently contaminated soils and groundwater beneath the primary and secondary wastewater treatment lagoons and a trench leading to the lagoons. Both the trench and the lagoons were located on

the Medtronics portion of the site, east of Old Central Avenue. Eight shallow soil borings were installed along the waste water trench and around the primary and secondary waste water treatment lagoons. High levels of PAHs and heterocyclics were found. Additionally, about 5000 gallons of free oil were discovered in the vicinity of the primary waste water lagoon.

As with the Site Investigations, remediation at the Boise Cascade Site was conducted separately within the individual property boundaries. The following remedial actions were implemented at the Site:

A slurry wall containment system was constructed around the former retort building. Visually contaminated soil was excavated and placed in a vault formed by a slurry wall, and a cap was constructed over the vault. The excavated areas were backfilled with clean soil. A subdrain system was installed in the former loading area to remove groundwater from the coarse Fridley Formation and discharge it into the City of Fridley sanitary sewer system. A long-term monitoring of groundwater, surface water, and air quality has been ongoing.

At the Medtronics Property on the basis of the investigations above, Boise and Medtronics companies developed a Remedial Action Plan (RAP) to excavate and dispose of visibly contaminated soils on the Medtronics portion of the site. The following Remedial Actions were implemented at the Site:

All the visibly contaminated soil in the two wastewater lagoons and in the trench that was used to convey wastewater from the retort to the lagoons were excavated and disposed of in a hazardous waste facility that had interim status pursuant to RCRA. Excavated areas were backfilled with clean soil. Groundwater that was in contact with and directly beneath contaminated soil was collected, treated and disposed of into the City of Fridley sanitary sewer system. About 5000 gallons of free oil discovered in the vicinity of the primary wastewater lagoon was collected and disposed offsite. Long-term monitoring of groundwater, surface water, sediments, and air quality has been ongoing. A final Close Out Report which documents completion of Site construction, was signed on September 30, 1992.

EPA, with the concurrence of the State of Minnesota, has determined that all appropriate Fund-financed responses under CERCLA at the Boise Cascade/Onan/Medtronics Site have been completed, and no further Superfund response is appropriate in order to provide protection of human health and the environment.

Dated: October 6, 1994.

David A. Ullrich,

Acting Regional Administrator, USEPA, Region V.

[FR Doc. 94–26383 Filed 10–25–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 94–121 RM–8530]

Radio Broadcasting Services; Nashville, NC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Eternal Lamp, Inc., seeking the allotment of Channel 259A to Nashville, NC, as the community's first local aural transmission service. Channel 259A can be allotted to Nashville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 35–58–12 North Latitude and 77–58–00 West Longitude.

DATES: Comments must be filed on or before Dec. 12, 1994, and reply comments on or before December 27, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Tom Marino, President, Eternal Lamp, Inc., P.O. Box 8224, Rocky Mount, NC 27804 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 94–121, adopted October 12, 1994, and released October 21, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239) 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

John A. Karousos,

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

[FR Doc. 94–26488 Filed 10–25–94; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1039 and 1145

[Ex Parte No. 346 (Sub-No. 36)]

Rail General Exemption Authority—Exemption of Non-Ferrous Recyclables And Railroad Rates on Recyclable Commodities

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rulemaking; extension of comment due date.

SUMMARY: By decision served August 23, 1994 (59 FR 43529, August 24, 1994), the Commission sought public comment by September 23, 1994, on a proposal to exempt partially from regulation the rail transportation of certain non-ferrous recyclables. The due date for comments was subsequently extended to October 24, 1994 (59 FR 47292, September 15, 1994). The Association of American Railroads and the Institute of Scrap Recycling Industries, Inc., require additional time to prepare and coordinate the witness statements and the joint comments and request an extension of the due date until November 7, 1994. The request is reasonable; therefore, the extension will be granted.

DATES: Comments must be received by November 7, 1994.

ADDRESSES: Send an original and 10 copies of the comments referring to Ex Parte No. 346 (Sub-No. 36) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721)].

Decided: October 20, 1994.

By the Commission, Vernon A. Williams, Acting Secretary.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–26512 Filed 10–25–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition to List the Say's Spiketail Dragonfly as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to list the Say's spiketail dragonfly (*Cordulegaster sayi*) under the Endangered Species Act (Act) of 1973, as amended. The Service finds that the petition presents substantial information indicating that listing this species may be warranted.

DATES: The finding announced in this document was made on October 17, 1994. To be considered in the 12-month finding for this petition, information and comments should be submitted to the Service by December 27, 1994.

ADDRESSES: Comments and information concerning this petition should be sent to U.S. Fish and Wildlife Service, 6620 Southpoint Drive South, Suite 310, Jacksonville, Florida 32216. The petition, finding, and supporting data are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Michael M. Bentzien, Acting Field Supervisor, at the above address; telephone (904) 232–2580.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Act, as amended, requires that the Service make a finding on whether a petition to list, delist or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. This finding is to be based on all information available to the Service at the time the finding is made. To the maximum extent practicable, the finding shall be made within 90 days following receipt of the petition and promptly published in the **Federal Register**. The Service must also commence a timely status review of the petitioned species if its accompanying information results in a positive finding. Following a positive 90-day finding, Section 4(b)(3)(B) of the Act requires the Service to make a 12-month finding as to whether the petitioned action is:

(1) Not warranted,

(2) Warranted; or

(3) Warranted but precluded by other higher priority listing proposals.

On February 15, 1994, the Service received a petition from Ms. Nancy Fraser Williams on behalf of the Rock Creek Owners' Association, Gainesville, Florida. The petition requests that Says' spiketail dragonfly, (*Cordulegaster sayi*), be listed as an endangered species. It states that a portion of a forested ravine and its riparian corridor owned by the Rock Creek residential housing subdivision is essentially the species' only known breeding grounds. The petitioners contend that a proposed municipal storm water retention project within the corridor's floodplain, described as the Possum Branch of Hogtown Creek, would gravely endanger the existing breeding sites of this extremely rare dragonfly and virtually wipe out the species.

Westfall (unpublished) provides collection information for Say's spiketail from seven localities in northern Florida and one specific site from southeastern Georgia. Five of these sites are located on public land, with occurrence based on fewer than two dozen specimens. Rock Creek, named in the petition, is the best studied and most productive of the known collection sites. Alabama may be added to the range if identification of an adult female collected in 1994 from Conecuh National Forest is verified (Mr. Bill Mauffray, International Odonate Research Institute, pers. comm., 1994).

Say's spiketail was included as a candidate for listing in the Service's invertebrate notice of review for animals published in the **Federal Register** on May 22, 1984 (49 FR 21664) and is comprehensive animal notices of review published January 6, 1989 (54 FR 554) and November 21, 1991 (56 FR 58804). The dragonfly was included in the first notice as a category 1 candidate for listing, but as a category 2 candidate in subsequent notices. A category 1 taxon is one for which the Service has available enough substantial information on biological vulnerability and threat(s) to support a proposal to list it as endangered or threatened. A category 2 taxon is one for which information in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support a proposed rule.

The information presented in the petition supports the Service's previous decision to consider this species as a category 2 listing candidate as defined above. At the time the petition was received, the Service was aware of and investigating the proposed floodwater relief project and its potential impact on Say's spiketail. The hydrologic model for the project (Westfall and Mauffray 1994) predicted the proposed flood control structure would increase depth of inundation for 10-year and 25-year storm events by approximately 2 and 3 feet, respectively. All but one of nine seepage transects included in the project's biological assessment would be completely inundated during any 10-year event. The seep heads and a few feet of their runs in four of the nine sampled seeps would not be totally inundated by a 10-year flood under the existing pre-project conditions.

One such 10-year event did occur in March 1993. The only larvae collected after this flood were found at three completely inundated seeps (Westfall and Mauffray, 1994). Less than 10 percent of the previous seasons' adult total was observed during a 3-week period in 1993. During the 1994 flight season, however, 12 adults were observed in a single day at Rock Creek, indicating recovery from any adverse effects from flooding. It appears that larvae may not be displayed by significant flooding and are able to survive these episodes at their original locations.

A recent review of category 2 insects in the southeast region (Schweitzer 1989) recommended a very high status survey priority for Say's spiketail. The Service concurs with this recommendation and plans to fund a survey within the near future to better determine current distribution and status. However, the service does not anticipate this survey will be completed in time for the 12-month finding on this petition.

Although a status review of Say's spiketail dragonfly is currently in progress based upon its inclusion as a category 2 species in the Service's comprehensive notice of review for animal candidates, the Service hereby announces its formal review of the species' status pursuant to this 90-day petition finding. Public comments

regarding population trends, biological vulnerability and threats to this species should be sent to the office specified in the **ADDRESSES** section.

References Cited

Schweitzer, D.F. 1989. A review of category 2 insects in the U.S. Fish and Wildlife Service's Regions 3, 4, and 5. Report to the U.S. Fish and Wildlife Service, Newton Corner, MA. Pg. 24–25.

Westfall, M.J. Jr., and F.C. Johnson. Unpublished. Notes on *Cordulegaster sayi* Selys, 1854, with a description of the larva, redescription of the female, and notes on related species.

Westfall, M.J. Jr., and W. Mauffray. 1994. Report of the dragonfly, *Cordulegaster sayi* (Selys), a C2 candidate for endangered species status, in the Possum Branch of the Hogtown drainage system, and the potential devastation of the largest known breeding area by a proposed city of Gainesville flood control project. International Odonate Research Institute. 10 pp.

Author

This document was prepared by Mr. John F. Milio (See **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: October 17, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–26527 Filed 10–25–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 59, No. 206
Wednesday, October 26, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

October 21, 1994.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title the information collection; (3) Form number (s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision

- Farmers Home Administration

7 CFR 1915–R, Rural Development Loan Fund Servicing
FmHA 1951–4
On occasion; Quarterly; Semi-annually; Annually
State and local governments; Businesses or other for-profit; Nonprofit institutions; Small businesses or organizations; 2,700 responses; 20,033 hours
Jack Holston, (202) 720–9736

- Farmers Home Administration

7 CFR 1942–C, Fire and Rescue Loans
FmHA 1942–52, 53, 54
On occasion; Quarterly; Annually
State or local governments; Non-profit institutions; 3,090 responses; 6,695 hours
Jack Holston (202) 720–9736

- Farmers Home Administration

7 CFR 1951–C, Offsets of Federal Payments to FmHA Borrowers
On occasion
Indidivduals or households; Farms; Businesses or other for-profit;
Small businesses or organizations; 650 responses; 535 hours
Jack Holston (202) 720–9736

Extension

- Farmers Home Administration

7 CFR 1951–N, Servicing Cases Where Unauthorized Loan or Other Financed Assistance Was Received—Multiple Family Housing
On occasion
Individuals or households; State or local governments; Farms;
Busineses or other for-profit; Non-profit institutions; Small businesses or organizations; 700 responses; 800 hours
Jack Holston, (202) 720–9736

- Rural Development Administration

7 CFR 4284–E, Section 306C WWD Loans and Grants
On occasion
State or local governments; Non-profit institutions; Small businesses or organizations; 60 responses; 1,050 hours
Jack Holston, (202) 720–9736

- Farmers Home Administration

Section 502 Rural Housing Demonstration Program
On occasion
State or local governments; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 15 responses; 1,200 hours
Jack Holston, (202) 720–9736

Reinstatement

- Agricultural Stabilization and Conservation Service

7 CFR Part 1427, CCC Cotton Loan Program Regulations CCC–877, 879, 881, 881–1, 883, 880, 605, 605–1, 605–2, Cotton A5, Cotton A, Cotton A1, Cotton A2, CCC–809, CCC–810, CCC–912
On occasion; Annually
Individuals or households; Farms; Businesses or other for-profit; 716,500 responses 162–875 hours
Philip Sharp (202) 720–7988

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 94–26531 Filed 10–25–94; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the U.S. Plant Variety Protection Application Serial No. 94–00–280 "Grazer Rye Grass," filed August 1, 1994, is available for licensing and that the United States Department of Agriculture, Agricultural Research Service, intends to grant an exclusive license to the University of Georgia Research Foundation (UGRF) of Athens, Georgia.

DATES: Comments must be received within 90 calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 416, Building 005, BARC-West, Baltimore Boulevard, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: Andrew Watkins of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–6786.

SUPPLEMENTARY INFORMATION: The Federal Government's plant variety protection rights to this variety are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention, for UGRF has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 USC 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the

requirements of 35 USC 209 and 37 CFR 404.7.

R.M. Parry,

Acting Assistant Administrator.

[FR Doc. 94-26534 Filed 10-25-94; 8:45 am]

BILLING CODE 3410-03-M

Animal and Plant Health Inspection Service

[Docket No. 94-111-1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared two environmental assessments and findings of no significant impact for the shipment of unlicensed veterinary biological products for field testing. Risk analyses, which form the bases for the environmental assessments, have led us to conclude that shipment of the unlicensed veterinary biological products for field testing will not have a significant impact on the quality of the human environment. Based on our findings of no significant impact, we have determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact may be obtained by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.** Please refer to the docket number of this notice when requesting copies. Copies of the environmental assessments and findings of no significant impact (as well as the risk analyses with confidential business information removed) are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Jeanette Greenberg, Veterinary Biologics, BBEP, APHIS, USDA, room 571, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; telephone (301) 436-5390; fax (301) 436-8669.

SUPPLEMENTARY INFORMATION: A veterinary biological product regulated under the Virus-Serum Toxin Act (21 U.S.C. 151 *et seq.*) must be shown to be pure, safe, potent, and efficacious before a veterinary biological product license may be issued. A field test is generally necessary to satisfy prelicensing requirements for veterinary biological products. In order to ship an unlicensed product for the purpose of conducting a proposed field test, a person must receive authorization from the Animal and Plant Health Inspection Service (APHIS).

In determining whether to authorize shipment for field testing of the unlicensed veterinary biological products referenced in this notice, APHIS conducted risk analyses to assess the products' potential effects on the safety of animals, public health, and the environment. Based on those risk analyses, APHIS has prepared environmental assessments. APHIS has concluded that shipment of the unlicensed veterinary biological products for field testing will not significantly affect the quality of the human environment. Based on these findings of no significant impact, we have determined that there is no need to prepare environmental impact statements.

Environmental assessments and findings of no significant impact have been prepared for the shipment of the following unlicensed veterinary biological products for field testing:

Requester(s)	Product	Field test location(s)
Tufts University School of Veterinary Medicine; Rhone Merieux, Inc.; and the Centers for Disease Control and Prevention.	A live, genetically engineered, vaccinia-vectored rabies vaccine that expresses the rabies virus surface glycoprotein; the vaccine is enclosed in raccoon baits.	Area astride the Cape Cod Canal, Barnstable County, MA (same 61-square-mile area as for the ongoing field test plus additional 20 square miles on the northern border).
Rhone Merieux, Inc., and the State of New Jersey.	A live, genetically engineered, vaccinia-vectored rabies vaccine that expresses the rabies virus surface glycoprotein; the vaccine is enclosed in raccoon baits.	The northern part of Cape May Peninsula, NJ (same area as for the ongoing field test).

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500-1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 20th day of October, 1994.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-26532 Filed 10-25-94; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of State Coastal Management Programs

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the New Jersey Coastal Management Program, and the Padilla Bay (Washington) and Waquoit Bay (Massachusetts) National Estuarine Research Reserves.

These evaluations will be conducted pursuant to section 312 and section 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of Coastal Management Programs (CMPs) and National Estuarine Research Reserves (NERRs). Evaluation of CMPs requires findings concerning the extent to which a State has met the national coastal management objectives, adhered to its Coastal Management Program approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. Evaluation of NERRs requires findings concerning the operation and management of the reserve including education and interpretive activities, the consistency of research activities with the approved research guidelines, and

the existence of a basis for the continued support of the findings for designation. The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The New Jersey Coastal Management Program evaluation site visit will be from December 5 to December 9, 1994. A public meeting will be held on Monday, December 6, 1994 at 7:00 p.m., at the New Jersey DEP Headquarters Public Hearing Room, 1510 Hooper Avenue, Room 140, Trenton, New Jersey 08625.

The Waquoit Bay National Estuarine Research Reserve site visit will be from December 5 to December 9, 1994. A public meeting will be held on Wednesday, December 7, 1994 at 7:30 p.m., at the Reserve Headquarters (the former Sergeant Estate), 149 Waquoit Highway, Waquoit, Massachusetts 02536.

The Padilla Bay National Estuarine Research Reserve site visit will be from December 5, to December 9, 1994. A public meeting will be held on Wednesday, December 7, 1994 at 7:00 p.m., at the Breazeale-Padilla Interpretive Center, 1043 Bayview-Edison Road, Mt. Vernon, Washington 98273.

Each State will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the States' most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the site visit. Please direct written comments to Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Vickie A. Allin, Chief, Policy Coordination Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3090.

Federal Domestic Assistance Catalog 11.419
Coastal Zone Management Program Administration

Dated: October 19, 1994.

Scott Page,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–26365 Filed 10–25–94; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 101794D]

Endangered Species; Permits

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

ACTION: Notice of receipt of application for a scientific research permit (P430A).

Notice is hereby given that Thomas F. Savoy and Deborah J. Shake of the Connecticut Department of Environmental Protection have applied in due form to take listed shortnose sturgeon (*Acipenser brevirostrum*) as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

The applicant requests a 5-year permit to take 800 shortnose sturgeon from the Connecticut River to be measured, weighed, sexed, examined, and tagged. The applicant wishes to determine current numbers, locations, and movement patterns of shortnose sturgeon within the Connecticut River.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, NMFS, 1335 East-West Hwy., Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1315 East-West Hwy., Room 13229, Silver Spring, MD 20910–3226 (301–713–2322); and

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508–281–9250).

Dated: October 18, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–26473 Filed 10–25–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 101794E]

Endangered Species; Permits

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

ACTION: Notice of Receipt of an Application for a Modification to Scientific Research Permit 818 (P211C).

Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has applied in due form for a modification to Permit 818 (P211C) requesting an increase in the take of listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

ODFW requests authorization for an increase in the take of juvenile, endangered, Snake River spring/summer chinook salmon (Oncorhynchus tshawytscha) because of their plans to expand their research sampling at Catherine Creek as a part of their life history, smolt migration, and habitat studies in the upper Grande Ronde and Imnaha River basins. In addition, an unexpectedly high production of juveniles in 1994, partially attributed to recent progeny production from listed Rapid River Hatchery adults passed above the hatchery to spawn, is resulting in greater capture numbers and associated indirect mortality. The juvenile salmon's larger than expected escapement in the spring of 1995 will allow ODFW to increase the sample size for their scientific research. A larger number of juveniles would be captured, handled, and receive passive integrated transponder tags for the modification and the increased take would be authorized for 1994 and 1995 only.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, NMFS, 1335 East-West Hwy., Silver Spring, MD 20910–3226, within 30 days of the publication of this notice. Those individuals requesting a hearing should set out the specific reasons why a hearing on this particular application

would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, NMFS, 1315 East-West Hwy., Room 13229, Silver Spring, MD 20910–3226 (301–713–2322); and

Environmental and Technical Services Division, NMFS, 525 North East Oregon St., Suite 500, Portland, OR 97232 (503-230-5400).

Dated: October 18, 1994.

William W. Fox, Jr., Ph.D.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–26474 Filed 10–25–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Poland

October 21, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 28, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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 Category 435 is being increased for carryover.

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 61680, 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

October 21, 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 16, 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 Poland and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on October 28, 1994, you are directed to amend the directive dated November 16, 1993 to increase the limit for Category 435 to 14,267 dozen [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Poland.

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. 94–26557 Filed 10–25–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Concurrency and Risk Assessment on F–22 Program

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Concurrency and Risk Assessment on F–22 Program will meet in closed session on November 2–4, 1994 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on research, scientific, technical, and manufacturing matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will access the concurrency and risk assessment of.the F–22 program.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. § 552b(c)(4) (1988), and that accordingly this meeting will be closed to the public.

Dated: October 21, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer Department of Defense.

[FR Doc. 94–26505 Filed 10–25–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Supplemental Record of Decision (ROD) for the Disposal and Reuse of Norton Air Force Base (AFB), CA

On September 14, 1994, the Air Force signed a Supplemental Record of Decision (ROD) for the Disposal and Reuse of Norton AFB. The decisions included in this Supplemental ROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) filed with the Environmental Protection Agency on June 4, 1993.

Norton AFB closed on March 31, 1994, pursaunt to the Defense Authorization Amendments and Base Closure and Realignment Act (BCRA) (Public Law No. 100–526) and recommendations of the Defense Secretary's Commission on Base Realignment and Closure. This Supplemental ROD modifies certain previous decisions made in the Partial ROD executed on December 15, 1993, first supplemental January 14, 1994, and subsequently supplemental March 30, 1994. The previous decisions making Parcels C, F, H, H–1, I–1, I–2, I–3, K–1, K–2, K–4, and the Easements and Utilities, available for disposal by neogtiated or public sale is modified to provide for the disposal of such property by Economic Development Conveyance under the provisions of Public Law No. 103–160, the Pryor Amendments. In all other respects, previous decisions regarding such parcels are unchanged.

The implementation of the closure and reuse action and associated

[1] The limit has not been adjusted to account for any imports exported after December 31, 1993.

mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local regulations and statutes, and all practicable and reasonable efforts have been incorporated to minimize harm to the local public and environment.

Any questions regarding this matter should be directed to Mr. John E.B. Smith or Ms. De Carlo Ciccel at (703) 696–5534. Correspondence should be sent to: AFBCA/SP, 1700 North Moore Street, Suite 2300, Arlington, VA 22209–2809.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–26462 Filed 10–25–94; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 7–10 November 1994.

Time of Meeting: 0800–1700.

Place: West Point, NY; Ft. Lee, VA and Ft. Monroe, VA, respectively.

Agenda: The Army Science Board's Ad Hoc Subgroup on "Science and Engineering Requirements for Military Officers and Civilian Personnel in the High Tech Army of Today and Tomorrow" will meet at West Point, NY, Ft. Lee, VA, and Ft. Monroe, VA to receive briefings from the US Military Academy, Special Operations Command, TRADOC Analysis Command, ROTC Cadet Command, and Officer Candidate School and discuss their impact on the study subject. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Herbert J. Gallagher,

COL, GS, Executive Secretary.

[FR Doc. 94–26555 Filed 10–21–94; 2:31 pm]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 9–10 November 1994.

Time of Meeting: 1300–1700 and 0800–1500 respectively.

Place: Ft. Gordon, Georgia.

Agenda: The Army Science Board's Ad Hoc Subgroup on "Use of Technologies in Education and Training" will review how the U.S. Army Signal Center and Fort Gordon have used technology in training and education. Lessons learned will be covered. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–26577 Filed 10–25–94; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF ENERGY

Notice of Intent To Grant Partially Exclusive Patent License to Sugar Land Products Co.

AGENCY: Department of Energy, Office of the General Counsel.

ACTION: Notice of Intent to Grant Partially Exclusive Patent License.

SUMMARY: Notice is hereby given of an intent to grant to Sugar Land Products Co., of Houston, Texas, a partially exclusive license to practice the invention described in U.S. Patent No. 4,442,018, entitled "Stabilized Aqueous Foam Systems and Concentrate and Method for Making them." The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be partially exclusive, i.e., limited to certain fields of use in the areas of transportation, construction, and agriculture. The partically exclusive license will be subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Technology Transfer and Intellectual Property, Department of Energy, Washington, D.C. 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously in the specified fields of use.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than December 27, 1994.

ADDRESSES: Office of Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Technology Transfer and Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F–067, 1000 Indepedence Avenue, 20585; Telephone (202) 586–4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partically exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations (37 CFR 404) require that the necessary determinations be made after public nortice and opportunity for filing written objections.

Sugar Land Products Co., of Houston, Texas, has applied for a partially exclusive license to practice the invention embodied in U.S. Patent No. 4,442,018, for fields of use of the transportatin industry, the construction industry and the agriculture industry, and has a plan for commercialization of the invention for those fields of use.

The proposed license will be partically exclusive as defined above, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, D.C., on October 20, 1994.

Robert R. Nordhaus,

General Counsel.

[FR Doc. 94–26536 Filed 10–25–94; 8:45 am]

BILLING CODE 6450–01–P

Bonneville Power Administration

Newberry Geothermal Pilot Project; Record of Decision

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of Record of Decision.

SUMMARY: The Bonneville Power Administration has issued a Record of Decision (ROD) to purchase electrical power from the proposed Newberry Geothermal Pilot Project (Newberry Project), to provide billing credits [1] to Eugene Water & Electric Board (EWEB), and to provide wheeling services to EWEB for the transmission of this power to their system. BPA has decided to acquire 20 average megawatts (aMW) of electrical power from a privately-owned geothermal power plant on the west flank of Newberry Volcano in Deschutes County, Oregon. The Newberry Project will generate 30 aMW and will be developed, owned, and operated by CE Newberry, Inc. of Portland, Oregon. In addition, BPA has decided to grant billing credits to EWEB for 10 aMW of electrical power and to provide wheeling services to EWEB for the transmission of this power to their system. BPA expects the Newberry Project to be in commercial operation by November 1997.

BPA has statutory responsibilities to supply electrical power to its utility, industrial and other customers in the Pacific Northwest. The Newberry Project will be used to meet the electrical power supply obligations of these customers. The Newberry Project will also demonstrate the availability of geothermal power to meet power supply needs in the Pacific Northwest and is expected to be the first commercial geothermal plant in the region

ADDRESSES: Copies of the Newberry Project FEIS, Executive Summary, Appendices, and Comment Report, (DOE EIS–0207, June 1994), and the USFS/BLM ROD are available from the Fort Rock Ranger District, 1230 NE Third Street, Suite A262, Bend, Oregon 97701; telephone (503) 383–4703. Copies of this ROD, the MAP, and the Resource Programs EIS are available from BPA's Public Involvement Office, PO Box 12999, Portland, Oregon 97212 or by calling BPA's nationwide toll-free document request line, 1–800–622–4520.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine S. Pierce, NEPA Compliance Officer for the Office of Energy Resources—RAE, Bonneville Power Administration, PO Box 3621, Portland, Oregon 97208, telephone (503) 230–3962.

Public availability: This ROD will be distributed to all persons and agencies known to be interested in or affected by the proposed action or alternative.

SUPPLEMENTARY INFORMATION:

Purpose and Background

The Bonneville Power Administration (BPA) is a self-financing Federal power marketing agency with statutory responsibility to supply electricity to utility, industrial, and other customers in the Pacific Northwest. The Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act) requires BPA to meet its customers' electric power requirements. 16 U.S.C. 839d(a)(2). As part of its mission, BPA is responsible for acquiring conservation and additional generation resources sufficient to meet the future needs of its utility customers. Section 6(d) of the Northwest Power Act authorizes BPA to acquire experimental, developmental, demonstration, or pilot projects of a type with potential for providing cost-effective service to the region. 16 U.S.C. 839d(d).

The Pacific Northwest Electric Power and Conservation Planning Council (Council), in its 1986 Power Plan, noted that "* * * approximately 4,400 megawatts of cost-effective electrical energy could be obtained through the development of regional geothermal resource areas." However, because the resource had not been confirmed, it was not included in the portfolio of the 1986 Plan. The Power Plan called for methods of confirming this resource so that it would be available when needed. Newberry Volcano, Oregon, was identified as one of the most promising sites.

The Newberry Project was selected under the BPA Geothermal Pilot Project Program. The goal of the Program is to initiate development of the Pacific Northwest's large, but essentially untapped, geothermal resources, and to confirm the availability of this resource to meet the energy needs of the region. The primary underlying objective of this Program is to assure the supply of alternative sources of electrical power to help meet growing regional power demands and needs.

BPA's purposes for this action are to:

(1) Meet contractual obligations to supply requested, cost-effective power to BPA customers, having considered potential environmental impacts and mitigation measures in its decision;

(2) Assure consistency with BPA's statutory responsibilities, including the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act), while taking into consideration the Pacific Northwest Electric Power and Conservation Planning Council's (Council) Conservation and Electric Power Plan (Power Plan) and Fish and Wildlife Program; and

(3) Test the availability of geothermal energy to provide a reliable, economical, and environmentally acceptable alternative energy source to help meet the region's power needs.

To make these decisions, BPA cooperated on and adopted the Newberry Geothermal Pilot Project Final Environmental Impact Statement (FEIS) (DOE/EIS—0207, June 1994). The FEIS was tiered to the Resource Programs Environmental Impact Statement (RPEIS–DOE/EIS–0162), which considered the environmental tradeoffs among the resource types available to meet BPA's needs.

The FEIS evaluated the exploration, development, utilization, and decommissioning phases of the Newberry Project as well as related transmission, wheeling, and billing credit components. Alternative A is the CEC/EWEB proposal, and Alternative B is the three Federal agencies' modification of the proposal. In addition to identifying and analyzing the environmental impacts of these two alternatives for the Newberry Project, the FEIS also evaluated the No Action alternative. By contract, the Newberry Project is required to meet all Federal, state, and local requirements. The FEIS fulfills the requirements of the National Environmental Policy Act (NEPA) and meets the needs of the U.S. Forest Service (USFS) and the Bureau of Land Management (BLM), who have documented their decisions in a separate, joint ROD. BPA has also determined that this action is consistent with the Council's 1991 Power Plan.

Based on the information analyzed and disclosed in the FEIS and associated documents, including the USFS/BLM ROD, BPA has determined that the preferred alternative is Alternative B with the conditions and mitigation and monitoring elements described in the USFS/BLM ROD. A Mitigation Action Plan (MAP) developed from the FEIS analysis is available. It requires implementation of the specific mitigation requirements

[1] One method that BPA uses to acquire energy resources is Billing Credits. With this innovative mechanism, authorized by the Northwest Power Act, BPA provides a credit to an eligible customer for load reduction actions and energy resource developments. A complete description of the Billing Credits Policy is presented in an Environmental Assessment (DOE/EA–0180, June 1982), which has been made available to the public.

described in the FEIS and USFS/BLM ROD.

BPA develops and publishes a biennial integrated least cost plan, the Resource Program. In its Draft 1990 Resource Program, BPA said it would be willing to participate in up to three geothermal pilot projects. The purpose of these projects would be to initiate development, confirm resources, and determine the ability to develop three of the largest, most promising sites in the region. BPA agreed to purchase—in joint ventures with regional utilities—up to 10 average megawatts (aMW) from each of three projects. After receiving comments from customers supporting the projects, and after the Council approved this approach in its 1991 Power Plan, BPA published a solicitation that resulted in seven proposals.

The objectives of BPA's solicitation were to:

(1) Meet contractual obligations to supply requested, cost-effective power to BPA customers, having considered potential environmental impacts and mitigation measures in its decision;

(2) Assure consistency with BPA's statutory responsibilities, including the Northwest Power Act, while taking into consideration the Council's Power Plan and Fish and Wildlife Program; and

(3) Test the availability of geothermal energy to provide a reliable, economical, and environmentally acceptable alternative energy source to help meet the region's power needs. Three projects were selected for contract negotiations on December 17, 1991. One of the selected projects was a proposal by the California Energy Company (CEC) and the Eugene Water & Electric Board (EWEB) to develop a 30-aMW geothermal power plant and supporting facilities at Newberry Volcano, Oregon.

This Administrative Record of Decision sets out the reasons for BPA's decision to execute a Power Purchase Agreement with CE Newberry, Inc. (a subsidiary of CEC), through which BPA will purchase electrical output from the proposed Newberry Project; to execute a Billing Credits Generation Agreement with EWEB for a portion of the output from the Newberry Project; and to provide wheeling services to EWEB for the transmission of this electricity to their system.

Legal Authority

BPA is a self-financing power marketing agency with the United States Department of Energy. BPA was established by the Bonneville Project Act of 1937, 16 U.S.C. 832 *et seq.*, to market wholesale power from the Bonneville Dam and to construct power lines for the transmission of this power to load centers in the Northwest. As other Federal dams and transmission lines were built, the combined power and transmission facilities have been integrated into a single power supply system. Today, BPA markets power from 30 Federal hydroelectric projects and two nuclear plants. BPA's transmission systems contain 14,797 circuit miles and provide about half of the region's power and three-fourths of its transmission capacity.

BPA sells wholesale electric power to 126 utilities, 13 direct service industrial customers (DSIs), and several government agencies. BPA's primary marketing area is the Pacific Northwest region, comprised of the states of Washington, Oregon, Idaho, that portion of Montana lying west of the continental divide, and small portions of California, Utah, Wyoming, and Nevada. 16 U.S.C. 837 and 839a(14). BPA also has congressional authorization to sell or exchange wholesale power outside the Pacific Northwest to the extent that such power is surplus to the needs of the region. *See* 16 U.S.C. 837a.

The Northwest Power Act directs BPA to serve the net power requirements of any Pacific Northwest electric utility requesting service, and to serve existing DSIs in the Pacific Northwest. 16 U.S.C. 839c(b)(1) and (d). Although BPA cannot own or construct electric generating facilities, the Northwest Power Act permits BPA to acquire rights to the output or capability of electric power resources. *See* 16 U.S.C. 839a(1) and 16 U.S.C. 839d. BPA may acquire a major resource (a resource having a planned capability greater than 50 aMW and acquired for more than 5 years, 16 U.S.C. 839a(12)) if it is consistent with the Council's Power Plan. 16 U.S.C. 839d(c)(1)(D). If the resource is not major, the Northwest Power Act instructs that the resource must be consistent with the priorities required of the Plan. 16 U.S.C. 839d(b)(1) and (2).

The Northwest Power Act authorizes BPA to acquire experimental, developmental, demonstration, or pilot projects of a type with potential for providing cost-effective service to the region. 16 U.S.C. 839d(d).

BPA is also directed by the Northwest Power Act to grant billing credits to a customer, if requested. 16 U.S.C. 839d(h). A billing credit agreement is a contract between BPA and a customer, under which BPA gives the customer a credit on its power bill for the difference between BPA's wholesale power rate and the cost of power from a new resource. The energy and capacity on which the credit is based is the net amount the resource reduces the customer's load on BPA.

Finally, BPA must satisfy all requirements of the National Environmental Policy Act (NEPA). 42 U.S.C. 4321 *et seq.*

Description of Need

BPA load forecasts for the 1990 Resource Program showed that if the medium load growth rate occurs, BPA must acquire 500 aMW by the year 2000 to meet customers' needs. Pacific Northwest Loads and Resources Study, 1990. If utility and DSI loads grow at the medium-high rate, BPA will need to acquire an additional 1,500 aMW by the year 2000. The analysis in BPA's Resource Programs Environmental Impact Statement (RPEIS) showed that geothermal is a reliable source of electric power that can help meet energy needs in the Pacific Northwest. Final Environmental Impact Statement: Resource Programs, 1993.

1990 Resource Program

BPA's 1990 Resource Program, issued July 1990, defined the actions BPA would take to develop new resources to meet the power requirements of its customers. The 1990 Resource Program focused on Fiscal Years 1992 and 1993, and included near-term actions to prepare for these years. One of these actions was an offer to participate in geothermal pilot projects aimed at confirming resources and determining developability at three of the largest, most promising sites in the Pacific Northwest.

The 1990 Resource Program was developed through an extensive public process that included a technical review panel. Many of the comments received supported BPA's participation in geothermal pilot projects.

Council Plan

The Council's 1991 Power Plan noted that the geothermal confirmation program in BPA's 1990 Resource Program was consistent with the recommendations of the Council's Research, Development, and Demonstration Advisory Committee. The Council's "Recommended Activities for Implementing the 1991 Power Plan" included geothermal demonstration projects initiated by BPA and the region's utilities. The Council acknowledged that energy costs of a demonstration plant would likely be higher than the marginal cost of other new resources, but the premium would decline over time.

Pilot Project Solicitation

Request for Proposals

BPA published a Request for Proposals (RFP) in Commerce Business Daily on July 5, 1991. The RFP stated that BPA would be willing to purchase up to 10 aMW of electric power from each of three projects located in or near the BPA service area. Other conditions specified in the RFP were:

- BPA would not finance projects but only purchase output
- Part of the output from each project had to be purchased by another utility
- Overall project size could be greater than 10 aMW
- The proposed site had to be capable of supporting at least 100 MW
- The proposed site had to be suitable for operation as a Federal geothermal unit
- The resource area had to be undeveloped for electric power production
- The power contract had to include an option for BPA to purchase subsequent output from the site
- Projects that would allow BPA to be a cooperating agency in a BLM environmental process were strongly preferred

These conditions were intended in part to limit the number of proposals likely to be submitted. BPA could devote only a small amount of staff time to evaluating proposals, and therefore tried to be quite specific about what it wanted.

Project sponsors were encouraged to submit project outlines or summaries ahead of time before developing detailed proposals. This was intended to prevent developers from spending money developing proposals that would not meet program goals. Several developers met with program staff or discussed the RFP on an informal basis before submitting proposals. Letters of intent were due September 3, 1991, and proposals were due October 1, 1991.

Further information on BPA's Geothermal Pilot Project Program was published prior to the solicitation in an article in a geothermal industry trade journal, the Geothermal Resources Council BULLETIN (December 1990). The article specified that the projects had to be in three different resource areas, preferably involving different resource developers. This article was provided to developers and others who inquired about the RFP or the Geothermal Pilot Project Program.

Proposals Received

Seven proposals were received. Two of them clearly did not meet program objectives, and a third was withdrawn by the sponsor during the evaluation period.

One of the projects not meeting program objectives was located in Canada. Although projects located outside the United States were not excluded in the RFP, a foreign project would not have met the program goal of testing ability to overcome (U.S.) institutional barriers to development. Furthermore, a Canadian project would not be subject to a Bureau of Land Management (BLM) environmental process.

A project was proposed at Raft River, Idaho, employing a power cycle (the "Kalina" cycle) considered to be precommercial. Testing new power plant technologies was not a goal of the program, and previously developed sites were specifically excluded by the RFP. In the early 1980s, Raft River was the site of a demonstration plant developed by the U.S. Department of Energy. Sponsors of the Canadian and Raft River projects were notified on October 30, 1991, that their proposals had been eliminated from consideration.

Four proposals received detailed evaluation. They were:

- A proposal by the California Energy Company (CEC) and the Eugene Water & Electric Board (EWEB) for a 30–MW project at Newberry Volcano, Oregon.
- A proposal by Vulcan Power Company (Vulcan) for a 30–MW project at Newberry Volcano, Oregon.
- A proposal by Trans-Pacific Geothermal Corporation for a 30–MW project at Vale, Oregon.
- A proposal by Unocal Corporation for a 14–MW project at Glass Mountain, California.

Evaluation Process

Proposals were evaluated by a project team composed of BPA staff. Two sets of criteria were used. The first set, considered "threshold" criteria, were the criteria stated in the RFP. Proposals were eliminated from further consideration if they failed to meet any of these criteria except the utility cost sharing requirement. Threshold criteria included:

- *Resource area considered capable of producing at least 100 MW.* Since BPA required the sites to be undeveloped, there was no way to know reservoir size with much certainty for the proposed sites. If better data were not available, a resource estimate by the U.S. Geological Survey or some other authoritative source was considered sufficient basis for meeting this criterion.
- *Suitable for operation as a unit.* For the purpose of conserving the resource, Federal geothermal leasing regulations allow geothermal leaseholders to unite with each other in the development or operation of any geothermal resource area. The leases affected by such a cooperative arrangement are called a unit, and one of the leaseholders is designated the unit operator. 43 CFR 3243. BPA wanted to encourage coordinated development and avoid resource depletion problems experienced elsewhere, and therefore included suitability for unitization as a selection criteria. The lease block had to be unitized or suitable for unit operation with the developer as operator. If the area was not already unitized, the developer had to control a large and reasonably contiguous lease block. Bureau of Land Management staff were consulted regarding the suitability of proposed sites for unitization. It should be noted that unitization in itself was not the objective of this requirement. The objective was to encourage coordinated development and conservation of the resource.
- *Resource area not previously developed for electric power production.* A program goal was to develop new resources. If a power project had already been developed at a site, the site did not meet this criterion.
- *Output contract proposed.* BPA was willing to purchase output only, not finance projects.
- *Amenable to BPA receiving an option on future power from the lease block.* Since the cost of power from the first project was expected to exceed the cost of other resources available to BPA, BPA required a right of first refusal on up to 100 MW of additional development at each site. Subsequent plants would benefit from established infrastructure and lower risks, and the cost of power from them would likely be more cost-effective.
- *Cost sharing by another utility.* Initiating development of Northwest resources would have regionwide benefit. A cooperative effort that included cost sharing seemed appropriate. It was recognized that developers might have difficulty enlisting another utility before BPA identified candidate projects, so failure to meet this criterion did not disqualify a proposal during the evaluation period. Developers were notified of this.
- *Project allows BPA to be a cooperating agency in a BLM environmental process.* Staffing constraints would not allow BPA to be the lead agency in the NEPA review. This criterion effectively limited projects to Federal or Tribal land.

The second set of criteria addressed the developers ability to complete the project successfully. These are standard

criteria used by BPA in previous and subsequent solicitations, and included:

• *Development team experience.* How qualified was the project team? Had they worked together on previous successful projects? A salaried staff currently involved in project development or in operating projects tended to be rated more highly than a listing of consultants that would be hired for a proposed project. A salaried staff was thought to indicate greater stability and commitment by the developer to maintaining a long term presence in the geothermal industry. There was also no guarantee that the listed consultants would ever work on a proposed project.

• *Ability to finance the project.* Proven ability to finance projects was desired. Was the developer experienced in obtaining construction and long term project financing? Was the financing plan realistic? Audited financial reports were requested from each developer, and Dun and Bradstreet financial information reports were obtained, if available.

• *Project design.* Had all important aspects of project design been considered?

• *Transmission availability.* Were transmission capacity or wheeling services available to deliver the energy to the BPA grid?

• *Site control.* Developers were asked to provide copies of lease documents or other evidence of site control.

• *Development schedule.* Was the development schedule realistic, well thought out, and logical? Did it include all important activities?

• *Environmental impacts/siting issues/permits and licenses.* To what extent had environmental and siting issues been identified? What progress had been made in obtaining permits and licenses? BPA staff consulted with land management agencies in the project areas, and requested additional information from developers, when necessary.

• *Cost of energy.* This was used more as a starting point for negotiations than as a selection criterion. BPA did not expect developers to commit to a price until the terms and conditions of the power contract were better known. Another reason for not selecting based on price was to avoid being forced to select weak projects with unrealistic power prices and to discourage "low-ball" bids.

The evaluation process included a preliminary evaluation of the proposals, followed by requests from the BPA project team for additional information and a final evaluation.

An issue of site control affecting the two proposed projects at Newberry Volcano was examined. The ownership or ownership share of three leases—OR 11987, OR 11992, and OR 45506—was a matter of dispute between CEC and Vulcan. Since both developers considered it likely that litigation would be necessary to resolve this dispute, and because BPA's decision to purchase only output was thought to place all risk of nonperformance on the developer, this was not a critical factor in the selection process.

The BPA team selected three projects for further consideration, and the Administrator was briefed and a final decision made on December 17, 1991. The proposers were notified of BPA's decision by registered letter between December 18 and December 20, 1991.

The December 18 letter to Vulcan Power Company, which was not selected, explained the reasons for BPA's decision. The CEC/EWEB project was stronger in many respects and met BPA requirements for utility cost sharing. Also, Vulcan lacked a history of successful project development (the one project it attempted was unsuccessful). As noted in the December 1990 Geothermal Resources Council BULLETIN article mentioned above, only one project would be chosen at each site.

Contract Negotiations

The three projects selected for contract discussions were Glass Mountain, Vale, and the CEC/EWEB Newberry Project. All three projects were considered capable of meeting the goals of the program. Total output from the three projects exceeded the 30 aMW BPA agreed to purchase in the solicitation. But because the terms of the power purchase contracts and the degree of participation by other utilities were not known at this time (only one of the projects had identified a utility partner), and in the interest of meeting program goals, BPA agreed to consider purchasing more than 30 aMW. The Glass Mountain and Vale Projects will, if appropriate, be the subject of separate Records of Decision, and will not be discussed further in this document.

Negotiations for the Newberry Project began in January 1992, and were completed in December 1992. The negotiations resulted in three proposed agreements:

• A Power Purchase Agreement between CEC and BPA;

• A Billing Credits Generation Agreement between EWEB and BPA;

• A Power Purchase Agreement between CEC and EWEB.

Under its Power Purchase Agreement with CEC, BPA would purchase approximately 20 average megawatts of output from the project and receive an option on an additional 67 megawatts, if available in the future. Under its Power Purchase Agreement with CEC, EWEB would purchase 10 average megawatts from the project and receive an option on 33 megawatts, if available. BPA would give EWEB billing credits for 10 average megawatts under a Billing Credits Generation Agreement. The term of the agreements is 50 years from the commercial operation date of the project.

The price of energy will not exceed BPA's Alternative Cost, as established in BPA's 1990 Billing Credit Solicitation. The Alternative Cost is the estimated cost which BPA would incur as a result of acquiring new resources, and is the upper limit on the amount of a billing credit other than conservation.

Memorandum of Understanding

A Memorandum of Understanding (MOU) between CE Newberry, Inc. (a subsidiary of the California Energy Company), EWEB, and BPA was executed on December 17, 1992. The MOU acknowledged that the parties had reached agreement on contract principles, and defined the roles of the parties during the environmental review required by NEPA. The MOU noted that BPA had not made a final decision to sign any power purchase or other agreements, and that such power purchase obligation would not arise, if at all, until the environmental impacts of the proposed Newberry Project had been analyzed in accordance with NEPA.

Environmental Considerations

National Environmental Policy Act Background

The National Environmental Policy Act (NEPA) is the basic national charter for protection of the environment. It establishes policy, sets goals, and provides means for carrying out its policy. NEPA requires Federal agencies to make environmental information available to public officials and citizens before decisions are made and before actions are taken. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. The NEPA process is intended to help public officials make decisions that are based on an understanding of environmental consequences. NEPA mandates that Federal agencies use all practical means to protect, restore, and enhance the quality of the human environment and

avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

Newberry Geothermal Pilot Project Environmental Impact Statement

On December 2, 1992, a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in accordance with NEPA was published by the Environmental Protection Agency (EPA) in the **Federal Register**. This EIS would analyze the environmental impacts of various alternatives related to the development of the proposed Newberry Geothermal Pilot Project (Newberry Project). The U.S. Forest Service (USFS) would be the Lead Agency in this process; the Bureau of Land Management (BLM) and BPA would be Cooperating Agencies.

BPA adopted the Newberry Geothermal Pilot Project Final Environmental Impact Statement (FEIS) (DOE/EIS–0207, June 1994). The FEIS was tiered to the Resource Programs Environmental Impact Statement (RPEIS–DOE/EIS–0162), which considered the environmental tradeoffs among the resource types available to meet BPA's need.

The FEIS evaluated the exploration, development, utilization, and decommissioning phases of the Newberry Project as well as related transmission, wheeling, and billing • credit components. Alternative A is the CEC/EWEB proposal, and Alternative B is the three Federal agencies' modification of the proposal. In addition to identifying and analyzing the environmental impacts of these two alternatives for the proposed Newberry Project, the FEIS also evaluated the No Action alternative. The Power Purchase and Billing Credits Agreements require that the Newberry Project meet all Federal, state, and local requirements. The FEIS fulfills the requirements of the National Environmental Policy Act (NEPA) and meets the needs of the USFS and the BLM, who have documented their decisions in a separate, joint Record of Decision (ROD). BPA has also determined that this action is consistent with the Council's 1991 Power Plan.

The following alternatives were considered in the EIS:

Alternative A

Alternative A is the proposal as submitted by CE Exploration (CEE, a subsidiary of the California Energy Company). It includes exploration, development, production, utilization, and decommissioning of the geothermal resources on CEE's Federal geothermal leases on the west flank of Newberry Volcano. Highlights of this alternative, which is described in more detail in the FEIS, include development of exploration/production well pads at 14 specific locations; construction and operation of one 33–MW (gross output) power plant at a specific site; construction of associated pipelines and access roads; construction and utilization of an H-frame, 115-kilovolt transmission line along the north side of Forest Road 9735 to deliver power from the plant to an existing transmission line; and mitigation and monitoring measures as proposed by CEE. These would be permanent facilities with a contract life of at least 50 years.

Alternative B

Alternative B is a modification of Alternative A developed by the three Federal agencies that allows for greater siting flexibility to minimize potential environmental impacts once the geothermal resource is defined through exploration. It is similar to Alternative A in plant design and size, size of the well field and pads, and design of the facilities except for the transmission line. It differs most in respect to the siting flexibility of well pads, power plant, pipelines, and access roads and the mitigation and monitoring measures to be included. It is described in detail in the FEIS and highlights include development of exploration/production well pads at 14 out of 20 possible locations; siting the individual well pads within a 40-acre or less siting area; construction and operation of one 33–MW power plant at one of three possible locations; construction of associated pipelines and access roads; construction and utilization of a single pole design 115-kilovolt transmission line to the south of Forest Road 9735; and additional mitigation and monitoring measures proposed by the agencies and public. These facilities would also be permanent, with a contract life of at least 50 years.

Alternative C

Alternative C is the No Action alternative. Under this alternative, BPA would not acquire the energy output from the proposed Newberry Project, thereby foregoing the opportunity to supplement BPA's energy supply and to demonstrate the availability of geothermal power to help meet the region's power needs. BPA would also not provide billing credits to EWEB, with the same results as above, and would not provide wheeling services to transmit the energy. CEE would not go forth with the project without the power purchase agreement, and EWEB would cease further involvement without billing credits. This alternative is environmentally preferable, as it would result in no impacts to the immediate environment.

Other Actions

Because the proposed action will not satisfy BPA's total need for electrical energy, implementing the proposed action will not foreclose consideration of other potential BPA resource actions. Resource types potentially available to meet future load growth were comparatively evaluated in the RPEIS and include:

- Conservation (commercial, residential, and industrial sectors);
- Renewables (hydropower, wind, biomass, solar, and other geothermal power);
- Cogeneration;
- Combustion turbines;
- Nuclear; and
- Coal.

Decision Factors and Issues

All of the project alternatives were evaluated against the purpose and need for the Newberry Project, and only Alternatives A and B would satisfy the need for electrical power. These alternatives would also help BPA meet its contractual obligations and are consistent with BPA's statutory responsibilities. Based on the information analyzed and disclosed in the FEIS and associated documents, including the USFS/BLM ROD, BPA has determined that the preferred alternative is Alternative B with the conditions and mitigation and monitoring elements described in the USFS/BLM ROD. The rationale for selecting Alternative B is summarized in the USFS/BLM ROD by major issues that were of most concern or apparent controversy. A Mitigation Action Plan (MAP) developed from the FEIS analysis is available. It requires implementation of the specific mitigation requirements described in the FEIS and USFS/BLM ROD.

Environmental Consultations, Review, and Permit Requirements

BPA reviewed the status of all permits and licenses required for the Newberry Project, consulted with CEE to satisfy area-wide, state, and local environmental plans and programs, and developed a Mitigation Action Plan MAP to assure that all environmental requirements are addressed and that all practicable means to avoid, minimize, or mitigate environmental impacts have been adopted. It implements the specific mitigation requirements described in the FEIS and USFS/BLM ROD. Development of the Newberry Project will be consistent with environmental policies established by NEPA and the Oregon Energy Facility Siting Council (EFSC), and will be consistent with the requirements of the Council's Power Plan.

Monitoring and Enforcement

The MAP (Attachment 2) for the Newberry Project requires implementation of mitigation measures necessary to reduce the environmental impacts identified in the FEIS. The USFS, BLM, and BPA all have responsibility for monitoring the

progress of the Newberry Project and ensuring that these measures are taken as appropriate. The USFS and BLM responsibilities are detailed in the USFS/BLM ROD. (Attachment 1). BPA will continue to monitor the Newberry Project through its environmental oversight program. The Power Purchase and Billing Credits Agreements stipulate the penalties for noncompliance with these measures.

Decision

Upon consideration of the entire record, BPA has decided to execute a Power Purchase Agreement with CE Newberry, Inc., execute a Billing Credits Generation Agreement with EWEB, and provide wheeling services for transmission of energy from the Newberry Project to EWEB's system.

Issued in Portland, Oregon on September 16, 1994.

John. S. Robertson,

Deputy Administrator.

[FR Doc. 94–26537 Filed 10–25–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration, Energy

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so, as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION CONTACT: Herbert Miller, Office of Statistical Standards, (EI–73), Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585. Mr. Miller may be telephoned at (202) 254–5346.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–886.
3. N.A.
4. Alternative Fuel Vehicles Suppliers' Annual Report.
5. New.
6. Annually.
7. Mandatory.
8. State or local governments, Businesses or other for-profit, and Federal agencies or employees.
9. 5,090 respondents.
10. 1 response.
11. 2.17 hours per response.
12. 11,020 hours.
13. Form EIA–886 is an annual survey of the number of alternative fuel vehicles (AFVs) made available on a calendar year basis. The data will be used to track the AFV supply situation for the Federal government, State governments, and fuel providers to acquire AFVs. Respondents are manufacturers, importers, and conversion companies of AFV vehicles.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, D.C., October 19, 1994.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 94–26535 Filed 10–25–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket CP94–682–000]

Southern Natural Gas Co.; Notice of Intent to Prepare an Environmental Assessment for the Southern Natural Gas Company's Proposed Cleveland Branch Pipeline Project and Request for Comments on Environmental Issues

October 20, 1994.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss environmental impacts of the construction and operation of facilities proposed in the Cleveland Branch Pipeline Project. This EA will be used by the Commission in its decisionmaking process (whether or not to approve the individual projects).[1]

Summary of the Proposed Facilities

Southern Natural Gas Company (Southern) proposes to construct:

- About 20.2 miles of 12-inch-diameter natural gas pipeline in Catoosa and Whitfield Counties, Georgia and Hamilton and Bradley Counties, Tennessee. This proposed pipeline, referred to as the "Cleveland Branch Line" would extend from milepost (MP) 101.44 on Southern's existing 12-inch Chattanooga Branch Line in Catoosa County, Georgia, to a proposed interconnection owned by East Tennessee Natural Gas Company (East Tennessee) in Bradley County, Tennessee; and
- One new meter station in Bradley County. The proposed meter station would consist of two 6-inch meter runs, pressure regulators, flow control valves, about 125 feet of miscellaneous buried piping, and an 8-foot by 10-foot instrumentation building. This facility would be located adjacent to East Tennessee's existing mainline system and would require a site of about 150 feet by 150 feet for construction and operation.

Southern indicates that the proposed pipeline facilities would deliver a total

[1] Southern Natural Gas Company's application was filed with the Commission pursuant to section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

firm transportation service of about 11,350 thousand cubic feet (Mcf) per day to its customer group, which is comprised of various gas distributors and municipalities served exclusively on a firm basis by East Tennessee.

The general location of the project facilities is shown in appendix 1.[2]

Land Requirements for Construction

Southern proposes to use a 75-foot-wide right-of-way for construction. Following construction, a 50-foot-wide easement would be permanently maintained; the remaining 25 feet would be restored and revert back to prior use. About 200.4 acres would be affected by construction.

Additional working space would be required adjacent to the planned construction right-of-way at areas of steep side slopes, bored road crossings, stream crossings and in most areas where topsoil would be segregated (agricultural and residential areas). No new access roads would be required.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are taken into account during the preparation of the EA.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Hazardous waste.
- Air quality and noise.
- Safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we recommend that the Commission approve or not approve the project.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Southern. Keep in mind that this is a preliminary list. The list of issues may be added to, subtracted from, or changed based on your comments and our analysis. Issues are:

- The proposed project would cross 37 waterbodies, three of which are perennial. The perennial waterbodies are Little Tiger Creek, Tiger Creek and Sugar Creek, all located in Catoosa County, Georgia.
- Some of these waterbodies support valuable riparian vegetation, which helps stabilize soil to prevent erosion and provides pristine habitat for wildlife. Some creeks may also support fishery resources.
- About 79 acres of upland forest would be disturbed.
- About 6 acres of residential land would be affected by construction; one residence is located within 50 feet of the proposed construction right-of-way.

Public Participation

You can make a difference by sending a letter addressing your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., N.E., Washington, D.C. 20416;
- Reference Docket No. CP94–682–000;
- Send a *copy* of your letter to: Ms. Alisa Lykens, EA Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., N.E. Room 7312, Washington, D.C. 20426; and
- Mail your comments so that they will be received in Washington, D.C. on or before November 23, 1994.

If you wish to receive a copy of the EA, you should request one from Ms. Lykens at the above address.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding or become an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) attached as appendix 2.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by Section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your scoping comments considered.

Additional information about the proposed project is available from Ms. Alisa Lykens, EA Project Manager, at (202) 208–0766.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–26493 Filed 10–25–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–3–21–000]

Columbia Gas Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

October 20, 1994.

Take notice that on October 17, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Eighth Revised Sheet No. 25
Eighth Revised Sheet No. 26
Eighth Revised Sheet No. 27
Eighth Revised Sheet No. 28

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference Room, Room 3104, 941 North Capitol Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

The proposed tariff sheets bear an issue date of October 17, 1994 and proposed effective dates of November 1, 1994.

Columbia states that the instant filing revises the base TCRA rates to (a) reflect the impact of paying an exit fee of $37,556,308, plus a pre-petition administrative claim of $3,498,728, inclusive of interest, to Tennessee Gas Pipeline Company (Tennessee) on October 7, 1994, (b) remove $34,701,618 of annual demand costs included in the current TCRA rates that would have been paid under the 858 contracts with Tennessee but for the Exit Fee Settlement, (c) flow through a refund of $13,708,920 (inclusive of interest) received from Tennessee pursuant to a Commission order issued in Tennessee's Docket No. RP91–203, and (d) eliminate the portion of the estimated capacity release revenue attributable to Tennessee.

Columbia requests waiver of the 30-day notice requirement and also requests waiver of the Commission's requirement in a September 30, 1994 order in Tennessee's Docket No. RP91–203 that it make a special compliance filing to adjust its rates to reflect any future refunds in that docket, and requests permission to return any future refund through the normal operation of the tariff since the refund would only be demand charges for one month amounting to less than $500,000.

Columbia states that copies of the filing were served upon Columbia's wholesale customers and interested state regulatory 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, N.E., Washington, D.C. 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 October 27, 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 Columbia's filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–26524 Filed 10–25–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–13–000]

El Paso Natural Gas Co.; Notice of Compliance Filing

October 20, 1994.

Take notice that on October 14, 1994, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance, pursuant to Part 154 of the Federal Energy Regulatory Commission (Commission) Regulations Under the Natural Gas Act certain restated tariff sheets.

El Paso states the tendered tariff sheets restate the take-or-pay Throughput Surcharge and Direct Bill amounts for the period from March 1, 1990 through July 31, 1994 in order to remove certain ineligible costs required by Commission orders issued on June 16, 1994 at Docket No. RP90–81–00, et al., and Docket No. RP91–26–000, et al. The restated Transportation Statement of Rates tariff sheets are included in Original Volume No. 1–A, First Revised Volume No. 1–A, Second Revised Volume No. 1–A, and Third Revised Volume No. 2 of El Paso's FERC Gas Tariff. The restated Direct Bill amounts are included in First Revised Volume No. 1 and Second Revised Volume No. 1.

El Paso states that it is requesting waiver of the notice requirement of Section 154.22 of the Commission Regulations pursuant to Section 154.51 to permit the tendered tariff sheets to become effective on their indicated dates. El Paso states that no party will be adversely affected by the waiver since El Paso is merely restating tariff sheets to reflect revised rates for previously effective periods.

El Paso states that copies of the filing were served upon all of El Paso's affected interstate pipeline system customers and interested state regulatory 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, N.E., 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 October 27, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–26522 Filed 10–25–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–93–000]

K N Interstate Gas Transmission Co.; Notice of Informal Settlement Conference

October 11, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Friday, October 14, 1994, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, DC, for the purpose of discussing settlement in 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 Lorna J. Hadlock at (202) 208–0737 or Donald Williams at (202) 208–0743.

Lois D. Cashell,

Secretary.

[FR Doc. 94–26519 Filed 10–25–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–120–000]

Koch Gateway Pipeline Co.; Notice of Informal Settlement Conference

October 20, 1994.

Take notice that Commission Staff will convene an informal settlement conference in this proceeding on October 27, 1994, at 10:00 a.m. The conference will be held in a hearing room at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined in 18 CFR 385.102(b), may 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 Donald A. Heydt at (202) 208–0740 or Warren C. Wood at (202) 208–2091.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–26520 Filed 10–25–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–14–000]

NorAm Gas Transmission; Notice of Compliance Filing

October 20, 1994.

Take notice that on October 17, 1994, NorAm Gas Transmission Company (NGT), in accordance with the Commission's August 31, 1994 order in the above reference proceeding, tendered for filing its report of data relating to imbalance activity occurring during NGT's first year of operation under Order No. 636.

NGT states that it has included in the report each of the items of information required by the Commission to be filed in its August 2, 1993 order in NGT's restructuring proceeding, Docket No. RS92–3–000.[1]

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 November 10, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–26523 Filed 10–25–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–187–003]

Tennessee Gas Pipeline Co.; Notice of Tariff Filing

October 20, 1994.

Take notice that on October 17, 1994, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its revised 2nd Sub Original Sheet No. 22A and 2nd Substitute First Revised Sheet No. 314 of its FERC Gas Tariff, Fifth Revised Volume No. 1 for a proposed effective date of August 22, 1994.

Tennessee states that the filing is in compliance with the Commission's Order, issued September 30, 1994, in the above-referenced docket. Tennessee further states that the September 30th Order required Tennessee to file supporting workpapers showing the derivation of the rates for its new IT–X service and to incorporate the Commission's proposed language regarding hourly changes in IT–X nominations into its tariff.

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 Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before October 27, 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 this proceeding. Copies of this filing are on file and available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–26521 Filed 10–25–94; 8:45 am]

BILLING CODE 6717–01–M

[1] 64 FERC ¶ 61,166 at 62,479 (1993), rehearing denied, 65 FERC ¶ 61,343 (1993).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5097–1]

Proposed Determination To Prohibit or Restrict the Use of Wetlands and Other Waters as Disposal Sites for the Nashua-Hudson Circumferential Highway in Nashua, Hudson, Litchfield, and Merrimack, NH

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Section 404(c) Determination and Public Hearing.

SUMMARY: Section 404(c) of the Clean Water Act (Act) authorizes the Environmental Protection Agency (EPA) to prohibit or restrict the discharge of dredged or fill material at defined sites in the waters of the United States (including wetlands) whenever it determines, after notice and opportunity for hearing, that use of such sites for disposal would have an unacceptable adverse impact on various resources, including wildlife. EPA-New England proposes under Section 404(c) of the Act to prohibit use of wetlands and other waters by the proposed Nashua-Hudson Circumferential Highway (NHCH) as disposal sites for dredged or fill material. The highway would directly eliminate 40 acres of valuable wetlands and indirectly degrade or threaten extensive additional wetland habitat. EPA-New England believes that filling the wetlands and waters of the site may have an unacceptable adverse effect on wildlife habitat and possibly municipal water supplies, and that less environmentally damaging practicable alternatives may be available.

Purpose of Public Notice

EPA seeks comment on this proposed determination to prohibit or restrict the disposal of dredged or fill material into wetlands and waters in the greater Nashua area associated with construction of the proposed highway. See Solicitation of Comments, at the end of this public notice, for further details.

Public Comment

Comments on or requests for additional copies of the proposed determination should be submitted to the designated Record Clerk at the EPA New England Regional Office, Lucy Delvalle, U.S. EPA, JFK Federal Building, WWP, Boston, MA 02203–2211, (617) 565–3474.

EPA seeks comments concerning the issues enumerated under the Solicitation of Comments at the end of the document. Copies of all comments submitted in response to this notice, as well as the administrative record for the proposed determination, will be available for public inspection during normal working hours (9:00 a.m. to 5:00 p.m.) at the EPA Regional Office.

In accordance with EPA regulations at 40 CFR 231.4, the Regional Administrator has decided that a hearing on this proposed 404(c) determination would be in the public interest.

Hearing Date and Location

Monday, November 21, 1994 at 6 pm; Hudson Memorial School; 1 Memorial Drive; Hudson, NH.

Hearing Procedures

(a) written comments may be submitted prior to the hearing, and both oral and written comments may be presented at the hearing.

(b) the Regional Administrator of EPA New England, or his designee, will be the Presiding Officer at the hearing.

(c) any person may appear at the hearing and submit oral and/or written statements or data and may be represented by counsel or other authorized representative. Any person may present written statements or recommendations for the hearing file prior to the time the hearing file is closed to public submissions.

(d) the Presiding Officer will establish reasonable limits on the nature, amount, or form of presentation of documentary

material and oral presentations. No cross examination of any hearing participant shall be permitted, although the Presiding Officer may make appropriate inquiries of any such participant.

(e) the hearing file will remain open for submission of written comments until close of business, Tuesday, December 6, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Kern, EPA Water Quality Branch, JFK Federal Building, WWP, Boston, MA 02203–2211. (617) 565–4426.

SUPPLEMENTARY INFORMATION AND BACKGROUND

I. Section 404(c) Procedure

The Clean Water Act, 33 U.S.C. 1251 *et seq.*, prohibits the discharge of pollutants, including dredged or fill material, into the waters of the United States, including wetlands, except in compliance with, among other requirements, section 404. Section 404 establishes a federal permit program to regulate the discharge of dredged or fill material subject to environmental regulations, known as the 404(b)(1) Guidelines, developed by EPA in conjunction with the Army Corps of Engineers (Corps). Except for section 404(c) actions, the Corps may issue permits authorizing dredged and fill material discharges into waters and wetlands if they comply with, among other requirements, EPA's 404(b)(1) Guidelines. Section 404(c) authorizes EPA, after providing notice and opportunity for hearing, to prohibit or restrict filling waters of the United States where it determines that such use would have an unacceptable adverse effect on wildlife or other specified environmental interests. EPA can exercise 404(c) to "veto" a permit the Corps has decided to issue or to protect valuable aquatic areas in the absence of any specific permit decision.

Regulations published in 40 CFR Part 231 establish the procedures to be followed by EPA in exercising its section 404(c) authority. Whenever the Regional Administrator has reason to believe that use of a site may have an unacceptable adverse effect on one or more of the pertinent resources, he may begin the process by notifying the Corps of Engineers, the applicant, and the landowners of the aquatic sites (if different from the applicant), that he intends to issue a proposed determination under section 404(c). Unless one of these parties persuades the Regional Administrator within 15 days that no unacceptable adverse effects will occur, the Regional Administrator publishes a notice in the **Federal Register** of his proposed determination, soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and the close of the comment period, the Regional Administrator may either withdraw the proposed determination or prepare a recommended determination. (A decision to withdraw may be reviewed at the discretion of the Assistant Administrator for Water at EPA Headquarters.) If the Regional Administrator prepares a recommended determination, he then forwards it and the complete administrative record compiled in the Region to the Assistant Administrator for Water at EPA Headquarters. The Assistant Administrator makes the final decision affirming, modifying, or rescinding the recommended determination.

II. Project Description and History

The New Hampshire Department of Transportation (DOT) proposes to construct the Nashua-Hudson Circumferential Highway, a 13 mile limited access toll road in the City of Nashua and the Towns of Hudson, Litchfield and Merrimack in New Hampshire. A bypass highway, similar to the NHCH, has been proposed for many years. For the past decade EPA has raised environmental concerns regarding the highway. In its review of an earlier 1984 EIS, EPA recommended permit denial due to concerns about drinking water impacts at the Pennichuck Reservoir and wetland losses. In 1990 the Army Corps of Engineers required a revised EIS to focus on these issues.

During the past three years, EPA reviewed several draft EIS documents, attended numerous meetings with DOT and the Corps, and conducted many site visits. EPA consistently advised the Corps and NHDOT that potential impacts to the Pennichuck Reservoir area, wetlands, and other water resources must be avoided and reduced. In 1992, EPA sent several letters to the Corps stating concerns regarding severity of the aquatic impacts, the need to examine other alternatives, and the potential adverse drinking water impacts. EPA alerted the Corps that these impacts could cause the highway to violate the Guidelines.

The Corps released the revised draft EIS in October 1992. EPA commented to the Corps in March 1993 that the proposed project violated the 404(b)(1) Guidelines and should be denied a permit and that the project was a candidate for prohibition under EPA's section 404(c) authority. The Corps issued the final EIS in October 1993. EPA restated its concerns in a November 1993 comment letter on the final EIS and identified the highway as a likely candidate for action under section 404(c) of the Clean Water Act.

At several points in February and March 1994, the Corps indicated its intent to issue a 404 permit for the NHCH, notwithstanding EPA's objections. On March 31, 1994, EPA began the first step in the 404(c) process by notifying DOT and the Corps that it believed the filling of the wetlands and other waters may have an unacceptable adverse effect on wildlife habitat and drinking water resources.

EPA subsequently sent the notification letter to the numerous landowners in the right-of-way. The Corps, DOT and some landowners submitted letters in response to the notice that EPA was commencing the 404(c) process. EPA also met with DOT and the Corps on May 13 and 26, 1994, and with approximately 20 landowners on June 23, 1994 in Hudson, NH. Because these consultations did not convince the Regional Administrator that the highway would not cause an unacceptable impact, he is proceeding to this next step in the process.

III. Characteristics and Functions of the Site

The wetlands within the proposed alignment of the NHCH as well as the 100+ square mile study area, as defined in the EIS, provide high quality, diverse habitat for fish and wildlife, a travel corridor for upland and wetland wildlife, food web production for on-site and downstream biological communities, nutrient and pollutant uptake and assimilation, floodwater storage, and flow moderation. Additionally, they serve as an environment for fishing, hunting, bird watching and other recreational activities. The EIS states that the vast majority of the wetlands provide a wide spectrum of functions and values. Wildlife habitat rated the highest at most of the sites.

Most of the wetlands in the study area are riparian systems which border streams that flow to the Merrimack River, including Limit, Second, Merrill, Glover, Chase, and Pennichuck Brooks. Wetlands bordering streams provide special values. The streams transport organic material from upstream areas in the watershed to the floodplain wetlands, supporting food web production for on-site and downstream biological communities. Riverine wetlands also assimilate nutrients and pollutants, store floodwater, and

moderate flows. These riparian corridors are also valuable because of their high productivity and travel use by wildlife.

The study area contains valuable wildlife habitat, and includes over 200 different species of birds, mammals, amphibians and reptiles. The New Hampshire Heritage Program considers over 20% of these species uncommon, rare, threatened, or endangered in the state. Over 75% of the species in the study area utilize or depend on wetlands or riparian systems for survival.

Some of the more than 100 bird species that utilize the study area include great blue heron and green-backed heron. Several wetland birds are uncommon or threatened, including species such as American bittern and eastern screech owl. Many of these aquatic species need large tracts of land to survive, such as northern waterthrush and belted kingfisher; others, such as red-shouldered hawk, depend greatly on riparian wetland systems. The bald eagle, a federal endangered species, uses this portion of the Merrimack River during winter for feeding, roosting and as a travel corridor. A peregrine falcon, also a federal endangered species, was observed at the Second Brook wetland complex during its migratory patterns.

More than 40 mammal species live in the study area, including otter and mink. These aquatic species also require large blocks of habitat in which to forage and breed. Some of the mammal species in the study area are considered uncommon or rare in the state, such as fisher, hoary bat, and southern bog lemming.

Over 30 species of reptiles and amphibians also inhabit the project site such as the uncommon blue spotted salamander; the vast majority of these species need wetlands for various life functions. Several species of amphibians in New Hampshire are obligate vernal pool species; that is, they require vernal pools to breed and survive. Moreover, some of these species, which can live 20 to 25 years, return to their natal pools each year to breed. Therefore, destruction of these pools may eliminate entire breeding populations of these animals. For example, one obligate species, spotted salamander, was observed at numerous vernal pools directly on the proposed alignment. Another obligate species, blue spotted salamander, a state listed species, was also observed at several locations on the proposed alignment. Painted turtles and other species were also observed using these valuable aquatic systems.

Fish use wetlands as nursery areas and most important recreational fishes spawn in wetlands. Second Brook and Glover Brook are stocked with trout; the Merrimack River itself likely supports more than 30 fish species.

Area-sensitive species such as mink and otter as well as forest interior birds, such as red-shouldered hawk, broad-winged hawk, northern waterthrush, Canada warbler, barred owl, and black and white warbler live in the study area. These wetland species typically require large tracts for breeding and decline sharply with habitat fragmentation and reductions in forest patch sizes.

Several large blocks of habitat in the study area support these interior, secretive animals. These habitats, generally associated with the large wetland complexes, are primarily undeveloped tracts of land and water with several corridors to allow free range of movement. The Second Brook area and lands to the east form a habitat block of approximately 5,000 to 10,000 acres, uncommonly large for this portion of New Hampshire. Large wildlife habitats also exist to the north in Londonderry and Litchfield.

The Merrimack River, which flows north to south, dominates the hydrology of the study area and is fed by numerous tributaries flowing east to west. Since most of the proposed highway heads north and south, the 13 mile road would inevitably cross and fill a number of tributaries and sub-tributaries to the Merrimack.

Wetlands at the site help to maintain and/or improve water quality, as well as regulate water quantity. Wetland plants and soil trap, assimilate, and transform pollutants entering the watershed. Wetland trees and shrubs retard floodwater, decreasing downstream flood stages. The basal flow contribution from wetlands to streams during summer stress periods provides water at the most important time of year.

The Merrimack River is an existing and future source of water supply for a number of communities in New Hampshire and Massachusetts. In fact, the Merrimack River is a supplemental and emergency supply source for Nashua, although the intake is upstream from the proposed project. The Merrimack River is currently the primary drinking water source for a number of communities in Massachusetts (e.g. Lawrence, Lowell, Methuen, and Tewksbury), all of which are downstream of the proposed project and take raw water directly from the Merrimack River, just prior to treatment. Another community, Andover, MA, augments its primary supply by pumping water from the Merrimack. In addition, the Merrimack River has been considered as a future drinking water supply source for several additional communities, many of which are downstream (e.g. Haverhill, MA, North Andover, MA) of the proposed project.

The NHCH would result in approximately 1.25 miles of roadway and two proposed interchanges within the Pennichuck Brook drainage watershed. Pennichuck Brook and ponds serve as the primary public water supply for the City of Nashua and for sections of other neighboring communities. There are many small public water supply systems that rely on drilled wells in Hudson and Litchfield. In addition, the Southern New Hampshire Water Company has a high yield wellfield in southern Litchfield.

EPA, New Hampshire, and Massachusetts, having recognized the important environmental resources in the area, have been working to implement a multi-million dollar initiative to protect the aquatic resources of the Merrimack River Watershed. Considerable time, money and effort have been expended during the past three years to protect water quality and wildlife habitat. This project would adversely affect the very resources that EPA has targeted for protection with this watershed initiative.

IV. Basis of the Proposed Determination

A. Section 404(c) Criteria

The CWA requires that exercise of the final section 404(c) authority be based on a determination of "unacceptable adverse effect" to municipal water supplies, shellfish beds, fisheries, wildlife or recreational areas. EPA's regulations define "unacceptable adverse effect" at 40 CFR 231.2(e) as:

> Impact on an aquatic or wetland ecosystem which is likely to result in significant degradation of municipal water supplies (including surface or groundwater) or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the Section 404(b)(1) Guidelines (40 CFR Part 230).

One of the basic functions of section 404(c) is to police the application of the section 404(b)(1) Guidelines. Those portions of the Guidelines relating to the analysis of less environmentally damaging practicable alternatives and significant degradation of waters of the United States are particularly important in the evaluation of unacceptability of environmental impacts in this case. The Guidelines forbid the discharge of dredged or fill material into waters of

the United States if, among other requirements, there is a less environmentally damaging practicable alternative or if it would cause or contribute to significant degradation of waters of the United States.

B. Adverse Impacts of the Proposed Project

Direct Impacts to Wildlife

The project as currently proposed by DOT would directly fill approximately 40 acres of wetlands.[1] Destruction of wetland acreage correlates with loss of functions and values including habitat destruction, reduced primary and secondary productivity and alteration of hydrological functions. The NHCH would also cross 18 streams, causing the direct loss of 3,000 feet of stream bed, place 200 acres of roadway on top of fourteen different high yield aquifers, and eliminate 600 acres of undeveloped upland habitat.

The proposed project would disrupt high quality aquatic ecosystems already experiencing stress from encroaching development in southern New Hampshire. The large direct loss of wetlands would cause the death and displacement of wildlife, and reduce water quality functions. Uncommon species would suffer the most, especially area sensitive animals, species dependent on riparian habitats, and smaller animals that are either less mobile or depend on vernal pools.

The project would destroy at least 5 vernal pools. Vernal pools are especially valuable to wildlife, particularly as breeding areas for amphibians. Given the strong fidelity of numerous aquatic species to their natal ponds, the direct destruction of the pools results in the loss of a large and important wildlife resource. Several populations of different species would be lost, including spotted salamander and the rare state listed blue-spotted salamander.

The highway would impact one of the last essentially intact ecosystems remaining in the greater Nashua area and cause impacts well beyond the footprint of the fill. Numerous streams and wetlands would be bisected, thereby altering the hydrology, disrupting species movement and increasing predation of uncommon species.

[1] All of the full build alternatives described in the EIS would cause similar long term impacts to the environment. Therefore, the following summary is generally applicable to the other full build options as well

Indirect Impacts to Wildlife

In addition to direct losses, the NHCH would degrade wetlands, including vernal pools, that would border the proposed highway. When a large highway fragments habitat blocks, common species proliferate at the expense of the more unusual wetland wildlife species. Fragmentation causes increased nest predation and parasitism to songbird populations. Large highways act as funnels moving some predators, such as red fox and crows, into previously buffered wetland interior areas.

Riparian corridors help maintain viable wildlife populations by adding to the natural connectivity of habitats already fragmented by development. Far ranging aquatic mammals inhabiting the site which often travel along streams, such as fisher and mink, would be impacted adversely. While such species are capable of crossing highways, they often avoid areas of human disturbance. Fast moving vehicles would kill some of these individuals which venture onto the highway especially at night.

Large highways restrict wildlife movement and interfere with the natural exchange of genetic material. A large highway with fences, broken canopy, and vehicle activity throughout much of the night presents a significant barrier to the movement patterns of animals, resulting in increased direct mortality and avoidance behavior. Because of its size and projected high traffic volume, this highway will likely act as a barrier to restrict the movement of numerous wetland species across the landscape, especially small mammals, reptiles, and amphibians.

DOT has asserted that: (1) local roads and other disturbances have already fragmented the area to some degree; (2) the undeveloped block of habitat near Second Brook is actually 10,000 acres, not 3,000 or 5,000 acres and the road would not pass through the center of it; (3) the bridges and culverts would provide for the movement of animals; (4) DOT's consultant conducted a site specific analysis of the habitats and wildlife; and (5) the vernal pools, several of which are impaired, do not contain any special species. EPA agrees in part with some of these statements, but nevertheless believes the NHCH could have unacceptable effects on wildlife. EPA is, however, especially interested in receiving comment on the five issues raised above.

In considering DOT's statements, EPA has been mindful of several factors. First, while there are local roads in the area, most of them are roughly 25' wide and have tree canopies which cover most of the road. Fragmentation impacts are generally proportional to the size of the interruption. A 250' wide highway such as the NHCH, with activity throughout the day and night would normally cause an order of magnitude or greater impact than existing conditions.

Second, EPA agrees that the overall habitat block approximates 10,000 acres, but this fact only underscores the value of the area for wildlife. That a roadway further east could cross more of the center of the block does not change the severe impacts of a highway in the present proposed location. Third, we hope that the bridges and culverts would help with animal movement patterns; however, despite these efforts less than 2% of the roadway will allow passage and, in any event, there is little known regarding animal use of oversized culverts. These passages would not assist many of the small species searching for food or breeding sites that cannot find or travel to the nearest potential passageway. Other long ranging species can and will cross highways without using a culvert and are subject to roadkill.

While the EIS provided much useful information, it contained relatively few site specific wildlife observations and the likely impacts of the highway. Thus, EPA contracted with wildlife experts to gain site specific information lacking in the EIS. Preliminary results for reptiles and amphibians confirm that many of the vernal pools the NHCH would impact provide high quality breeding habitat for many wetland species, including a rare state listed species.

Secondary and Cumulative Impacts

Construction of the highway may also spur secondary development along the route which will degrade additional aquatic resources. The highway would allow quicker access to the region, encouraging greater development especially for certain types of projects. Location and access are major siting criteria for many types of commercial and industrial development. In addition, these projects normally require reasonably large tracts of land increasing the prospects of adverse impacts to wetland habitat. Over time, additional point and non-point contamination sources may degrade the quality of both surface and groundwater supply resources.

Based on the number of permit applications that EPA, the Corps, and the State have reviewed the past 10 years, the greater Nashua area has experienced some of the most severe cumulative loss of aquatic habitat in New England. The direct and indirect impacts from the proposed highway

would aggravate the severe cumulative loss of habitat and depletion of biodiversity that has occurred. Furthermore, other large highways proposed in this vicinity, such as the Manchester Airport highway, the Nashua southwest bypass, and the Windham-Salem Route 111 bypass are currently in the planning stages. If built, these highways would result in additional cumulative impacts to the wetlands and streams that flow into this portion of the Merrimack River.

Water Quality Impacts

The NHCH would also reduce overall water quality as a result of temporary construction related adverse impacts, the long-term adverse impacts from contamination from highway stormwater runoff, the anticipated secondary and cumulative impacts associated with newly constructed highways, and the potential for bulk chemical or fuel spills. Greater amounts of sediment, nutrients, and other pollutants associated with urban runoff, such as heavy metals, oil and grease, and organic contaminants could enter groundwater and tributary streams and flow into the Merrimack River. Sedimentation results in turbidity and often transports pesticides, heavy metals and other toxins into the streams, which adversely affects aquatic life.

EPA is aware that DOT proposes to make a substantial effort to reduce impacts to drinking water resources. It plans to install a closed drainage system near the Pennichuck water supply that diverts a majority of the runoff to a detention pond downstream of the intake. It also proposes to divert drainage from the F.E. Everett Turnpike (not part of the NHCH), several bridges (including crossing the Merrimack River), several interchanges, including the Turnpike and Route 102, and other locations, and discharge the contaminated water into lined detention basins for water quality renovation, prior to being discharged to a surface water source (e.g. the Merrimack River or an associated tributary). DOT also states it will carefully maintain these structures and ponds and designate a Environmental Coordinator to oversee the implementation of the plans. In addition, there has been discussion about implementing some type of long-term water quality monitoring plan to evaluate the effectiveness of selected detention basins.

While these measures will help considerably, and in the case of the F.E. Everett Turnpike, actually improve an existing situation, the highway would unavoidably increase overall pollution to these water supply sources. The NHCH would place over 200 acres of land under pavement and impact a number of surface and groundwater public water supplies by adding contaminants to these aquatic systems. Stormwater runoff from the highway would degrade both surface and groundwater. While mitigation measures could reduce these impacts, it is difficult to control fully the pollutants generated by a large highway crossing many streams and wetlands.

For example, long-term problems such as accidents, spills, maintenance and disposal would remain. Detention ponds hopefully remove the majority of the pollutants, but some pollution passes through and enters aquatic systems. Over time, detention ponds may become a sink of pollution unless properly and frequently dredged and maintained. In time, impermeable lining material may be altered in such a way that it could be functioning less efficiently. Also, numerous portions of the highway would drain directly to groundwater, wetlands and streams.

Secondary development in the watershed, in part spurred by the highway, would worsen water quality concerns. Historical studies and a recent planning study (I–190/Wachusett Reservoir Water Supply Protection Study, 1992) support the fact that the presence of interstate highways encourages development and induces growth. Highways provide the necessary access to areas where development has not occurred, as well as additional access to existing developed areas. The Pennichuck Corporation, which owns and operates the Pennichuck Water Supply, controls only 11% (approximately 1800 acres) of the entire Pennichuck Brook watershed. In fact, the Pennichuck Corporation has sold nearly 200 acres of watershed land in recent years and EPA anticipates continued development within the watershed.

The NHCH could directly or indirectly adversely impact a number of groundwater resources, particularly in the communities of Hudson and Litchfield along the project corridor. The increased secondary and cumulative growth will be concentrated at or in the vicinity of the proposed interchanges, within sensitive water supply resource areas. Groundwater degradation is a nearly inevitable consequence of increased development, increased land use, and industrial development. Additionally, there is no assurance that new interchanges would not be constructed in the future along this proposed limited access highway, which would further increase developmental pressures.

The FEIS also concludes that any of the full or partial build alternatives will degrade or pose a contamination threat to surface water and groundwater resources as a result of stormwater runoff, the possibility of accidental spills, and short-term construction impacts. The FEIS presents these impacts to water supply resources as being essentially unavoidable and states that these potential adverse impacts should be minimized and mitigated, primarily through the use of Best Management Practices (BMPs) and other structural means. However, the future responsibility of mitigating any adverse impacts to water supply resources from accelerated or enhanced associated development would be deferred to local zoning and planning boards.

C. Project Need and Alternatives

There is clearly a need to reduce or minimize traffic congestion in the greater Nashua area and the Central Business District (CBD) in particular. This is especially true at the Taylor's Falls Bridge, the only crossing of the Merrimack River in New Hampshire south of Manchester. Several primary routes converge on the bridge—Routes 111, 102, and 3A. However, no alternative, including the NHCH, will solve all the traffic difficulties; under all options traffic problems remain.

EPA requests public comment on the effectiveness of various alternatives to reduce traffic problems in the Nashua area, including the NHCH. We also request comment on other alternatives or combinations of options which would cause considerably less environmental damage, including partial build options, mass transit, reducing existing traffic during rush hours, and improving or expanding existing local roads (see discussion below).

Background

EPA concurred with the project purpose as originally defined by the Corps: "to provide a transportation improvement to assist east-west traffic movements and to reduce congestion on existing bridges and streets in and near the central business districts of Nashua and Hudson by adding new crossings of the Merrimack River." However, the EIS includes the additional "goal" of reducing traffic volumes for the CBD in the year 2010 to a level less than existing traffic levels, as specifically measured by the percent change in LOS F miles (explained below) from 1990 to 2010. Alternatives which did not meet this specific goal were eliminated as being "impracticable." Because this test for practicability is constrained in space

(central business district), time (compares two specific years of analysis) and measure (percentage of miles of level of service F), it artificially eliminated certain alternatives from further consideration.

EPA believes the basic project purpose, in keeping with the requirements of the Guidelines, would be: to reduce a large portion of the traffic congestion in the greater Nashua area (as defined in the EIS), with greater importance being given to the Central Business District. This basic project purpose would provide a sound basis to evaluate and judge the practicability of various options.

Traffic engineers analyze traffic conditions and future projections using a number of different techniques, including the following:

1. Average daily traffic volume (ADT) for roadway segments
2. Level of Service (LOS)—for roadway segments
3. Level of Service (LOS)—for intersections
4. Free-Flow and Congested Vehicle Hours of Travel (VHT)

Typically highway departments use a peak-hour analysis of existing and projected conditions to determine the need for highway improvements. Existing and future "Levels of Service" are analyzed. LOS is a qualitative measure describing operational conditions assigned a letter A–F. LOS A and B represent relatively little traffic and LOS E and F represent heavy traffic conditions and vehicular delay for at least peak hours (prime commuting hours).

All of these methods were used with Nashua to predict future traffic conditions (2010) in three separate locations:

1. The central business district (CBD)
2. The F.E. Everett Turnpike (Turnpike)
3. Roadway segments bordering the CBD

DOT's Traffic Projections

The proposed NHCH provides some traffic relief for the central business district. Using DOT data and models, the full build would remove LOS F' in the CBD (F' is worse than F), while, for example, if a partial build highway from Route 102 north to the Turnpike were constructed, 1.2 miles of LOS F' would remain.

In the CBD in 2010 with the NHCH built, 4.5 miles of traffic congestion (LOS F', F, & E) would result. Under the no build condition, 8.9 miles of congestion would remain (LOS F', F, & E).

However, the proposed NHCH does not provide substantial traffic relief for the entire study area. Using DOT's data and models, any traffic measurement—ADT, LOS for intersections, LOS for road segments—shows modest traffic improvements for the NHCH. In the study area in 2010, 27.3 miles of congestion (LOS E, F, and F') would remain. Under a no build alternative 39.7 miles of congestion would result.

When one examines the vehicle hours of travel (VHT), it appears that the partial build option supplies a substantial portion of traffic relief that the NHCH would provide. The percent of free-flow traffic would be 69% for the NHCH verses 66% for the partial build from Route 102 north to the Turnpike. The following table summarizes the congested and free-flow hours of travel:

Alternative	Free-flow VHT	Congested VHT
No-Build (2010) ..	169,172 (50.1%)	168,416
Full Build (2010) ..	162,461 (68.5%)	74,727
Partial Build (2010) ..	164,646 (65.7%)	86,140

DOT's models may also overestimate traffic benefits from a full build highway. For example, the model assumes the same future traffic growth in the study area, with or without the highway. EPA's experience with other highways in New England suggests that they do alter land use and development patterns. We have no reason to believe that this highway would be any different. If the highway generates more development, the corresponding increase in traffic could increase levels beyond current projections for the full build (or reduce projections for the no build option). We request comment from the public on whether the highway will likely spur additional development and traffic growth.

Increased traffic in the study area resulting from the NHCH could place additional burdens on the two North-South roads in the region, I–93 and especially the F.E. Everett Turnpike. Both of these roads are proposed for widening in the near future, and major portions of the Turnpike will be at LOS F conditions even after expansion. Even with the EIS assuming no increased growth in traffic caused by the highway, the EIS shows that parts of the Turnpike already experiencing LOS F conditions will receive greater traffic volumes once the NHCH is in place. This condition would worsen if the NHCH generates additional traffic to the area.

The current analysis gives little weight to toll avoidance. However, this is a factor that could cause the full build to reduce congestion less than projected in the CBD because the Taylor's Falls Bridge, the primary focal point of traffic in the CBD, would be the only non-toll road remaining in New Hampshire to cross the Merrimack River south of Manchester. (The Sagamore Bridge, currently free, would require a toll once it is part of the NHCH.) Some percentage of vehicles currently using the Sagamore Bridge would avoid paying the toll by using either the Taylor's Falls Bridge, or the Tyngsborough Bridge, five miles south in Massachusetts. The EIS did not discuss the issue of tolls and toll avoidance, and EPA requests comment on these issues.

In summary, the proposed highway would only provide partial traffic relief for the overall traffic patterns in the greater Nashua area. Other measures of reducing traffic volumes, which cause much less impact to the environment, may also provide some portion of the relief that the NHCH would provide. Such measures and combinations of measures could include partial build options, traffic demand management measures (TDM), traffic systems management (TSM), and local improvements.

Partial Build Options

Partial build alternatives would involve constructing one or more segments of the NHCH but something short of the full highway proposed by DOT. All the partial build alternatives discussed below have substantially less impact to wildlife because the partial build options would not fragment the 10,000 acre habitat block, would not destroy several valuable vernal pools, and it would avoid nine streams and other valuable wetlands. Partial build alternatives include:

- Southern Bridge. This option would be an expansion of the Sagamore bridge in the south from the F.E. Everett Turnpike in Nashua to Route 3A in Hudson, allowing direct access from the Turnpike across the Merrimack River to Hudson.
- Two Bridges. This option would include expansion of the Sagamore bridge in the south from the F.E. Everett Turnpike in Nashua to Route 3A in Hudson and construction of a new bridge in the north also from the F.E. Everett Turnpike in Merrimack to Route 3A in Litchfield. Thus, it would provide a new crossing of the Merrimack River between Nashua and Manchester.
- Partial Build to Route 102. Identical to the above alternative, this option would also extend the northern section two miles east to Route 102 in Litchfield.

• Partial Build to Route 111. This alternative is the same as above, plus an extension of the northern section another four miles southeast to Route 111.

Partial build alternatives, as measured by LOS of segments, appear to do relatively little to improve traffic in the CBD. However, as measured by average daily traffic, the partial build option from Route 102 north to the F.E. Everett Turnpike, for example, would provide over 50% of the traffic benefits of the full build in the CBD and over 75% of the traffic benefits of the full build for the entire traffic network. DOT states in several documents that a bridge to the north would provide traffic benefits to the study area.

However, DOT has also stated that the partial build options will not provide traffic relief or could even make the traffic situation worse, including adding more traffic on local roads, such as Route 3A. We understand that local roads in the area will be busier with more cars in the future, but that may be true if the NHCH is built as well. EPA seeks comment on this issue as well.

TDM/TSM Measures

Traffic demand measures (TDM) reduce the number of vehicles on roadways especially during peak travel times when the worst congestion occurs. Traffic system management (TSM) refers to infrastructure improvements to enhance the efficiency of vehicle movement.

DOT and the Nashua Regional Planning Commission have already made important strides in acquiring funds in recent years to pursue some TDM/TSM measures. Some of the projects which have been funded or for which they are pursuing funding include:

1. improving traffic circulation at Taylor's Falls Bridge
2. constructing an intermodal transit facility (downtown Nashua)
3. expanding existing and building new park and ride facilities
4. completing a statewide plan for TDM, mass transit, and high occupancy vehicle lanes (HOV)
5. buying old railroad corridors for bike and walking trails
6. building an HOV lane at the Bedford toll—2 year trial
7. providing free shuttle bus service along Main Street in Nashua for 2 years
8. improving downtown traffic circulation in Nashua

Additional and expanded TDM and planning techniques for managing and reducing peak congestion, which appear to have the greatest potential in the greater Nashua area include:

(1) organized operation of mini-vans for car-pooling and ride-sharing;

(2) better management, operation, and extension of the local bus system;

(3) changing future land use development patterns to encourage cluster developments;

(4) parking disincentives;

(5) removing disincentives to implement and utilize mass transit;

(6) extending rail service to the greater Nashua and Manchester area from Boston;

(7) telecommunications in lieu of travel; and

(8) incentives to business for implementing staggered work hours and many of the measures listed above.

It is important that TDM measures be combined with TSM to prevent the improved mobility from attracting new users and leading to future congestion problems. Traffic flow improvements could include signal system timing/optimization, addition of turning lanes, restrictions of single occupant vehicles (to enhance HOV operations and attract users), fringe park and ride lots, and pedestrian/non-motorized improvements.

Local road improvements

Local improvements include anything that expands capacity on the basic existing traffic network, for example, improving traffic flow across the Taylor's Falls Bridge. While some TDM/TSM measures could also be listed under this category, other local improvements could involve adding additional lanes, overpasses, mini-bypasses, or other structural changes. Since the EIS does not focus on this issue very much, EPA would appreciate comments on needed improvements to the existing traffic network.

D. Mitigation

The current mitigation plan consists of avoiding, minimizing and compensating for environmental losses. DOT has endeavored to minimize impacts by proposing: 1. two bridges and five box culverts at some of the stream locations; 2. closed drainage systems to divert and treat runoff in order to minimize impacts to drinking water resources; 3. 26' median widths at wetland locations; 4. 2:1 side slopes to minimize impacts; and 5. two retaining walls to reduce impacts.

The compensatory mitigation portions of the plan consist of the following: 1. attempted creation or restoration of 44 acres of wetlands mainly at the former Benson's Wild Animal Farm; 2. bringing Merrill Brook above ground at Benson's; 3. constructing water detention basins adjacent to the roadway; 4. preserving an additional 100 acres at Benson's and 135 acres along an old alignment that DOT owns in the southern portion of the site; and 5. protecting water supply by capturing part of the runoff from the existing F.E. Everett Turnpike.

In general, DOT has proposed a substantial mitigation plan, especially to minimize impacts. However, EPA believes that the environmental benefits, especially for wildlife, of the proposed compensation plan fall well short of the impacts the NHCH would cause. While creation and restoration may be beneficial to the aquatic environment, especially when applied at a low value site in a relatively undisturbed landscape setting, wetland creation suffers from both theoretical limitations and practical problems.

First, the poor track record associated with wetland creation suggests that it would be unwise to rely on this mitigation to provide all of the intended benefits. Some wetland functions, such as flood storage, can normally be replicated successfully. Attempts to mitigate wildlife habitat losses have met with mixed success, and benefit only a few select species. There has been little or no demonstrated ability to recreate other wetland values such as groundwater discharge and recharge or the complex interactions of water, soil and plants involved in the uptake and transformation of nutrients and pollutants.

DOT has made an effort to address this uncertainty by offering to construct the mitigation at Benson's before the highway can proceed. This would allow the success or failure at Benson's to be evaluated with greater certainty. EPA believes that demonstrating success at the Benson's site or other selected sites prior to highway construction makes sense and should be part of any mitigation plan should the NHCH be partially or fully constructed. However, even if successful, it would not alter the insufficiency of the current mitigation plan. The creation site borders 3 roads, including the busy Route 111. The potential for human alteration and disturbance, from off road vehicles and other human intrusion, would remain, as well as the impacts to wildlife from fragmentation and being hit by cars and trucks. Thus, restoring the site would only offset a modest amount of the impacts the highway would cause to uncommon species in the study area.

Second, the proposed mitigation would not replace many lost functions and values. It would not compensate for fragmenting one of the last large undeveloped tracts remaining in the

study area, which provides an oasis for many species of wildlife. The plan would not replace riparian streams, floodplains or the spectrum of natural resource values these areas provide. Also, it would do little to offset the large indirect, secondary, and cumulative impacts the highway would inevitably cause or contribute to.

While preservation cannot replace the direct and indirect impacts from fragmentation, it can reduce the likely secondary and cumulative impacts. However, the current preservation proposal appears insufficient to provide substantial environmental benefits. The 100 acres at Benson's, while useful to buffer the creation area, would be located between the new highway and the developed portions of Hudson, providing only modest wildlife access and benefits. The 135 acres, which is part of the old right-of-way, protects some useful habitat; however, it is a long linear parcel and some of it lies inside of or adjacent to the NHCH.

Three areas appear to be especially valuable and vulnerable to secondary impacts in the future: (1) the 5,000–10,000 acre block in the southeastern portion of the study area; (2) a large wetland and upland complex in the southern part of Litchfield and Londonderry, containing several rare species and bordering other protected lands; and (3) floodplain forest and farmland along the Merrimack River in Litchfield. We request comment on the adequacy of the current preservation package and whether additional preservation options, such as portions of those described above, could offset the likely secondary and cumulative impacts of the highway.

After considering the project's impacts and the uneven track record of wetland creation and enhancement projects to compensate for projects involving much less severe impacts, EPA has concluded that the adverse effects of the highway will be difficult to mitigate sufficiently to render them environmentally acceptable. The mitigation plan described in the EIS and other documents would not compensate for the severe impacts to wildlife which the project would cause.

V. Proposed Determination

Based on the current proposal, the Regional Administrator proposes to recommend that the discharge of dredged or fill material into wetlands and other waters associated with the Nashua-Hudson Circumferential Highway be prohibited. This action would not prohibit other uses of the land on the alignment, nor would it preclude possible permitting of partial build alternatives.

This proposed determination is based primarily on the adverse impacts to wildlife. EPA has already concluded and stated in previous letters that the project would cause or contribute to significant degradation of waters of the United States and violate the § 404(b)(1) Guidelines. It would directly destroy 40 acres of wetlands in an area beset with cumulative impacts, and will degrade additional wetlands through secondary and indirect impacts. Based on current information, the Regional Administrator has reason to believe that the adverse impacts of the Nashua-Hudson Circumferential Highway would be unacceptable. Moreover, these impacts may be in part avoidable.

VI. Solicitation of Comments

EPA solicits comments on all issues discussed in this notice. In particular, we request information on the likely adverse impacts to wildlife and other functional values of the streams and wetlands at the site. We also seek information pertaining to plants, animals and hydrology of the site and adjacent lands. All studies of the natural resource values of the area or informal observations would be helpful. Information on species or communities of regional and/or statewide importance would be especially useful.

While the significant loss of wildlife habitat serves as EPA's main basis for this proposed 404(c) determination, New England has additional concerns with the proposed project including water quality and drinking water impacts, alternatives, and mitigation. In particular, EPA solicits comments on particular aspects of the project including:

(1) The presence and likely impacts to fish and wildlife resources using the study area;

(2) The potential for indirect impacts from the NHCH to fish and wildlife resources, such as fragmentation, noise and roadkill;

(3) The extent to which local roads and other disturbances have or have not fragmented the study area;

(4) The extent to which the bridges and culverts would or would not provide for the movement of animals;

(5) The potential for secondary wetland losses, through additional development that would benefit from access to the highway;

(6) Evidence of past and likely future cumulative impacts to the aquatic environment;

(7) Information on potential for drinking water and other water quality impacts;

(8) Information on whether the new highway would generate additional traffic and land use changes compared to a no-build alternative;

(9) The extent to which additional traffic would travel across the Taylor's Falls Bridge and the Tyngsborough Bridge to avoid paying tolls on the Sagamore Bridge or the northern bridge.

(10) The extent to which partial build options would provide traffic relief or make the traffic situation worse, including adding more traffic on local roads, such as Route 3A;

(11) The effectiveness or lack of effectiveness of the NHCH in reducing traffic congestion;

(12) Information on the availability of less environmentally damaging practicable alternatives to satisfy the basic project purpose—reducing traffic congestion in the greater Nashua area—taking into account cost, technology, and logistics;

(13) The extent to which local improvements, such as adding additional lanes, overpasses, and mini-bypasses, could provide traffic relief;

(14) The effectiveness of TDM/TSM in reducing traffic under a no build or partial build alternative. If a full build is permitted, what TDM/TSM solutions should be implemented and why?;

(15) Information on the current mitigation plan and whether it would replace the functions and values of the aquatic habitats destroyed or degraded;

(16) The potential for a different or supplemental mitigation plan which could reduce the direct and indirect impacts of the NHCH to an environmentally acceptable level. Mitigation could involve avoidance, by bridging for example, additional wetland creation, habitat preservation, additional water quality mitigation measures, watershed and aquifer preservation, up-front success requirements or other factors. Recommendations of appropriate sites are encouraged.

(17) The current preservation package and additional preservation options, and whether the protection could offset the likely secondary and cumulative impacts of the highway.

The record will remain open for comments until December 6, 1994. All comments will be fully considered in reaching a decision to either withdraw the proposed determination or forward to EPA Headquarters a recommended determination to prohibit or restrict the use of the wetlands as a disposal site for construction of Nashua-Hudson Circumferential Highway.

FOR FURTHER INFORMATION CONTACT: Mr. Mark J. Kern, U.S. E.P.A., JFK Federal

Building, WWP, Boston, MA 02203–2211, (617) 565–4426.

John P. DeVillars,

Regional Administrator, New England Region.

[FR Doc. 94–26510 Filed 10–25–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–00394; FRL–4917–1]

Interim Policy for Particle Size and Limit Concentration Issues in Inhalation Toxicity Studies; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is making available to all interested parties, an *Interim Policy for Particle Size and Limit Concentration Issues in Inhalation Toxicity Studies* which deals with several of the most controversial issues encountered in inhalation toxicity studies. It offers recommendations regarding aerosol particle size, limit concentrations in acute studies, revised Toxicity Categories, inhalation chamber selection, and reporting of analytical concentrations for formulations.

DATES: The Interim Policy is effective October 26, 1994.

ADDRESSES: Copies of the *Interim Policy for Particle Size and Limit Concentration Issues in Inhalation Toxicity Studies*, identified with the docket control number "OPP–00394" can be obtained by mail from: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person: Public Docket and Freedom of Information Section, Field Operations Division, Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: By mail: John E. Whalan or John C. Redden, Health Effects Division (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office locations and telephone numbers: John E. Whalan, Rm. 828C, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6511 or John C. Redden, Rm. 718I, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–7727.

SUPPLEMENTARY INFORMATION: Toxicity Guidelines for inhalation studies were issued in 1982. Since then, numerous inadequacies have been identified, particularly with regards to aerosol particle size and limit concentration requirements. In 1991, EPA's Health Effects Division (HED) requested public comments on its Inhalation Guidelines. These critiques, combined with numerous interviews with inhalation toxicologists, demonstrated these issues to be universal concerns. HED evaluated the state of the science with particular emphasis on the physical and biological realities of performing inhalation toxicity studies. The results of this investigation led to an Interim Policy which considers four major areas of controversy:

1. Particle size requirements for aerosol products.
2. Limit concentration for aerosols, gases, and vapors in acute studies, and revised Toxicity Categories.
3. Selection of appropriate inhalation chambers.
4. Reporting of analytical concentration for formulations.

The Interim Policy was presented to a Science Advisory Panel on December 15, 1993, for comment. The *Final Report of the Joint FIFRA Scientific Advisory Panel and Science Advisory Board Meeting* states that, "The Panel concurs with the Agency's recommendations and further that these guideline revisions reflect the current state-of-the-art for inhalation toxicity tests which are consistent with aerosol toxicology."

Rather than waiting for a comprehensive revision of the inhalation guidelines, EPA has chosen to disseminate the Interim Policy at this time because its recommendations have significant impact on the performance of studies and regulation of pesticide products.

List of Subjects

Environmental protection, Inhalation toxicity.

Dated: October 13, 1994.

Richard D. Schmitt,

Director, Health Effects Division, Office of Pesticide Programs.

[FR Doc. 94–26194 Filed 10–25–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–00397; FRL–4903–8]

Statement of Policy for Minor Amendments; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is soliciting comments on a proposed policy which streamlines the registration process by identifying minor registration amendments which may be (1) submitted as notifications, (2) not submitted at all (non-notifications), or (3) which can be processed faster if they are minor formulation changes. That policy is described in a draft Pesticide Regulation (PR) Notice entitled, "Notifications, Non-Notifications and Minor Formulation Amendments." Interested parties may request this document as described in the ADDRESSES unit of this notice.

DATES: Written comments, identified by the docket number [OPP–00397], must be received on or before December 12, 1994.

ADDRESSES: The PR Notice is available from Sherada Hobgood, By mail: Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS-1, 2800 Crystal Drive North, Arlington, VA, (703) 308–8352.

Submit written comments to: By mail: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Sherada Hobgood (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS–1, 2800 Crystal Drive North, Arlington, VA, (703) 308–8352.

SUPPLEMENTARY INFORMATION: The Agency is proposing to expand the current list of amendment actions which may be accomplished without prior Agency approval. The policy will streamline the registration process to allow certain minor, low risk

amendments to be achieved by notification, non-notification or by accelerated review. If adopted, this policy would speed the approval of such amendments and free Agency resources to focus on more important actions while maintaining protection to public health and the environment.

This **Federal Register** notice announces the availability of the draft PR Notice and solicits comment on the proposed policy. In particular, the Agency invites comment on the following issues:

1. A process for accelerating the processing of minor formulation amendments is being proposed to speed up the review of changes of inert ingredients which are believed not to change the toxicological or chemical properties of products. What are the strengths and weaknesses of this approach?

2. A certification statement is being proposed which would be submitted with each notification indicating that the amendment complies with the PR Notice, that a product may be subject to enforcement action or cancellation by order without a hearing if it is not consistent with the PR Notice. The intent of this certification is to assure registrants comply with the notice and that they understand the consequences of not complying. What are the pros and cons of the certification statement?

3. EPA proposes allowing several additional kinds of amendments to be accomplished by notification—addition of pests, addition of non-food, indoor sites, and addition of directions related to packaging. Changes in directions for use is currently prohibited by 40 CFR 151.46(b)(1). Does EPA have discretion to allow the proposed changes under 40 CFR 152.44(b)(1)?

After reviewing public comments received, EPA may make changes to the Policy and revise the draft PR Notice prior to release.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: October 13, 1994.

Steven L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–26192 Filed 10–25–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5097–3]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss improvements to the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Tuesday, November 15, 1994, from 9:00 am to 5:00 pm, and Wednesday, November 16, 1994, from 9:00 am to 3:00 pm.

ADDRESSES: The meeting will take place at the National Governors Association Hall of the States, Room 333, 444 North Capitol Street, Washington, D.C. Comments may be sent to Sheila Frace, Effluent Guidelines Task Force, Office of Water (4303), EPA, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Sheila Frace at 202–260–7120, fax 202–260–7185.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally does not review specific effluent guideline regulations currently under development.

The meeting agenda will include continued discussions on draft recommendations concerning subcategorization of industries in effluent guidelines. There will also be consideration of a draft report on methodology for conducting preliminary industry studies.

The meeting is open to the public. Limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines program. Comments should be sent to EPA at the above address. Comments submitted will be transmitted to Task Force members for consideration.

Dated: October 21, 1994.

Eric Strassler,

Designated Federal Official, Effluent Guidelines Task Force.

[FR Doc. 94–26550 Filed 10–25–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5094–8]

Review of Ecological Assessment Case Studies From a Risk Assessment Perspective Volume II

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a report entitled "Review of Ecological Assessment Case Studies from a Risk Assessment Perspective Volume II". The report includes five peer-reviewed case studies that explore the relationship between the ecological risk assessment process as described in the EPA report "Framework for Ecological Risk Assessment" (EPA 630/R–92/001) and several types of ecological assessments done by EPA and others. The report is a companion volume to a previously published set of 12 case studies ("Review of Ecological Assessment Case Studies from a Risk Assessment Perspective", EPA/630/R–92/005).

ADDRESSES: To obtain a single copy of the report, interested parties should contact the ORD Publications Office, CERI, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569–7562, FAX: (513) 569–7566. Please provide your name and mailing address, and request the document by the title and EPA number (EPA/630/R–94/003).

FOR FURTHER INFORMATION CONTACT: Bill van der Schalie, U.S. Environmental Protection Agency (8101), 401 M Street, SW., Washington, DC 20460, Telephone (202) 260–6743.

SUPPLEMENTARY INFORMATION: In 1993, EPA's Risk Assessment Forum published an evaluation of 12 ecological assessment case studies from a risk perspective ("Review of Ecological

Assessment Case Studies from a Risk Assessment Perspective", EPA/630/R-92/005). To complement this original set of case studies, five new case studies were developed and peer reviewed to provide further insight into the ecological risk assessment process. The new case studies expand the range of the first case study set by including different kinds of stressors (radionuclides, genetically-engineering organisms, and physical alteration of wetlands) and programmatic approaches (Pre-Manufacture Notice assessments under the Toxic Substances Control Act and the EPA's Environmental Monitoring and Assessment Program). Both case studies reports provide useful perspectives concerning the application of ecological risk assessment principles to a range of problems.

Dated: August 30, 1994.

Carl Gerber,

Assistant Administrator for Research and Development.

[FR Doc. 94-26514 Filed 10-25-94; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-296; FCC 94-256]

Simplification of the Depreciation Prescription Process

AGENCY: Federal Communications Commission.

ACTION: Notice; further order inviting comments.

SUMMARY: The Federal Communications Commission has adopted a Further Order Inviting Comments on selected accounts and proposed projection life and future net salvage ranges for use by local exchange carriers (LECs) regulated under its price cap regulatory scheme. The Further Order Inviting Comments identifies eight accounts for which the Commission proposes to establish ranges for use beginning in 1995. The Commission has also proposed different simplification methods for four other accounts. The rule change is intended to lessen the depreciation prescription burden on price cap LECs in light of regulatory and market changes without sacrificing protection for consumers.

DATES: Comments are due on November 14, 1994. Reply comments are due on December 14, 1994.

ADDRESSES: All comments should be filed with the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. A copy should be sent to Fatina K. Franklin, Accounting and Audits Division, 2000 L Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Fatina K. Franklin, Common Carrier Bureau, Accounting and Audits Division, (202) 418-0840.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Order Inviting Comments on Simplification of the Depreciation Prescription Process, CC Docket No. 92-296, FCC 94-256, adopted October 7, 1994 and released October 11, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text will be published in the *FCC Record* and may also be purchased from the Commission's copy contractor, International Transcription Services, Room 246, 1919 M Street NW., Washington, DC 20554.

Summary

1. On September 23, 1993, we adopted streamlined depreciation prescription procedures for the local exchange carriers ("LECs") regulated under our price cap incentive regulatory plan.[1] These procedures require us to establish ranges for the future net salvage and projection life estimates that are used to compute depreciation rates for plant categories. The new procedures generally permit price cap LECs to make streamlined filings for changes in depreciation rates for these categories, as long as these estimates fall within the prescribed ranges. In our *Second Report and Order*, 59 FR 35632 (July 13, 1994), we adopted underlying factor ranges for 22 depreciation rate categories. By this *Further Order Inviting Comments*, we invite comments on our proposals for setting ranges for the remaining 12 plant categories.

2. Prior to adoption of the *Depreciation Simplification Order*, the depreciation prescription process required carriers to submit extensive data to support the underlying depreciation basic factors that are the future net salvage, projection life, and survivor curve estimates used to compute proposed depreciation rates. These data requirements often resulted in voluminous submissions, consisting of up to 25 pages of analysis for each of 34 plant categories. In recognition of the regulatory, technological, and market changes that price cap LECs face, we decided to simplify the process by establishing ranges that specify maximum and minimum amounts for two of the basic depreciation factors, the future net salvage and projection life estimates. Under our new process, if a price cap LEC meeting the requisite criteria selects future net salvage and projection life estimates that are within the established ranges, it need not submit the detailed supporting data otherwise required. In addition, under the new procedures, price cap LECs can change these basic factors annually, as opposed to the current triennial represcription cycle. These streamlined procedures are intended to simplify the depreciation process, achieve administrative savings, and allow the price cap LECs greater flexibility in the depreciation process, while continuing an appropriate oversight of their depreciation rates.

3. We determined that the new, streamlined procedures should be implemented in two phases, beginning with the accounts most readily adaptable to the range approach. We have completed phase one of the streamlining process and adopted ranges for 22 plant categories. We now begin phase two by proposing ranges for eight of the remaining categories. If we implement these proposals, we will have established ranges of projection life and future net salvage factors for 30 of the 34 plant categories. These plant categories represent 85% of the total plant investment. In addition, we propose in this notice alternate simplified procedures for the other four accounts. We solicit public comment on the following proposals for phase two.

4. We propose to establish ranges for eight of the remaining twelve plant categories. (See Appendix). In the *Depreciation Simplification Order*, we set forth a number of specific data that should be considered in establishing the projection life and future net salvage ranges, and we used these data to formulate the ranges listed in the attached Appendix. For each plant category, we first developed a range of one standard deviation from the mean of each of the projection life and the future net salvage basic factors underlying the currently prescribed LEC depreciation rates. We then determined whether there are technological trends or recent changes in carrier investment plans that might not be fully reflected in the LECs' prescribed factors. Finally, we considered the number of LECs with basic factors that fall within the initial ranges and altered the ranges where appropriate. We recognized, however, that these specifically enumerated data must be considered in light of our

[1] Simplification of the Depreciation Prescription Process, *Report and Order*, 8 FCC Rcd 8025 (1993) (*Depreciation Simplification Order*), 58 FR 58788 (November 4, 1993).

obligation to prescribe reasonable depreciation rates:

> We wish to make the ranges wide enough to accommodate a significant number, if not all, of the LECs. On the other hand, we must not make the ranges so wide that they would no longer enable us to exercise effective oversight of depreciation rates.

Thus, in developing the proposed ranges, we considered both the specific data enumerated in the *Depreciation Simplification Order* and our overriding responsibility to prescribe reasonable depreciation rates. We set forth in the Appendix our proposed projection life and future net salvage ranges for these light plant categories.

5. We do not propose to establish ranges for Account 2211, Analog Electronic Switching; Account 2215, Electro-mechanical Switching; and Account 2431, Aerial Wire. These are "dying accounts" as LECs are replacing the plant in these accounts with newer technologies. The LECs are rapidly phasing out this obsolete equipment in accordance with specific retirement schedules that are based on company plans to modernize their networks. Depreciation rates for this equipment can be readily calculated from these retirement schedules. We believe that depreciation rates for such equipment that are based upon a LEC's specific retirement plans are more accurate than rates based upon national averages. Moreover, the calculations are less complicated than those for other plant accounts, since detailed statistical analyses are not required to forecast lives.

6. In addition, we do not propose to set ranges for Account 2121, Buildings. For depreciation study purposes, we have permitted the LECs to subdivide this account and estimate lives for each subcategory. Moreover, we allowed the LECs flexibility to develop individual methods of categorization. As a result, some LECs subdivided this account based on the size of the buildings, some by location, and others based on use. Because of the significant differences among the categorization methods, the LECs' current basic factors for the subaccounts cannot be used to establish nationwide ranges. If ranges are to be developed for the buildings account, the LECs' data must be recast into new, uniform subcategories.

7. We believe that the cost of establishing such subcategories would outweigh the benefits. The LECs have indicated that the cost of compiling the information necessary to develop new subcategories would be substantial. Moreover, the LECs do not have plans to add or retire a significant number of buildings in the next few years. As a result, the underlying depreciation factors applicable to Account 2121 likely will not change, and an extensive analysis of the building account probably will not be necessary within the next few years. Accordingly, we propose to maintain the basic factors underlying the current prescribed depreciation rates for the buildings account, until our three-year range review when we will reconsider whether ranges would be appropriate for this account. In the interim, we believe that the data required under the streamlined procedures will be adequate, and we propose to require that the price cap LECs provide only these data for the buildings account.

8. This is a non-restricted notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

9. We certify that the Regulatory Flexibility Act of 1980 does not apply to this proceeding because if the proposals in this Order Inviting Comments are adopted, there will not be a significant economic impact on a substantial number of small business entities, as defined by Section 601(3) of the Regulatory Flexibility Act. Because of the nature of local exchange and exchange access service, the Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not "small entities" as defined by that Act. The Secretary shall send a copy of this Order Inviting Comments, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of that Act.

10. We invite comment on the proposals set forth above. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before November 14, 1994, and reply comments on or before December 14, 1994. To file formally in this proceeding, interested parties must file an original and four copies of all comments and reply comments. If commenters want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Room 246, 1919 M Street, N.W., Washington, D.C. 20554. We also ask that parties send a courtesy copy of their comments to the Accounting and Audits Division, 2000 L Street, N.W., Washington, D.C. 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

11. Accordingly, *It is Ordered*, pursuant to Sections 1, 4(i), 4(j), and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), and 220(b), that Notice is Hereby Given of proposed plant accounts for which basic factor ranges should be established and the ranges proposed for those accounts to be used in the depreciation prescription process as described in the *Depreciation Simplification Order*.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

PROPOSED ACCOUNTS AND RANGES

Account No.	Account name	Depreciation rate category	Projection life range (years)		Future net salvage range (percent)	
			Low	High	Low	High
2220	Digital switching	Digital Switching	16	18	0	5
2220	Operator systems	Combined	8	12	0	5
2232	Circuit equipment	Digital	11	13	0	5
2411	Poles	Poles	25	35	−75	−50
2421	Aerial Cable	Metallic	20	26	−35	−10

PROPOSED ACCOUNTS AND RANGES—Continued

Account No.	Account name	Depreciation rate category	Projection life range (years)		Future net salvage range (percent)	
			Low	High	Low	High
2423	Buried Cable	Metallic	20	26	−10	0
2426	Intrabuilding network cable	Metallic	20	25	−30	−5
2426	Intrabuilding network cable	Non-metallic	25	30	−15	0

[FR Doc. 94–26489 Filed 10–25–94; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1042–DR]

Georgia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1042–DR), dated October 19, 1994, and related determinations.

EFFECTIVE DATE: October 19, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 19, 1994, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Georgia, resulting from severe weather, heavy rains, flooding, high winds and tornadoes on October 1, 1994, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide individual Assistance in the designated areas. Public Assistance may be added at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Glenn C. Woodard of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared major disaster:

Bryan, Camden, Chatham, Decatur, Grady and Tift Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 94–26548 Filed 10–25–94; 8:45 am]
BILLING CODE 6718–02–M

Changes to the Hotel and Motel Fire Safety Act National Master List

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of additions and corrections/changes to, and deletions from, the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act.

EFFECTIVE DATE: November 25, 1994.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, D.C. 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make any other change to the list, see Supplementary Information below.

FOR FURTHER INFORMATION CONTACT: John Ottoson, Fire Management Programs Branch, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1272.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 29, 1993, 58 FR 62718, and published changes approximately monthly since then.

Parties wishing to be added to the National Master List, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Each update contains or may contain three categories: "Additions;" "Corrections/changes;" and "Deletions." For the purposes of the updates, the three categories mean and include the following:

"Additions" are either names of properties submitted by a State but inadvertently omitted from the initial master list or names of properties submitted by a State after publication of the initial master list;

"Corrections/changes" are corrections to property names, addresses or telephone numbers previously published or changes to previously published information directed by the State, such as changes of address or telephone numbers, or spelling corrections; and

"Deletions" are entries previously submitted by a State and published in the national master list or an update to the national master list, but subsequently removed from the list at the direction of the State.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1.

The update to the national master list follows below.

Dated: October 21, 1994.

John P. Carey,

General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST OCTOBER 18, 1994 UPDATE

Index	Property Name	PO Box/Rt No/street address	City/state/zip	Telephone
ADDITIONS				
California				
CA1331	Travelodge, Kettleman City	33410 Powers Drive	Kettleman City, CA 93239	(209) 386–0804
CA1330	Monterey Motor Lodge	55 Camino Aquijito	Monterey, CA 93940	(800) 558–1900
CA1332	Park Inn	5977 Mowry Ave	Newark, CA 94560	(510) 795–7995
CA1328	Waterfront Plaza Hotel	10 Washington St	Oakland, CA 94607	(510) 836–3800
CA1335	Ramada Hotel Old Town	2435 Jefferson St	San Diego, CA 921103097	(619) 260–8500
CA1327	Cathedral Hill Hotel	1101 Van Ness Avenue	San Francisco, CA 94109	(415) 776–8200
CA1329	Pacific Shore Hotel	1819 Ocean Ave	Santa Monica, CA 90401	(310) 451–8711
CA1334	Los Robles Lodge	1985 Cleveland Ave	Santa Rosa, CA 95401	(707) 545–6330
CA1333	Summerfield Suites Hotel/West Hollywood.	1000 Westmount Dr	West Hollywood, CA 90069	(310) 657–7400
District of Columbia				
DC0050	Embassy Square Suites	2000 N St. NW	Washington, DC 20036	( ) –
DC0049	Radisson Barcelo Hotel	2121 P St. NW	Washington, DC 20037	(202) 293–3100
Georgia				
GA0305	Albany Knights Inn	1201 Schley Ave	Albany, GA 31702	(912) 888–9600
GA0324	Comfort Inn Ashburn	820 Shoenys Drive	Asburn, GA 31214	(912) 567–0080
GA0314	Omni Hotel	100 CNN Ctr	Atlanta, GA 30335	(404) 659–0000
GA0310	Wyndham Garden Hotel Buckhead.	3340 Peachtree St. NE	Atlanta, GA 30026	(404) 231–1234
GA0327	Econo Lodge Augusta	2852 Washington Road	Augusta, GA 30909	(706) 736–0707
GA0306	Atlanta West Six Flags Knights Inn.	1595 Blair Bridge Rd	Austell, GA 300017003	(404) 944–0824
GA0311	Best Western Carrollton	35 Price Creek Rd	Bremen, GA 30110	(404) 537–4646
GA0329	Sleep Inn Brunswick	5272 N. Jesup Hwy	Brunswick, GA 31525	(912) 261–0670
GA0326	Econo Lodge Cartersville	Carson Loop Rd	Cartersville, GA 30120	(404) 386–0700
GA0318	Sheraton Gateway Hotel Atlanta	1900 Sullivan Rd	College Park, GA 30337	(404) 997–1100
GA0319	Sheraton Inn Columbus	5351 Simons Blvd	Columbus, GA 31904	(706) 327–6868
GA0323	Comfort Inn Commerce	I–85 & U.S. 441	Commerce, GA 30529	(706) 335–9001
GA0320	Best Western North Plaza Inn	1616 N. Expwy	Griffin, GA 30223	(404) 227–8400
GA0328	Sleep Inn Lavonia	890 Ross Place	Lavonia, GA 30553	(706) 356–2268
GA0317	Knights Inn	4952 Romises Road	Macon, GA 31206	(912) 471–1230
GA0308	Southlake Knights Court	6597 State Route #54	Morrow, GA 30260	(404) 960–1957
GA0330	Ramada Inn Savannah	301 Governor Truetlen Dr	Pooler, GA 31322	(912) 748–6464
GA0315	Super 8 Motel Savannah	15 Ft. Argyle Rd	Savannah, GA 31419	(912) 927–8550
GA0313	Cloister Hotel	100 First Street	Sea Island, GA 31561	(912) 638–3611
GA0316	Island Inn	301 Main Street	St. Simon's Island, GA 31522	(912) 638–7805
GA0312	Best Western Atlanta South	3509 Hwy 138	Stockbridge, GA 30281	(404) 474–8771
GA0309	Motel 6 #1117	7233 Davidson Parkway	Stockbridge, GA 30281	(404) 389–1142
GA0322	Comfort Inn Tifton	1104 King Rd	Tifton, GA 31744	(912) 382–4410
GA0307	Atlanta East Knights Inn	2942 Lawrenceville Hwy	Tucker, GA 300848134	(404) 934–5060
GA0325	Econo Lodge Tucker	1820 Mtn. Industrial	Tucker, GA 30084	(404) 939–8440
GA0321	Comfort Inn Villa Rica	128 Hwy. 61	Villa Rica, GA 30180	(404) 459–8000
Illinois				
IL0515	Courtyard Champaign	1811 Moreland Blvd	Champaign, IL 61820	(217) 358–0719
IL0516	Fairfield Inn Champaign	1807 Moreland Blvd	Champaign, IL 61820	( ) –
IL0518	Embassy Suites Deerfield	1445 Lake Cook Rd	Deerfield, IL 60015	(708) 945–4500
IL0519	Pine Motel	Rt. 84,19051 13th St	Fulton, IL 61252	(815) 589–4847
IL0517	Fairfield Inn Quincy	4315 Broadway	Quincy, IL 62301	( ) –
Kansas				
KS0142	Wichita Airport Hilton & Exec Conf Ctr.	2098 Airport Road	Wichita, KS 67209	(316) 945–5272
KS0141	Wichita Clubhouse Inn	515, S Webb Road	Wichita, KS 67207	(316) 684–1111
Louisiana				
LA0114	Holiday Inn Central	PO Box 91807, 2032 NE Evangeline Thruway.	Lafayette, LA 70509	(318) 233–6815
LA0115	Travelodge Executive Plaza	120 E Kaliste Saloom Rd	Lafayette, LA 70508	(318) 235–0858

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST OCTOBER 18, 1994 UPDATE—Continued

Index	Property Name	PO Box/Rt No/street address	City/state/zip	Telephone
LA0116	The Pelham Hotel	444 Common St	New Orleans, LA 70130	(504) 522–4444
Maine				
ME0050	Edgecomb Inn	Eddy Rd	Edgecomb, ME 14556	(207) 882–6343
ME0051	Maple Hill Farm Bed and Breakfast.	Outlet Rd	Hallowell, ME 04347	(207) 622–2708
ME0049	Machias Motor Inn	26 E. Main St	Machias, ME 04654	(207) 255–4861
ME0052	Northern Pines Conference Center.	559 Rt. 85	Raymond, ME 040716248	(207) 655–7624
Minnesota				
MN0270	40 Club Inn	Hwy. 210 West	Aitkin, MN 56431	(218) 927–2903
MN0250	Alexandria Comfort Inn	507 50th Avenue West	Alexandria, MN	(612) 762–5161
MN0258	Country Inn & Suites by Carlson	2221 Killebrew Drive	Bloomington, MN 55425	(612) 854–5555
MN0256	Country Inn by Carlson	14331 Nicollet Court	Burnsville, MN 55306	(612) 892–1900
MN0259	Val a Lodge Inc	150 Hwy. 30 W	Chatfield, MN 55923	(507) 867–3066
MN0252	Comfort Inn & Suites	P.O. Box 323, Hwy 2 E	East Grand Forks, MN 56721	(218) 773–9545
MN0260	Hawthorn Suite Hotel	3400 Edinborough Way	Edina, MN 55435	(612) 893–9300
MN0251	Comfort Inn	425 Western Avenue	Fergus Falls, MN 56537	(218) 736–5787
MN0261	Country Inn by Carlson	2601 S. Hwy. 169	Grand Rapids, MN 55744	(218) 327–4960
MN0271	Victorian Inn	1000 Hwy. 7 West	Hutchinson, MN 55350	(612) 587–6030
MN0262	Lake Pepin Lodge—Motel	1737 N. Lake Shore Drive	Lake City, MN 55041	(612) 345–5392
MN0272	Stardust Suites	P.O. Box 424	Mahnomen, MN 56557	(218) 935–2761
MN0273	Crowne Plaza Northsta Hotel	618 Second Avenue South	Minneapolis, MN 55402	(612) 338–2288
MN0264	Days Inn University	2407 University Avenue SE	Minneapolis, MN	(612) 623–3999
MN0274	Hyway House Motel	1626 Hwy. 10	Minneapolis, MN 55432	(612) 786–9000
MN0263	The Whitney Hotel	150 Portland	Minneapolis, MN 55401	(612) 339–9300
MN0253	Comfort Inn	200 East Oakwood Dr	Monticello, MN 55362	(612) 295–1111
MN0265	Motel Mora	301 S. Hwy. 65	Mora, MN 55051	(612) 679–3262
MN0266	Mills Motel	P.O. Box B, US Hwy. 10	New York Mills, MN 56567	(218) 385–3600
MN0254	Econolodge	40847 U.S. Hwy. 169	Onamia, MN 56359	(612) 532–3630
MN0275	Grand Casino Mille Lacs Hotel	Box 240, 777 Grand Avenue, HCR 67.	Onamia, MN 56359	(612) 532–7777
MN0276	Trailside Inn	Hwy 371 South	Pine River, MN 56474	(218) 587–4499
MN0255	Comfort Inn	P.O Box 274, 1382 E. Bridge St.	Redwood Falls, MN 56283	(507) 644–5700
MN0267	Royalty Suites	1620 First Ave. SE	Rochester, MN 55904	(507) 282–8091
MN0277	Palmer House Hotel	228 Original Main Street	Sauk Centre, MN 56378	(612) 352–3431
MN0257	Comfort Inn	4601 W. Hwy 13	Savage, MN 55378	(612) 894–6124
MN0278	Radisson St. Cloud	404 St. Germain	St. Cloud, MN 56301	(612) 654–1661
MN0279	Royal Court Motel	720 Hwy. 10 South	St. Cloud, MN 56304	(612) 255–1274
MN0269	Radisson Hotel St. Paul	11 East Kellogg Blvd	St. Paul, MN 55101	(612) 292–1900
MN0249	Americinn Motel of St. Peter	700 North Minnesota Avenue	St. Peter, MN 56082	(507) 931–6554
MN0268	Engesser House	1202 S. Minnesota Ave	St. Peter, MN 56082	(800) 688–2646
MN0280	The Springs Inn	90 Government Road	Taylors Falls, MN 55084	(612) 465–6565
Missouri				
MO0272	Comfort Inn	203 South Wildwood Dr	Branson, MO 65616	(417) 335–4727
MO0255	Grand Oaks Hotel	2315 Green Mountain Drive	Branson, MO 65616	(417) 336–6423
MO0278	Residence Inn by Marriott	280 Wildwood Dr. South	Branson, MO 65616	(417) 336–4077
MO0270	Rodeway Inn	2244 Shepherd of Hills Exp	Branson, MO 65616	(417) 336–5577
MO0271	Sleep Inn	210 S. Wildwood Dr	Branson, MO 65616	(417) 336–3770
MO0256	Holiday Inn of Clinton	Hwy 7 & Rives Rd	Clinton, MO 64735	(816) 885–6901
MO0257	Holiday Inn Sports Complex	4011 Blue Ridge Cut-Off	Kansas City, MO 64133	(816) 353–5300
MO0268	Radisson Suite Hotel, Kansas City.	106 W. 12th Street	Kansas City, MO 64105	(816) 221–7000
MO0265	Lee's Summit Fairfield Inn	1301 N.E. Windsor Dr	Lee's Summit, MO 64086	(816) 524–1512
MO0260	Oxford Inn	868 E. Hwy. 60	Monett, MO 65708	(417) 235–8039
MO0275	Econo Lodge	410 SE 1st St	Oak Grove, MO 64075	(816) 625–3681
MO0274	Comfort Inn	RR2 Box 2585, Route 54 West	Osage Beach, MO 65065	(314) 348–9555
MO0277	Best Western Coachlight	1403 Martin Spring Drive	Rolla, MO 65401	(314) 341–2511
MO0264	Best Western Ambassador Inn	2745 N. Glenstone Ave	Springfield, MO 65803	(417) 869–0001
MO0262	Best Western Deerfield Inn	3343 E. Battlefield	Springfield, MO 65804	(417) 887–2323
MO0267	Best Western Noah's Ark	1500 S. Fifth St	St. Charles, MO 63303	(314) 946–1000
MO0266	Knights Inn St. Charles/St. Louis.	3800 Harry S. Truman	St. Charles, MO 63301	(314) 925–2020
MO0273	Comfort Inn Westport	12031 Lackland Road	St. Louis, MO 63146	(314) 878–1400
MO0258	Doubletree Hotel & Conference Center.	16625 Swingley Ridge Drive	St. Louis, MO 63017	(314) 532–5000
MO0276	Econo Lodge South	3660 S. Lindbergh	St. Louis, MO 63127	(314) 965–9733
MO0259	Frontenac Hilton Hotel	1335 S. Lindbergh	St. Louis, MO 63131	(314) 993–1100
MO0269	La Quinta Inn St. Louis—Airport	5781 Campus Pky. Dr	St. Louis, MO 63042	(314) 731–3881

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST OCTOBER 18, 1994 UPDATE—Continued

Index	Property Name	PO Box/Rt No/street address	City/state/zip	Telephone
Mississippi				
MS0090	Briarwood Inn of Amory, Inc	915 US Highway 278 E	Amory, MS 38821	(601) 256–2120
MS0078	Comfort Inn	103 Clinton Center Dr	Clinton, MS 39056	( ) –
MS0079	Comfort Inn	1250 Hwy. 35 South	Forest, MS 39074	(601) 469–2100
MS0080	Comfort Inn—Greenville	3090 US Hwy. 82 E	Greenville, MS 38702	(601) –
MS0077	Holiday Inn, Grenada (Grenada Inn Inc.).	1796 Sunset Dr	Grenada, MS 38901	(601) 226–2851
MS0083	Comfort Inn	6595 US Highway 49	Hattiesburg, MS 39401	(601) 268–2190
MS0082	Quality Inn	6528 Hwy. 49 North	Hattiesburg, MS 39402	(601) 544–4530
MS0085	Comfort Inn	701 Bonita Lakes Dr	Meridian, MS 39301	(601) 693–1200
MS0084	Sleep Inn	1301 Hamilton Ave	Meridian, MS 39301	( ) –
MS0086	Comfort Inn—Olive Branch	7049 Enterprise Dr	Olive Branch, MS 38654	(601) 895–0456
MS0087	Econo Lodge	232 S. Pearson Rd	Pearl, MS 39208	(601) 932–4226
MS0088	Comfort Inn	424 West Porter St	Ridgelad, MS 39157	(601) 856–9510
MS0091	Briarwood Inn of Ripley, Inc	922 City Ave. South	Ripley, MS 38663	(601) 837–0002
MS0089	Comfort Inn	8792 Hamilton	Southaven, MS	(601) 342–5867
Nebraska				
NE0104	Rath Inn	RR 1, Box 268E	Blair, NE 68008	(402) 426–2340
NE0106	Comfort Inn	3535 W. State St	Grand Island, NE 68803	(308) 381–7788
NE0103	Super 8	2200 N Kansas Ave	Hastings, NE 68901	(402) 463–8888
NE0108	Comfort Inn of Kearney	903 2nd Avenue South	Kearney, NE 68847	(308) 237–5858
NE0107	Lexington Comfort Inn	2810 South Ridge Street	Lexington, NE 68850	(308) 324–3747
New Jersey				
NJ0197	McIntosh Inn of Princeton	3270 Brunswick Pike	Lawrenceville, NJ 08648	(609) 806–3700
NJ0194	Sheraton Hotel	15 Howard Blvd	Mt Arlington, NJ 07856	(201) 770–2000
NJ0199	McIntosh Inn of Somerset	255 Davidson Ave	Somerset, NJ 08873	(908) 563–1600
NJ0200	Travelodge—Spring Lake	1916 Highway 35	Wall, NJ 07719	(908) 974–8400
NJ0201	McIntosh Inn of West Long Branch.	294 Monmouth Park Hwy	West Long Branch, NJ 07764	(908) 542–7900
Nevada				
NV0109	Comfort Inn	1830 West Williams Ave	Fallon, NV 89406	(702) 423–5554
NV0110	Comfort Inn South	5075 Koval Lane	Las Vegas, NV 89109	(702) 736–3600
NV0112	Las Vegas Inn Travelodge	1501 W Sahara Avenue	Las Vegas, NV 89102	(702) 733–0001
NV0111	Val–U Inn	125 E Winnemucca Blvd	Winnemucca, NV 89445	(702) 623–5248
Ohio				
OH0548	Knights Inn	22115 Brookpark Rd	Fairview Park, OH 44126	(216) 734–4500
OH0550	Cherry Valley Lodge	1011 Franklin Ave	Heath, OH 43055	(614) 788–1310
OH0546	Fairfield Inn Ontario	1065 N Lexington Springmill Rd	Mansfield, OH 44906	(419) 747–2200
OH0547	Hampton Inn Ontario	1051 N Lexington Springmill Rd	Mansfield, OH 44906	( ) –
OH0549	Oberlin Inn	7 N Main St	Oberlin, OH 44074	(216) 775–1111
Oklahoma				
OK0086	Econo Lodge	5525 W Skelly Dr	Tulsa, OK 74107	(918) 446–1561
OK0085	Quality Inn Airport	222 N Garnett Rd	Tulsa, OK 74116	(918) 438–0780
Pennsylvania				
PA0424	McIntosh Inn	1701 Catasaua Road	Allentown, PA 18103	(610) 264–7531
PA0425	McIntosh Inn	3671 Street Road	Bensalem, PA 19020	(610) 245–0111
PA0420	Econo Lodge	2140 Motel Drive	Bethlehem, PA 18018	(610) 867–8681
PA0421	Econo Lodge	2015 North Reading Road	Denver, PA 17517	(717) 336–4649
PA0423	Microtel	8100 Peach Street	Erie, PA 16509	(814) 866–1004
PA0416	Comfort Inn Exton	5 North Pottstown Pike	Exton, PA 19341	(610) 524–8811
PA0418	Comfort Inn North	5137 Route 8	Gibsonia, PA 15044	(412) 444–8700
PA0422	Sleep Inn Motel	7930 Linglestown Road	Harrisburg, PA 17112–9390	(717) 540–9100
PA0419	Comfort Inn Hershey	1200 Mae Street	Hummelstown, PA 17036	(717) 566–2050
PA0426	McIntosh Inn	260 North Gulph Road	King of Prussia, PA 19406	(610) 768–9500
PA0427	McIntosh Inn	US Route #1 & Route 352 South.	Media, PA 19063	(610) 565–5800
South Carolina				
SC0214	Sheraton Inn Charleston	170 Lockwood Drive	Charleston, SC 29403	(803) 723–3000
SC0213	Radisson Suite Resort	12 Park Lane	Hilton Head Island, SC 29928	(803) 686–5700
South Dakota				
SD0061	Comfort Inn	2923 SE 6th Ave	Aberdeen, SD 57401	(605) 226–0097
SD0062	Holiday Inn	2727 6th Ave SE	Aberdeen, SD 57401	(605) 225–3600
SD0063	Arlington Super 8 Motel	704 Hwy. 81 S	Arlington, SD 57212	(605) 983–4609
SD0064	Comfort Inn	514 Sunrise Ridge Rd	Brookings, SD 57006	(605) 692–9566
SD0065	Holiday Inn of Brookings	2500 6th St. E	Brookings, SD 57006	(605) 692–9471

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST OCTOBER 18, 1994 UPDATE—Continued

Index	Property Name	PO Box/Rt No/street address	City/state/zip	Telephone
SD0066	Mineral Palace Hotel and Gaming.	601 Historic Main St	Deadwood, SD 57732	(605) 578–2036
SD0067	Faulkton Super 8 Motel	700 Main St	Faulkton, SD 574380387	(605) 598–4567
SD0068	Best Western Four Presidents Motel.	250 Winter St	Keystone, SD 57751	(605) 666–4472
SD0069	Holy Smoke Resort	PO Box 684, Hwy. 16A	Keystone, SD 57751	(605) 666–4616
SD0070	Days Inn Motel	1506 S. Burr	Mitchell, SD 57301	(605) 996–6208
SD0071	Comfort Inn North Sioux City	115 Streeter Dr	North Sioux City, SD 57049	(605) 232–3366
SD0072	Days Inn	PO Box 67	Oacoma, SD 57365	(605) 734–4100
SD0073	Best Western Kings Inn	220 S. Pierre St	Pierre, SD 57501	(605) 224–5951
SD0074	Comfort Inn	410 W. Sioux	Pierre, SD 57501	(605) 224–0377
SD0075	Plankinton Super 8 Motel	Rural Rt. 3 Box 1C	Plankinton, SD 57368	(605) 942–7722
SD0076	Comfort Inn Rapid City	1550 N. Lacrosse	Rapid City, SD 57701	(605) 348–2221
SD0077	Econolodge	625 E. Disk Drive	Rapid City, SD 57701	(605) 342–6400
SD0078	Holiday Inn Mount Rushmore Area.	1902 Lacrosse St	Rapid City, SD 57701	(605) 348–1230
SD0079	Comfort Inn North	5100 N. Cliff Ave	Sioux Falls, SD 57104	(605) 331–4490
SD0080	Sioux Falls Fairfield Inn	4501 W. Empire Pl	Sioux Falls, SD 57116	(605) 361–2211
SD0081	Sioux Falls Residence Inn	4509 W. Empire Pl	Sioux Falls, SD 57116	(605) 361–2202
SD0082	Sleep Inn	1500 N. Kiwanis	Sioux Falls, SD 57201	(605) 339–3992
SD0083	Comfort Inn	PO Box 1056	Spearfish, SD 57783	(605) 642–2337
SD0084	Fairfield Inn by Marriott Spearfish.	2720 1st Ave. E	Spearfish, SD 57783	(605) 642–3500
SD0085	Holiday Inn Northern Black Hills	I–90 and Exit 14	Spearfish, SD 57783	(605) 642–4683
SD0086	Days Inn Sturgis	HC 55 Box 348	Sturgis, SD 57785	(605) 347–3027
SD0087	Comfort Inn	800 35th St. Cir	Watertown, SD 57201	(605) 886–3010
SD0088	Stones Inn Motel	3900 9th Ave. SE	Watertown, SD 57201	(605) 882–3630
SD0089	Days Inn of Yankton	2410 Broadway	Yankton, SD 57078	(605) 665–8717
Tennessee				
TN0265	Briarwood Inn of McKenzie	635 N. Highland Drive	McKenzie, TN 38201	(901) 352–1083
Texas				
TX0547	Lexington Hotel Suites	4150 Independence Dr	Dallas, TX 75237	(214) 298–7014
TX0549	Holiday Inn DFW Airport South	4440 W. Airport Frwy	Irving, TX 75062	(214) 399–1010
TX0546	Best Western Garden Oasis	110 W. IH–20	Odessa, TX 79761	(915) 337–3006
TX0551	Temple Fairfield Inn	1402 S.W. H.K. Dodgen Loop	Temple, TX 76504	(817) 771–3030
TX0552	Temple Hampton Inn	1414 S.W. H.K. Dodgen Loop	Temple, TX 76504	(817) 778–6700
Utah				
UT0076	Comfort Inn	250 N. 1100 W	Ceder City, UT 84720	(801) 586–2082
UT0073	Comfort Inn—Salt Lake Airport	200 N. Admiral Byrd Rd	Salt Lake City, UT 84116	(801) 537–7444
UT0074	Econo Lodge	715 W. North Temple	Salt Lake City, UT 84116	(801) 363–0062
UT0075	Quality Inn City Center	154 W. 600 S	Salt Lake City, UT 84101	(801) 521–2930
Virginia				
VA0571	Econo Lodge Dumfries	17005 Dumfries Road	Dumfries, VA 220260000	(703) 221–4176
VA0572	Econo Lodge	3173 Sussex Drive	Emporia, VA 238470000	(804) 535–8535
Washington				
WA0257	Comfort Inn	4282 Meridan Street	Bellingham, WA 98226	(206) 738–1100
WA0258	Rodeway Inn "Bellis Fair"	3710 Meridian Street	Bellingham, WA 98226	(206) 738–6000
WA0259	Quality Inn at Oyster Bay	4303 Kitsap Way	Bremerton WA 98312	(206) 405–1111
WA0260	Comfort Inn	7801 W. Quinault	Kennewick, WA 99336	(509) 783–8396
WA0261	Comfort Inn	4700 Park Center Avenue NE	Lacey, WA 98503	(206) 456–6300
WA0264	Best Western College Way Inn	300 W College Way	Mount Vernon, WA 98273	(206) 424–4287
WA0270	Edge Water Beach Bed & Breakfast.	26818 Edgewater Blvd	Poulsbo, WA 98370	(800) 641–0955
WA0263	Quality Inn Sea TAC	17101 Pacific Highway South	Seattle, WA 98188	(206) 246–7000
WA0277	Juan De Fuca Cottages	182 Marine Drive	Sequim, WA 98382	(360) 683–4433
WA0275	Cedar Willow Estates	E 2820 53rd	Spokane, WA 99223	(509) 448–4048
WA0276	The Ridge	South 160 Coeur D' Alene	Spokane, WA 99204	(509) 624–1404
WA0262	Quality Inn	7001 NE Highway 99	Vancouver, WA 98682	(206) 696–0516
WA0265	Clocktower Place	E 15719 4th Avenue	Veradale, WA 99037	(509) 926–0906
WA0266	Sunrise Village	E 15615 4th Avenue	Veradale, WA 99037	(509) 926–0906
Wisconsin				
WI0225	Paradise Shores Resort Hotel	W26364 Cth M	Holcombe, WI 54745	(715) 595–4227
WI0224	Knights Inn Milwaukee South	9420 S. 20th Street	Milwaukee, WI 53154	(414) 761–3807
WI0222	Stevens Point Fairfield Inn	5317 Highway 10 East	Stevens Point, WI 54481	(715) 342–9300
West Virginia				
WV0175	B B's Motel	HC 71 Box 72	Asbury, WV 24916	(304) 645–6890

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST OCTOBER 18, 1994 UPDATE—Continued

Index	Property Name	PO Box/Rt No/street address	City/state/zip	Telephone
WV0193	Coolfont Resort	Box 710, Rt. 1	Berkeley Springs, WV 25411	(304) 258–4500
WV0180	Green Lantern Motel	HCR 61, Box 123	Capon Bridge, WV 26711	(304) 856–2653
WV0190	North Bend State Park—Lodge	Rt. 1	Cario, WV 26337	(304) 643–2931
WV0182	Riverside Inn	3313 Kanawha Blvd. E	Charleston, WV 25306	(304) 925–2592
WV0181	Town House West—New Section.	Rt. 50 W.	Clarksburg, WV 26301	(304) 623–3716
WV0189	Canaan Valley State Park—Lodge.	HC 70, Box 330	Davis, WV 26260	(304) 866–4121
WV0188	Timberline 4 Seasons—Resort	Rt. 32, HC 70 Box 488	Davis, WV 26260	(304) 866–4801
WV0176	Fairlea Townhouse Motel	Rt. 219, Fair St	Fairlea, WV 24902	(304) 645–7070
WV0179	Hickory Hills Cabins	Rt. 220 N	Franklin, WV 26807	(304) 358–7400
WV0191	Motel Conrad	100 Conrad Court	Glenville, WV 26351	(304) 462–7316
WV0183	Smiley's Motel	419 Hurricane Creek Road	Hurricane, WV 25526	(304) 562–3346
WV0178	Hollywood Motel	901 Popular Street	Kenova, WV 25530	(304) 453–2201
WV0165	Comfort Suite	Rt. 14 177	Mineral Wells, WV 26150	(800) 228–5150
WV0187	Holiday Inn (Star City)—Bldg. A	1400 Saratoga Ave	Morgantown, WV 26505	(304) 599–1680
WV0186	Morgantown Motel	Rt. 5 Box 25	Morgantown, WV 26505	(304) 292–3374
WV0168	New Martinsville Motor Lodge	Rt. 2	New Martinsville, WV 26155	(304) 455–2750
WV0170	Best Western	4115 1st Ave	Nitro, WV 25143	(304) 755–8341
WV0167	Stables Motor Lodge	3604 7th St	Parkersburg, WV 26101	(304) 424–5100
WV0174	Rainelle Motor Lodge	906 Main St	Rainelle, WV 25962	(304) 438–8571
WV0177	Scottish Inn	Rt. 2. PO Box 33 (Silverton)	Ravenswood, WV 26164	(304) 273–2830
WV0172	The Washington Motel	410 Washington St	Ravenswood, WV 26164	(304) 273–9356
WV0169	77 Motor Inn	Rt. 3 Box 80	Ripley, WV 25271	(304) 372–5949
WV0171	El Rancho Inn	2843 McCorkle Ave	Saint Albans, WV 25177	(304) 727–2201
WV0166	St. Marys Motel Inc	216 3rd St	Saint Marys, WV 26170	(304) 684–2233
WV0185	The Inn At Snowshoe	PO Box 10	Snowshoe, WV 26209	(304) 572–1000
WV0184	Whistle Punk Village & Inn	Snowshoe Dr. PO Box 10	Snowshoe, WV 26209	(304) 572–1000
WV0192	Microtel—South Charleston	600 Second Ave	South Charleston, WV 25303	(304) 744–4900
WV0173	Justice Inn	87 Justice Ave. Rt. 10	West Logan, WV 25601	(304) 752–3210
CORRECTIONS/ CHANGES				
California				
CA0989	Travelodge Hotel at Lax	5547 W. Century Blvd	Los Angeles, CA 90045	(310) 649–4000
Georgia				
GA0231	Rodeway Inn Macon	4999 Eisenhower Pkwy	Macon, GA 31206	(912) 781–4343
Illinois				
IL0310	Days Inn Chicago Addison	600 E. Lake St	Addison, IL 60101	(708) 834–8800
IL0433	Days Inn Bloomington	1707 W. Market St	Bloomington, IL 61701	(309) 829–6292
IL0203	Days Inn Bloomington East	1803 E. Empire	Bloomington, IL 61704	(309) 663–1361
IL0488	Fairfield Inn Kankakee	1550 St. Rte. 50	Bourbonnais, IL 60914	(815) 935–1334
IL0509	Holiday Inn Carbondale	800 E. Main St	Carbondale, IL 62901	(618) 529–1100
IL0018	Best Inns Caseyville	2423 Old Country Inn Rd	Caseyville, IL 62232	(618) 397–3300
IL0434	Comfort Inn Champaign	305 Marketview Dr	Champaign, IL 61821	(217) 352–4055
IL0253	Essex Inn Grant Park	800 S. Michigan Ave	Chicago, IL 60605	(312) 939–2800
IL0326	Hilton Hotel O'Hare	11601 W. Touhy Ave	Chicago, IL 60666	(312) 686–8000
IL0250	Marriott Chicago Downtown	540 N. Milwaukee Ave	Chicago, IL 60611	(312) 836–0100
IL0167	Marriott Hotel Chicago O'Hare	8535 W. Higgins St	Chicago, IL 60631	(312) 693–4444
IL0265	Plaza Hotel O'Hare	5615 N. Cumberland	Chicago, IL 60631	(312) 693–5800
IL0403	Best Western Inn Countryside	5631 S. LaGrange Rd	Countryside, IL 60525	(708) 352–8480
IL0175	Comfort Inn Danville	383 Winch Rd	Danville, IL 61832	(217) 443–8004
IL0485	Fairfield Inn Danville	389 Lynch Dr	Danville, IL 61832	(217) 443–3388
IL0367	Super 8 Danville	377 Lynch	Danville, IL 61832	(217) 443–4499
IL0083	Budgetel Inn Decatur	5100 Hickory Point Frontage Rd	Decatur, IL 62526	(217) 875–5800
IL0498	Hampton Inn Forsyth	1429 Hickory Point Dr	Decatur, IL 62526	(217) 877–5577
IL0435	Comfort Inn Forsyth	134 Barnett Ave	Forsyth, IL 62535	(217) 875–1166
IL0496	Best Western Country View Inn	PO Box 163, I–70 and Rte. 127	Greenville, IL 62246	(618) 664–3030
IL0436	Comfort Inn Gurnee	6080 Gurnee Mills Blvd. E	Gurnee, IL 60031	(708) 855–8866
IL0437	Fairfield Inn Gurnee	6090 Gurnee Mills Blvd. E	Gurnee, IL 60031	(708) 855–8868
IL0163	Super 8 Motel Jacksonville	1003 W. Morton	Jacksonville, IL 62650	(217) 479–0303
IL0041	Comfort Inn Joliet South	135 S. Larkin Ave	Joliet, IL 60435	(815) 744–1770
IL0027	Super 8 Motel Joliet	1730 McDonough St	Joliet, IL 60436	(815) 725–8855
IL0461	Country Inn Lincoln	1750 5th	Lincoln, IL 62656	(217) 732–9641
IL0124	Hilton Hotel Lisle	3003 Corporate W. Dr	Lisle, IL 60532	(708) 505–0900
IL0030	Super 8 Motel Litchfield	110 Ohren Ln. I–55 and Rt. 16	Litchfield, IL 62056	(217) 324–7788
IL0256	Holiday Inn Macomb	1400 N. Lafayette	Macomb, IL	(309) 833–5511
IL0010	Holiday Inn Mattoon	300 Broadway Ave. E	Mattoon, IL 61938	(217) 235–0313
IL0031	Super 8 Motel Mattoon	205 McFall Rd. I–57 & Rt. 16	Mattoon, IL	(217) 235–8888
IL0102	Kitchenette Motel O'Hare	2301 N. Mannheim Rd	Melrose Park, IL 60160	(708) 455–0100

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST OCTOBER 18, 1994 UPDATE—Continued

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IL0162	Super 8 Motel Mendota	508 Hwy. 34E	Mendota, IL 61342	(815) 539–7429
IL0118	Best Western Moline	2520 52nd Ave	Moline, IL 61265	(309) 762–9191
IL0409	Comfort Inn Moline	2600 52nd Ave	Moline, IL 61265	(309) 762–7000
IL0466	Motel 6 Moline	2359 69th Ave	Moline, IL 61265	(309) 764–8711
IL0438	Comfort Inn Morris	70 Gore Rd W	Morris, IL 60450	(815) 942–1433
IL0465	Holiday Inn Naperville	1801 N. Naper Blvd	Naperville, IL 60563	(708) 505–4900
IL0122	Days Inn Niles	6450 W. Touhy Ave	Niles, IL 60714	(708) 647–7700
IL0120	Hilton Hotel Northbrook	2855 N. Milwaukee Ave	Northbrook, IL 60062	(708) 480–7500
IL0101	Hilton Inn Oak Lawn	9333 S. Cicero Ave	Oak Lawn, IL 604532517	(708) 425–7800
IL0076	Holiday Inn Oak Lawn	4140 W. 95th St	Oak Lawn, IL 60453	(708) 425–7900
IL0439	Comfort Suites Peoria	4021 War Memorial Dr	Peoria, IL 61614	(309) 688–3800
IL0311	Holiday Inn Peoria	4400 N. Brandywine Dr	Peoria, IL 61614	(309) 686–8000
IL0482	Residence Inn Peoria	4201 N. War Memorial Dr	Peoria, IL 61614	(309) 681–9000
IL0160	Super 8 Motel Princton	2929 N. Main St	Princeton, IL 61356	(815) 872–8888
IL0223	Super 8 Motel Quincy	224 N. 36th St	Quincy, IL 62301	(217) 228–8808
IL0212	Days Inn Robinson	1500 W. Main	Robinson, IL 62454	(618) 544–8448
IL0161	Super 8 Motel Rochelle	601 Hwy. 38E	Rochelle, IL 61068	(815) 562–2468
IL0481	Residence Inn Rockford	7542 Colosseum Dr	Rockford, IL 61107	(815) 227–0013
IL0110	Best Western O'Hare	10300 W. Higgins Rd	Rosemont, IL 60018	(708) 296–4471
IL0520	Marriott Suites Chicago O'Hare	6155 N. River Rd	Rosemont, IL 60018	(708) 696–4400
IL0239	Marriott Hotel Schaumburg	50 N. Martingale Rd	Schaumburg, IL 60173	(708) 240–0100
IL0489	Summerfield Suites Schaumburg.	901 E. Woodfield Office CT	Schaumburg, IL 60173	(708) 619–6677
IL0197	Hampton Inn O'Hare	3939 N. Mannheim Rd	Schiller Park, IL 60176	(708) 671–1700
IL0026	Hilton Hotel North Shore	9599 N. Skokie Blvd	Skokie, IL 60077	(708) 679–7000
IL0293	Fairfield Inn Springfield	3446 Freedom Dr	Springfield, IL 62704	(217) 793–9277
IL0053	Hilton Hotel Springfield	700 E. Adams St	Springfield, IL 62701	(217) 789–1530
IL0316	Holiday Inn Springfield East	3100 S. Dirksen Pkwy	Springfield, IL 62703	(217) 529–7171
IL0029	Super 8 Motel Tuscola	Rt. 36 E	Tuscola, IL	(800) 800–8000
IL0317	Travelodge Urbana	409 W. University	Urbana, IL 61801	(217) 328–3521
IL0004	Travelodge Vandalia	1500 N. 6th St	Vandalia, IL 62471	(618) 283–2363
IL0495	Comfort Inn Waukegan	3031 Belvidere	Waukegan, IL 60085	(708) 623–1400
IL0123	Budgetel Willowbrook	855 79th ST	Willowbrook, IL 60521	(708) 654–0077
IL0057	Super 8 Motel Woodstock	1200 Davis Rd	Woodstock, IL 60098	(815) 337–8808
Kansas				
KS0143	Harvey Hotel	549 S. Rock Road	Wichita, KS 67207	(316) 686–7131
Minnesota				
MN0154	Americinn Motel	Hwy. 71 and Lake Rd	Blackduck, MN 56647	(218) 835–4500
MN0210	Wyndham Garden Hotel—Bloomington.	4460 W. 78th St. Cir	Bloomington, MN 55435	(612) 831–3131
MN0015	Blue Earth Super 8 Motel	PO Box 394, 1120 North Grove Street.	Blue Earth, MN 56013	(507) 526–7376
MN0106	Best Western Northwest Inn	6900 Lakeland Ave. N	Brooklyn Park, MN 55428	(612) 566–8855
MN0227	Holiday Inn Duluth	200 W. 1st St	Duluth, MN 55802	(218) 722–1202
MN0035	Econo Lodge	P.O. Box 667, Hwy. 61 E	Grand Marais, MN 556040667	(218) 387–2500
MN0217	Holiday Inn of International Falls	1500 Hwy. 71	International Falls, MN 56649	(218) 283–4451
MN0235	Best Western American Inn	3924 Excelsior Blvd	Minneapolis, MN 55416	(612) 927–7731
MN0051	Ramada Plaza Hotel Minneapolis.	12201 Ridgedale Dr	Minnetonka, MN 55350	(612) 593–0000
MN0052	Riverwood Metro Business Resort.	10990 95th St. NE	Monticello, MN 55362	(612) 441–6833
MN0236	Best Western Soldiers Field Tower & Suites.	401 SW 6th St	Rochester, MN 55902	(507) 288–2677
MN0281	Kahler Plaza Hotel	101 SW First Avenue	Rochester, MN 55902	(507) 280–6000
MN0226	Holiday Inn	75 S. 37th Ave	St. Cloud, MN 56301	(612) 253–9000
Missouri				
MO0072	Comfort Inn	2427 Mid American Industr. Dr	Boonville, MO 65233	(816) 882–5317
MO0234	Clarion at Fall Creek Resort	#1 Fall Creek Dr	Branson, MO 65616	(417) 334–6404
MO0156	Quality Inn-Shephard Hills Expressway.	3269 Shepherd Hills Exp	Branson, MO 65616	(417) 335–6776
MO0075	Comfort Inn	1926 Jefferson St	Jefferson City, MO 65109	(314) 636–2797
MO0043	Kansas City Marriott Downtown Hotel.	200 W. 12th St	Kansas City, MO 64105	(816) 421–6800
MO0144	Oxford Inn	868 E. HWY 60	Monett, MO 65708	(417) 235–8039
MO0210	Oxford Inn	868 E. HWY 60	Monett, MO 65708	(417) 235–8039
MO0073	Comfort Inn	1200 HWY. 92	Platte City, MO 64079	(816) 431–5430
MO0254	Comfort Inn—North	2550 North Glenstone	Springfield, MO 65803–4738	(417) 866–5255
MO0244	Econo Lodge	2808 N. Kansas	Springfield, MO 65803	(417) 869–5600
MO0018	2750	Plaza Way	St. Charles, MO 63303	(314) 949–8700

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST OCTOBER 18, 1994 UPDATE—Continued

Index	Property Name	PO Box/Rt No/street address	City/state/zip	Telephone
MO0074	Comfort Inn	3730 S. Lindbergh Blvd	St. Louis, MO 63127	(314) 842–1200
MO0036	Holiday Inn St. Louis Convention Center.	811 N. 9th St	St. Louis, MO 63101	(314) 421–4000
MO0099	St. Louis Hotel Ventures	901 N. First St	St. Louis, MO 63102	(314) 241–4200
MO0096	Econo Lodge	HC6 Box 107B	St. Roberts, MO 65583	(314) 336–7272
MO0171	Smalley's Motel	813 Main, Bus Rt 60	Van Buren, MO 63965	(314) 323–4263
Mississippi				
MS0070	Comfort Inn of Greenwood	401 HWY 82 West	Greenwood, MS 38930	(601) 453–5974
Nebraska				
NE0057	Rath Inn	13006 238th Street	Greenwood, NE 68366	(402) 944–3313
NE0007	Holiday Inn Express	3001 Chicago St	Omaha, NE 68131	(402) 345–2222
New Jersey				
NJ0195	Holiday Inn Boardwalk	Chelsea Ave & Boardwalk	Atlantic City, NJ 08401	(609) 348–2200
NJ0196	McIntosh Inn of East Brunswick	764 Route 18	East Brunswick, NJ 08816	(908) 238–4900
NJ0198	McIntosh Inn of Mount Laurel	1132 Route 73	Mount Laurel, NJ 08054	(609) 234–7194
Oklahoma				
OK0033	Comfort Inn, Ardmore	2700 W. Broadway	Ardmore, OK 73401	(405) 226–1250
OK0068	Comfort Inn North Oklahoma City.	4017 N.W. 39th Expressway	Oklahoma City, OK 73112	(405) 947–0038
Pennsylvania				
PA0025	Comfort Inn	7625 Imperial Way	Allentown, PA 18106	(610) 391–0344
PA0023	Econo Lodge	Test 2115 Downyflake LN	Allentown, PA 18103	(610) 797–2200
PA0036	Comfort Inn Pocono	PO Box 184 Rt. 611	Bartonsville, PA 18321	(717) 467–1500
PA0041	Comfort Inn	3660 Street Rd	Bensalem, PA 19020	(215) 245–0100
PA0399	Comfort Inn of Bethlehem	3191 Highfield Drive	Bethlehem, PA 18017	(610) 865–6300
PA0403	Comfort Suites Bethlehem	120 West Third Street	Bethlehem, PA 18015	(610) 882–9700
PA0060	Radisson Penn Harris Hotel	1150 Camp Hill Bypass	Camp Hill, PA 17011	(717) 763–7117
PA0016	Econo Lodge of Douglasville	Route 422W 387 Ben Franklin Hwy.	Douglasville, PA 19518	(610) 385–3016
PA0111	Comfort Inn Phila Airport	53 Industrial Hwy	Essington, PA 19029	(610) 521–9800
PA0127	Comfort Inn	50 Pine Dr	Greencastle, PA 17225	(717) 597–8164
PA0153	Friendship Inn Hershey	43 W. Areba Ave	Hershey, PA 17033	(717) 533–7054
PA0170	Comfort Inn	550 W. Dekalb Pike	King of Prussia, PA 19406	(610) 962–0700
PA0181	Econo Lodge South	2140 US Highway 30 East	Lancaster, PA 17602	(717) 397–1900
PA0190	McIntosh Inn	2307 Lincoln Hwy. E	Lancaster, PA 17602	(717) 299–9700
PA0204	Desmond Great Valley	One Liberty Blvd	Malvern, PA 19355	(215) 296–9800
PA0205	McIntosh Inn	One Morehall Rd	Malvern, PA 19355	(610) 279–6000
PA0012	Comfort Inn West	6325 Carlisle Pike Rt. 11	Mechanicsburg, PA 17055	(717) 790–0924
PA0218	Rodeway Inn Airport	800 Eisenhower Blvd	Middletown, PA 17057	(717) 939–4147
PA0240	McIntosh Inn	130 Limekiln Rd	New Cumberland, PA 17070	(717) 774–8888
PA0276	Econo Lodge	P.O. Box 581, RR 1	Pine Grove, PA 17963	(717) 345–4099
PA0019	Hawthorn Suites Hotel	700 Mansfield Ave	Pittsburgh, PA 15205	(412) 279–6300
PA0018	Quality Inn	234 Route 15	Williamsport, PA 17701	(717) 323–9801
Tennessee				
TN0264	Holiday Inn Worlds Fair & Convention Center.	525 Henley St	Knoxville, TN 37902	(615) 522–2800
Texas				
TX0548	Oakridge Motor Inn	P.O. Box 43, 1H–10 & U.S. Hwy. 77.	Schulenberg, TX 78956	(409) 743–4192
TX0550	Sheraton Tyler Hotel	5701 S. Broadway	Tyler, TX 75703	(903) 561–5800
Utah				
UT0022	Seven Peaks Resort Hotel/ Provo Park Hotel.	101 W. 100 N	Povo, UT 84601	(801) 377–4700
UT0071	Econo Inn	460 E. Saint George Blvd	Saint George, UT 84770	(801) 673–4861
Washington				
WA0237	Comfort Inn	440 Three Rivers Drive	Kelso, WA 98626	(206) 425–4600
WA0158	Clarion Inn at Totem Lake	12233 Totem Lake Way	Kirkland, WA 98034	(206) 821–2202
WA0174	Comfort Inn Sea Tac	19333 Pacific Highway S	Seattle, WA 98188	(206) 878–1100
WA0154	Econo Lodge	13910 Pacific Highway S	Seattle, WA 98168	(206) 244–0810
WA0235	Comfort Inn	13207 NE 20th Avenue	Vancouver, WA 98686	(206) 574–6000
WA0062	Comfort Inn	520 N Second Avenue	Walla Walla, WA 99362	(509) 525–2522
Wisconsin				
WI0217	Miwaukee Marriott Brookfield	375 South Moorland Rd	Brookfield, WI 53005	(414) 786–1100

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST OCTOBER 18, 1994 UPDATE—Continued

Index	Property Name	PO Box/Rt No/street address	City/state/zip	Telephone
West Virginia				
WV0113	Friendship Inn	RT. 119, P.O. Box 1536	Chapmanville, WV 25508	(304) 855–7182
WV0036	Comfort Inn	102 Racer Dr	Cross Lanes, WV 25313	(304) 776–8070
WV0126	Beaver Ridge Condo's-Ash & Beach Lodge.	P.O. Box 50, Rt. 1	Davis, WV 26260	(304) 866–4572
WV0034	Super 8 Motel	911 Dunbar Ave	Dunbar, WV 25064	(304) 768–6888
WV0149	Grantsville Hotel	P.O. Box 560	Grantsville, WV 26147	(304) 354–7857
WV0071	Days Inn	Putman Village Dr	Hurricane, WV 25526	(304) 757–8721
WV0022	Days Inn	635 N. Jefferson St	Lewisburg, WV 24901	(304) 645–2345
WV0006	Holiday Inn	301 Foxcroft Ave	Martinsburg, WV 25401	(304) 267–5500
WV0055	Holiday Inn (Star City)—Bldg. C	1400 Saratoga Ave	Morgantown, WV 26505	(304) 599–1680
WV0084	Travelers Inn	519 N. State Rt. 2	New Martinsville, WV 26155	(304) 455–3555
WV0087	Super 8 Motel	102 Duke St	Ripley, WV 25271	(304) 372–8880
WV0063	Yokums Vactionland Motel & Cabins.	HC 59, Box 3	Seneca Rocks, WV 26884	(304) 567–2351
WV0070	Silver Creek Lodge at Snowshoe.	1 Silver Creek Pkwy	Slatyfork, WV 26291	(304) 572–4000
WV0067	Spruce Lodge	P.O. Box 10, Snowshoe Dr	Snowshoe, WV 26209	(304) 572–2900
WV0068	Timberline Lodge	P.O. Box 10, Snowshoe Dr	Snowshoe, WV 26209	(304) 572–2900
WV0143	Ramada Inn Motorlodge—Main & Bldgs. 2 & 3.	2nd Ave. & B St	South Charleston, WV 25303	(304) 744–4641
WV0144	Red Roof Inn—Main & Bldg. 2	4006 McCorkle Ave. SW	South Charleston, WV 25309	(304) 744–1500
WV0019	CSX Hotels The Greenbrier	Station A Box 2025	White Sulphur Spgs., WV 24986.	(304) 536–1110
DELETIONS				
Nebraska				
NE0102	Best Western Stagecoach Inn	201 Stagecoach Trail	Ogallala, NE 69153	(308) 284–3656
Tennessee				
TN0035	Garden Plaza Hotel	211 Mockingbird Ln	Johnson City, TN 37601	(615) 929–2000
TN0086	Garden Plaza Hotel	1850 Old Fort Pkwy	Murfreesboro, TN 37130	(615) 895–5555
TN0119	Garden Plaza Hotel	215 S. Illinois Ave	Oak Ridge, TN 37830	(615) 481–2468
West Virginia				
WV0125	Blackbear Woods Resort	P.O. Box 55, Rt. 1	Davis, WV 26260	(304) 866–4391

[FR Doc. 94–26547 Filed 10–25–94; 8:45 am]
BILLING CODE 6718–26–U

Letter of Map Change Distribution Service

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This Notice announces the availability of a subscription service for receiving copies of Letters of Map Change (LOMCs).

DATES: The subscription service is currently available for LOMCs effective on and after October 1, 1994.

FOR INFORMATION CONTACT: Information about the subscription service may be requested by writing to the following addresses: If you are located east of the Mississippi River or in Minnesota, address your request as follows: Letter of Map Change Distribution Coordinator-East, 2953 Prosperity Avenue, Fairfax, Virginia 22031. If you are located west of the Mississippi River or in Louisiana, address your request as follows: Letter of Map Change Distribution Coordinator-West, 3601 Eisenhower Avenue, Suite 600, Alexandria, Virginia 22304.

SUPPLEMENTARY INFORMATION: FEMA announces a new product for those who are interested in National Flood Insurance Program maps and determinations made by LOMCs. Those interested may now subscribe to the Letter of Map Change Distribution Service and receive complete copies of the approximately 5,200 LOMCs, as well as denied LOMC applications issued each year. These LOMC copies will be appropriately annotated to protect the privacy of individuals. Subscriptions will be for a one-year period beginning with the date that a complete application, with appropriate fee, is received. Copies of LOMCs will be provided during the first and third weeks of each month. The first two issues will be distributed on or about November 1, 1994, and November 15, 1994, and will include those LOMCs effective from October 1 through October 15, 1994, and October 16 through October 31, 1994, respectively.

Dated: October 18, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–26546 Filed 10–25–94; 8:45 am]
BILLING CODE 6718–03–P

FEDERAL MARITIME COMMISSION

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.: 203–011474.

Title: CSAV/CCNI Car Carrier Agreement.

Parties:

Compania Sud Americana De Vapores, S.A.
Compania Chilena De Navegacion Interoceanica, S.A.

Synopsis: The proposed Agreement authorizes the parties to discuss, agree and establish rates, charges, rules and practices, deployment and utilization of vessels, charter space to and from one another, and rationalize sailings in the trade between East Coast ports of the U.S. (Maine to Key West, Florida) and ports in Panama and on the West Coast of South America (Balboa to Concepcion Bay Chile Range) principally Peru and Chile) and inland and coastal points (including Argentinian and Bolivian points). Adherence to any agreement reached is voluntary.

Agreement No.: 232–011475.

Title: Hanjin/Tricon Agreement.

Parties:

Cho Yang Shipping Co. Ltd.
DSR-Senator Lines
Hanjin Shipping Co., Ltd.

Synopsis: The proposed Agreement authorizes the parties to charter space to and from one another, and rationalize sailings in the trade from and to U.S. Atlantic Coast ports (Bangor, ME/Key West, FL range) and to and from ports in the United Kingdom and North European Continent (Le Havre/Hamburg range).

Agreement No.: 224–200259–009.

Title: Jacksonville Port Authority/ Crowley American Transport, Inc. Terminal Agreement.

Parties:

Jacksonville Port Authority.
Crowley American Transport, Inc.

Synopsis: The proposed amendment extends the term of the Agreement.

Agreement No.: 224–200888.

Title: Port of Oakland/Marine Terminals Corporation Terminal Agreement.

Parties:

Port of Oakland ("Port")
Marine Terminals Corporation ("MTC")

Synopsis: The proposed Agreement provides MTC with terminal services at the Port's Ninth Avenue Terminal. As compensation, MTC will pay the Port 70 percent of dockage and wharfage and 90 percent of wharfage tariff charges subject to certain agreed upon provisions. The Agreement has an initial term of two years.

Dated: October 20, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–26472 Filed 10–25–94; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 94–23]

Rose International, Inc. v. Trans-Atlantic Agreement and Its Member Lines; Notice of Filing of Complaint and Assignment

Notice is given that a complaint filed by Rose International, Inc. ("Complainant") against Trans-Atlantic Agreement, and jointly and severally its member lines ("Respondents") was served October 21, 1994. Complainants allege that Respondents violated sections 10(b) (1), (4), (10), (12), (14) and (15) of the Shipping Act of 1984, 46 U.S.C. app. §§ 1709(b) (1), (4), (10), (12), (14) and (15) by knowingly and willfully accepting cargo for the account of various shippers of household goods who are NVOCCs without tariffs or bonds on file with the Commission; by entering into unlawful service contracts with these shippers resulting in rates for them that discriminate against complainant; and by allowing these shippers to obtain transportation at less than the rates contained in Respondents' tariffs through unjust and unfair devices or means.

This proceeding has been assigned to the office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by October 23, 1995, and the final decision of the Commission shall be issued by February 23, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 94–26475 Filed 10–25–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Citizens Bancshares, Inc., et al.; Notice of Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 17, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Citizens Bancshares, Inc., Salineville, Ohio; to engage *de novo* in the permissible nonbanking activity of courier services, pursuant to § 225.25(b)(10) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. West Concord Bancshares, Inc., West Concord, Minnesota; to engage *de novo* in making real estate, installment, and commercial loans for its own account, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 20, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–26479 Filed 10–25–94; 8:45 am]

BILLING CODE 6210–01–F

Mid Am, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 21, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mid Am, Inc., Bowling Green, Ohio; to acquire Lucas County Credit Bureau, Inc., Toledo, Ohio, and thereby indirectly acquire MWN Corporation, St. Petersburg, Florida, and engage in check verification, pursuant to § 225.25(b)(22) of the Board's Regulation Y, and debt collection, pursuant to the provision of § 225.25(b)(23) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 20, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–26480 Filed 10–25–94; 8:45 am]

BILLING CODE 6210–01–F

Mid Am, 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 November 21, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mid Am, Inc., Bowling Green, Ohio; to acquire 100 percent of the voting shares of ASB Bankcorp, Inc., Adrian, Michigan, and thereby indirectly acquire Adrian State Bank, Adrian, Michigan.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First Security Bankshares, Inc., Lavonia, Georgia; to acquire 95.1 percent of the voting shares of Braselton Banking Company, Braselton, Georgia.

2. Hancock Holding Company, Gulfport, Mississippi; to merge with First Denham Bancshares, Inc., Denham Springs, Louisiana, and thereby indirectly acquire First National Bank of Denham Springs, Denham Springs, Louisiana.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Bankers' Bank of the West Bancorp, Inc., Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Bankers' Bank of the West, Denver, Colorado.

Board of Governors of the Federal Reserve System, October 20, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–26481 Filed 10–25–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Program Announcement No. 93612–952, Availability of Financial Assistance for the Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities

AGENCY: Administration for Native Americans, Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of availability of competitive financial assistance to assist eligible applicants address environmental problems and impacts from Department of Defense activities to Indian lands.

DEFINITION: For purposes of this program announcement, Indian lands is defined as all lands used by American Indian tribes and Alaska Native Villages.

SUMMARY: The Congress has recognized that Department of Defense activities may have caused environmental problems for Indian tribes and Alaska Natives. These environmental hazards can negatively impact the health and safety as well as their social and economic welfare. Accordingly, the Congress has taken steps to help those affected begin to mitigate environmental impacts from Department of Defense

activities by assisting them in the planning, development and implementation of programs for such mitigation.

This environmental mitigation program was begun through a program announcement published on December 29, 1993 as a response to the Department of Defense Appropriations Act, Public Law 103–139, which was enacted on November 11, 1993. This program continues under Public Law 103–335 (the Act), enacted on September 30, 1994. Section 8094 of the Act states, "Of the funds appropriated to the Department of Defense (DOD) for Operations and Maintenance Defense–Wide, not less than $8,000,000 shall be made available until expended to the Administration for Native Americans within 90 days of enactment of this Act: Provided That such funds shall be made available only for the mitigation of environmental impacts, including training and technical assistance to tribes, related administrative support, the gathering of information, documenting of environmental damage, and developing a system for prioritizing of mitigation, on Indian lands resulting from Department of Defense activities: Provided further, That the Department of Defense shall provide to the Committees on Appropriations of the Senate and House of Representatives by September 30, 1995, a summary report of all environmental damage that has occurred on Indian land as a result of DOD activities, to include, to the extent feasible, a list of all documents and records known to the Department that describe the activity or action causing or relating to such environmental damage." The Administration for Native Americans (ANA) and the Department of Defense (DOD) announce the availability of FY95 funds for eligible applicants to begin the process of addressing the environmental problems and damage caused from defense activities.

FOR FURTHER INFORMATION CONTACT: Sharon McCully—(202) 690–5780 or Rita LeBeau—(202) 690–5790 or Gerry Gipp—(202) 690–6662 at the Administration for Native Americans, Department of Health and Human Services, 200 Independence Avenue, SW., Rm 348F, Washington, DC 20201–0001.

DATES: The closing date for submission of applications is August 18, 1995.

A. Introduction and Purpose

The program announcement states the availability of any unobligated fiscal year 1994 and fiscal year 1995 financial assistance to eligible applicants using funds provided by the Department of Defense through the Administration for Native Americans for the purpose of mitigating environmental impacts on Indian lands related to Department of Defense activities.

Financial assistance awards made under this program announcement will be on a competitive basis and the proposals will be reviewed against the evaluation criteria in this announcement.

The Federal government recognizes that substantial environmental problems, resultant from defense activities, exist on Indian lands and will geographically range from border to border and from coast to coast. The nature and magnitude of the problems will most likely be better defined when affected Indian tribes and Alaska Natives have completed environmental assessments called for in Phase I of this four-phase program.

The Federal government has also recognized that Indian tribes, Alaska Natives and their tribal organizations must have the opportunity to develop their own plans and technical capabilities and access the necessary financial and technical resources in order to assess, plan, develop and implement programs to mitigate any impacts caused by Department of Defense activities.

The Administration for Native Americans (ANA) and the Department of Defense (DOD) recognize the potential environmental problems created by DOD activities that may affect air, water, soil and human and natural resources (i.e., forests, fish, plants). It is also recognized that potential applicants may have specialized knowledge and capabilities to address specific concerns at various levels within the four phase program. Under this announcement proposals will be accepted for any and all of the four phases or one specific phase. These phases are: Phase I—assessment of Indian lands to develop as complete an inventory as possible of environmental impacts caused by Department of Defense activities; Phase II—identification and exploration of alternative means for mitigation of these impacts and determination of the technical merit, feasibility and expected costs and benefits of each approach in order to select one approach; Phase III—development of a detailed mitigation plan, and costing and scheduling for implementation of the design, including strategies for meeting statutory or regulatory requirements and for dealing with other appropriate Federal agencies; and, Phase IV—implementation of the mitigation plan.

The following are some known areas of concern. It is expected that applicants may identify additional areas of concern in their applications:

- damage to treaty protected spawning habitats caused by artillery practice or other defense activities;
- damage to Indian lands and improvements (e.g. wells, fences) and facilities caused by bombing practice;
- damage caused to range and forest lands by gunnery range activities;
- low-level flights over sacred sites and religious ceremonies which disrupt spiritual activities;
- movement of soil covering the remains of buried Indian people and artifacts requiring, by tradition, their reburial in traditional rituals;
- operation of dams by the Army Corps of Engineers which has had adverse impacts on spawning beds and treaty fishing rights and water quality due to problems of siltation; reduced stream flows; increased water temperatures; and, dredge and fill problems;
- leaking of underground storage tanks on lands taken from Indians for temporary war-time use by the Department of Defense;
- unexploded ordnance from gunnery and bombing practice on Indian lands resulting in significant damage to rangelands, wildlife habitat, stock water wells, etc.;
- disposal activities related to removal of unexploded ordnance, nuclear waste materials, toxic materials, and biological warfare materials from Indian lands;
- transportation of live ordnance, nuclear waste, chemical and biological warfare materials from and across Indian lands;
- seepage of fluids suspected of containing toxic materials onto Indian lands;
- chlorofluorocarbons (CFC's) resulting from abandoned containers and/or dumping onto Indian lands;
- polychlorinated biphenyls (PCB's) from transformers which have been abandoned and/or dumped onto Indian lands;
- public health concerns regarding electromagnetic fields surrounding Defense-related transmission facilities which cross Indian lands; and
- reclamation activities required to mitigate any or all of the above stated conditions and other activities as they become known.

B. Proposed Projects To Be Funded With FY 1994 and 1995 Funds

The purpose of this announcement is to invite single year (up to seventeen months in duration) or up to thirty-six

month proposals from eligible applicants to undertake any or all of the Phases.

Applicants may apply for projects of up to 36 months duration. A multi-year project, requiring more than 12 months to develop and complete, affords applicants the opportunity to develop more complex and in-depth projects. Funding after the first 12 month budget period of an approved multi-year project is non-competitive and subject to availability of funds. (see Part E for further information)

Phase I: The purpose of Phase I is to conduct the research and planning needed to identify environmental impacts to Indian lands caused by Department of Defense activities on or near Indian lands and to plan for remedial investigations to determine and carry out a preliminary assessment of these problems. These activities may include, but not be limited to, the following:

- conduct site inspections to identify problems and causes related to DOD activities;
- identify and develop approaches to handle raw data that will assist in performing comprehensive environmental assessments of problems and causes related to DOD activities;
- identify approaches and develop methodologies which will be used to develop the activities to be undertaken in Phases II and III;
- identify other Federal agency programs, if any, that must be involved in mitigation activities and their requirements;
- identify potential technical assistance and expertise required to address the activities to be undertaken in Phases II and III; and
- identify other Federal environmental restoration programs that could be accessed to cooperatively coordinate and mobilize resources in addressing short and long-term activities developed under Phase III.

Phase I should result in adequately detailed documentation of the problems and sources of help in solving them to provide a useful basis for examining alternative mitigation approaches in Phase II.

Phase II: The purpose of Phase II activities is to examine alternative approaches for mitigation of the impacts identified in Phase I and to lead toward the mitigation design to be developed in Phase III. Phase II activities may include, but need not be limited to the following:

- conduct remedial investigation and/or feasibility studies as necessary;
- plan for the design of a comprehensive mitigation strategy to address problems identified during Phase I which address areas such as land use restoration, clean-up processes, contracting and liability concerns; regulatory responsibilities; and resources necessary to implement clean up actions;
- design strategies that coordinate with or are complementary to existing DOD cleanup programs such as the Defense Environmental Restoration Program which promotes and coordinates efforts for the evaluation and cleanup of contamination at DOD installations;
- review possible interim remedial strategies that address immediate potential hazards to the public health and environment in order to provide alternative measures i.e., providing alternate water supplies, removing concentrated sources of contaminants, or constructing structures to prevent the spread of contamination;
- identify specific types of technical assistance and management expertise required to assist in developing specific protocols for environmental assessments, remedial investigations, feasibility studies, interim remedial actions and strategic planning for existing and future mitigation activities;
- review other types of assessments that need to be considered, reviewed and incorporated into the conduct and/or design process such as:

—estimates of clean-up cost;
—estimate of impacts of short-term approach;
—estimate of impacts of long-term approach;
—cultural impacts;
—economic impacts;
—human health-risk impacts; and

- document approaches and procedures which have been developed in order to negotiate with appropriate Federal agencies for necessary cleanup action and to keep the public informed.

In establishing the basis for a design process, particularly when there are multiple problems, the applicants may want to consider a prioritization process as follows:

- emergency situations that require immediate clean-up;
- time-critical sites, i.e. sites where the situation will deteriorate if action is not taken soon;
- projects with minimum funding requirements;
- projects with intermediate-level funding requirements;
- projects with maximum funding requirements.

Achieving compliance with Federal environmental protection legislation is the driving force behind all Federal clean-up activities. The following is a list of major Federal environmental legislation that should be recognized in a regulatory review as all Federal, state and local regulatory requirements which could have major impacts in the design of mitigation strategies:

- Indian Environmental General Assistance Program Act of 1992;
- Clean Air Act (CAA);
- Clean Water Act (CWA);
- Safe Drinking Water Act (SDWA);
- Surface Mining Control and Reclamation Act of 1977 (SMCRA);
- Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA);
- Toxic Substances Control Act (TSCA);
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);
- Nuclear Waste Policy Act of 1982 (NWPA);
- Comprehensive Environmental Resource Conservation and Liability Act (CERCLA or Superfund);
- Resource Conservation and Recovery Act of 1976 (RCRA);
- Hazardous and Solid Waste Amendments of 1984 (HSWA);
- National Environmental Policy Act of 1969 (NEPA);

Other Federal legislation that should be included in the regulatory review and that should be of assistance are the tribal specific legislative acts, such as:

- American Indian Religious Freedom Act;
- National Historic Preservation Act of 1991;
- Indian Environmental Regulatory Enhancement Act of 1990;

Other regulatory considerations could involve applicable tribal, village, state and local laws, codes, ordinances, standards, etc. which should also be reviewed to assist in planning, the mitigation design, and development of the comprehensive mitigation strategy.

Phase II should result in a carefully documented examination of alternative approaches and the selection of an approach to be used in the Phase III design process.

Phase III: The purpose of Phase III is the completion of activities initiated under Phase II, the initiation of new activities required to implement programs, and the design of on-site actions required to mitigate environmental damage from DOD activities.

The Phase III activities may include but need not be limited to:

- development and implementation of a detailed management plan to: guide corrective action; resolve issues rising from overlapping or conflicting jurisdictions; guide a cooperative and collaborative effort among all parties to

ensure there are no duplicative or conflicting regulatory requirements governing the cleanup actions; and, establish a tribal or village framework and/or parameter(s) that will guide the negotiations process for one or multiple cleanup actions;

• establishment of priorities for mitigation programs when there are multiple clean-up sites; consider at a minimum the nature of the hazard involved: such as its physical and chemical characteristics, including concentrations and mobility of contaminants; the pathway indicating potential for contaminant transport via surface water, ground water and air/soil, and any other indicators that are identified during the environmental assessment, including the prioritization process identified under Phase II;

• program design and implementation of information dissemination strategies prior to start up of on-site implementation of mitigation program activities;

• development of a legal and jurisdictional strategy that addresses DOD/contractor liability issues to ensure quality, cost-effective mitigation services, and to evaluate any measures providing equitable risk between the DOD and the remediation contractor, as well as to incorporate Tribal Employment Rights Office (TERO) and other policies and procedures, if required;

• design of an approval process and other processes necessary for the implementation of tribal and village codes and regulations for current and future compliance enforcement of all mitigation actions;

• development/design of a documentation strategy to ensure all DOD and contractor cleanup activities are conducted and completed in a environmentally clean and safe manner for the social and economic welfare, as well as public health of Indian and Alaska Native people and the surrounding environment;

• development and conduct of certified training programs that will enable a local work force to become technically capable to participate in the mitigation activities, if they so choose; and

• conduct of any other activities deemed necessary to carry out Phase I, II and III activities.

Phase III should result in a comprehensive plan for conducting all aspects of mitigation action contemplated.

Phase IV: *The Phase IV activities are the implementation of mitigation plans specified in the detailed plan completed in Phase III.*

C. Eligible Applicants

The following organizations are eligible to apply:

• Federally recognized Indian tribes;

• Incorporated Non-Federally and State recognized Indian tribes;

• Alaska Native villages, tribes or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs in the **Federal Register** Notice dated October 21, 1993;

• nonprofit Alaska Native Regional Associations and/or Corporations with village specific projects;

• nonprofit Native organizations in Alaska with village specific projects;

• other tribal or village organizations or consortia of Indian tribes.

In addition, current ANA grantees who meet the above eligibility criteria, but do not have a mitigation grant under Program Announcement 93612–943 are also eligible to apply for a grant award under this program announcement.

D. Available Funds

Subject to availability of funds, approximately $8 million of financial assistance is available in FY 1995 under this program announcement for eligible applicants. Any unobligated FY1994 funds would also be available for this purpose. It is expected that about 17 awards will be made, ranging from $100 thousand to $1 million.

Each eligible applicant described above (Part C) can receive only one grant award under this announcement.

E. Multi-Year Projects

This announcement is soliciting applications for project periods up to 36 months. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be as long as 36 months. Funding after the 12 month budget period of an approved multi-year project is non-competitive. The non-competitive funding for the second and third years is contingent upon the grantee's satisfactory progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, compliance with the applicable statutory, regulatory and grant requirements, and determination that continued funding is in the best interest of the Government.

F. Grantee Share of Project

Grantees must provide at least five (5) percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. The funds for the match must be from a private source, or state source where the funds were not obtained from the Federal government by the state, or a Federal source where legislation or regulation authorizes the use of these funds for matching purposes. Therefore, a project requesting $300,000 in Federal funds (based on an award of $100,000 per budget period), must include a match of at least $15,789 (5% total project cost). Applicants may request a waiver of the requirement for a 5% non-Federal matching share. Since the matching requirement is very low it is not expected that waivers will be requested. However, the procedure for requesting a waiver can be found in 45 CFR 1336, Subpart E—Financial Assistance Provisions.

It is the policy of ANA to apply the waiver of the non-Federal matching share requirement for the purposes of this particular program announcement.

G. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

H. Application Process

(1) Availability of Application Forms: In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied, including Form–424, and in the manner prescribed by ANA. The application kits containing the necessary forms and instructions may be obtained from: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, Room 348F, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201–0001, Attention: Rita LeBeau (202) 690–5790.

(2) Application Submission: Each application should include one signed original and two (2) copies of the grant application, including all attachments. Assurances and certifications must be completed. Submission of the application constitutes certification by the applicant of its compliance with Drug-Free Workplace and Debarment and these forms do not have to be submitted. The application must be hand delivered or mailed by the closing date to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, Rm 6C–462, 6th Floor East, OFM/DDG, Aerospace Center Building, 370 L' Enfant Promenade,

SW., Washington, DC 20447, Attention: William J. McCarron ANA 93612–952.

Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at Administration for Children and Families, Division of Discretionary Grants, 6th Floor, OFM/DDG, 901 D Street, SW., Rm 6C–462, Washington, DC 20447.

The application must be signed by an individual authorized: (1) To act for the applicant tribe, village or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award.

(3) Application Consideration: The Commissioner of the Administration for Native Americans determines the final action to be taken with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel consisting of reviewers familiar with environmental problems of Indian tribes and Alaska Native villages will evaluate each application against the published criteria in this announcement. The results of this review will assist the Commissioner in making final funding decisions.
- The Commissioner's decision will also take into account the comments of ANA staff, state and Federal agencies having performance related information, and other interested parties.
- As a matter of policy the Commissioner will make grant awards consistent with the stated purpose of this announcement and all relevant statutory and regulatory requirements under 45 C.F.R. Parts 74 and 92 applicable to grants under this announcement.
- After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

I. Review Process and Criteria

Applications submitted by the post-marked date under this program announcement will undergo a pre-review to determine that:

- The applicant is eligible in accordance with the Eligible Applicants Section of this announcement.
- The application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation (All required materials and forms are listed in the Grant Application Checklist.)

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the evaluation criteria. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success. A proposed project should reflect the purposes stated and described in the Introduction and Program Purpose (Section A) of this announcement. No additional weight or preference is given to applications because of an increased number of phases proposed. Also, competition is not based on proposals of the same phase or phases but on the merit of the application independent of phase consideration. The evaluation criteria are:

(1) Goals and Available Resources (15 points):

(a) The application presents specific mitigation goals related to the proposed project. It explains how the tribe or village intend to achieve those goals identified in the application and clearly documents the involvement and support of the community in the planning process and implementation of the proposed project.

The above requirement can be met by the tribe or tribal organization through submission of a resolution that states that community involvement has occurred in the project planning and will occur in the implementation of the proposed project.

(b) Available resources (other than ANA) which will assist and be coordinated with the project are described. These resources may be personnel, facilities, vehicles or financial and may include other Federal and non-Federal resources.

(2) Organizational Capabilities and Qualifications (10 points):

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly demonstrates the successful management of prior or current projects of similar scope by the organization and/or by the individuals designated to manage the project.

(b) Position descriptions or resumes of key personnel, including those of consultants, are presented. The position descriptions and resumes relate specifically to the staff proposed in the Approach Page and in the proposed Budget of the application. Position descriptions very clearly describe the position and its duties and clearly relate to the personnel staffing required for implementation of the project activities. Either the position descriptions or the resumes present the qualifications that the applicant believes are necessary for overall quality management of the project.

(3) Project Objectives, Approach and Activities (45 points). The Objective Work Plan in the application includes project objectives and activities related to the long term goals for each budget period proposed and demonstrates that these objectives and activities:

- are measurable and/or quantifiable;
- are based on a fully described and locally determined balanced strategy for mitigation of impacts to the environment;
- clearly relate to the tribe or village long-range goals which the project addresses;
- can be accomplished with available or expected resources during the proposed project period;
- indicate when the objective, and major activities under each objective will be accomplished;
- specify who will conduct the activities under each objective; and
- support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected (20 points). The proposed project will result in specific measurable outcomes for each objective that will clearly contribute to the completion of the project and will help the tribe or village meet its goals. The specific information provided in the application on expected results or benefits for each objective is the basis upon which the outcomes can be evaluated at the end of each budget year.

(5) Budget (10 points). There is a detailed budget provided for each budget period requested. (This is especially necessary for multi-year

applications.) The budget is fully explained. It justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source. Sufficient cost and other detail is included and explained to facilitate the determination of cost allowability and the relevance of these costs to the proposed project. The funds requested are appropriate and necessary for the scope of the project.

J. Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

(1) Program Guidance:

- The Administration for Native Americans will fund projects that present the strongest prospects for meeting the stated purposes of this program announcement. Projects will not be funded on the basis of need alone.
- In discussing the problems being addressed in the application, relevant historical data should be included so that the appropriateness and potential benefits of the proposed project will be better understood by the reviewers and decision-maker.
- Supporting documentation, if available, should be included to provide the reviewers and decision-maker with other relevant data to better understand the scope and magnitude of the project.
- The applicant should provide documentation showing support for the proposed project from authorized officials, board of directors and/or officers through a letter of support or resolution. It would be helpful, particularly for organizations, to delineate the membership, make-up of the board of directors, and its elective procedures to assist reviewers in determining authorized support.

(2) *Technical Guidance.*

- Applicants are strongly encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of its quality and potential competitiveness in the review process.
- ANA will accept only one application under this program announcement from any one applicant. If an eligible applicant sends two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- An application from an Indian tribe, Alaska Native Village or other eligible organization must be submitted by the governing body of the applicant.
- The application's Form 424 must be signed by the applicant's representative (tribal official or designate) who can act with full authority on behalf of the applicant.
- The Administration for Native Americans suggests that the pages of the application be numbered sequentially from the first page and that a table of contents be provided. The page numbering, along with simple tabbing of the sections, would be helpful and allows easy reference during the review process.
- Two (2) copies of the application plus the original are required.
- The Cover Page should be the first page of an application, followed by the one-page abstract.
- Section B of the Program Narrative should be of sufficient detail as to become a guide in determining and tracking project goals and objectives.
- The applicant should specify the entire length of the project period on the first page of the Form 424, Block 13, not the length of the first budget period. ANA will consider the project period specified on the Form 424 as governing.
- Line 15a of the Form 424 should specify the Federal funds requested for the first *Budget period,* not the entire project period.
- Applicants proposing multi-year projects need to describe and submit project objective workplans and activities for each budget period. (Separate itemized budgets for the Federal and non-Federal costs should be included)
- Applicants for multi-year projects must justify the entire time-frame of the project and also project the expected results to be achieved in each budget period and for the total project period.

(3) *Projects or activities that generally will not meet the purposes of this announcement.*

- Proposals from consortia of tribes or villages that are not specific with regard to support from, and roles of member tribes.
- The purchase of real estate or construction.

K. Paperwork Reduction Act of 1980

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ANA grant applications under the Program Narrative Statement by OMB.

L. Due Date for Receipt of Applications

The closing date for applications submitted in response to this program announcement is August 18, 1995.

M. Receipt of Applications

Applications must either be hand delivered or mailed to the address in Section H, Application Process: Application Submission.

The Administration for Native Americans will not accept applications submitted via facsimile (FAX) equipment.

Deadline: Applications shall be considered as meeting the announced deadline if they are either:

1. received on or before the deadline date at the place specified in the program announcement, or
2. sent on or before the deadline date and received by the granting agency in the time for the independent review under DHHS GAM Chapter 1–62 (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to 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. Applications which do not meet the criteria above are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines. The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

(Catalog of Federal Domestic Assistance Program Number 93.612 Native American Programs)

Dated: October , 1994.

Dominic J. Mastrapasqua

Acting Commissioner, Administration for Native Americans.

BILLING CODE 4184–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN):
☐☐ – ☐☐☐☐☐☐☐

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Orgsnization
N. Other (Specify) _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and commitment procedure in response to Executive Order 12372 and have selected the program to be included in the process, have been given an opportunity to review the applicant's submission.

Item and Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:
23. Remarks	

SF 424A (4-88) Page 2
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INSTRUCTIONS FOR THE SF–424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections, A,B,C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4 Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in the columns (e) and (f) the amounts of funds needed for the upcoming period. The amounts(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amounts(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used in the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the application is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a), the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

ASSURANCES—NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in

accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions of State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

BILLING CODE 4184–01–P

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

(c) are not presently indicated or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participate shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

Date

BILLING CODE 4184-01-P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity *(if individual, last name, first name, MI)*:	b. Individuals Performing Services *(including address if different from No. 10a)* *(last name, first name, MI)*:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply)*:	13. Type of Payment *(check all that apply)*:
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment *(check all that apply)*: ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form - LLL

[FR Doc. 94–26530 Filed 10–25–94; 8:45 am]
BILLING CODE 4184–01–C

National Institutes of Health

National Institute of Mental Health; Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the advisory committee of the National Institute of Mental Health for November 1994.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of the Public Law 92–463, the entire meeting of the review committee will be closed to the public for the review, discussion and evaluation of individual grant applications. These applications, evaluations, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the contact person indicated.

This notice is being published less than 15 days prior to the meetings due to the difficulty of coordinating the attendance of members because of conflicting schedules.

Committee Name: Clinical Centers and Special Projects Review Committee.

Contact: Phyllis L. Zusman, Parklawn Building, Room 9C–18, Telephone: 301, 443–1340.

Meeting Date: November 1–2, 1994.

Time: 7 p.m.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: October 20, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–26562 Filed 10–25–94; 8:45 am]

BILLING CODE 4140–01–M

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panels (SEPs) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Behavioral and Neurosciences.

Date: November 2, 1994.

Time: 8:00 a.m.

Place: River Inn Hotel, Washington, DC.

Contact Person: Dr. Carl Banner, Scientific Review Administrator, 5333 Westbard Ave., Room 319A, Bethesda, MD 20892, (301) 594–7206.

Name of SEP: Microbiological and Immunological Sciences.

Date: November 8,1994.

Time: 12:00 Noon.

Place: NIH, Westwood Building, Room A19, Telephone Conference.

Contact Person: Mr. Howard Berman, Scientific Review Administrator, 5333 Westbard Ave., Room A19, Bethesda, MD 20892, (301) 594–7234.

Name of SEP: Behavioral and Neurosciences.

Date: November 29, 1994.

Time: 10:00 a.m.

Place: NIH, Westwood Building, Room 306B, Telephone Conference.

Contact Person: Ms. Carol Campbell, Scientific Review Administrator, 5333 Westbard Ave., Room 306B, Bethesda, MD 20892, (301) 594–7165.

The meetings will be closed in accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 20, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–26561 Filed 10–25–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

On August 17, 1994, a notice was published in the **Federal Register** (59 FR 42282) that an application had been filed with the Fish and Wildlife Service by Daesaeng Corporation, Korea, with International Animal Exchange as their U.S. agent, for a permit (PRT–795025) to take (remove from the wild) and export for public display 5 sea otters (*Enhydra lutris lutris*).

Notice is hereby given that on September 27, 1994, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service authorized the requested permit subject to certain conditions set forth therein.

Documents and other information submitted for these applications are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Rm 420(c), Arlington, Virginia 22203. Phone (703) 358–2104 or Fax (703) 358–2281.

Dated: October 21, 1994.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–26533 Filed 10–25–94; 8:45 am]

BILLING CODE 4310–55–P

Bureau of Land Management

[AZ-024–05–1220–04]

Arizona: Phoenix Resource Management Plan Amendment and Lower Gila North Management Framework Plan and Decision Record, Phoenix District

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the Federal Land Policy and Management Act of 1976 and Section 102(2)(c) of the National Environmental Policy Act of 1969, a Final Planning Amendment/Environmental Assessment was prepared by the Phoenix District, Arizona. A subsequent Decision Record and Finding of No Significant Impact (FONSI) is made available for public comment for thirty (30) days, after which the Decision will become final.

The Decision determines that it is appropriate to amend subject plans to

establish the eligibility of two river segments for possible inclusion in the Wild & Scenic River System. The two rivers are the Agua Fria north of Black Canyon City and the Hassayampa between Wagoner and Wickenburg.

SUPPLEMENTARY INFORMATION: Copies of the scoping documentation, and the Environmental Assessment are available from Bureau of Land Management's Phoenix District Office, 2015 West Deer Valley Road, Phoenix, AZ 85027. Public comments on the Environmental Assessment will be accepted for a period of thirty (30) days following publication of this notice.

FOR FURTHER INFORMATION CONTACT: Gail Acheson, Phoenix Resource Area Manager, 2015 West Deer Valley Road, Phoenix, AZ 85027 or telephone (602) 780–8090.

Also, reading copies may be reviewed at Bureau of Land Management's Arizona State Office, 3707 N. 7th Street, Phoenix, AZ 85011, telephone (602) 650–0528 (public room).

Dated: October 19, 1994.

David J. Miller,

Associate District Manager.

[FR Doc. 94–26461 Filed 10–25–94; 8:45 am]

BILLING CODE 4310–32–P

Bureau of Reclamation

Information Collection Submitted to the Office of Management Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the bureau's clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1006–****), Washington, DC 20503, telephone 202–395–7340.

Title: Voluntary Customer Survey to Implement Executive Order (E.O.) 12862.

OMB approval number: 1006–****

Abstract: On September 11, 1993, President Clinton issued E.O. 12862. Among the directives of the E.O. was the requirement that agencies "survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services." As expressed in this E.O., customer satisfaction is seen as the ultimate performance indicator for the Federal Government because it shows how well our customers are being served and what we must do to close the "gap" between what we provide our customers and what they want. Plans are to use a variety of voluntary "survey instruments" that will include both quantitative and qualitative written surveys, telephone exchanges, point-of-contact questionnaires, focus groups, etc.

Bureau form number: None.

Frequency: Ongoing.

Description of respondents: Individuals from the related water and electrical service utilities, i.e., Federal, State, and local entities, Native Americans, universities, the press, environmental groups, the legal community, consultants, and the general public.

Estimated completion time: ½ hour.

Annual response: 5,000.

Annual burden hours: 2,500.

Bureau clearance officer: Marilyn Rehfeld, 236–6769 extension 259.

Dated: September 13, 1994.

Murlin Coffey,

Chief, Supply and Services Division.

[FR Doc. 94–26463 Filed 10–25–94; 8:45 am]

BILLING CODE 4310–94–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32556]

Illinois Central Corporation—Common Control—Illinois Central Railroad Company and the Kansas City Southern Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Request for comments as to the lawfulness of a voting trust proposed by applicants.

SUMMARY: On July 29, 1994, IC Corp, ICRR, Kansas City Southern Industries Inc. (KCSI), and the Kansas City Southern Railway Company (KCSR) (collectively applicants) filed a notice of intent to file an application seeking Commission approval and authorization for: (1) IC Corp's acquisition of control of and merger with KCSI; and (2) the resulting common control of ICRR and KCSR by IC Corp. Applicants have submitted a proposed voting trust agreement/management plan for which they seek an informal opinion stating that the proposal effectively insulates IC Corp (the settlor of the trust) from any violation of 49 U.S.C. 11343. The Commission here seeks comments on that issue and other related issues.

DATES: Written comments must be filed with the Interstate Commerce Commission and served on applicants no later than November 15, 1994. Applicants' reply is due by November 25, 1994.

ADDRESSES: An original and 20 copies of all documents must be sent to Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423. Attn: Finance Docket No. 32556. In addition, one copy of all documents in this proceeding must be sent to applicants' representatives: (1) Robert P. vom Eigen, Hopkins & Sutter, 888 Sixteenth Street NW., Washington, DC 20006; and (2) William A. Mullins, Troutman Sanders, 601 Pennsylvania Avenue NW., Suite 640 North Building, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 927–5660. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: In this transaction, IC Corp will acquire 100% of the stock of KCSI. The acquisition will occur as a part of a transaction in which: (1) KCSI will effect a reorganization in which it distributes complete ownership of its financial services and information processing operations to the holders of KCSI's common stock; and (2) IC Corp will place its stock in its subsidiary, ICRR, rather than the carrier to be acquired (KCSR) or its parent (KCSI), into an independent voting trust.

IC Corp proposes to acquire KCSI, which controls KCSR, without Commission authority. Section 11343 (49 U.S.C. 11343), the provision governing consolidations, mergers, and acquisition of control, requires that Commission authority be obtained for the acquisition of control of a carrier by any number of carriers or the acquisition of control of at least two carriers by a person that is not a carrier. After IC Corp places its shares of ICRR stock into trust, the holding company will immediately acquire control of KCSR. Applicants state that, while awaiting approval of the transaction by the Commission, ICRR and KCSR will be operated independently. The parties anticipate that the independent voting trust will terminate upon approval of common control by the Commission.

In connection with the placement of ICRR stock into the voting trust, certain major personnel changes will be effected: (1) IC Corp's and ICRR's current chairman of the board, president/Chief Executive Officer/director, and chief financial officer will resign their positions with ICRR and assume identical positions at KCSR, but

will retain their positions with IC Corp; (2) their positions at ICRR will be filled, respectively, by ICRR's current senior vice president—marketing, senior vice president—operations, and controller; (3) all ICRR officers who will remain with ICRR, and who presently occupy positions with IC Corp, will resign from their positions with the holding company; and (4) several outside directors will resign their positions on the IC Corp board and will become directors of ICRR.

Certain shippers and labor interests have identified concerns associated with applicants' proposal. For this reason, and because of the uniqueness of the proposal, we have decided to review it ourselves rather than delegating the matter to agency staff. To assist us in that review, we seek public comment on: (1) whether the proposal sufficiently insulates IC Corp from controlling ICRR prior to Commission approval of IC Corp's common control of KCSR and ICRR; (2) whether certain conditions should be imposed on the trust arrangements; and (3) whether KCSR employees are entitled to labor protection. Interested parties are also invited to comment on any other issues or concerns they deem relevant to the voting trust/management plan.

We invite interested persons to submit written comments on applicants' proposal. Comments must be filed by November 15, 1994. Applicants may reply by November 25, 1994.

Decided: October 19, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons, Morgan, and Owen. Vice Chairman Phillips recused herself in this proceeding.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–26513 Filed 10–25–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

Advisory Council on Unemployment Compensation; Hearings

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (57 FR 4007, Feb. 3, 1992). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program, and to make recommendations for improvement.

TIME AND PLACE: The hearings will be held from 1 p.m. to 3 p.m. on November 30 and December 1 at the Radisson Hotel Denver, 1550 Court Place, Denver, Colorado.

PUBLIC PARTICIPATION: The hearings will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the hearing.

SUBMITTING WRITTEN STATEMENTS: Individuals or organizations wishing to submit written statements should send fifteen (15) copies to Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue NW., room S–4231, Washington, DC 20210. Statements must be received not later than November 16, 1994.

PRESENTING ORAL STATEMENTS: Individuals or organizations wishing to present oral statements should send a written request to Ellen S. Calhoun, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue NW., room S–4206, Washington, DC 20210. Requests for presenting oral statements should indicate a daytime phone number. Time slots will be assigned on a first-come, first-served basis. All such requests must be received not later than November 16, 1994.

FOR ADDITIONAL INFORMATION CONTACT: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitution Avenue NW., room S–4231, Washington, DC 20210. (202) 219–7831. (This is not a toll-free number.)

Signed at Washington, DC, this 20th day of October, 1994.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 94–26544 Filed 10–25–94; 8:45 am]

BILLING CODE 4510–30–M

Advisory Council on Unemployment Compensation; Meeting

SUMMARY: The Advisory Council on Unemployment Compensation (ACUC) was established in accordance with the provisions of the Federal Advisory Committee Act on January 24, 1992 (57 FR 4007, Feb. 3, 1992). Public Law 102–164, the Emergency Unemployment Compensation Act of 1991, mandated the establishment of the Council to evaluate the overall unemployment insurance program, including the purpose, goals, counter-cyclical effectiveness, coverage, benefit adequacy, trust fund solvency, funding of State administrative costs, administrative efficiency, and other aspects of the program, and to make recommendations for improvement.

TIME AND PLACE: The meeting will be held from 8:30 a.m. to 12 noon and 3:30 p.m. to 5 p.m. on November 30 and 8:30 a.m. to 12 noon on December 1 at the Radisson Hotel Denver, 1550 Court Place, Denver, Colorado.

AGENDA: The agenda for the meeting is as follows:

1. Discussion of UI coverage of agricultural workers;
2. Discussion of options for ensuring the forward funding of the UI system;
3. Discussion of variations in eligibility for UI among the States; and,
4. Discussion of variations in UI benefit levels and duration among the States.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seating will be available to the public on a first-come, first-served basis. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the meeting.

FOR ADDITIONAL INFORMATION CONTACT: Esther R. Johnson, DFO, Advisory Council on Unemployment Compensation, U.S. Department of Labor, 200 Constitutional Avenue NW., room S–4231, Washington, DC 20210. (202) 219–7831. (This is not a toll-free number.)

Signed at Washington, DC, this 20th day of October, 1994.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 94–26543 Filed 10–25–94; 8:45 am]

BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29

U.S.C. 1142, a public meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Thursday, November 10, 1994, in Suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

The purpose of the Eighty-Seventh meeting of the Secretary's ERISA Advisory Council, which will be held from 1 p.m. until 3:30 p.m., is to receive and discuss a detailed analysis and make recommendations of reports from each of its Work Groups i.e., Healthcare Reform; Reporting and Disclosure; Defined Contribution Plans, and to conduct any other business that may come before the Council. The Council will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding any aspect of the administration of ERISA.

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting twenty (20) copies on or before November 8, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary at the above address. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 8, 1994.

Signed at Washington, DC this 20th day of October, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–26538 Filed 10–25–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Defined Contribution Plans of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until 12 noon, Thursday, November 10, 1994, in Suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This work group was formed by the Advisory Council to study issues relating to defined contribution plans covered by ERISA.

The purpose of the November 10 meeting is to discuss and finalize the group's conclusions and recommendations concerning the educational aspects, coverage and participation under defined contribution plans. The work group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before November 8, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 10, 1994.

Signed at Washington, DC this 20th day of October, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–26539 Filed 10–25–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Healthcare Reform of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 9:30 a.m. until noon, Wednesday, November 9, 1994, in Suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This work group was formed by the Advisory Council to study issues relating to healthcare reform for employee benefit plans covered by ERISA.

The purpose of the November 9 meeting is to discuss a draft report of the work group. The work group will also take testimony and/or submissions from employee representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before November 8, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 8, 1994.

Signed at Washington, DC this 20th day of October, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94–26540 Filed 10–25–94; 8:45 am]

BILLING CODE 4510–29–M

Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Working Group on Reporting and Disclosure of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held from 1 p.m. until 3:30 p.m., Wednesday, November 9, 1994, in Suite N–3437 AB, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This work group was formed by the Advisory Council to study issues relating to reporting and disclosure requirements for employee benefit plans covered by ERISA.

The purpose of the November 9 meeting is to discuss a draft report and recommendations of the work group. The work group will also take testimony and/or submissions from employee

representatives, employer representatives and other interested individuals and groups regarding the subject matter.

Individuals or representatives of organizations wishing to address the work group should submit a written request on or before November 8, 1994 to William E. Morrow, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten (10) minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statement should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before November 8, 1994.

Signed at Washington, DC this 20th day of October, 1994.

Olena Berg,

Assistant Secretary, Pension and Welfare Benefits Administration.

[FR Doc. 94-26541 Filed 10-25-94; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94-085]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: December 7, 1994, 9 a.m. to 4:30 p.m.; and December 8, 1994, 9 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Room 6H46, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546 (202/358-4729).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Update
—Goals for National Partnership in Aeronautics R&T
—National Institute for Aeronautics Study
—Aeronautics Enterprise Plan

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: October 20, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94-26503 Filed 10-25-94; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

October 17, 1994.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on November 17-18, 1994.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue NW., Washington, DC. A portion of the morning and afternoon sessions on November 17-18, 1994, will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

The agenda for the sessions on November 17, 1994, will be as follows:

8:30-9 a.m.

Coffee for Council Members—Room 527

(Open to the Public)

COMMITTEE MEETINGS

(Open to the Public)
Policy Discussion
9-10 a.m.
Education Programs—Room M-14
Fellowship Programs—Room 315
Public Programs—Room 415
Research Programs/Preservation and Access—Room M-07
State Programs—Room 507
10 a.m. until Adjourned
(Closed to the Public)
Discussion of specific grant applications before the Council
2 p.m. until Adjourned
(Closed to the Public)
Joint Meeting of the State and Public Programs Committees to review Frankel Prize nominees—Room 415

The morning session on November 18, 1994, will convene at 9 a.m., in the 1st Floor Council Room, M-09, and will be open to the public, as set out below. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members will be served from 8:30-9 a.m.)
Minutes of the Previous Meeting
Reports
A. Introductory Remarks
B. Introduction of New Staff
C. National Conversation
D. Contracts Awarded in the Previous Quarter
E. Final Fiscal Year 1993 Budget Report
F. Fiscal Year 1994 Appropriations
G. Legislative Report
H. Committee Reports on Policy and General Matters
1. Overview
2. Education Programs
3. Fellowships Programs
4. Public Programs
5. Research Programs
6. Preservation and Access
7. State Programs

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. David C. Fisher, Advisory Committee Management Officer, Washington, DC 20506, or call area code (202) 606-8322, TDD (202) 606-8282. Advance notice of any special needs or accommodations is appreciated.

David C. Fisher,

Advisory Committee Management Officer.

[FR Doc. 94-26526 Filed 10-25-94 8:45 am]

BILLING CODE 7536-01-M

Music Advisory Panel; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber Music Ensembles Section) to the National Council on the Arts will be held on November 15–18, 1994. The panel will meet from 9:00 a.m. to 5:30 p.m. on November 15–17 and from 9:00 a.m. to 5:00 p.m. on November 18 in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 2:00 p.m. to 5:00 p.m. on November 18 for a policy and guideline discussion.

Remaining portions of this meeting from 9:00 a.m. to 5:30 p.m. on November 15–17 and from 9:00 a.m. to 2:00 p.m. on November 18 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: October 20, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–26471 Filed 10–25–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating LicensesInvolving 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 September 30, through October 14, 1994. The last biweekly notice was published on October 12, 1994 (59 FR 51616).

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 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, 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 November 25, 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.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: September 23, 1994

Description of amendments request: The proposed amendments would revise the Unit 2 Shutdown AC Sources Technical Specifications (TSs) to allow a one-time extension from 7 to 14 days of the allowed outage time (AOT) for the dedicated Class 1E emergency power source during the upcoming Unit 2 1995 Refueling Outage (RFO-10). The proposed amendments would also revise the Unit 1 Control Room Emergency Ventilation System (CREVS) TSs to provide a one-time extension from 7 to 30 days of the AOT for one train of the CREVS to be inoperable. As noted, these extensions will be needed during the upcoming 1995 Unit 2 RFO-10 to support the modifications scheduled for the onsite electrical distribution system in response to the Station Blackout (SBO) Rule, 10 CFR 50.63, and the upgrade of No. 21 Emergency Diesel Generator (EDG).The specific changes requested are:

Unit 2 TSs 3.8.1.2 and 3.8.2.2 will include a footnote indicating that the AOT for aligning an operable emergency diesel generator (EDG) to provide power to the emergency busses within 14 days during the Unit 2 RFO-10.

Unit 1 TS 3.7.6.1 will be modified to indicate that during the No. 21 EDG upgrade, the time to restore the No. 21 filter train of the air conditioning unit to operable status may be extended to 30 days (for loss of emergency power only) if: 1) A temporary diesel generator is demonstrated to be available by starting it at least once per 7 days and 2) if action 1 is not met, restore compliance with the action within 7 days or be at least in hot standby within the next 6 hours and in cold shutdown within the following 30 hours.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of issue of no significant hazards consideration for each of the proposed changes, which is presented below:

In relation to the requested changes to the Unit 2 TSs:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Requiring one Class 1E Emergency Diesel Generator (EDG) to be available for a shutdown unit ensures that AC power will be available for a loss of offsite power event, a boron dilution event, or a fuel handling incident. There is a very low probability that a loss of offsite power will occur due to severe weather or inadvertent damage to the switchyard during the 14-day period that the temporary splice box is being installed and No. 12 EDG is out-of-service. The Calvert Cliffs offsite power supply is highly redundant and has significant capability in withstanding severe weather events, such as tornadoes. In addition, Calvert Cliffs Emergency Response Plan Implementation Procedures requires that certain actions be taken, up to and including shutdown of both units, on the approach of a severe storm, such as a hurricane. The probability of a loss of offsite power is maintained low by prohibiting planned maintenance on two of the three 500 kV transmission lines and associated relaying and devices within the switchyard. Availability of the required offsite power sources will be verified once per shift. In addition to the offsite power sources, a temporary diesel generator will also be installed to provide a backup onsite power source with the capacity to support the safety-related loads of the shutdown unit.

The boron dilution event and the fuel handling incident are the only two accidents that are explicitly analyzed in the Updated Final Safety Analysis Report for a shutdown unit. The potential accident precursors such as core alterations, positive reactivity insertions, movement of irradiated fuel and movement of heavy loads over irradiated fuel, will be prohibited while No. 12 EDG is out-of-service for the temporary splice box installation. Therefore the probability of a boron dilution event or fuel handling incident is decreased during the operations allowed by this change. The requirement to maintain containment penetration closure ensures that the consequences of an accident would not be significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

A temporary diesel generator is being installed onto a 4 kV bus of the shutdown unit while the dedicated EDG for this unit is transferred to the operating unit for up to 14 days. This is an extension of the same configuration allowed by Action Statements 3.8.1.2.b and 3.8.2.2.b with additional provision taken for the Control Room Emergency Ventilation System (CREVS). The EDGs will be aligned so that each train of the CREVS will have an emergency power supply available. The proposed change has been evaluated and it has been determined that it does not impair any existing safety-related equipment needed to maintain the unit in a safe shutdown condition, and does not create any new accident initiators. The operation of the temporary diesel generator is familiar to the operators and is not significantly different from typical operator activities.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The safety function provided by the AC electrical power sources and associated distribution systems for a shutdown unit is to ensure that the unit can be maintained in a safe shutdown condition, and there is sufficient instrumentation and control capability available for monitoring and maintaining the unit status. The proposed change would allow the shutdown unit to be without a dedicated Class 1E emergency power source for up to 14 days. This is an extension of the outage time of seven days allowed by the Technical Specifications for performing maintenance and inspections on No. 12 EDG. This proposed change will have no impact on the offsite power sources.

Several compensatory measures will be taken during this period to ensure that a power source will be available for the shutdown unit. These measures include requiring that two offsite power sources are available, and a temporary diesel generator will be installed capable of supplying the loads necessary to maintain the unit in a safe condition. In addition, Technical Specifications require several compensatory measures to reduce the potential for a fuel handling incident and a boron dilution event. These measures include prohibiting positive reactivity changes, suspending core alterations, movement of irradiated fuel, and the movement of heavy loads over irradiated fuel. Establishing containment penetration closure further ensures that adequate margin of safety is maintained. In addition, reduced inventory conditions of the Reactor Coolant System will be prohibited during the 14-day period.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

In relation to the requested changes in the Unit 1 TSs:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Control Room Emergency Ventilation System (CREVS) is designed so that the Control Room can be occupied under all plant conditions. The CREVS is required to maintain the Control Room temperature and to filter the Control Room air in the event of a radioactive release. When No. 21 Emergency Diesel Generator (EDG) is being upgraded, No. 12 CREVS will be without a Class 1E emergency power source. The CREVS is not an initiator in any previously evaluated accidents. Therefore, the proposed change does not involve an increase in the probability of an accident previously evaluated.

The CREVS is required to maintain the Control Room habitable following a radioactive release from a loss of coolant accident, a main steam break, or a steam generator tube rupture. There is a very low probability of an event occurring requiring Control Room isolation during the 30-day period that it will take to upgrade No. 21 EDG. Requiring that the CREVS have both a normal power source and an emergency power source available ensures that one train of the system will be available so that the Control Room can be occupied under these conditions. The probability of a loss of offsite power is very low due to the highly redundant design of the offsite power supply Planned maintenance on three of the offsite power supplies and associated relaying and devices within the switchyard will be prohibited during the upgrade period to maintain the low probability of a loss of offsite power event. Number 12 CREVS train will continue to have its normal power source for all but approximately four days when the bus will be de-energized to allow bus work that is necessary to the tie-in of the Alternate AC diesel generator. Number 11 CREVS will have both its normal and emergency power supply available and this train is capable of maintaining the Control Room habitable. In addition, a temporary diesel generator will be installed to provide assurance that an emergency power source will be available to No. 12 CREVS. The compensatory measures that will be taken during this period will ensure that the proposed change does not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The CREVS is not being modified by this proposed change. The system will continue to operate in the same manner. Number 21 EDG will operate in a similar manner after the upgrade and will be able to support unit operation after all the testing is completed. The installation of the temporary diesel generator during the upgrade period has been evaluated to ensure that it does not create any new accident initiators.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The operability of the CREVS during Modes 1 through 4 ensures that the Control Room will remain habitable under all plant conditions. The proposed change does not affect the function of the CREVS. The proposed change will allow one train of the CREVS to be without a Class 1E emergency power supply for up to 30 days. This train will have the normal power supply available for all but approximately four days to allow

necessary bus work. The other train of the CREVS will have both its normal and emergency power supplies during this period. Compensatory measures that will be taken include prohibiting planned maintenance on the required offsite power sources and installing a temporary diesel generator of sufficient capacity as a backup to the affected train. These measures will maintain the current margin of safety. The upgrade to the existing EDGs will provide additional margin for the electrical loading of 4 kV safety-related busses. The completion of the No. 21 EDG upgrade will improve the margin of safety for the onsite electrical distribution system.

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 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ledyard B. Marsh

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: September 6, 1994

Description of amendment request: The proposed amendment changes the Pilgrim Nuclear Power Station Technical Specifications Sections 3.7.B.1.a, 3.7.B.1.c, 3.7.B.1.e, 3.7.B.2.a, and 3.7.B.2.c. The proposed changes also add new sections 3.7.B.1.f and 3.7.B.2.e. These sections require both trains of the Standby Gas Treatment (SGTS) and Control Room High Efficiency Air Filtration (CRHEAF) System to be operable for the initiation of fuel movement and during fuel handling operations involving irradiated fuel.

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 operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specifications 3.7.B.1 and 3.7.B.2.e restrict the movement of irradiated fuel when only one train of SGTS or one train of CRHEAF are operable. Irradiated fuel movement may not begin and may only continue for seven days when the Limiting Condition of Operation is entered.

Removing these restrictions during refueling operations does not involve a significant increase in the probability or consequences of an accident previously evaluated because compensatory measures will be in place.

When sections 3.7.B.1.f and 3.7.B.2.e are invoked fuel movement will not commence until 5 days following plant shutdown and reactor vessel will be flooded-up to elevation 114". The 5 day period provides decay-time before irradiated fuel movement begins. Flooding-up elevation 114" provides an enlarged inventory reducing the possibility of a loss-of-coolant event exposing fuel such that radioactive gasses are produced, an event SGTS and CRHEAF are designed to mitigate.

Other compensatory measures include requiring the SBO [station blackout] diesel or the shutdown transformer to be operable prior to and during the fuel movement. This adds defense-in-depth by making available another power supply to the in-service safety-related bus. Also, the substitution of a non-safety power supply to the SGTS and CRHEAF "inoperable" systems while their safety-grade bus is out-of-service for maintenance will provide offsite power to the "inoperable" train. While this electrical supply is not safety-grade, it is reliable and capable of powering the SGTS and CRHEAF systems. The components of the "inoperable" trains will be available with power from an alternate power source. The compensatory connection to the non-safety grade bus gives added confidence these trains can perform the design function although they are not "operable" as defined by Technical Specifications.

Operating Pilgrim in accordance with this proposed change does not involve a significant increase in the probability or consequence of an accident previously analyzed because compensatory measures will be in force to: restrict the commencement of irradiated fuel handling or new fuel handling over the spent fuel or core until 5 days following reactor shutdown; provide a reliable source of power to the "inoperable" SGTS and CRHEAF systems; provide an enlarged coolant inventory to protect irradiated fuel from the effects of an inadvertent draindown of the vessel; and provide an additional source of emergency power to the active SGTS and CRHEAF systems by ensuring the operability of the SBO diesel generator or the Shutdown Transformer.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Planned maintenance activities require removing a safety-related bus and emergency diesel generator powering a train of SGTS and CRHEAF from service. The redundant trains are not affected. The affected trains of SGTS and CRHEAF will be connected to a non-safety bus, allowing them to operate but not allowing them to be considered operable under the purview of Technical Specifications. The proposed change allows refueling activities to commence with one train of SGTS and CRHEAF fully operable and the other train available but not powered by its safety grade bus and associated emergency diesel generator. Compensatory measures will be in effect during refueling activities involving this configuration. The proposed changes do not create the possibility of a new or different kind of accident from the fuel-drop accident previously analyzed. Therefore, operating Pilgrim in accordance with this change will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

SGTS and CRHEAF contribute to the margin of safety during fuel handling by mitigating the consequences of a fuel-handling event. Allowing an exception to the requirement of both trains of SGTS and CRHEAF operable prior to or during fuel movement activities does not involve a significant reduction in the margin of safety because the first line of defense, the other SGTS and CRHEAF trains, will be operable. The redundant trains will also be powered and operable in all ways except the "operable" concept required by Technical Specification.

Hence, the actual condition of the equipment allows it to meet its design function except under the strict Technical Specification interpretation of operable, and the described compensatory measures that will be in effect when the exception is employed, constrain the potential impact on the margin of safety caused by using the exception; therefore, operating Pilgrim in accordance with this proposed Technical Specification request 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: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: September 6, 1994

Description of amendment request: The proposed amendment would reduce the Reactor Pressure Setpoint at which

the shutdown cooling system automatically isolates. This setpoint also isolates the low pressure coolant injection valves when the shutdown cooling system is in operation.

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 operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification Table 3.2.A lists the instrumentation that initiates primary containment isolation and also lists the trip level setting (setpoints) for that instrumentation. The setpoint for reactor high pressure is presently [less than or equal to] 110 psig which was selected to provide protection for the RHR [residual heat removal] low pressure suction piping against possible overpressurization. This signal initiates a group 3 containment isolation by closing the shutdown cooling isolation valves and the Low Pressure Coolant Injection (LPCI) valves. To provide an optimal solution to address Generic Letter 89-10, the motor-operated valves which effect the isolation of the RHR suction piping (MO1001-47 and MO1001-50) are being modified based on a lower differential pressure in the design calculations. The setpoint is being reduced to ensure plant operation is maintained in accordance with the new design and to continue to provide the protection necessary against overpressurization. This does not involve an increase in the probability or consequences of an accident previously analyzed because reducing the setpoint to less than what the technical specifications currently requires is a change in the conservative direction relative to protection of the piping. The LPCI injection valves are designed for higher pressures and the proposed setpoint change does not involve an increase in the probability or consequences of an accident previously evaluated.

Technical Specification Table 3.2.B lists instrumentation that initiates or controls the core and containment cooling systems and also lists the trip level settings (setpoints) for that instrumentation. The setpoint for reactor low pressure [less than or equal to] 110 psig, is a permissive for the group 3 isolation of the RHR inboard injection valves. Reducing the setpoint to [less than or equal to] 76 psig is consistent with the design of the other group 3 isolation valves that receive the same signal and accomplishes the isolation of the shutdown cooling system when there is a system breach. Thus, revising this setpoint does not increase the probability or consequences of an accident previously evaluated.

2. The operation of Pilgrim Station 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 setpoint change supports modifications made to the shutdown cooling isolation valves to provide additional margin to address Generic Letter 89-10 concerns. Reducing the setpoint for this function continues to provide protection of the RHR suction piping and ensures closure of the isolation valves. Therefore, revising the reactor high pressure setpoint to [less than or equal to] 76 psig for instrumentation that initiates primary containment isolation (Table 3.2.A) does not create the possibility of a new or different kind of accident previously evaluated. Similarly, the revision of the reactor low pressure setpoint to [less than or equal to] 76 psig for instrumentation that initiates or controls the core and containment cooling systems does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The purpose of the setpoint for reactor pressure in Table 3.2.A and 3.2.B is to provide protection for the RHR suction piping and ensure proper isolation for unlikely piping breaches. Changing the setpoint to a lower value is consistent with modifications being made to the shutdown cooling isolation valves. The margin of safety for this setpoint was established to protect the RHR suction piping from overpressurization and to ensure that primary containment integrity could be established by the isolation valves on a Group 3 isolation. A margin of safety for protecting the RHR suction piping exists due to the difference between the design pressure of the piping and the setpoint specified in the technical specifications. Reducing the setpoint increases the difference between the design pressure of the piping and the setpoint hence, this margin of safety is increased. The margin of safety established for primary containment isolation valves is maintained by specifying a setpoint which corresponds to the closing differential pressure of the valves under postulated accident conditions. The setpoint change does not reduce the design margins established to ensure the valves perform their design isolation function when required. The low pressure coolant injection valves that receive this same signal are designed for higher pressures than the current setpoint of [less than or equal to] 110 psig and, therefore, a lower setpoint increases the margin of safety. Thus, the proposed amendment 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 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: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: September 6, 1994

Description of amendment request: The proposed amendment would remove Technical Specification section 4.5.H.4, a section which requires the testing and calibration of pressure switches in certain emergency core cooling system (ECCS) lines.

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 Operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. [***].

The discharge piping for ECC systems is maintained filled to prevent water hammer during automatic pump starts. Monthly venting is the primary means of ensuring filled discharge piping. The pressure switches are an adjunct to such venting. Hence, piping in the Core Spray System, the Low Pressure Coolant Injection System (LPCI), the High Pressure Coolant Injection (HPCI) system, and the Reactor Core Isolation Coolant (RCIC) system are all equipped with pressure switches that detect pressure decay in the discharge piping of these systems.

This proposed change does not change Pilgrim's configuration or equipment. The switches perform a surveillance function and do not provide a signal needed to prevent or mitigate an accident. The switches will continue to perform their surveillance function and their surveillance and calibration will be performed in accordance with Pilgrim procedures. Removal of section 4.5.H.4 eliminates the possibility of inoperable switches forcing the shutdown of Pilgrim or the alternative of declaring an operable safety system inoperable because of its association with these switches.

Technical Specifications will continue to require venting the discharge piping high point when the systems are configured such that water hammer can occur. (sections 4.5.H.1, 4.5.H.2 and 4.5.H.3). Thus, the application of this proposed change does not reduce the Technical Specifications intent of reducing the likelihood of discharge piping water hammer. Therefore, operating Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously analyzed.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or

different kind of accident from any accident previously evaluated.

Section 4.5.H's purpose is to maintain the ECCS discharge piping filled to prevent water hammer. The purpose of the pressure switches is to detect voids in ECCS discharge piping to prevent the possibility of damage due to water hammer. These switches are not safety-related, have no automatic functions, and are not relied on to prevent or mitigate an accident. Instead, they enhance the existing discharge pipe venting surveillance requirements by detecting void formation in discharge pipe.

The switches will continue to perform their surveillance function through Pilgrim procedures. Venting will continue to be required by Technical Specifications. Therefore, operating Pilgrim in accordance with this proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change does not impair the detection of conditions necessary to produce a water hammer in the discharge piping.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The discharge piping pressure switches are surveillance instruments and act as a secondary means of protecting the discharge piping from conditions that can produce water hammer. They are not relied on to prevent or mitigate accidents. Hence, these switches do not significantly impact safety because they are not the primary means of preventing discharge piping water hammer. Therefore, removing the pressure switches from Technical Specifications potentially contributes to plant availability but does not involve a significant reduction in a margin of safety because the primary method of detection (venting) remains and the switches will continue to be subject to procedural controls.

This proposed change has been reviewed and recommended for approval by the Operations Review Committee and reviewed by the Nuclear Safety Review and Audit Committee.

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: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: September 6, 1994

Description of amendment request: The proposed amendment would relocate the alarms for the drywell to suppression chamber vacuum breakers to a different annunciator panel.

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 operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously identified.

The proposed change relocates annunciators in the control room but does not change their designed function or setpoint.

The Annunciator System is non-safety related and performs no direct safety function. No accident initiators are being affected by this proposed change. Accident mitigating systems remain operable, and accident scenarios are unaffected.

2. The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

Relocating the Drywell to Suppression Chamber annunciator from one control room panel to another does not create the possibility of a new or different kind of accident. This modification does not modify the setpoints or functions of the annunciators. Hence, it is administrative and proposed to allow relocation which is currently constrained by the current Technical Specifications level of detail.

3. The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

The equipment being relocated is non-safety related and its relocation does not impact the margin of safety. This relocation is proposed to enhance the operator's ability to identify and analyze abnormal events.

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: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Attorney for licensee: W. S. Stowe, Esquire, Boston Edison Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Project Director: Walter R. Butler

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: June 13, 1994, as supplemented on October 7, 1994.

Description of amendment request: The proposed amendment would make several changes to the Administrative Controls in Section 6 of Technical Specifications (TS) for Byron and Braidwood stations. The proposed changes include: (1) a change to the submittal frequency of the Radiological Effluent Release Report, (2) a revision to the Shift Technical Advisor description, (3) clarification of the Shift Engineer's responsibilities, and (4) editorial changes. The references to the Semiannual Radiological Effluent Release Report are also revised in other sections of the TS. The proposed change in the October 7, 1994, submittal revised TS 6.3.1 to include generic descriptions of personnel who fulfill the responsibilities of a radiation protection manager. This supplements the information that was published in the Federal Register on August 3, 1994 (59 FR 39581).

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 changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Section 6 of Technical Specifications do not affect any accident initiators or precursors and do not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident.

The proposed changes are administrative in nature and provide clarification. These changes provide consistency with station procedures, programs, the Code of Federal Regulations, other Technical Specifications, and Standard Technical Specifications. These changes do not impact any accident previously evaluated in the Updated Final Safety Analysis Report.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the design or operation of any system, structure, or component in the plant. There are no changes to parameters governing plant operation; no new or different type of equipment will be installed. The proposed changes are considered to be administrative

changes. All responsibilities described in Technical Specifications for management activities will continue to be performed by qualified individuals.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes do not affect the margin of safety for any Technical Specification. The initial conditions and methodologies used in the accident analyses remain unchanged, therefore, accident analysis results are not impacted.

The proposed changes are administrative in nature and have no impact on the margin of safety of any Technical Specification. They do not affect any plant safety parameters or setpoints. The descriptions for the Shift Technical Advisor and Shift Engineer are clarified, however, include no reduction to their responsibilities.

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: Robert A. Capra

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: September 13, 1994

Description of amendment request: The amendments replace Containment Systems technical specification (TS) 3.6.2.2, "Spray Additive System" with a new Emergency Core Cooling Systems TS 3.5.5, "ECCS Recirculation Fluid pH Control System."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change involves replacement of concentrated NaOH injected via the containment spray system with trisodium phosphate (TSP) stored in the containment and dissolved in the sump recirculation solution to maintain acceptable post accident spray/recirculation solution chemistry. Deletion of the concentrated NaOH will eliminate a personnel hazard. The pH control system functions in response to an accident and does not involve or have any effect on any initiating event for any accident previously evaluated. Operation under the proposed amendment will continue to ensure that iodine potentially released post-LOCA is retained in the sump solution, and resultant offsite and control room thyroid doses are within the limits of 10 CFR 100 and 10 CFR 50, Appendix A, General Design Criterion 19, respectively.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The deleted equipment is isolated from the remaining equipment by blind flanges, locked closed valves, cut and capped piping, determinated and/or spared cables; and interfaces are analyzed to ensure the remaining required equipment meets applicable original design requirements. The new equipment (TSP and baskets) is a passive pH control system and is supported and analyzed to ensure there are no adverse interfaces (e.g. pipe break, jet impingement, seismic) with existing equipment, systems, or structures.

3. The proposed change does not involve a significant reduction in a margin of safety. The slight change in recirculation solution pH maintains adequate protection against chloride induced stress corrosion cracking of austenitic stainless steel and maintains the capability of the solution to retain iodine. It results in an insignificant increase in the post-accident rate of hydrogen generation, which remains well within the existing capacity of the hydrogen recombiners. The increased mass in the containment will have no significant impact on post-accident flood levels, recirculation solution boron concentration, or peak clad temperatures. No other operating parameters for systems, structures, or components assumed to operate in the safety analysis are changed. The offsite and control room doses meet the limits of 10 CFR 100 and GDC 19 respectively. Because the trisodium phosphate is nonvolatile and the baskets are protected with solid covers and are located slightly above the floor in the containment where access is strictly controlled, a surveillance interval of once per refueling outage provides assurance that the TSP will be available when required.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: September 26, 1994

Description of amendment request: The proposed license amendment would revise the "Plan for the Long Range Planning Program" by changing the semi-annual reporting period to annual, and to reflect refined evaluation criteria and assessment methodology; and, to incorporate the necessary changes to the license condition wording.

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. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The proposed revision to the Facility Operating License does not affect the safety analysis and does not involve any physical changes to the plant, nor any changes in the format or restraints on plant operations, and only contemplates a change to the Plan for the Long Range Planning Program currently approved by the NRC in license condition 2.C.(6). Therefore, this change will not increase the probability of previously analyzed accidents because it involves no direct plant modification or change in operation, and hence, it is also unrelated to the possibility of increasing the consequences of previously analyzed accidents.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed revision to the Facility Operating License does not affect the safety analysis and does not involve any physical changes to the plant, nor any changes in the format or restraints on plant operations, and only contemplates a change to the Plan for the Long Range Planning Program currently approved by the NRC in license condition 2.C.(6). Therefore, this change has no effect on the possibility of creating a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed revision to the Facility Operating License does not involve any physical changes to the plant, nor any changes in the format or restraints on plant operations, and only contemplates a change

to the Plan for the Long Range Planning Program currently approved by the NRC, in license condition 2.C.(6). Therefore, the overall margin of safety for the plant is maintained.

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, NJ 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Phillip F. McKee

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: September 26, 1994

Description of amendment request: The proposed license amendment would revise the "Plan for the Long Range Planning Program" by changing the semi-annual reporting period to annual, and to reflect refined evaluation criteria and assessment methodology; and, to incorporate the necessary changes to the license condition wording.

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. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The proposed revision to the Facility Operating License does not affect the safety analysis and does not involve any physical changes to the plant, nor any changes in the format or restraints on plant operations, and only contemplates a change to the Plan for the Long Range Planning Program currently approved by the NRC in license condition 2.C.(9). Therefore, this change will not increase the probability of previously analyzed accidents because it involves no direct plant modification or change in operation, and hence, it is also unrelated to the possibility of increasing the consequences of previously analyzed accidents.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed revision to the Facility Operating License does not affect the safety analysis and does not involve any physical changes to the plant, nor any changes in the format or restraints on plant operations, and only contemplates a change to the Plan for the Long Range Planning Program currently approved by the NRC in license condition 2.C.(9). Therefore, this change has no effect on the possibility of creating a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed revision to the Facility Operating License does not involve any physical changes to the plant, nor any changes in the format or restraints on plant operations, and only contemplates a change to the Plan for the Long Range Planning Program currently approved by the NRC, in license condition 2.C.(9). Therefore, the overall margin of safety for the plant is maintained.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Phillip F. McKee

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: September 26, 1994

Description of amendment request: The proposed amendment would revise the Cooper Nuclear Station (CNS) Technical Specifications, Section 3.5.C "HPCI System," to increase the minimum pressure at which the High Pressure Coolant Injection (HPCI) System is required to be OPERABLE from greater than 113 psig to greater than 150 psig.

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. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Evaluation

The change in the reactor vessel pressure at which the High Pressure Coolant Injection (HPCI) System must be operable from 113 psig to 150 psig will not result in a significant increase in the probability or consequences of an accident previously evaluated. The HPCI System is designed to provide adequate reactor vessel coolant injection for small break accidents where the reactor vessel remains pressurized. Therefore, the HPCI System provides a means of responding to previously analyzed accidents. Changing the lower bound reactor vessel pressure limit at which the HPCI System must be operable does not affect any of the accident initiation sequences previously analyzed, and therefore this proposed change will not result in an increase in the probability of any accident previously analyzed.

The change in the required pressure at which the HPCI System must be operable from 113 psig to 150 psig will not involve a significant increase in the consequences of any accident previously evaluated. Increasing this minimum pressure at which the HPCI System must be OPERABLE will not affect the availability of other systems which provide standby core cooling. The CNS Core Standby Cooling Systems (CSCS), which consist of the HPCI System, the Automatic Depressurization System (ADS), the Low Pressure Coolant Injection (LPCI) System, and the Core Spray (CS) System, are designed to cover the spectrum of loss-of-coolant accidents. For large break events, the reactor vessel will depressurize below the point where the HPCI System is OPERABLE, and single failure proof core cooling is provided by a combination of the LPCI and CS systems. For small break events wherein the reactor vessel does not rapidly depressurize, the HPCI System is designed to provide core cooling with a reactor vessel pressure range of 1120 psig to 150 psig. Upon failure of the HPCI System to provide adequate core cooling, the ADS in conjunction with the LPCI and CS systems provide single failure proof assurance of adequate core cooling. The Low Pressure Systems (LPCI and CS) are designed and required to provide core cooling at reactor pressures below 150 psig.

The District performed calculations which have determined that the low pressure Core Standby Cooling systems are capable of providing adequate core cooling with a reactor pressure of 150 psig under the most degraded pump conditions, i.e., pump performance at minimum Technical Specifications requirements. Additionally, the District reviewed applicable engineering calculations to ensure that no calculations were relying on the HPCI System to provide degraded flow to the reactor vessel during any accident scenario or transient. Based on the diverse means of providing adequate core cooling for the spectrum of loss-of-coolant accidents, and the capability of the low pressure core cooling systems to provide adequate core cooling at 150 psig and below, changing the required pressure at which HPCI must be operable from 113 psig to 150 psig will not change the capability to provide adequate core cooling following postulated events.

The proposed changes do not alter the conditions or assumptions in any of the Updated Safety Analysis Report (USAR) accident analyses. Since the USAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. Therefore, it can be concluded

that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2.Does the proposed License Amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Evaluation

The proposed changes introduce no new failure modes for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. Increasing the minimum reactor pressure at which the HPCI System is required to be OPERABLE will not cause an unplanned initiation of the HPCI System or any other plant system or equipment, nor will the change impede the initiation of any required safety system. The HPCI System relies on the containment suppression pool, emergency condensate storage tanks, plant D.C. electrical system, and the reactor low water level and high drywell pressure instrumentation to adequately operate. The proposed increase in the minimum reactor pressure at which the HPCI System would be required OPERABLE will not affect the equipment of these systems, nor will the change affect the physical configuration of the HPCI System. There will be no change in the types or increase in the amount of effluents released offsite. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change create a significant reduction in the margin of safety?

Evaluation

Changing the reactor vessel pressure at which the HPCI System must be OPERABLE from 113 psig to 150 psig will not constitute a significant reduction in the margin of safety. As stated in the Technical Specifications Bases Section 3.5.C, the HPCI System is designed to provide rated cooling water flow for reactor pressures ranging from 1120 psig to 150 psig. The HPCI is not designed to provide rated cooling water flow at reactor pressures below 150 psig. At reactor operating pressures below 150 psig, the low pressure core cooling systems are required to be available, are capable of fulfilling their functions, and provide the required flow in the low pressure regions below 150 psig. Additionally, the combination of the ADS, LPCI and CS systems provide additional means of providing adequate core cooling at any reactor pressure. Therefore the proposed change to increase the minimum reactor pressure at which the HPCI System is required to be operable to greater than 150 psig will not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Attorney for licensee: Mr. G.D. Watson, Nebraska Public Power District, Post Office Box 499, Columbus, Nebraska 68602-0499

NRC Project Director: William D. Beckner

Northeast Nuclear Energy Company (NNECO), Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of amendment request: September 9, 1994

Description of amendment request: The proposed revision to the Technical Specifications would delete the requirement for a special test of the alternate train when one train is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed changes in accordance with 10CFR50.92 and concludes that the changes do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed changes do not affect the operation of the APR [automatic pressure relief] or FWCI [feedwater coolant injection] subsystems, nor the SBGT [standby gas treatment] system. The proposed changes do not modify the required actions described in the LCOs [limiting conditions for operation] when either one or both circuits of SBGT or an APR valve are determined to be inoperable. The proposed changes will increase the availability of the APR subsystem by eliminating a surveillance requirement that causes the actuation logic to be taken out of service for testing when one valve is determined to be inoperable. The proposed changes will not affect the availability of the remaining circuit of SBGT since testing does not remove the train from service.

Both the SBGT and APR systems function to mitigate the consequences of postulated accidents. As such, modification to the surveillance requirements does not create a significant increase in the probability of an accident. Eliminating the alternate train testing requirement will not significantly increase the consequences of a postulated accident. The added assurance that the APR actuation logic is operable which is provided by Section 4.5.D.2 is not sufficient to justify the loss of safety function during testing, or the increased risk of inadvertent operation of the APR valves or the FWCI subsystem. While Technical Specification 4.7.B.3.c does not remove the remaining SBGT circuit from service, reasonable assurance of operability is provided by Technical Specification 4.7.B.2.d which requires a monthly demonstration of operability of each train of the SBGT system.

Therefore, no significant increase in the probability or consequences of an accident previously analyzed would occur.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed changes delete the requirement to demonstrate the operability of the remaining APR valves actuation logic, the FWCI subsystem, and the alternate circuit of SBGT immediately and daily thereafter when one APR valve or one circuit of SBGT is determined to be inoperable. The proposed changes do not add or change any equipment or logic. The proposed changes also do not alter any system operability requirements. These changes only affect the number of surveillance tests which must be performed. They do not affect the test methodology for any of these systems.

Since there are no changes to the function, operation, or surveillance test methodology of any of these systems, the possibility of a new or different kind of accident is not created.

3. Involve a significant reduction in the margin of safety.

The proposed changes delete the requirement to demonstrate the operability of the remaining APR valves actuation logic, the FWCI subsystem, and the alternate circuit of SBGT immediately and

daily thereafter when one APR valve or one circuit of SBGT is determined to be inoperable. The elimination of the additional assurance that the actuation logic for the remaining APR valves and the FWCI subsystem is operable is more than offset by the increase in the margin of safety which is created by eliminating a requirement to remove the safety system from service for testing. The margin of safety for the SBGT system is not significantly reduced since this system is tested monthly in accordance with Technical Specification 4.7.B.2.d.

Assurance of operability is provided by the normal, scheduled surveillances which have been established at a sufficient interval to provide reasonable assurance of operability. Therefore, the proposed changes do 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 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, CT 06360.

Attorney for licensee: Ms. L. M. Cuoco, Senior Nuclear Counsel, Northeast Utilities Service Company, Post Office Box 270, Hartford, CT 06141-0270.

NRC Project Director: Phillip F. McKee

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, DiabloCanyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: September 20, 1994 (Reference LAR 94-08)

Description of amendment requests: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant Unit Nos. 1 and 2 to revise surveillance requirements (SRs) as recommended by NRC Generic Letter (GL) 93-05, "Line-Item Technical Specification Improvements to Reduce Surveillance Requirements for Testing During Power Operation." The specific TS changes proposed are as follows:

(1) TS SR 4.1.3.1.2 would be revised to change the frequency for testing the movability of the control rods from at least once per 31 days to at least once per 92 days.

(2) TS 3/4.3.2, Table 4.3-2, "Engineered Safety Features Actuation System Instrumentation Surveillance Requirements," Functional Unit 3.c.4), and TS 3/4.3.3.1, Table 4.3-3, "Radiation Monitoring Instrumentation for Plant Operations SRs," would be revised to change the monthly channel functional test to a quarterly channel functional test.

(3) The proposed changes to TS 3/4.5.1 are as follows: (a) TS SR 4.5.1.1a.1) would be revised to more clearly state that the accumulator water volume and pressure must be verified to be within their limits. (b) TS SR 4.5.1.1b. would be revised to specify that the boron concentration surveillance is not required to be performed if the accumulator makeup source was the refueling water storage tank (RWST). (c) TS SR 4.5.1.2 would be relocated to plant procedures.

(4) TS SR 4.5.2c.2) would be revised to clarify that a separate containment entry to verify the absence of loose debris is not required after each containment entry.

(5) TS SR 4.6.2.1d. would be revised to change the frequency for a containment spray header flow test from at least once per 5 years to at least once per 10 years.

(6) TS SR 4.6.4.2a. would be revised to change the verification of the minimum hydrogen recombiner sheath temperature from at least once per 6 months to at least once each refueling interval.

(7) TS SR 4.7.1.2.1 would be revised to change the surveillance frequency for testing each auxiliary feedwater (AFW) pump from at least once per 31 days to at least once per 92 days on a staggered test basis.

(8) TS SR 4.10.1.2 would be revised to lengthen the allowed period of time for a rod drop test from 24 hours to 7 days prior to reducing shutdown margin to less than the limits of TS 3.1.1.1.

(9) TS SR 4.11.2.6 would be revised to change the surveillance frequency from 24 hours to 7 days when radioactive material is being added to the gas decay tanks and to add a requirement to monitor radioactive material concentrations in the gas decay tanks at least once per 24 hours when system degassing operations are in progress.

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. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The changes proposed in this LAR [license amendment request] are consistent with the guidance provided in GL 93-05. The proposed changes eliminate testing that is likely to cause transients or excessive wear of equipment. An evaluation of these changes indicates that they result in a net benefit to plant safety. The evaluation considered:

(i) Unavailability of safety equipment due to testing

(ii) Initiation of significant transients due to testing

(iii) Actuation of engineered safety features that unnecessarily cycle safety equipment

(iv) Importance to safety of that system or component

(v) Failure rate of that system or component

(vi) Effectiveness of the test in discovering the failure

As a result of the decrease in the testing frequencies, the risk of testing causing a transient and equipment degradation will be decreased, and the reliability of the equipment will not be significantly decreased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the method of operating any equipment at DCPP. Additionally, the proposed changes do not result in a physical modification to any plant equipment.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed changes affect the surveillance requirements. There is no decrease in equipment reliability by the elimination of unnecessary testing that increases the risk of transients or equipment degradation.

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 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: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Project Director: Theodore R. Quay

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 amendment request: September 19, 1994

Description of amendment request: The proposed license amendment would revise Technical Specification (TS) 3/4.7.4, "Snubbers," and its bases, in accordance with NRC Generic Letter (GL) 90-09, "Alternative Requirements for Snubber Visual Inspection Intervals and Corrective Actions." One difference from GL 90-09 is that the initial inspection interval using the new criteria would be 18 months from the conclusion of the visual inspection conducted during the recently completed refueling outage. Additional changes to the TS would be made to ensure consistency with the revised

snubber visual inspection interval schedule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change has been reviewed for PNPP and has been determined not to involve a significant hazards consideration based on the following:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Implementing the guidance recommended in a GL 90-09 will not introduce any new failure mode and will not alter any assumptions previously made in evaluating the consequences of an accident. As stated in the GL, the proposed alternate schedule for visual inspections of snubbers will maintain the same operability confidence level as the existing schedule. Also, the surveillance requirements and schedule for snubbers functional testing remains the same, providing a 95 percent confidence level that 90 percent to 100 percent of the snubbers operate within the specified acceptance limits. The proposed visual inspection schedule is separate from the functional testing and provides additional confidence that the installed snubbers will serve their design function and are being maintained operable. The proposed change does not affect limiting safety system settings or operating parameters, and does not modify or add any accident initiating events or parameters. No hardware modifications are associated with these changes. Therefore, the proposed change does not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementing the recommendations provided in GL 90-09 does not involve any physical alterations to plant equipment, changes to setpoints or operating parameters, nor does it involve any accident initiating event. As stated in the GL, the alternate schedule for snubber visual inspections maintains the same confidence level as the existing schedule. In addition to the visual inspections, functional testing of snubbers, which provides a 95 percent confidence level that 90 percent to 100 percent of the snubbers operate within specified acceptance limits, will continue to be performed. Since this TS change does not physically alter the plant equipment and the snubber confidence level remains the same there will not be any new or different accident resulting from snubber failure from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change incorporates surveillance requirements for snubber visual inspection intervals that are consistent with the guidance provided in GL 90-09. As stated in the GL, the proposed snubber visual inspection interval maintains the same confidence level as the existing snubber visual inspection interval. This surveillance requirement does not alter the current Limiting Condition for Operation or the accompanying actions for the snubber(s). The requirement for functional testing of safety-related snubbers is unchanged and remains the basis for the established margin of safety and assures a 95 percent confidence level that 90 percent to 100 percent of the snubbers operate within the specified acceptance limits. The functional testing along with the proposed visual inspection provides adequate assurance that the snubber will perform its intended function. 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 request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037NRC Acting Project Director: Cynthia A. Carpenter

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 12, 1994

Description of amendment request: The proposed amendment would modify Point Beach Nuclear Plant Technical Specification (TS) 15.3.3, "Emergency Core Cooling System, Auxiliary Cooling Systems, Air Recirculation Fan Coolers, and Containment Spray," by incorporating allowed outage times similar to those contained in NUREG 1431, Revision 0, "Westinghouse Owner's Group Improved Standard Technical Specifications," and by clarifying the operability requirements for the service water pumps. The proposed changes would also clarify the completion times for placing a unit in hot or cold shutdown if a limiting condition for operation cannot be met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

In accordance with the requirements of 10 CFR 50.91(a), Wisconsin Electric Power Company (Licensee) has evaluated the proposed changes against the standards of 10 CFR 50.92 and has determined that the operation of Point Beach Nuclear Plant, Units 1 and 2, in accordance with the proposed amendments, does not present a significant hazards consideration.

A proposed facility operating license amendment does not present a significant hazards consideration if operation of the facility in accordance with the proposed amendment will not:

1. Create 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. Will not create a significant reduction in a margin of safety.

CRITERION 1

Operation of this facility under the proposed Technical Specifications change will not create a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes to the allowed out of service times have no impact on the probability of an accident occurring. This equipment being out of service is not an initiator for any accident previously evaluated. There is no physical change to the facility, its systems or its operation.

The clarification of service water pump operability requirements will ensure redundant train capability to mitigate the consequences of an accident which has been previously evaluated. Extending the allowed out of service times for the safety injection, residual heat removal, and containment spray pumps and valves and residual heat removal heat exchangers does not create a significant increase in the consequences of an accident previously evaluated. The proposed changes are consistent with the Westinghouse Improved Standard Technical Specifications, NUREG 1431, Revision 0. Plant specific analysis demonstrates the proposed changes do not pose an undue risk and thus will not result in a significant increase in the consequences of an accident.

CRITERION 2

Operation of this facility under the proposed Technical Specifications change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The safety injection, containment spray, and residual heat removal pumps and valves and residual heat removal heat exchangers are used to mitigate the consequences of an accident and are not normally in use during power operation. The availability of these components does not effect the possibility of a new or different type of accident. The service water pumps are normally in use during power operation. The proposed change will ensure that redundant train capability exists. Minimum service water pump requirements remain the same. The failure modes of the service water system remain unchanged. Therefore, extending the allowed out of service time does not create the possibility of a different type of accident than previously evaluated.

CRITERION 3

Operation of this facility under the proposed Technical Specifications change

will not create a significant reduction in a margin of safety. The proposed Technical Specification changes revise the allowed outage times for the safety injection, residual heat removal, and containment spray pumps and valves and residual heat removal heat exchangers to 72 hours. This change will allow more time for corrective maintenance to be performed on these components, if required, and avoid potential transients and challenges to safety systems associated with a required shutdown of the unit without the specific safety related equipment operable. The proposed changes are consistent with the Westinghouse Improved Standard Technical Specifications, NUREG 1431, Revision 0. Plant specific analysis demonstrates the changes do not pose an undue risk and thus will not result in a significant reduction in a margin of safety. The clarification to the specification for service water pump operability may increase the margin of safety by ensuring that redundant train capability exists.

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: Cynthia A. Carpenter

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 15, 1994

Description of amendment request: This amendment would revise Technical Specification 3/4.3.3, Table 4.3-3, "Radiation Monitoring Instrumentation For Plant Operations Surveillance," to change the analog channel operational test (ACOT) interval from monthly to quarterly for the following radiation monitors: (1) Containment Atmosphere - Gaseous Radioactivity - High (GT-RE-31 and 32); (2) Gaseous Radioactive - RCS Leakage Detection (GT-RE-31 and 32); (3) Particulate Radioactivity - RCS Leakage Detection (GT-RE-31 and 32); (4) Fuel Building Exhaust - Gaseous Radioactivity - High (GG-RE-27 and 28); (5) Criticality - High Radiation Level (SD-RE-37 and 38; SD-RE-35 and 36); (6) Control Room Air Intake - Gaseous Radioactivity - High (GK-RE-04 and 05).

This proposed change is identified as a line-item improvement in Section 5.14 of Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operations."

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 of Consequences of an Accident Previously Evaluated

The probability of occurrence and the consequences of an accident evaluated previously in the Updated Safety Analysis Report (USAR) are not increased due to the proposed technical specification change. Review of past ACOT history for the affected monitors revealed that these monitors have experienced no calibration or setpoint-related problems since the beginning of plant operation. Increasing the ACOT frequency for these monitors will not adversely affect system operability, and this change would reduce the potential for instrument damage, thus effectively increasing system reliability and availability. These radiation monitors are not accident-initiating equipment, so increasing the surveillance interval on these monitors will not affect the probability of any accident previously evaluated. In addition, for the monitors listed in TS Table 4.3-3, no credit is taken in the plant accident analyses in Chapter 15 of the USAR for any automatic actuation function generated as a result of a radiation monitor signal. On these bases it is concluded that the probability and consequences of the accidents previously evaluated in the USAR are not increased.

2. Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

No new type of accident or malfunction will be created since the radiation monitors are not accident-initiating equipment. The proposed change merely increases the ACOT interval for the affected radiation monitors, and does not change the method and manner of plant operation. The safety design bases in the USAR have not been altered. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a Significant Reduction In the Margin of Safety

The proposed changes do not change the plant configuration in a way that introduces a new potential hazard to the plant and do not involve a significant reduction in the margin of safety. The proposed changes do not affect applicable safety analysis acceptance criteria and will not affect system operating conditions. In addition, plant operating experience has shown that these monitors have not experienced calibration of setpoint-related failures since the beginning of plant operation. Therefore, it is concluded that the margin of safety, as described in the bases to any technical specification, is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Theodore R. Quay

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 22, 1994

Description of amendment request: The proposed amendment revises Technical Specification (TS) 6.2.2.g, 6.3.1.b, and 6.12.1.c to reflect title changes in the Wolf Creek Nuclear Operating Corporation (WCNOC) organization. The title Supervisor Operations in TS 6.2.2.g is being changed to Superintendent Operations. The title Radiation Protection Manager in TS 6.3.1.b and the title Manager Radiation Protection in TS 6.12.1.c are being changed to Superintendent Radiation Protection. The title changes do not represent any changes in reporting relationships, job responsibilities, or overall organizational changes. This request supersedes a request for amendment dated April 19, 1994, which was noticed on June 22, 1994 (59 FR 32239)

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. Proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. These changes involve administrative changes to the WCNOC organization and to the position titles and as such have no effect on plant equipment or the technical qualification of plant personnel.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change is administrative in nature and does not involve any change to the installed plant systems or the overall operating philosophy of Wolf Creek Generating Station.

3. The proposed change does not involve a significant reduction in a margin of safety. This change does not involve any changes in

overall organizational commitments. A position title change alone does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Theodore R. Quay

Peviously Published Notices Of Consideration Of Issuance Of Amendments ToFacility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: June 3, 1994

Description of amendment request: In a letter of August 13, 1993, and as supplemented on September 15, 1993, September 16, 1993, December 17, 1993, January 19, 1994, February 11, 1994, and February 24, 1994, Commonwealth Edison Company submitted requests for amendments for steam generator (SG) tube sleeving in accordance with (1) Westinghouse and (2) Babcock & Wilcox processes. By letter dated March 4, 1994, the NRC granted the proposed sleeving methods contingent upon four conditions which the licensee accepted in their letter of February 24, 1994.

Three of the four changes will be reflected in the plants' Technical Specifications (TS). By letter dated June 3, 1994, the licensee requested changes to TS 3.4.5 and 3.4.6.2 to include the three conditions, which are:

1. Amend the Byron and Braidwood licenses to reflect a primary-to-secondary leakage rate limit of 150 gallons per day (gpd) through any one SG.

2. Amend the Byron and Braidwood licenses to reflect an inservice inspection of a minimum of 20 percent of a random sample of the sleeves for axial and circumferential indication at the end-of-cycle. In the event that an imperfection of 40 percent or greater depth is detected, an additional 20 percent (minimum) of the unsampled sleeves should be inspected, and if an imperfection of 40 percent or greater depth is detected in the second sample, all remaining sleeves should be inspected.

3. Add a condition to the Byron and Braidwood licenses to conduct additional corrosion testing to establish the design life for the kinetically or laser welded sleeved tubes in the presence of a crevice.

Collectively, these conditions will enable the licensee to have:

1. Further assurance that the integrity of the SGs will be maintained in the event of a main steam line break or under loss-of-coolant accident (LOCA) conditions;

2. Increased monitoring of the SG tube sleeves for any degradation; and

3. Increased confidence that SG sleeve integrity will be maintained for extended operations.

Date of publication of individual notice in **Federal Register:** October 12, 1994 (59 FR 51613)

Expiration date of individual notice: November 14, 1994

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.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: September 7, 1994, and September 17, 1994 (two letters)

Description of amendment request: The proposed amendment would revise the technical specifications (TS) to incorporate a 1.0 volt steam generator tube interim plugging criteria (IPC) for Unit 1 beginning with Cycle 7, which has begun. This supplements the information that was published in the **Federal Register** on August 31, 1994 (59 FR 45019).

Date of publication of individual notice in **Federal Register:** September 23, 1994 (59 FR 48917)

Expiration date of individual notice: October 24, 1994

Local Public Document Room location: Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: September 16, 1994

Brief description of amendment request: The application changes the Technical Specifications pertaining to the extension of the snubber functional testing interval and the increase in sample plan size.

Date of publication of individual notice in **Federal Register:** September 30, 1994 (59 FR 50019)

Expiration date of individual notice: October 31, 1994

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Power Authority of the State of New York, Docket Nos. 50-286 and 50-333, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York, and James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendments request: September 16, 1994

Brief description of amendments: The proposed amendments would revise Section 6.0 (Administrative Controls) of the Technical Specifications of both facilities to reflect, in part, licensee management changes. Specifically, the title of Executive Vice President-Nuclear Generation is being changed to Executive Vice President and Chief Nuclear Officer and a new position, Vice President Regulatory Affairs and Special Projects, which will report to the Executive Vice President and Chief Nuclear Officer, is being established. In addition, the list of Safety Review Committee (SRC) members is being deleted and replaced with a description of SRC membership requirements, including individual qualifications. Each SRC member, including the alternates, will have to be approved by

the Executive Vice President and Chief Nuclear Officer.

Date of publication of individual notice in **Federal Register** : September 30, 1994 (59 FR 50021)

Expiration date of individual notice: October 31, 1994

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601 and the Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of the State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New YorkDate of application for amendment: September 29, 1994

Brief description of amendment: The proposed amendment would revise Section 4.4 of the Indian Point Nuclear Generating Unit No. 3 Power Plant Technical Specifications. Specifically, TS 4.4.E.1 would be revised to allow a one-time extension to the 30-month interval requirement for leak rate testing of Residual Heat Removal (RHR) containment isolation valves AC-732, AC-741, AC-MOV-743, AC-MOV-744, and AC-MOV-1870. A one-time schedular exemption from plant specific requirements associated with 10 CFR Part 50, Appendix J, Type C testing (local leak rate test) for the above listed RHR containment isolation valves will be processed separately. This one-time extension for leak rate testing of the RHR valves would defer the leak rate testing until the next refueling outage, when the RHR system can be removed from service as required by current procedures.

Date of publication of individual notice in **Federal Register:** October 5, 1994 (59 FR 50777)

Expiration date of individual notice: November 4, 1994

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit 2, Somervell County, Texas

Date of amendment request: September 19, 1994

Brief description of amendment request: The proposed amendment would revise the technical specifications for Comanche Peak Steam Electric Station Unit 2 to allow a one-time extension of emergency diesel generator and related surveillance testing from 18 to 24 months.

Date of individual notice in Federal Register: September 30, 1994 (59 FR 50024)

Expiration date of individual notice: October 31, 1994

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P. O. Box 19497, Arlington, Texas 76019

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: September 19, 1994

Brief description of amendment request: The proposed amendment would revise the 18-month surveillance requirements of the technical specifications for certain emergency core cooling system, containment system, and plant systems to eliminate the restriction that these surveillances be performed during shutdown or during the refueling mode or cold shutdown.Date of individual notice in Federal Register: September 30, 1994 (59 FR 50022)

Expiration date of individual notice: October 31, 1994

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P. O. Box 19497, Arlington, Texas 76019

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.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: February 18, 1994, as supplemented June 20, 1994

Brief description of amendments: These amendments allow credit to be taken for burnup of spent fuel assemblies in establishing storage locations within the spent fuel storage pool. The current spent fuel storage pool is configured to store fresh fuel assemblies with a maximum radially average enrichment of 4.30 weight percent (w/o) U-235 in a two-out-of-four checkerboard array. These amendments allow for three distinct storage regions. Region 1 allows storage of fresh fuel assemblies with a maximum radially averaged enrichment equal to 4.30 w/o U-235 in a checkerboard configuration. Region 2 allows storage of spent fuel assemblies in a three-out-of-four configuration. Region 3 allows storage of spent fuel assemblies in every location (four-out-of-four configuration).

Date of issuance: September 30, 1994Effective date: September 30, 1994

Amendment Nos.: 82, 69, and 54

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17593) The supplemental letter dated June 20, 1994, responded to a staff request for additional information, was clarifying in nature, and did not affect the staff's initial no significant hazards determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 1994.No significant

hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: August 18, 1994

Brief description of amendments: These amendments revised Technical Specification 6.9.1.10 to add the analytical method supplement entitled "Calculative Methods for the CE Large Break LOCA Evaluation Model for the Analysis of CE and W Designed NSSS," CENPD-132, Supplement 3-P-A, dated June 1985. This TS contains the list of analytical methods used to determine the Palo Verde Nuclear Generating Station core operating limits. Additionally, the existing references to earlier versions of CENPD-132, and the associated approval letters are deleted.

Date of issuance: October 7, 1994

Effective date: October 7, 1994

Amendment Nos.: 83, 70, and 55

Facility Operating License Nos. NPF-41, NPF-51, and NPF-74: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 6, 1994 (59 FR 46069) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 7, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, IllinoisDocket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: July 6, 1994

Brief description of amendments: The NRC previously approved the application of steam generator tube sleeving technologies through the reference of specific vendor technical reports. These amendments remove specific vendor technical report references and replace them with references to the generic reports.

Date of issuance: September 29, 1994

Effective date: September 29, 1994

Amendment Nos.: 64, 64, 55, and 54

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 3, 1994 (59 FR 39582) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 29, 1994. No significant hazards consideration comments received: No

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.

Consolidated Edison Company of New York, Docket No. 50-247, Indian PointNuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: August 11, 1994

Brief description of amendment: The amendment revises Technical Specification Section 6.5.1, Station Nuclear Safety Committee (SNSC), to change the designation of the SNSC Chairman and to clarify the maximum number of alternate members allowed for quorum purposes.

Date of issuance: October 3, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 177

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 31, 1994 (59 FR 45002) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 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.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: June 11, 1993, as supplemented July 1, 1993, and August 11, 1994.

Brief description of amendment: The amendment add acceptance criteria for the electric and diesel fire pumps based on Emergency Core Cooling System performance requirements and removes a portion of the fire protection requirements from the Technical Specifications.

Date of issuance: September 30, 1994

Effective date: September 30, 1994

Amendment No.: 114

Facility Operating License No. DPR-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36432). The July 1, 1993, and August 11, 1994, letters provided clarifying information within the scope of the initial notice and did not affect the staff's proposed no significant hazards considerations findings. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: May 24, 1994, as supplemented August 4 and September 8, 1994

Brief description of amendments: The amendments transfer the boron concentration in Technical Specification (TS) 3.9.1 for the reactor coolant system and the refueling canal during MODE 6, and the boron concentration in TS 4.7.13.3 for the spent fuel pool from the TS to the Core Operating Limits Report (COLR). The associated Bases to the TS are also changed. The application is submitted in response to the guidance in Generic Letter 88-16 which addresses the transfer of fuel cycle-specific parameter limits from the TS to the COLR.

Date of issuance: October 7, 1994

Effective date: To be implemented within 30 days from the date of issuance

Amendment Nos.: 125 and 119

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 31, 1994 (59 FR 45022) The August 4 and September 8, 1994 supplemental submittals provided clarifying information which did not affect the initial no significant hazards determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 7, 1994. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: May 24, 1994 as supplemented August 4 and September 8, 1994.

Brief description of amendments: The amendments transfer the boron concentration values in TS 3.9.1 for the reactor coolant system and the refueling canal during MODE 6, and the boron concentration value in TS 3/4.9.12 for the spent fuel pool from the TS to the Core Operating Limits Report (COLR). The application is submitted in response to the guidance in Generic Letter 88-16 which addresses the transfer of fuel cycle-specific parameter limits from the TS to the COLR.

Date of issuance: October 12, 1994

Effective date: October 12, 1994

Amendment Nos.: 149 and 131

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 22, 1994, 59 FR 32228 The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 12, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: May 12, 1994, as supplemented September 2, 1994

Brief description of amendment: The amendment revises Technical Specification Sections 3.1 and 4.1 for Protective Instrumentation, the associated bases, and tables to increase the surveillance test intervals and add allowable out-of service times. The Technical Specification changes will permit specified Channel Tests to be conducted quarterly rather than weekly or monthly. The amendment will enhance operational safety by reducing (1) the potential for inadvertent plant scrams, (2) excessive test cycles or equipment, and (3) the diversion of plant personnel and resources on unnecessary testing.

Two additional technical changes have been incorporated. The fist change involves extending the Channel Calibration interval for Average Power Range Monitor. The second change would add a quarterly Channel Calibration requirement for High Drywell Pressure (for Core Cooling) and Turbine Trip Scram Instrumentation.

Editorial changes have been incorporated in Instrumentation Sections 3.1 and 4.1 to provide clarity and consistency.

Date of issuance: October 11, 1994

Effective date: As of the date of issuance to be implemented within 90 days.

Amendment No.: 171

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 22, 1994 (59 FR 32228). The September 2, 1994, submittal provided additional clarifying information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 11, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Florida Power and Light Company, et al., Docket No. 50-335 St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendments: February 22, 1994

Brief description of amendments: This amendment modifies the minimum stored borated water inventory requirements for Operational Modes 1 through 4 by revising Figure 3.1-1 and Limiting Condition for Operation 3.1.2.8 of the unit Technical Specifications (TS). The associated bases for TS 3/4.1.2 are also revised to reflect the bounding borated water makeup volumes, as a function of boric acid concentration, which define the proposed inventory requirements.

Date of issuance: October 7, 1994

Effective date: October 7, 1994

Amendment No.: 129

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 30, 1994 (59 FR 14888) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 7, 1994No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: July 19, 1994

Brief description of amendments: The amendments relocate certain cycle-specific parameter limits from the Technical Specifications to the Core Operating Limits Report.

Date of issuance: October 12, 1994

Effective date: October 12, 1994

Amendment Nos. 167 and 161Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 3, 1994 (59 FR 39587) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 12, 1994No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

IES Utilities Inc., Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: June 18, 1993, as supplemented on December 17, 1993, and May 5, 1994.

Brief description of amendment: The amendment would revise the Technical Specifications (TS) by clarifying TS wording for the Low Pressure Coolant Injection (LPCI) and Containment Spray modes of the Residual Heat Removal (RHR) system to assure consistency with requirements of DAEC Updated Safety Analysis Report.

Date of issuance: October 4, 1994

Effective date: date of issuance to be implemented within 90 days of issuance.

Amendment No.: 200

Facility Operating License No. DPR-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 20, 1994 (59 FR 37074). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 26, 1993 (License Amendment Request 93-01), as modified by letter dated March 11, 1994, and April 7, 1993 (License Amendment Request 93-02), as modified by letter dated February 24, 1994.

Description of amendment request: This amendment revises the Appendix A Technical Specifications relating to the operability requirements for the primary component cooling water (PCCW) system, the service water (SW) system, and the ultimate heat sink (UHS). The amendment redefines the requirements for operable PCCW and SW systems and combines the technical specification requirements for the SW system and the UHS. The changes affect Technical Specification sections 3/4 7.3, 3/4.7.4, and 3/4.7.5.

Date of issuance: October 5, 1994

Effective date: October 5, 1994

Amendment No.: 32

Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notices in **Federal Register:** April 28, 1993 (58 FR 25860) June 23, 1993 (58 FR 34082). North Atlantic's letters dated March 11, 1994 and February 24, 1994, provide additional clarifying information related to risk calculations but neither letter changes the initial proposed no significant hazards consideration determinations. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, NH 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: May 6, 1994, as supplemented August 16, 1994.

Brief description of amendment: The amendment modifies the Limiting Conditions for Operation (LCO) for the Millstone Unit 2 Technical Specifications (TS) 3.8.2.3 and 3.8.2.4 and the Surveillance Requirements of TS 4.8.2.3.2.c.3. These changes relate to the amperage requirements and the charging capability of the DC distribution systems.

Date of issuance: October 14, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 180

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 22, 1994 (59 FR 32232) The August 16, 1994, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 14, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: July 1, 1994

Brief description of amendment: The amendment revises the Technical Specifications (TS) associated with the sump recirculation actuation signal. The changes will be implemented after the installation of four auctioneered power supplies in the Engineering Safety Feature Actuation System sensor cabinets.

Date of issuance: October 7, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 179

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 17, 1994 (59 FR 42342). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, CT 06360.

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: April 23, 1994, as supplemented August 4, 1994

Brief description of amendments: The amendments modify the requirement for individuals filling certain plant management positions to hold a Senior Reactor Operator (SRO) license. The amendments require that only the Superintendent - Operations or the Assistant Superintendent - Operations hold an SRO license.

Date of issuance: September 30, 1994

Effective date: September 30, 1994Amendment Nos. 80 and 41

Facility Operating License Nos. NPF-39 and NPF-85. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34086) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company,Delmarva Power and Light Company, and Atlantic City Electric Company,Docket No. 50-277, Peach Bottom Atomic Power Station,Unit No. 2, York County, Pennsylvania

Date of application for amendment: May 13, 1994, as supplemented by letter dated August 28, 1994

Brief description of amendment: This amendment allows a one-time schedular extension of the second Type A Containment Integrated Leakage Rate Test 10-year service period and an extended interval between Type A tests.

Date of issuance: September 30, 1994

Effective date: September 30, 1994

Amendment No.: 196

Facility Operating License No. DPR-44: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 22, 1994 (59 FR 32235) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Philadelphia Electric Company, Public Service Electric and Gas Company,Delmarva Power and Light Company, and Atlantic City Electric Company,Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station,Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: June 9, 1994, as supplemented by letter dated September 23, 1994.

Brief description of amendments: These amendments revise the Technical Specifications (TS) surveillance requirements for scram insertion times. The changes make the TS similar to those described in NUREG-1433, "Standard Technical Specifications General Electric Plants, BWR/4."

Date of issuance: September 30, 1994

Effective date: September 30, 1994

Amendments Nos.: 197 and 200

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 20, 1994 (59 FR 37080) The September 23, 1994 letter provided clarifying information that deletes language specifying the location for scram time acceptance criteria and did not change the initial proposed no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a SafetyEvaluation dated September 30, 1994.No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

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: November 17, 1993, as supplemented August 9, 1994

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to incorporate an instrument calibration "allowable value" format instead of the previous "setting limit" format. Instrumentation requiring specific value changes in the TSs included:

(1) The overpressure protection system (OPS) actuation curve (TS Figure 3.1.A-3).

(2) The minimum refueling water storage tank (RWST) water volumes and low level alarm settings (specified in TS Section 3.3.A). In addition the RWST level indicating switch calibration frequency (specified in TS Table 4.1-1) was changed from once every 18 months to once every 6 months.

(3) The control room ammonia and chlorine toxic gas instrument settings (specified in TS Section 3.3.H).

(4) The containment pressure high and high-high engineered safety features instrument settings (specified in TS Table 3.5.1).(5)

The main steam flow engineered safety features instrument settings (specified in TS Table 3.5.1).

In addition, the TS Bases for protective instrumentation limiting safety system settings (specified in TS Section 2.3) were revised to clarify the description on constants K through K_6 which are used in the overtemperature delta-temperature and overpower delta-temperature settings.

Date of issuance: October 7, 1994

Effective date: As of the date of issuance to be implemented prior to restart from the current outage.

Amendment No.: 154

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 22, 1993 (58 FR 67860) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 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: July 25, 1994

Brief description of amendment: The Technical Specifications amendment revised Table 3.6-1 (Non-Automatic Containment Isolation Valves Open Continuously or Intermittently for Plant Operation) and Table 4.4-1 (Containment Isolation Valves) to delete valves SI-1833A and B and add valves SI-MOV-1835A and B. The valves being deleted no longer perform a containment isolation function as a result of a modification which removed the boron injection tank. The valves being added are needed for testing the safety injection pumps.

Date of issuance: October 5, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 152

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 17, 1994 (59 FR 42346) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 5, 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: August 4, 1994

Brief description of amendment: The amendment revises the fuel oil availability requirements for the Emergency Diesel Generators (EDGs) from Section 3.7 of the Technical Specifications (TSs). This TS change requires that 30,026 gallons of fuel oil be available onsite in addition to the oil in the EDG storage tanks. Specification 3.7.F.4 is also being changed to require a total of 7056 gallons of fuel in the EDG fuel oil storage tanks. In addition, administrative changes will remove the word "available" from the phrase "... gallons of fuel available..." in Section 3.7.A.5 (for the individual storage tanks) to avoid confusion regarding the amount of usable fuel in the tanks.

Date of issuance: October 7, 1994

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 153

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 31, 1994 (59 FR 45031) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 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: August 4, 1994

Brief description of amendment: The amendment revises Sections 3.4 and 3.5 of the Technical Specifications (TSs). The TS Section 3.4 revision reduces the

maximum allowable percent of rated power associated with inoperable Main Steam Safety Valves (MSSVs). This change modifies Table 3.4-1 and the associated basis such that the maximum power level allowed for operation with inoperable MSSVs is below the heat removing capability of the operable MSSVs. The TS Section 3.5 revision corrects administrative errors in the action statements associated with Items 2.a and 2.c of Table 3.5-4. Additionally, the changes to Item 2.b of Table 3.5-3 and Item 2.b of Table 3.5-4 clarify the action statements associated with inoperable high containment pressure (Hi-Hi Level) instrumentation.

Date of issuance: October 3, 1994
Date of issuance: October 3, 1994
Effective date: As of the date of issuance to be implemented within 30 days.
Amendment No.: 151
Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 31, 1994 (59 FR 45031) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 3, 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.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, OhioDate of application for amendment: September 3, 1992, as supplemented on August 22, 1994

Brief description of amendment: The amendment revises the Technical Specifications to include the maximum allowable steam generator level as a variable limit based on the plant's mode of operation for Modes 1-4 and to include additional shutdown margin requirements in Mode 3. The amount of main steam superheat, the status of the main feedwater pumps, and the status of the Steam and Feedwater Rupture Control System were considered in determining the appropriate limits for the maximum allowable steam generator level.
Date of issuance: October 7, 1994
Effective date: October 7, 1994
Amendment No. 192
Facility Operating License No. NPF-3. This amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48830) The August 22, 1994, submittal, provided additional supplemental information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 7, 1994.No significant hazards consideration comments received: No
Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, OhioDate of application for amendment: March 30, 1994

Brief description of amendment: Revise T.S. to increase the required boration flowrate in the event the required shutdown margin is not met; increase the applicable minimum boron concentration and/or volume requirements; revise the applicable Action statements and surveillance requirements, and propose several administrative and editorial changes.
Date of issuance: September 29, 1994
Effective date: date of issuance, to be implemented within 90 days
Amendment No. 191
Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 25, 1994 (59 FR 27067) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1994.No significant hazards consideration comments received: No
Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: November 15, 1993
Brief description of amendments: The amendments revise the Comanche Peak Steam Electric Station Units 1 and 2 technical specifications by increasing the maximum permitted power at which the post-refueling power ascension reactor coolant system flow verification can be performed.
Date of issuance: October 7, 1994
Effective date: October 7, 1994, to be implemented within 30 days of issuance.
Amendment Nos.: Unit 1 - Amendment No. 30; Unit 2 - Amendment No. 15
Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 13, 1994 (59 FR 17606) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 7, 1994.No significant hazards consideration comments received: No.
Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: March 28, 1994
Brief description of amendments: The amendments revise the technical specifications by deleting reference to a large break LOCA analysis methodology that is no longer applicable, and adding reference to an approved steamline break analysis methodology.
Date of issuance: October 5, 1994
Effective date: October 5, 1994, to be implemented within 30 days of issuance.
Amendment Nos.: Unit 1 - Amendment No. 28; Unit 2 - Amendment No. 14
Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.
Date of initial notice in **Federal Register:** July 20, 1994 (59 FR 37088) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 5, 1994.No significant hazards consideration comments received: No.
Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: April 25, 1994
Brief description of amendments: The amendments revise the TS Surveillance Requirement 4.8.1.1.2 to allow "slow starts" of the emergency diesel generator (EDG) instead of "fast starts" during the monthly surveillance. A "fast start" is still required to be performed at least once every 184 days. These changes are

expected to improve EDG availability and reliability.

Date of issuance: October 6, 1994

Effective date: October 6, 1994, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 1 - Amendment No. 29; Unit 2 - Amendment No. 15

Facility Operating License Nos. NPF-87 and NPF-89. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 3, 1994 (59 FR 39599) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 6, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas 76019.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: April 15, 1994

Brief description of amendments: The amendments modify the pressure/temperature operating limitations during heatup and cooldown and the Low Temperature Overpressure Protection System pressure setpoints and enabling temperatures for Units 1 and 2. The proposed changes include revised Limiting Conditions for Operation, Action Statements, and Surveillance Requirements for the power-operated relief valves and block valves to address the concerns discussed in NRC Generic Letter 90-06. The proposed changes also include several editorial/administrative changes.

Date of issuance: October 5, 1994

Effective date: October 5, 1994

Amendment Nos.: 189 and 170

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 25, 1994 (59 FR 27069) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 5, 1994No significant hazards consideration comments received: No.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee NuclearPower Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 26, 1994

Brief description of amendment: The amendment revises the Kewaunee Nuclear Power Plant (KNPP) Technical Specification (TS) Sections 2.3, 3.6, and 4.6, by correcting minor typographical errors and format inconsistencies. These changes are being made as a part of the licensee's ongoing effort to revise each section of the KNPP TS to achieve a consistent format and to convert the entire document to Word Perfect. In addition, changes to the basis for TS Sections 2.3, 3.6, and 4.6 have been made.

Date of issuance: September 29, 1994

Date of issuance: September 29, 1994

Effective date: date of issuance, to be implemented within 30 days

Amendment No.: 111

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 3, 1994 (59 FR 39601) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1994.No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

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 application for amendments: May 30, 1991, as supplemented May 7, 1993, and April 28, 1994.

Brief description of amendments: These amendments revised Technical Specifications 15.3.1.A.5 and 15.3.15, and Table 15.4.1-1 and 15.4.1-2. The changes specified more stringent limiting conditions for operation and surveillance requirements for pressurizer power-operated relief valves and block valves. These changes were proposed to conform to the NRC's plan for 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," as conveyed in Generic Letter 90-06. Other related changes were also made.

Date of issuance: September 30, 1994

Effective date: September 30, 1994, to be implemented within 90 days.

Amendment Nos.: 155 & 159

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 28, 1993 (58 FR 16233). The May 7, 1993, and April 28, 1994, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 30, 1994. No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

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 November 25, 1995, 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).

Arizona Public Service Company, et al., Docket No. STN 50-529, Palo Verde Nuclear Generating Station, Unit No. 2, Maricopa County, Arizona

Date of amendment for amendment: October 9, 1994, as supplemented by letter dated October 12, 1994

Brief description of amendment: The proposed amendment would modify Technical Specification (TS) 4.8.2.1.e, "DC Sources - Operating" to specify that the provisions of TS 4.0.1 and 4.0.4 are not applicable to the battery capacity requirements until entry into Mode 4 coming out of the fifth refueling outage or upon any deep discharge cycle of the battery. The amendment was requested on an emergency basis so that the licensee could declare the Unit 2 batteries operable based upon the current capacities of the batteries without having to satisfy the surveillance requirement of TS 4.8.2.1.e. The licensee will thus be able to change modes and start up from the current mid-cycle steam generator inspection outage.

Date of issuance: October 13, 1994

Effective date: October 13, 1994

Amendment No.: 71

Facility Operating License No. NPF-51: The amendment revised the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: No.The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 13, 1994.

Local

Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensee: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

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: September 9, 1994

Brief description of amendments: The amendments change the Technical Specifications (TS) to revise the frequency for verifying the position of the drywell-suppression chamber vacuum breakers when a valve position indicator is inoperable from at least once every 72 hours to at least once every 14 days.

Date of issuance: October 5, 1994

Effective date: October 5, 1994

Amendment Nos.: 172 and 203

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.Public comments requested as to proposed no significant hazards consideration: Yes. (59 FR 47648 dated September 16, 1994) That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request for a hearing by October 3, 1994, but indicated that if the Commission makes a final no significant hazards determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendments and final no significant hazards consideration determination are contained in a Safety Evaluation dated October 5, 1994.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: Mr. Mark S. Calvert, Associate General Counsel, Carolina Power & Light Company, Brunswick Steam Electric Plant, P. O. Box 10429, Southport, North Carolina 28461

NRC Project Director: Michael L. Boyle

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: September 12, 1994, as supplemented September 30, 1994.

Brief description of amendment: The amendment revises technical specification 3/4.2.2, "APRM Setpoints," to permit operation in accordance with the Boiling Water Reactor Owners' Group (BWROG) guidelines on improved BWR thermal-hydraulic stability.

Date of issuance: October 7, 1994

Effective date: October 7, 1994

Amendment No.: 75

Facility Operating License No. NPF-47. The amendment revised the Technical Specifications. Public comments requested to proposed no significant hazards consideration: Yes, September 21, 1994 (59 FR 48456). The Commission's related evaluation of the amendment, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 7, 1994.Attorney for the licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, D.C. 20005

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

NRC Project Director: William D. Beckner

Dated at Rockville, Maryland, this 19th day of October, 1994.

For The Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II Office of Nuclear Reactor Regulation

[Doc. 94-26422 Filed 10-25-95; 8:45 am]

BILLING CODE 7590-01-F

[Docket Nos. 50–325 and 50–324

Carolina Power & Light Company et al. Brunswick Steam Electric Plant, Units 1 and 2; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRR), has issued a Director's Decision concerning a Petition dated October 14, 1993, filed pursuant to 10 CFR 2.206, on behalf of the National Whistleblower Center (NWC), the Coastal Alliance for a Safe Environment (CASE), and Mr. Charles A. Webb, requesting that actions be taken regarding the Brunswick Steam Electric Plant (Brunswick), Units 1 and 2, of the Carolina Power & Light

Company (CP&L or the Licensee). The Petition requested that (1) the NRC staff enter into a confidentiality agreement with NWC to facilitate the release of additional information; (2) the NRC immediately require the Licensee to state whether it has, in fact, known about cracks in the reactor core shroud since at least 1984; and (3) the Commission's Office of Investigations determine whether CP&L management engaged in criminal wrongdoing, commencing in 1984, when CP&L is alleged to have failed to report the existence of cracks in the core shroud to the NRC. The Petition also requested an immediate suspension of the operating license for Brunswick pending the criminal investigation.

The Petitioners based their request on allegations that (1) the Licensee falsely asserted to the NRC and to the public that cracks in the reactor shroud were but recently discovered, and the Petitioners contend that the Licensee discovered the cracks nine years earlier and the Licensee's management instructed the engineers who detected the cracks to prepare paperwork that would ensure that the cracks would not be reported to the NRC; (2) this alleged coverup demonstrates that CP&L does not have the character or integrity to operate a nuclear facility because of its unwillingness to report significant safety problems to the NRC; and (3) the Licensee is willing to take unreasonable risks with the health and safety of the public.

The Director of NRR has granted in part and denied in part the Petitioner's requests. The reasons are explained in the "Director's Decision Under 10 CFR 2.206" (DD–94–09), which is available for public inspection and copying in the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20037, and at the Licensee's local public document room at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, NC 28403–3297.

A copy of the Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c). As provided for in 10 CFR 2.206(c), the Decision will become the final action of the Commission 25 days after the date of issuance unless the Commission on its own motion institutes a review of the Decision within that time.

Dated at Rockville, Maryland this 19th day of October 1994.

For the Nuclear Regulatory Commission.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–26491 Filed 10–25–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Circular A–135, "Management of Federal Advisory Committees"

AGENCY: Office of Management and Budget, Federal Services Branch.

ACTION: Issuance of OMB Circular A–135, "Management of Federal Advisory Committees" dated October 5, 1994.

SUMMARY: This Circular outlines the Administration's policy of controlling the growth of Federal advisory committees through an annual agency review and planning process.

The Circular requires agencies to report annually to OMB and the General Services Administration's (GSA) Committee Management Secretariat on initiatives to reduce existing committees, terminate statutory committees and plans to establish new advisory committees during the next fiscal year.

OMB and GSA are responsible for reviewing and approving agency plans and setting agency advisory committee ceilings that maintain the President's government-wide advisory committee reduction goal established through Executive Order 12838.

FOR FURTHER INFORMATION CONTACT: Steve Mertens, Federal Services Branch, Office of Management and Budget, (202) 395–5090.

To the Heads of Executive Departments and Establishments

Subject: Management of Federal Advisory Committees

1. *Purpose.* This Circular provides guidance and instructions on the management of Federal advisory committees and requires Executive Departments and agencies to establish a committee planning and review process.

2. *Background.* On February 10, 1993, the President signed Executive Order 12838, "Termination and Limitation of Federal Advisory Committees," which requires each Executive Department and agency to reduce the number of discretionary committees by one-third. New discretionary advisory committees are subject to review and approval by the Director of OMB.

On June 28, 1994, the Vice President issued a memorandum reiterating Administration policy regarding the maintenance of the reduction targets mandated by Executive Order 12838, as well as new guidance relating to Executive Branch action on advisory committees proposed by statute. The Vice President's memorandum also called for additional savings in committee costs over and above those achieved under E.O. 12838, as recommended by the National Performance Review (NPR).

3. *Policy.* The Administration is committed to maintaining advisory committees as a way of ensuring public and expert involvement and advice in Federal decision-making. At the same time, the number and cost of advisory committees must be carefully managed. Advisory committees should get down to the public's business, complete it and then go out of business.

Agencies should review and eliminate advisory committees that are obsolete, duplicative, low priority or serve a special, rather than national interest. New advisory committees should be established only when essential to the attainment of clearly defined Executive Branch priorities, as defined by E.O. 12838, and when they will not exceed an agency's advisory committee ceiling as established by the Executive order's reduction requirement.

The Administration will generally not support the establishment of new statutory committees or legislative language that exempts advisory committees from coverage under the Federal Advisory Committee Act (FACA). In addition, each agency should make a concerted effort to work with its Congressional oversight committees to reduce the number of existing committees required by statute.

4. *Definitions.* For purposes of this Circular, definitions for "advisory committee," "agency," and other terms are the same as defined in GSA's implementation regulations for the Federal Advisory Committee Act (41 CFR Part 101–6). In addition:

A "non-discretionary advisory committee" is an advisory committee either mandated by Presidential directive or by statute and is subject to the Federal Advisory Committee Act. A "non-discretionary advisory committee" mandated by statute is: (1) specifically identified by name, specific purpose or function in statute, and (2) a committee whose creation or termination is beyond an agency's legal discretion. Advisory committees referenced by general (non-specific) authorizing language or committee report language will not be considered "non-discretionary." In addition, where a statute requires an advisory committee as defined above, but allows for one or more committees, only one committee shall be considered to be required by statute.

5. *Required Action.* Each Executive Department and agency shall report to OMB annually on the results of its efforts to maintain discretionary committee levels required by E.O. 12838, and other actions to reduce its inventory of non-discretionary statutory committees. This submission will be used by the Director of OMB as the basis for approving requests to establish new committees.

(1) Agency advisory committee management plans will be submitted to OMB and GSA each year and include:

(a) performance measures used to evaluate each committee's progress in achieving its stated goals or mission;

(b) plans for the establishment of any new advisory committees during the coming fiscal year;

(c) a summary of actions taken to ensure the advisory committee reduction goal is maintained; and

(d) the results of a review of non-discretionary advisory committees and plans to continue, terminate or merge these groups through legislation. This will include a list of those committees established by specific statutory authority during the current fiscal year regardless of their coverage under the Federal Advisory Committee Act.

(2) With regard to non-discretionary advisory committees mandated by statute, the agency will notify GSA of plans to establish such committees prior to filing the charter required by section 9(c) of the Federal Advisory Committee Act. Such notification will provide GSA with at least 10 working days to review the proposed committee charter and advise the agency of its recommendations.

6. *OMB Responsibilities.* The Office of Management and Budget shall:

(a) review and approve agency advisory committee management plans pursuant to Section 5 and in accordance with the Executive order;

(b) set advisory committee ceilings for each agency within the government-wide advisory committee reduction goal established by the Executive order;

(c) work with agencies to control the establishment of statutory advisory committees and develop legislation to terminate those non-discretionary committees which are no longer necessary;

(d) ensure that relevant legislation is reviewed consistent with OMB Circular A–19; and

(e) ensure agencies meet the cost reduction target recommended by the Vice President's National Performance Review.

7. *GSA Responsibilities.* The General Services Administration shall (in addition to its responsibilities under the FACA and as an agency under Section 5 above):

(a) prepare required justifications and recommendations specified in Section 5 for each advisory committee subject to the FACA and not sponsored by another department or agency;

(b) assist OMB in its management and oversight of advisory committees, including tracking agency compliance with the reduction goals specified by E.O. 12838;

(c) develop guidance, specific reporting formats and instructions to implement Section 5 of this Circular. To the extent practicable, new reporting requirements will be limited to information not readily available through existing sources of data;

(d) provide recommendations to OMB and each agency regarding the continuance or management of advisory committees as required by Section 7(b) of FACA, which mandates an annual comprehensive review of all advisory committees; and

(e) implement section 5(2) of this Circular.

8. *Information Contact.* Questions about this Circular should be addressed to the Federal Services Branch (202) 395–5090. Questions concerning the role of GSA should be directed to the Committee Management Secretariat (202) 273–3556.

9. *Termination Review Date.* This Circular will be subject to review two years after issuance.

10. *Effective Date.* This Circular is effective upon issuance.

Alice M. Rivlin,

Acting Director.

[FR Doc. 94–26457 Filed 10–25–94; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 20642; 811–7382]

Institutional Government Portfolio; Notice of Application

October 20, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Institutional Government Portfolio.

RELEVANT ACT SECTION: Order requested under Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on September 30, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 14, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 1000 Louisiana, Houston, Texas 77002–5098.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Law Clerk, at (202) 942–0654, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations:

1. Applicant, a Massachusetts business trust, is registered as an open-end, diversified management investment company. On December 16, 1992, applicant registered under the Act.[1] Applicant has not registered any securities under the Securities Act of 1933. Transamerica Fund Management Company is applicant's investment adviser ("Adviser").

2. Applicant is established as a master fund in a master/feeder fund arrangement with Transamerica Institutional U.S. Securities Trust (the "Trust"), the sole series of Transamerica Investment Portfolios, a management investment company separately registered under the Act. Under this arrangement, the Trust, which is the feeder fund, invests 100% of its assets in applicant. Transamerica Investment Portfolios has also filed an application under section 8(f) to deregister under the Act.

3. On July 19, 1994, applicant's Board of Trustees approved a plan to dissolve

[1] In the SEC's records, applicant is listed as "Transamerica Institutional Government Portfolio."

applicant by distributing all remaining assets, after payment of outstanding expenses, to the Trust, the sole shareholder. On July 29, 1994, the date of dissolution, the Trust approved applicant's dissolution in accordance with Massachusetts law. As of that date, applicant had 4,139 shares outstanding. Upon dissolution, the Trust received a cash distribution of $19.94 per share, representing applicant's total remaining net assets of $82,532.

4. In connection with the liquidation, applicant incurred total expenses of $15,884, representing audit fees, legal fees, and organizational expenses. Such expenses were reimbursed by the Adviser pursuant to a voluntary expense reimbursement policy in effect at the time of the liquidation.

5. Applicant has no remaining assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

6. Applicant intends to file a certificate of dissolution in accordance with the laws of the Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–26529 Filed 10–25–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20641; 811–7268]

Transamerica Investment Portfolios; Notice of Application

October 20, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Transamerica Investment Portfolios.

RELEVANT ACT SECTION: Order requested under Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

DATES: The application was filed on September 30, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 14, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 1000 Louisiana, Houston, Texas 77002–5098.

FOR FURTHER INFORMATION CONTACT: Sarah A. Wagman, Law Clerk, at (202) 942–0654, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Massachusetts business trust, is registered as an open-end, diversified management investment company. On October 8, 1992, applicant registered under the Act and filed a registration statement under the Securities Act of 1933 to issue an indefinite number of shares. The registration statement was declared effective on January 28, 1993, and applicant commenced an initial public offering of its securities on February 2, 1993. Transamerica Fund Management Company is applicant's investment adviser ("Adviser").

2. Applicant is established as a series mutual fund, presently comprising only one series, Transamerica Institutional U.S. Securities Trust (the "Trust"). The Trust serves as a feeder fund in a master/feeder fund arrangement with Institutional Government Portfolio (the "Master Fund"), a management investment company separately registered under the Act. Under this arrangement, the Trust invests 100% of its assets in the Master Fund. The Master Fund has also filed an application under section 8(f) to deregister under the Act.

3. On July 19, 1994, the Trust's Board of Trustees approved a plan to dissolve the Trust by redeeming all of its shares in the Master Fund and distributing all remaining assets, after payment of outstanding expenses, to the Adviser, the sole remaining shareholder. On July 29, 1994, the date of dissolution, the Adviser approved applicant's dissolution in accordance with Massachusetts law. As of that date, applicant had 4,125 shares outstanding. Upon dissolution, the Adviser received a cash distribution of $14.18 per share, representing applicant's total remaining net assets of $58,492.

4. In connection with the liquidation, applicant incurred total expenses of $42,372, representing audit fees, legal fees, and organizational expenses. Such expenses were reimbursed by the Adviser pursuant to a voluntary expense reimbursement policy in effect at the time of the liquidation.

5. Applicant has no remaining assets, liabilities, or shareholders. Applicant is not a party to any litigation or administrative proceeding. Neither applicant nor the Trust is presently engaged or proposes to engage in any business activities other than those necessary for the winding-up of applicant's affairs.

6. Applicant intends to file a certificate of dissolution in accordance with the laws of the Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–26528 Filed 10–25–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 94–064]

National Preparedness for Response Exercise Program (PREP)

AGENCY: Coast Guard, DOT.

ACTION: Notice of PREP Area Exercise Schedule for 1995, 1996 and 1997.

SUMMARY: The Coast Guard, the Environmental Protection Agency (EPA), the Research and Special Programs Administration (RSPA), and the Minerals Management Service (MMS), in concert with the states, the oil industry and concerned citizens, held a workshop on May 19, 1994, to discuss the proposed Preparedness for Response Exercise Program (PREP) Area exercise schedule and the scheduling process. This notice publishes the final revision of the Area exercise schedule for 1995, 1996, and 1997, and solicits industry members to lead Area exercises for 1995.

DATES: Industry members interested in leading the Industry-led Area Exercises

should submit their requests directly to the USCG or EPA On-Scene Coordinator (OSC) as soon as possible, but no later than 6 months prior to the proposed exercise date to ensure adequate planning time. Industry members should indicate the date and location of the exercise which they are interested in leading. Once the OSC has chosen an industry plan holder for an exercise, the OSC will contact the National Scheduling Coordinating Committee (NSCC) at the address listed below.

ADDRESSES: Commandant (G–MEP–4), Room 2100, U.S. Coast Guard Headquarters, 2100 Second Street, SW; Washington, DC 20593–0001. ATTN: Ms. Karen Sahatjian.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Sahatjian, Office of Marine Safety, Security and Environmental Protection, Marine Environmental Protection Division, (G–MEP–4), (202) 267–0746.

SUPPLEMENTARY INFORMATION:

Background Information

The Coast Guard, EPA, RSPA, and MMS developed the National Preparedness for Response Exercise Program (PREP) to provide guidelines for compliance with the Oil Pollution Act of 1990 pollution response exercise requirements (33 U.S.C. 1321 (j)). One section of the PREP focuses on Area exercises, which are designed to evaluate the entire response mechanism in a given Area to ensure adequate pollution response preparedness. The goal of the PREP is to conduct 20 Area exercises per year, with the intent of exercising most Areas of the country over a three year period. In the March 25, 1994, edition of the **Federal Register** (59 FR 14254), the Coast Guard announced the May 19, 1994, workshop to discuss the scheduling process, and proposed an exercise schedule for 1995, 1996, and 1997. This notice sets forth the scheduling process and the finalized exercise schedule for 1995, 1996, and 1997.

Scheduling Process

The Area exercise scheduling process is as follows:

1. The National Scheduling Coordinating Committee (NSCC), comprised of representatives of the Coast Guard, EPA, RSPA, and MMS, meets in January of each year to develop a proposed Area exercise schedule for the upcoming three year period. (For example, when the NSCC meets in 1995, the three years considered will be 1996, 1997 and 1998.) The information in the proposed schedule includes; the exercise Area, the exercise quarter, whether the exercise is industry-led or government-led, and the type of industry that will lead the exercise (vessel, marine transportation-related (mtr) facility, non-marine transportation-related facility, offshore facility or pipeline). Once developed, the proposed schedule is published in the **Federal Register** in February of each year.

2. The NSCC solicits input on the proposed schedule for each three year period. The NSCC also requests industry plan holders to lead the Area exercise or participate in the government-led Area exercises.

3. Once comments are received by the NSCC, they are considered and acted upon, as appropriate. Where there is conflict, every effort is made to resolve it while maintaining the integrity of the scheduling process.

Selection of Industry Participants for Area Exercises

The selection process for industry participants for the Area exercises is as follows:

1. Industry response plan holders interested in leading the Area exercises or supporting the government-led Area exercises should submit their requests directly to the USCG or EPA On-Scene Coordinator. These requests should be submitted as soon as possible after the proposed schedule is published, but no later than 6 months prior to the proposed exercise date. Once the OSC has chosen an industry plan holder for an exercise, the OSC will contact the NSCC in writing to the address listed under **ADDRESSES** above.

2. In Areas where no plan holders have come forth and expressed an interest in leading or participating in the Area exercises, OSCs will recommend industry plan holders for exercise participation to the NSCC. Some issues that will be considered when selecting industry participants include the number of times a specific industry has conducted exercises in the past, the operating history of industries in the Area and the perceived need for a particular industry plan holder to be exercised. The OSCs will consult with the selected industry plan holders prior to submitting their names for exercise participation.

3. In Areas scheduled for exercises involving pipelines or offshore facilities, the OSCs will coordinate with the respective regulatory agency (RSPA or MMS) to select plan holders to lead or participate in these exercises.

Scheduling Workshop

A PREP scheduling workshop was conducted by the NSCC on May 19, 1994. Similar workshops will continue to be held annually in May. The workshops will continue to focus primarily on the upcoming year's Area exercise schedule, but also will address issues relating to the following two years of the triennial schedule. National level industry representation is strongly encouraged at these workshops, as this is an opportunity for industry plan holders to comment on the schedule and address issues which may affect them and their operations. Input from the workshops will continue to be used for finalizing the upcoming year's schedule and proposing the schedule for the following two years.

Final Schedule

The following is the final PREP Schedule for Calendar Years 1995, 1996, and 1997. All of the comments received were incorporated, as appropriate. Where no industry plan holders have come forward to either participate or lead an exercise, the OSCs will solicit and recommend plan holders. Companies that wish to participate should contact the USCG or EPA OSC, who will then forward the name to the NSCC at the address listed under **ADDRESSES.** The Coast Guard will continue to publish a final schedule in the **Federal Register** annually in the fall.

PREP SCHEDULE—GOVERNMENT LED AREA EXERCISES

Area	Agency	Date/Qtr*	Participant
1995 Schedule			
Southern Coastal NC Area (MSO Wilmington)	CG	2/16–17	
San Francisco Bay & Delta Region Area (MSO San Francisco OSC)	CG	4/13–14	
Portland, OR Area (MSO Portland, OR OSC)	CG	6/8–9	
EPA Region V Area (EPA OSC)	EPA	8/3–4	
Tampa, FL Area (MSO Tampa OSC)	CG	9/28–29	

PREP SCHEDULE—GOVERNMENT LED AREA EXERCISES—Continued

Area	Agency	Date/Qtr*	Participant
South Texas Coastal Zone Area (MSO Corpus Christi OSC)	CG	12/7–8	
1996 Schedule			
Charleston, SC Area (MSO Charleston OSC)	CG	3/26–28	
Puget Sound Area (MSO Puget Sound OSC)	CG	1	
EPA Region VIII Area (EPA OSC)	EPA	2	
South Florida Area (MSO Miami OSC)	CG	5/1–3	
Philadelphia Coastal Area (MSO Philadelphia OSC)	CG	3	Christiana.
Sault Ste. Marie, MI Area (COTP Sault Ste. Marie OSC)	CG	4	
1997 Schedule			
Providence, RI Area (MSO Providence OSC)	CG	1	
Jacksonville Area (MSO Jacksonville OSC)	CG	1	
Southeast Alaska Area (MSO Juneau OSC)	CG	2	
Detroit Area (MSO Detroit OSC)	CG W/RSPA	3	
EPA Oceania Region (EPA OSC)	EPA	3	
New Orleans Area (MSO New Orleans OSC)	CG W/MMS	4	Kirby Corp.

*QUARTERS: 1 (January–March); 2 (April–June); 3 (July–September); 4 (October–December).

PREP SCHEDULE INDUSTRY LED AREA EXERCISES

Area	Industry	Date/QTR	Lead
1995 Schedule			
Guam Area (MSO Guam OCS)	v	1	
Cleveland, OH Area (MSO Cleveland OSC)	f (mtr)	1	
Maryland Coastal Area (MSO Baltimore OSC)	v	1	
Savannah Area (MSO Savannah OSC)	v	2/15–17	PDV Marina.
EPA Region III Area (EPA OSC)	p	2	
Long Island Sound, NY Area (COTP Long Island Sound OSC)	v	2	Tosco Corp.
EPA Region I Area (EPA OSC)	f (non-mtr)	2	
EPA Region II Area (EPA OSC)	f (non-mtr)	2	
San Diego, CA Area (MSO San Diego OSC)	f (mtr)	3	Navy.
SW Louisiana/SE Texas Area (MSO Port Arthur OSC)	v	3	Mobil.
EPA Region X Area (EPA OSC)	f (non-mtr)	4	
EPA Region VII Area (MSO Los Angeles OSC)	p	4	
Los Angeles/Long Beach Area (MSO Los Angeles OSC)	v	4	
Morgan City Area (MSO Morgan City OSC)	v	4	Shell.
1996 Schedule			
Prince William Sound Area (MSO Valdez OSC)	f (mtr)	1	
Virginia Coastal Area (MSO Hampton Roads OSC)	v	1	
Grand Haven, MI Area (COTP Grand Haven OSC)	v	2	
North Coast Area (MSO San Francisco OSC)	v	2	
Buffalo, NY Area (MSO Buffalo OSC)	f (mtr)	2	
Western Lake Erie Area (MSO Toledo OSC)	f (mtr)	2	
EPA Region VI Area (EPA OSC)	p	2	
Western Alaska Area (MSO Anchorage OSC)	p	3	
EPA Region IX Area (EPA OSC)	f (non-mtr)	3	
Maine & New Hampshire Area (MSO Portland OSC)	v	3	
Boston Area (MSO Boston OSC)	v	3	
Santa Barbara/Ventura Area (MSO Los Angeles/Long Beach OSC)	v	4	
Palau Area (MSO Guam OSC)	v	4	
EPA Region II Area (Caribbean) (EPA (SC)	f (non-mtr)	4	
1997 Schedule			
Northeast North Carolina Coastal Area (MSO Hampton Roads OSC)	v	1	
Comonwealth of N. Marianaas Islands Area (MSO Guam OSC)	v	1	Mobil Corp.
Caribbean Area (MSO San Juan OSC	f (mtr)	5/12–16	
Florida Panhandle Area (MSO Mobile OSC)	v	2	Kirby Corp.
Eastern Wisconsin Area (MSO Milwaukee OSC)	f (mtr)	2	
Chicago Area (MSO Chicago OSC)	f (mtr)	2	
Central Coast Area (MSO San Francisco OSC)	v	2	
EPA Alaska Region (EPA OSC)	f (non-mtr)	3	
Houston/Galveston Area (MSO Houston OSC)	v	3	Aramco Services Co.
New York, NY Area (COTP New York OSC)	v	3	OMI Corp.
Hawaii/American Samoa Area (MSO Honolulu OSC)	v	4	

PREP SCHEDULE INDUSTRY LED AREA EXERCISES—Continued

Area	Industry	Date/QTR	Lead
EPA Region IV Area (EPA OSC)	p	4	
Duluth—Superior Area (MSO Duluth OSC)	v	3	
Orange County Area (MSO LA/LB OSC)	f (mtr)	4	

*QUARTERS: 1 (January-March); 2 (April-June); 3 (July-September); 4 (October-December).
** INDUSTRY: v = vessel; f (mtr) = marine transportation-related facility; f (non-mtr) = non-marine transportation-related facility; p = pipeline.

Dated: October 20, 1994

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–26507 Filed 10–25–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–94–37]

Peitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before November 15, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on October 20, 1994.

Joseph Conte,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 25351.

Petitioner: USAir.

Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378.

Description of Relief Sought: To extend Exemption No. 5005, which allows USAir to utilize certain foreign equipment manufacturers and related repair facilities to perform maintenance, preventive maintenance, and alterations on the components, parts, and appliances that are produced by such manufacturers and are used on aircraft operated by USAir.

Docket No.: 26178.

Petitioner: Continental Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.358.

Description of Relief Sought: To amend Exemption No. 5256, which was issued to Continental Airlines, American Airlines, Eastern Airlines, and Northwest Airlines in order to develop, certificate, and implement predictive windshear devices in lieu of installation of existing reactive windshear systems. The amendment, if granted, would extend the final compliance date for installation of required windshear equipment in Continental's aircraft from December 31, 1995, to October 1, 1996.

Docket No.: 27872.

Petitioner: Taquan Air Service, Inc.

Sections of the FAR Affected: 14 CFR 135.181(a)(1).

Description of Relief Sought: To permit Taquan Air Service, Inc., to operate a single-engine aircraft (the Cessna C208 Caravan) for on-demand and/or scheduled passenger flights over-the-top or in IFR conditions.

Docket No.: 27874.

Petitioner: The University of Oklahoma.

Sections of the FAR Affected: 14 CFR 141.67(a)(2).

Description of Relief Sought: To permit the University of Oklahoma to recommend students for issuance of pilot's certificates without those students having completed all of the appropriate training at the University of Oklahoma.

Docket No.: 27892.

Petitioner: Regional Airline Association.

Sections of the FAR Affected: 14 CFR appendix I of part 121, subparagraphs 3 and 4.

Description of Relief Sought: To extend the September 19, 1994, compliance date requiring medical review officers conferring with employees who have received verified positive drug test results or who have refused to submit to a drug test to (1) advise them of available resources to resolve problems associated with illegal drug use and (2) ensure that the substance abuse professionals (SAP) evaluate such employees to determine if an employee is in need of assistance in resolving drug-use problems.

Dispositions of Petitions

Docket No.: 23358.

Petitioner: Crew Pilot Training, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2), (e)(3), and (g); 61.67(d)(2); 61.157(d)(1) and(2) and (e)(1) and(2); 61.191(c); and appendix A of part 61.

Description of Relief Sought/ Disposition: To permit Crew Pilot Training, Inc., to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR.

Grant, September 23, 1994, Exemption No. 5011E

Docket No.: 25080.

Petitioner: Aerospace Aviation Center Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2), (e)(3), and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.91(c); and appendix A of part 61.

Description of Relief Sought: To permit Aerospace Aviation Center, Inc., to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR.

Grant, September 23, 1994, Exemption No. 4745D

Docket No.: 25345.

Petitioner: National Business Aircraft Association, Inc.

Sections of the FAR Affected: 14 CFR 91.119, 91.409, 91.501(a), 91.503 through 91.535, and 91.515(a)(1).

Description of Relief Sought/ Disposition: To permit National Business Aircraft Association, Inc., members to use inspection programs required for large turbojet or turboprop powered airplanes for their small civil airplanes and helicopters. It also permits their operation of the aircraft under subpart F of part 91 of the FAR.

Grant, September 23, 1994, Exemption No. 1637R

Docket No.: 26559.

Petitioner: Helicopter Association International.

Sections of the FAR Affected: 14 CFR 43.3.

Description of Relief Sought/ Disposition: To allow properly trained pilots employed by operators of petitioner, and other similarly situated operators, when certificated maintenance personnel are not available, to remove and install oxygen cylinders in their aircraft after receiving appropriate training in this task by a properly certificated airframe mechanic.

Grant, September 30, 1994, Exemption No. 5526A

Docket No.: 26815.

Petitioner: International Aviation Consultants, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d) (2) and (3); 61.65(c), (e)(2), (e)(3), and (g); 61.67(d)(2); 61.157(d) (1) and (2) and (e) (1) and (2); 61.191(c); and appendix A of part 61.

Description of Relief Sought/ Disposition: To permit International Aviation Consultants, Inc., to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR.

Grant, September 30, 1994, Exemption No. 5968

Docket No.: 26847.

Petitioner: FlightSafety International.

Sections of the FAR Affected: 14 CFR 141.65.

Description of Relief Sought/ Disposition: To allow FlightSafety International to continue to recommend graduates of its approved certification course for flight instructor certificates and ratings without taking the FAA's written tests, in accordance with the provisions of subpart D of part 141 of the FAR.

Grant, September 29, 1994, Exemption No. 5528A

Docket No.: 26943.

Petitioner: National Charter Networks, Inc.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/ Disposition: To allow pilots employed by National Charter Networks, Inc., to alternate the configuration of its Lear 35 aircraft between passenger and ambulance when a certificated mechanic is not available.

Grant, September 26, 1994, Exemption No. 5547A

Docket No.: 27007.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 121.391(c).

Description of Relief Sought/ Disposition: To permit Air Transport Association of America member airlines and other similarly situated part 121 air carriers to allow non-required flight attendants to perform safety-related duties during aircraft surface movement.

Grant, September 29, 1994, Exemption No. 5533A

Docket No.: 27631.

Petitioner: LesAir, Inc.

Sections of the FAR Affected: 14 CFR 91.319(a) (1) and (2).

Description of Relief Sought/ Disposition: To permit LesAir, Inc., to conduct pilot and flight instructor training in an experimental gyroplane for compensation or hire.

Grant, September 23, 1994, Exemption No. 5966

Docket No.: 27710.

Petitioner: Allison Engine Company, Inc.

Sections of the FAR Affected: 14 CFR 21.325(b)(1).

Description of Relief Sought/ Disposition: To allow export airworthiness approvals to be issued for two Class I products (engines) located in Sweden for the SAAB 2000 airplane pre-production program.

Grant, October 4, 1994, Exemption No. 5969

Docket No.: 27812.

Petitioner: Lifeguard America, Inc.

Sections of the FAR Affected: 14 CFR 21.191(d), 91.203(a)(1), 91.319 (a) and (c), and 135.25(a)(1) and (a)(2).

Description of Relief Sought/ Disposition: To permit Lifeguard America, Inc., to operate an Experimental Exhibition Category aircraft, Bede Jet Corporation's BD–10, for the purpose of transporting human transplant organs for compensation.

Denial, September 14, 1994, Exemption No. 5963

Docket No.: 27819.

Petitioner: FFV Aerotech Incorporated.

Sections of the FAR Affected: 14 CFR 145.45(f).

Description of Relief Sought/ Disposition: To allow FFV to assign inspection procedures manuals to key individuals within departments and functionally place an adequate number of manuals for access by all employees.

Grant, September 27, 1994, Exemption No. 5967

Docket No.: 27856.

Petitioner: American International Airways, Inc.

Sections of the FAR Affected: 14 CFR 91.9(a) and 91.805.

Description of Relief Sought/ Disposition: To permit American International Airways, Inc., (AIA) to operate its McDonnell Douglas DC–8 (DC–8) aircraft with flaps at the fully extended position (flaps–50) when adverse weather conditions exist at Willow Run Airport, Ypsilanti, Michigan. A grant of this request would also exempt AIA's DC–8 aircraft from compliance with Stage 2 noise level requirements.

Denial, September 14, 1994, Exemption No. 5962

[FR Doc. 94–26501 Filed 10–25–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 180; Seventh Meeting

Design Assurance Guidance for Airborne Electronic Hardware

Joint RTCA Special Committee 180 and EUROCAE Working Group 46 Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee

180 meeting to be held December 13–15, 1994, starting at 8:30 a.m. on the first and 8:00 a.m. on the subsequent days. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

Agenda will be as follows: (1) Chairman's introductory remarks; (2) Review and approval of meeting agenda; (3) Approve summary of second joint meeting held September 27–29, 1994; (4) Leadership team meeting report; (5) Consensus items; (6) Review action items; (7) Review issue logs; (8) Joint team status reports; (9) Joint team meeting assignments and objectives; (10) Adjourn to Team Sessions; (11) Joint team reports; (12) Other business; (13) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued at Washington, D.C., on October 17, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–26499 Filed 10–25–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., RTCA Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for RTCA Technical Management Committee meeting to be held November 17, 1994, starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

Agenda will be as follows: (1) Chairman's remarks; (2) Review/approve summary of September 12, 1994 meeting; (3) Consider/approve: (a) Proposed Change No. 2 to DO–210, Parts A & B, Minimum Operational Performance Standards for Aeronautical Mobile Satellite Service (AMSS), prepared by SC–165 (b) Proposed final draft, VHF Air/Ground Communications System Improvements Alternatives Study and Selection of Proposals for Future Action, prepared by SC–172 (c) Reactivation of SC 173, Minimum Operational Performance Standards for Airborne Doppler Weather Radar with Forward-Looking Windshear Detection Capability (d) Proposed Revision of SC–182, Minimum Operational Performance Standards for an Avionics Computer Resource (ACR), Terms of Reference (e) Proposed revision of SC–183, Standards for Airport Security Access Control Systems, Terms of Reference; (4) Other business: (a) SC–180 request for guidance in coordinating hardware/software integration requirements (b) Proposal to revise DO–181A, Minimum Operational Performance Standards for Air Traffic Control Radar Beacon System Mode Select (ATCRBS/MODE S) (c) Proposal to revise DO–218, Minimum Operational Performance Standards for the Mode S Airborne Data Link Processor; (5) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on October 18, 1994.

David W. Ford,

Designated Officer.

[FR Doc. 94–26500 Filed 10–25–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Notice of 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. 3328

Applicant: CSX Transportation, Incorporated, Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the single main track, milepost N19.7, near Pegram, Tennessee, Nashville Division, Bruceton Subdivision; consisting of the discontinuance and removal of three controlled signals, conversion of one power-operated switch to hand operation, and the installation of two automatic block signals in conjunction with the retirement of Pegram siding.

The reason given for the proposed changes is that the three controlled signals and the power-operated switch are no longer needed for present day operation.

BS–AP–No. 3329

Applicant: Burlington Northern Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 9401 Indian Creek Parkway, Overland Park, Kansas 66210.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the signal system, on the two main track, between Blacktail and Java East, Montana, between mileposts 1158.5 and 1158.6, Montana Division, Hi Line Subdivision; consisting of the discontinuance and removal of 600 feet of rock slide fence.

The reason given for the proposed changes is that the hillside has been regraded to solid rock and there have been no rock slide detections in the last 20 years.

BS–AP–No. 3330

Applicants: CSX Transportation, Incorporated, Mr. D.G. Orr, Chief Engineer—Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202; and the New Orleans Public Belt Railroad, Mr. Anthony C. Marinello, Jr., Manager, Engineering and Maintenance, P.O. Box 51658, New Orleans, Louisiana 70151.

CSX Transportation, Incorporated (CSX) and The New Orleans Public Belt Railroad (NOPB) jointly seek approval of the proposed discontinuance and removal of four power-operated derails, on the two main tracks, Canal-NOPB Interlocker, milepost 801.5, New Orleans, Louisiana, CSX's Mobile Division, NO&M Subdivision.

The reason given for the proposed changes is the power-operated derails are no longer needed for present day operation.

BS–AP–No. 3331

Applicant: Southern Pacific Lines, Mr. J. A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105.

The Southern Pacific Lines seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the two main tracks, at Cecil Junction, Utah, between mileposts A–781 and A–781.4,

Roseville Division, Ogden Subdivision; consisting of the discontinuance and removal of automatic block signals 7800, 7810, 7812, 7813, and 7813.5, the conversion of signal 7811 to an operative approach, and designation of operations by yard limit rules.

The reason given for the proposed changes is that due to operational changes, the signal system is no longer required.

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 October 20, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–26465 Filed 10–25–94; 8:45 am]

BILLING CODE 4910–06–P

Federal Transit Administration

Innovative Financing Initiative: Notice of Funding Availability and Request for Information

AGENCY: Federal Transit Administration, DOT.

ACTION: Extension of comment period.

SUMMARY: On September 12, 1994, the Federal Transit Administration (FTA) issued a notice soliciting project proposals and information from transit authorities, planning officials, States, the private sector, and the public on its Innovative Financing Initiative. The FTA seeks to identify issues and obstacles to innovative financing of transit capital or operating needs, as well as project proposals that demonstrate or test an innovative financing mechanism. FTA is extending the comment period to allow interested parties additional time to review the Notice and to formulate proposals on this initiative.

DATES: Proposals must be received on or before December 30, 1994.

ADDRESSES: Proposals should be sent in triplicate to Janette Sadik-Khan, Associate Administrator, Office of Budget and Policy, Federal Transit Administration, Room 9310, 400 Seventh Street SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Paul Marx (202) 366–1675 or Janette Sadik-Khan (202) 366–4050.

SUPPLEMENTARY INFORMATION: The Federal Transit Administration issued a notice on September 12, 1994 (59 FR 46878) seeking proposals and information from transit authorities, planning officials, States, the private sector, and the public on the FTA's Innovative Financing Initiative. This initiative is based on Executive Order 12893, "Principles for Federal Infrastructure Investments," signed by President Clinton on January 26, 1994, which directs each executive department "to ensure efficient management of infrastructure * * * and to "encourage private sector investment which is a key objective of our efforts to promote innovative financing." Accordingly, Department of Transportation Secretary Federico Peña directed FTA to explore innovative ways to finance the transportation needs of our nation, taking into account a continuing Federal commitment to transit, as well as a growing private sector interest in transportation investment. Hence, the FTA is interested in identifying ways for States and localities to plan and execute integrated public transit investment programs.

The original comment period would end on October 30, 1994. FTA is extending the comment period for an additional 60 days, in order to allow interested parties adequate time to formulate their comments and/or proposals. The comment period will now close on December 30, 1994. Late-filed proposals will be considered to the extent practicable.

Date Issued: October 20, 1994.

Gordon J. Linton,

Administrator.

[FR Doc. 94–26494 Filed 10–25–94; 8:45 am]

BILLING CODE 4910–57–P

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Honda

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

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants the petition by American Honda Motor Company, Inc. (Honda) for an exemption from the parts marking requirements of the vehicle theft prevention standard for a high theft car line whose nameplate is confidential. This petition is granted because the agency has determined that the antitheft device to be placed on the car line as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with parts marking requirements.

DATES: The exemption granted by this notice is effective beginning with the (confidential) model year.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: In a letter dated April 29, 1994, American Honda Motor Company, Inc. (Honda) requested an exemption from the theft prevention standard for a car line beginning from the (confidential) model year. The nameplate of the car line is also confidential. The letter was submitted pursuant to 49 CFR part 543, *Exemption from Vehicle Theft Prevention Standard*, and requested an exemption from parts marking based on the installation of an antitheft device as standard equipment for the car line. In a June 29, 1994 telephone conversation with NHTSA officials, Honda clarified the scope of its petition.

Together, Honda's April 29 letter and information provided in the June 29 telephone conversation constitute a complete petition, as required by 49 CFR § 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6. In a letter dated May 31, 1994 to Honda, the agency granted the petitioner's request for confidential treatment of most aspects of its petition, including the nameplate of the car line and the model year of its introduction.

In its petition, Honda provided a detailed description and diagrams of the identity, design, and location of the components of the antitheft device for the new car line. The antitheft device

includes an engine starter interrupt function and an alarm function. The antitheft device is activated by removing the key from the ignition and locking the driver or passenger door with the key.

The alarm monitors the doors, hood, trunk lid, battery terminals, engine starter circuit, and battery circuit.

In order to ensure the reliability and durability of the device, Honda stated that it conducted tests, based on its own specified standards. Honda provided a detailed list of the tests conducted, including tests for temperature extremes, vibration, shock, and power voltage. Honda stated its belief that the device is reliable and durable since the device complied with Honda's specified requirements for each test.

Honda compared the device proposed for its new car line with devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements.

Honda concludes that the antitheft device proposed for its new car line is not less effective than those devices in the above car lines for which NHTSA has granted exemptions from the parts-marking requirements.

Based on this substantial evidence, the agency believes that the antitheft device for the new Honda car line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR part 541).

The agency believes that the device will provide the types of performance listed in 49 CFR 543.6(a)(3): Promoting activation; attracting attention to unauthorized entries; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4), the agency also finds that Honda has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Honda provided on its device. This information included a description of reliability and functional tests conducted by Honda for the antitheft device and its components.

For the foregoing reasons, the agency hereby exempts the Honda car line that is the subject of this notice, in whole, from the requirements of 49 CFR part 541.

If Honda decides not to use the exemption for the car line that is the subject of this notice, it should formally notify the agency. If such a decision is made, the car line must be fully marked according to the requirements under 49 CFR §§ 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA has attempted to compare the effectiveness of compliance with the theft prevention standard (parts marking) with the effectiveness of antitheft devices. NHTSA has compared the theft rates of 17 parts-marked MY 1986 vehicle lines, with the theft rates of the same 17 lines in MY 1991, when each line had an exemption from parts marking because it had an antitheft device as standard equipment. Of the 17 lines reviewed, 10 experienced theft rates for MY 1991 that were below their respective rates in MY 1986. Although the results of the data are inconclusive, it indicates a likelihood of lower theft rates for vehicle lines that have been exempted from parts marking because they are equipped with an antitheft device. With implementation of the requirements of the "Anti Car Theft Act of 1992," NHTSA anticipates more probative data upon which comparisons may be made.

NHTSA notes that if Honda wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Dated: October 20, 1994.

Ricardo Martinez,

Administrator.

[FR Doc. 94-26495 Filed 10-25-94; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF THE TREASURY

Customs Service

[ADM-9-03:CO:R:IT:R 912245 GRV]

Notice of Grant Money for the Establishment of a Center for the Study of Western Hemispheric Trade in Texas

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

ACTION: General notice.

SUMMARY: This notice announces the availability of application packages for institutions (or a consortium of institutions) located in the State of Texas interested in grant money for the planning, establishment, and operation of a Center for the Study of Western Hemispheric Trade. Application packages will be sent to those institutions that wish to be considered in the award of the grant money.

DATES: Requests for application packages will be accepted through November 25, 1994.

ADDRESSES: Requests for application packages should be sent to the Procurement Services Division, ATTN: Ms. Kim Doherty, Room 1438, Department of Treasury, 15th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20220; FAX (202) 622-2343.

FOR FURTHER INFORMATION CONTACT: At Customs: Mr. James Picard, (202) 927-2059; at Treasury: Mr. Phillip Casteel (Grant Officer) (202) 622-1300.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to authority contained in Public Law 103-182 (107 Stat. 2057, codified at 19 U.S.C. 3301 note), Customs, with offices of the Department of the Treasury, announce a competition for $10,000,000 in grant money to assist an institution (or consortium of institutions) in the State of Texas in the planning, establishment, and operation of a Center for the Study of Western Hemispheric Trade (Center). The Center is to conduct year-round programs that promote and study trade between and among Western Hemisphere countries. This notice is to obtain a list of interested Texas institutions that wish to be considered in the award of the grant money.

Once the list is compiled, Customs will establish a committee to develop criteria for evaluating eligible institutions, and the Commissioner of Customs will begin consulting with appropriate officials of the State of Texas and private sector authorities with respect to selecting, planning, and establishing the Center. Consideration will be given to an institution's ability to carry out the Center's designated programs and activities and to any resources the institution can provide the Center in addition to any Federal funds provided.

The grant program is described as follows:

1. *Grant sum:* $10,000,000

2. *Effective date:* Date of award

3. *Completion date (funding):* Fiscal Year 1997

4. *Program description:* The purpose of this grant is to provide support to Grantee's planning, establishing, and operating a Center for the Study of Western Hemispheric Trade (Center). It is understood that the grant will support the Grantee's activities from the effective date of the grant or as may be otherwise provided in the grant Schedule, and that the Center shall be established not later than [February 1,] 1995.

The government's support is based on the provision that the Center shall be a year-round program which will promote and study trade between and among Western Hemisphere countries (Canada, the United States, Mexico, countries located in South America, beneficiary countries (as defined by Section 212 of the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701 et seq.), the Commonwealth of Puerto Rico, and the United States Virgin Islands).

Scope of the Center

The Center is expected to conduct activities designed to examine—

(1) the impact of the NAFTA on the economies in, and trade within, the Western Hemisphere;

(2) the negotiation of any future free trade agreements, including possible accessions to the NAFTA; and,

(3) adjusting tariffs, reducing nontariff barriers, improving relations among customs officials, and promoting economic relations among countries in the Western Hemisphere.

Programs and Activities of the Center

The Center is expected to conduct the following activities:

(1) Provide forums for international discussion and debate for representatives from Western Hemisphere countries regarding issues which affect trade and other economic relations within the hemisphere;

(2) Conduct studies and research projects on subjects which affect Western Hemisphere trade, to include tariffs, customs, regional and national economics, business development and finance, production and personnel management, manufacturing, agriculture, engineering, transportation, immigration, telecommunications, medicine, science, urban studies, border demographics, social anthropology, and population;

(3) Publish materials, disseminating information, and conducting seminars and conferences to support and educate representatives from countries in the Western Hemisphere who seek to do business with or invest in other Western Hemisphere countries; (grants made may provide that reasonable fees may be charged for attendance at such seminars and conferences and for copies of Center-published documents, studies, and reports);

(4) Provide grants, fellowships, endowed chairs, and financial assistance to outstanding scholars and authorities from Western Hemisphere countries;

(5) Provide grants, fellowships, and other financial assistance to qualified graduate students, from Western Hemisphere countries, to study at the Center; and,

(6) Implement academic exchange programs and other cooperative research and instructional agreements with the complementary North/South Center at the University of Miami at Coral Gables.

Institutions interested in being considered for the award of the grant money should request an application package from the U.S. Customs Service, ATTN: James Picard, Office of International Affairs, 1301 Constitution Avenue, NW., Washington, DC 20229. The letter should be received by Customs by the date set forth at the beginning of this notice.

Dated: October 20, 1994.

Michael H. Lane,

Acting Commissioner of Customs.

[FR Doc. 94–26560 Filed 10–25–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Computer Matching Program Between the Department of Veterans Affairs and the United States Postal Service

AGENCY: Department of Veterans Affairs.

ACTION: Notice of computer matching program.

Notice is hereby given that the Department of Veterans Affairs (VA) and the United States Postal Service (USPS) propose to conduct a computer matching program. The purpose of the program is to identify and locate USPS employees who owe delinquent debts to the Federal Government as a result of their participation in benefit programs administered by VA. Once identified and located, VA will pursue collection of debts through voluntary payments. If such payments are not forthcoming, VA may request USPS to offset up to 15 percent of the employees' disposable pay as authorized under the provisions of the Debt Collection Act of 1982.

The legal authority for undertaking this matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government, 31 U.S.C. 3711 (Collection and Compromise) and 5 U.S.C. 5514 (Installment Deduction for Indebtedness). These statutes authorize Federal agencies to offset a Federal employee's salary as a means of satisfying delinquent debts owed the United States. VA and USPS have concluded an agreement to conduct the matching program pursuant to provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(o)).

USPS will act as the recipient (i.e., matching) agency. VA will provide a tape extract to USPS that contains the name and social security number (SSN) of each record subject. USPS will compare the tape extract against its database of employee records, establishing "hits" (i.e., individuals common to both tapes) on the basis of matched SSN's. For each hit, USPS will disclose to VA the following information: name, SSN, home address and employee type (permanent or temporary).

Records to be Matched: The systems of records maintained by the respective agencies from which records will be disclosed for the purpose of this computer match are as follows:

USPS: Finance Records—Payroll System (USPS 050.020) containing records of approximately 700,000 employees. Disclosure will be made under routine use 24 of that system, a full description of which was last published at 57 FR 57515 (December 4, 1992).

VA: (a) "Compensation, Pension, Education and Rehabilitation Records—VA" (58VA21/22) appearing at page 967 of the document entitled Privacy Act

Issuances, 1991 Comp., Volume II. The exchange of data under this agreement is consistent with routine uses 9 and 12 of 58VA21/22. (b) "Loan Guaranty Home, Condominium and Manufactured Home Loan Applicant Records, Specially Adapted Housing Applicant Records and Vendee Loan Applicant Records—VA" (55VA26), appearing at page 962 of the document entitled Privacy Act Issuances, 1991 Comp., Volume II. The exchange of data under this agreement is consistent with routine use 19 of 55VA26. The debtor records actually used to perform the match are maintained in the Centralized Accounts Receivable System (CARS). CARS records, which number about 500,000, are a subset of those found in both Privacy Act systems of records listed above.

The matching program is expected to begin on or about November 25, 1994, and continue in effect for 18 months. Matching activity will begin no sooner than 30 days after publication of this notice or 40 days after a report of this matching program has been provided to Congress and the Office of Management and Budget (OMB), whichever is later. The agreement governing the matching program and, thus, the matching program, may be extended an additional 12 months with the respective approval of VA's and USPS' Data Integrity Boards. Such extension must occur within three months prior to expiration of the 18-month period set forth above and under the terms set forth in 5 U.S.C. 552a(o)(2)(D).

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposal to conduct the matching program to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Service Unit at the above address, between 8:30 a.m. and 4:30 p.m., Monday through Friday, except holidays, until November 25, 1994.

FOR FURTHER INFORMATION CONTACT: Mark Gottsacker, Debt Management Center (389/00A), U.S. Department of Veterans Affairs, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111, (612) 725–1844.

SUPPLEMENTARY INFORMATION: This information is required by the Privacy Act of 1974, as amended (5 U.S.C. 552a(e)(12)).

A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: October 17, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94–26558 Filed 10–25–94; 8:45 am]

BILLING CODE 8310–01

Sunshine Act Meetings

Federal Register
Vol. 59, No. 206
Wednesday, October 26, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Thursday, November 10, 1994.
PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 94–26644 Filed 10–24–94; 1:27 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 4, 1994.
PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 94–26645 Filed 10–24–94; 1:27 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 18, 1994.
PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 94–26646 Filed 10–24–94; 1:27 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 25, 1994.
PLACE: 2033 K St., N.W., Washington, D.C., 8th Floor Hearing Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 94–26647 Filed 10–24–94; 1:27 pm]
BILLING CODE 6351–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Friday, October 28, 1994.
PLACE: 6th Floor, 1730 K Street, N.W., Washington, D.C.
STATUS: Open.
MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Peabody Coal Co.*, Docket No. KENT 91–179–R. (Issues include whether the judge correctly found that the deep cut ventilation requirement proposed by the Department of Labor's Mine Safety and Health Administration was suitable to Peabody's mine under 30 U.S.C. 860(o).)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Dated: October 21, 1994.
Jean H. Ellen,
Chief Docket Clerk.
[FR Doc. 94–26617 Filed 10–24–94; 11:37 am]
BILLING CODE 6735–01–M

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, October 31, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 21, 1994.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 94–26586 Filed 10–21–94; 4:34 pm]
BILLING CODE 6210–01–P

Corrections

Federal Register
Vol. 59, No. 206
Wednesday, October 26, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7081

[OR-943-4210-06; GP4-108; OR-48744]

Withdrawal of Public and Non-Federal Lands for the Eagle Rock and Leaburg Lake Sections of the McKenzie River; Oregon

Correction

In rule document 94-21795 beginning on page 45987 in the issue of Tuesday, September 6, 1994, make the following correction:

On page 45988, in the first column, in the land description for the *Eagle Rock Section* in the sixth line "89°1'55"" should read"89°16'55"", and in the 21st line "72.41§ " should read "72.41"

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN: 3150-AD57

Fracture Toughness Requirements for Light Water Reactor Pressure Vessels

Correction

In proposed rule document 94-24209 beginning on page 50513 in the issue of Tuesday, October 4, 1994 make the following correction:

On page 50513, in the first column, under **DATES** the comment date should read "January 3, 1995".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket Nos. 25148 and 26620; Admt. Nos. 65-38; 121-240; 135-51]
RIN 2120-AE82

Antidrug Program for Personnel Engaged in Specified Aviation Activities

Correction

In rule document 94-20237 beginning on page 42922 in the issue of Friday, August 19, 1994 make the following corrections:

Appendix I to Part 121

1. On page 42929, in the third column, under paragraph V. G., in the first line, "1."should appear before "Each".

2. On page 42930, in the first column, under paragraph VI. C., in the second line, "1." should appear before "Not".

3. On the same page 42930, in the second column, under paragraph VI. E., in the first line, "1." should appear before "Each".

4. On page 42932, in the first column, under paragraph IX. A., in the second line, "1." should appear before "Each".

BILLING CODE 1505-01-D

federal register

Wednesday
October 26, 1994

Part II

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Competitive Discretionary Grant Program: Second National Incidence Studies of Missing, Abducted, Runaway and Throwaway Children; Application Extension Date; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Missing Children's Assistance Act; Notice of Extension of Time To Submit for the Fiscal Year 1994 Competitive Discretionary Grant Program: Second National Incidence Studies of Missing, Abducted, Runaway and Throwaway Children (NISMART II)

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Department of Justice.

ACTION: This notice extends the due date for applications for the Second National Incidence Studies of Missing, Abducted, Runaway and Throwaway Children (NISMART II).

SUMMARY: This is a revision to 59 FR 47520 and 47523, September 15, 1994.

DATES: The due date for submission of applications is extended to November 18, 1994. All applications must be received by mail or delivered to OJJDP by 5 p.m. e.s.t., November 18, 1994. Applications received after the deadline date will not be considered.

ADDRESSES: Applications must be mailed or delivered to: NISMART II, Research and Program Development Division, OJJDP, Room 782, 633 Indiana Avenue NW., Washington, D.C., 20531.

FOR FURTHER INFORMATION CONTACT: Pam Cammarata, Research and Program Development Division, OJJDP, Room 782, 633 Indiana Avenue, NW, Washington, D.C., 20531. (202) 307–0586. For copies of the original solicitation for applications, refer to the Federal Register, Vol. 59, No. 178, September 15, 1994. An application kit and supplemental information relevant to the project, can be obtained by calling the Juvenile Justice Clearinghouse, toll free, 24 hours a day, (800) 638–8736.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

I certify that the foregoing is a true and correct copy of the original document.

Olga R. Trujillo,

General Counsel, Office of Justice Programs.

[FR Doc. 94–26477 Filed 10–25–94; 8:45 am]

BILLING CODE 4410–18–P

federal register

Wednesday
October 26, 1994

Part III

Federal Retirement Thrift Investment Board

5 CFR Parts 1650 and 1653
Retirement Benefits Court Order Regulations; Proposed Rule

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1650 and 1653

Retirement Benefits Court Order Regulations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing proposed regulations governing retirement benefits court orders. The proposed regulations contain a number of procedural changes which reflect the Board's experience in processing retirement benefits court orders, as well as changes in Federal tax law. The proposed regulations will establish a new Part in the Code of Federal Regulations replacing existing regulations regarding court orders.

DATES: Comments must be received on or before December 27, 1994.

ADDRESSES: Comments may be sent to: Michelle C. Malis, Federal Retirement Thrift Investment Board, 1250 H Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Michelle C. Malis (202) 942–1658.

SUPPLEMENTARY INFORMATION: The Board administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335. The provisions governing the TSP are codified primarily in subchapters III and VII of Chapter 84 of Title 5, United States Code. The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a TSP participant's account are held in trust for that participant. 5 U S.C. 8437(g).

Under 5 U.S.C. 8467(a), payments from the TSP that would otherwise be made to a TSP participant shall be paid "to another person if and to the extent that the terms of a court decree of divorce, annulment or legal separation, or the terms of any court order or court-approved property settlement agreement incident to any court decree of divorce, annulment, or legal separation expressly provide." A related provision, 5 U.S.C. 8435(d), states that an election or change of election of TSP benefits shall not be effective to the extent that it would conflict with "a court decree of divorce, annulment or legal separation * * * or any court order or court-approved property settlement agreement incident to such decree * * *." The TSP need only honor court orders or decrees meeting the requirements of 5 U.S.C. 8467(a) and 8435(d) if the Executive Director receives proper notice of the order before disbursement of the participant's account.

These proposed regulations address only court orders and decrees described in 5 U.S.C. 8435(d) and 8467. Such orders and decrees are referred to in the proposed regulations as "retirement benefits court orders." These are to be distinguished from "alimony and child support orders," which are governed by 5 U.S.C. 8437(e)(3). Proposed regulations governing alimony and child support orders will be promulgated in a separate subpart of Part 1653. The current proposed regulations, when effective, will supersede the interim regulations presently found at 5 CFR 1650.27 to 1650.43.

Section by Section Analysis

Section 1653.1 states the purpose of the proposed regulations. The procedures set forth in the regulations will be applied in determining whether the Board must honor orders purporting to constitute retirement benefits court orders described in 5 U.S.C. 8435(d) and 8467. The regulations also establish procedures for calculation and payment of awards pursuant to qualifying retirement benefits court orders.

Section 1653.2(a) sets forth the general rule that only "qualifying" retirement benefits court orders will be honored. If an order is determined not to be qualifying, it will not affect the participant's account. TSP participants involved in divorce proceedings, and their representatives, are encouraged to read the TSP publication, "Information About Court Orders," to obtain useful information for drafting and submitting court orders that will be deemed qualifying under the regulations.

Section 1653.2(b) sets forth the requirements for a court order to be "qualifying." Section 1653.2(b)(1) describes the type of legal document that can be a qualifying order. The first sentence is designed to clarify that the language "court decree of divorce, annulment, or legal separation," as used in both 5 U.S.C. 8435(d) and 8467 has been interpreted by the Board to mean "a court decree of divorce, a court decree of annulment, or a court decree of legal separation." In order to have a qualifying court order, a court must be involved. A legal separation agreement that has not been approved by a court, for example, is not a "court decree of legal separation," and therefore cannot constitute a qualifying court order. Also, a property settlement agreement must be court-approved in order to be qualifying. This means that the court's approval must be demonstrated on the face of the document or in an accompanying court order.

The second sentence of § 1653.2(b)(1) is designed to make it clear that a "court order or court-approved property settlement agreement incident to [a decree of divorce, of annulment or of legal separation]" may occur at any stage of the proceeding, not just after the entry of a final decree of divorce, of annulment or of legal separation. For example, courts often issue orders during a divorce proceeding in order to preserve the *status quo* in anticipation of a final decree dividing the property of the parties. The proposed regulations also allow for the possibility that an order serving a function other than preservation of the *status quo* could be deemed "incident to" a decree that has not yet been entered.

If the Board receives an otherwise valid order awarding a former spouse a portion of a TSP account, but prior to payment receives a valid amended order changing the earlier award, the amended order will be honored. However, under no circumstances will the Board accept the return to the TSP of funds that have been properly paid pursuant to an earlier order, even if a subsequent order would dictate such a result. The processing of multiple court orders is addressed in § 1653.3(k).

Section 1653.2(b)(2) addresses the requirement in 5 U.S.C. 8435(d)(2)(A) that a court order must "expressly relate" to a participant's TSP account and the requirement in 5 U.S.C. 8467 that the court order must "expressly provide" for payment to someone other than the participant. For an order to be honored under either provision, the order must unambiguously address the TSP account.

Section 1653.2(b)(2)(i) requires that an order must clearly and specifically deal with a participant's TSP account. It is not sufficient to use generic language that is arguably broad enough to include the TSP. For example, an order that states, "Former Spouse is awarded 50% of all of Participant's Federal retirement benefits" would not be language that expressly relates to the TSP, even though the TSP is a Federal retirement benefit. The clearest and most effective way to ensure that an order is honored is to actually name the Thrift Savings Plan; parties to divorce actions are encouraged to attempt to obtain such specific language in their orders. However, § 1653.2(b)(2)(ii) makes it clear that, even if the Thrift Savings Plan is identified by name, the order must not contain language that is

inconsistent with the division of a participant's interest in a defined contribution plan, such as the TSP, in which the participant has an individual account. References to "benefit formulas," "accrued benefits," or "eventual benefits" may or may not be acceptable in context, because such terms have the potential to raise questions as to whether the order is truly dealing specifically with the TSP account as opposed to simply including the TSP among other retirement benefits to which the participant may be entitled. Since use of such terms may lead the Board to reject an order as not expressly relating to the TSP account, these terms should be avoided in favor of references to the "TSP account" or "TSP account balance."

Section 1653.2(b)(3) further implements the requirement of 5 U.S.C. 8467 that a payment pursuant to a court order must be expressly provided for in the order. If the order requires a payment from the TSP account, it must either award a specific dollar amount or divide the participant's account balance by applying a fraction, a percentage, or a formula that yields a mathematically possible result. For example, a formula where the numerator is larger than the denominator and therefore yields an amount greater than the entire account balance is not acceptable. All of the variables for the formula must also be set forth in the order or must be available through reference to Government employment records. The dollar amount, percentage, fraction or variables used must be clearly determinable; they cannot be qualified by terms such as "approximately." The order may or may not provide for interest or earnings to be added to the amount of the award, but any award of earnings must also be clearly determinable. The order may also award a survivor annuity under 5 U.S.C. 8435(e).

Under § 1653.2(b)(4), an order will only be deemed qualifying if it calls for payment to the spouse, former spouse, attorney for the spouse or former spouse, dependent children of the participant, other dependents of the participant, or the attorney for the participant's dependent children or other dependents. Payment cannot be made to the participant or to others, such as credit card companies, mortgage lenders, or other creditors of the parties to the divorce. The TSP is a retirement savings plan, and the occasion of a divorce should not be a general opportunity for the participant to obtain access to his or her account or for the parties to use retirement savings to liquidate their general debts. In this context, payment to the attorney for the participant is tantamount to a payment to the participant, since the participant owes a debt to the attorney. Thus, the proposed rules would not permit such a payment. In contrast, it is permissible for the court to award a payment from the TSP account to the attorney representing the spouse/former spouse or dependent children or other dependents for legal fees incurred in connection with the divorce, because direct payments to the spouse/former spouse or dependent children or other dependents are also permissible. The Board will not honor an order asking for payment to be made jointly, such as to the former spouse and his or her children. Rather, the order should separately specify the award to be made to each person.

Section 1653.2(c) specifically states that certain orders are not qualifying. Section 1653.2(c)(1) provides that an order relating only to money that is not vested (under 5 U.S.C. 8432(g)) shall not be deemed a qualifying order unless the money will become vested within 90 days of receipt of the order if the participant remains in Federal employment.

Section 1653.2(c)(2) represents a significant departure from current rules for processing court orders. Under current rules the Board has been paying court orders as soon as the amount of the award can be calculated, even where the order calls for a payment at a later date. In cases where a dollar amount is awarded and the order specifies that payment is to be made upon a date in the future, that dollar amount has been paid immediately. On the other hand, where the amount of the award is based on a percentage of the account balance as of a date in the future (such as the participant's separation from Federal Government employment or some other specified date), or is based on a percentage determined by a formula containing variables that cannot be determined until a date in the future, the Board's current procedures have called for the order to be retained by the Board so that payment could be made at the appropriate time in the future.

Under § 1653.2(c)(2)(i) of the proposed rules, orders requiring payment at a future specified date will not be considered qualifying orders unless two requirements are met. First, it must be currently possible to calculate the amount of the entitlement. Second, the award must provide for interest or earnings to be paid on the amount of the award until the date of payment. If both of these requirements are met, the order will be considered qualifying. However, payment will be made not at the future date specified in the order, but rather will be made currently after following the procedures of § 1653.5. The rationale for this limited exception to the general rule that orders requiring future payment will be rejected is that, where the amount of the award can currently be calculated and the order calls for interest or earnings, a payment of that amount currently is the economic equivalent of a payment of the same amount plus earnings at a future date. However, under the proposed regulations there will be no case in which the Board will hold orders until a future date specified by a court for payment.

Section 1653.2(c)(2)(ii) is designed to clarify that is not necessary for the exact amount of the award to be determinable upon receipt of the order by the Board. An order may be qualifying if it provides for a current payment to be calculated as of the date of payment. The Board recognizes that the procedures set forth in the proposed regulations will often require a few months between the receipt of the order by the Board and the payment of the account. Orders will not be deemed non-qualifying future orders merely because the amount of the award cannot be calculated until a payment date that will invariably be later than the date of receipt of the order by the Board. For example, an order that incorporates a formula using a variable such as the number of months of the participant's Federal employment as of the date of payment would not be considered a non-qualifying future order, even though the length of the participant's Federal service will have to be determined as of the date of payment, which is likely to be a few months after the Board's receipt of the order.

Section 1653.2(d) defines the term "former spouse" as used in the proposed regulations, by adopting the definition contained in 5 U.S.C. 8401(12).

Section 1653.3 sets forth procedures for reviewing retirement benefits court orders. Section 1653.3(a) provides that the Board will process court orders in accordances with applicable Federal law, namely FERSA and the Board's regulations. The Board's processing of court orders is not controlled by the procedures of the state divorce courts.

Section 1653.3(a) also makes it clear that the Board cannot be made a party to the underlying divorce action and thereby be subject to the jurisdiction of the court handling the divorce proceeding. The Board is a Federal agency which, under the doctrine of sovereign immunity, is not subject to suit in state court absent specific

statutory authorization. Therefore, legal process to join the Board as a party to a divorce proceeding will not be honored. Parties to a divorce must, without the Board's participation in the proceeding, obtain from the court an appropriate order and then submit that order to the Board for a determination as to whether it is a qualifying order. To the extent there is any dispute about the Board's actions concerning a court order, the matter must be resolved in Federal court under 5 U.S.C. 8477, not in state court.

Section 1653.3(b) provides the address for the TSP recordkeeper to which court orders should be sent for processing. Receipt by the recordkeeper is deemed receipt by the Board.

Section 1653.3(c) provides the general rule that the Board will "freeze" the account of a TSP participant for whom a document has been received that purports to be a qualifying retirement benefits court order. When an account is frozen, the participant may not withdraw the account or obtain a loan from the account. The freeze is intended to ensure that the participant may not defeat the purposes of a court order by removing the funds from the account while the Board is conducting its review of what may turn out to be a valid order. Both 5 U.S.C. 8435(d) and 8467 indicate that the Executive Director may not make payments to the participant after receiving a qualifying court order until the court order has been complied with.

Section 1653.3(d) lists certain types of documents that the Board views as not even purporting to constitute qualifying retirement benefits court orders. Therefore, these documents will be rejected without substantive review and no freeze will be placed on the account. Section 1653.3(d)(1) provides that an order will be rejected if it fails to indicate on its face that it has been issued or approved by a court, unless an accompanying document plainly establishes that the order was approved or issued by a court. An unsigned order will be rejected under this provision.

Section 1653.3(d)(2) provides that an order will be rejected where the account has been closed, which may have occurred either because the participant withdrew his or her account or because the entire account was paid pursuant to an earlier court order. Similarly, because FERSA was enacted on June 6, 1986, court orders entered before that date cannot "expressly relate" to a TSP account, since the court could not have contemplated the existence of a TSP account. Accordingly, under § 1653.3(d)(3), such orders will be rejected without review. Court orders awarding funds in the TSP account only to the participant (§ 1653.3(d)(4)) and court orders failing to make any mention of any retirement benefits (§ 1653.3(d)(5)) will also be rejected without substantive review and without freezing the account.

Sections 1653.3(e) and (f) require a court order to be either an original or copy of a complete court order.

If a court order is not complete, the parties will be given 30 days to submit a complete document. If it is not received within 30 days, the account will be unfrozen and the order will not be reviewed further. However, if the incomplete order does not include a signature or other indication that it was properly issued or approved by a court, then it will be rejected under § 1653.3(d)(1) without a 30-day period for resubmission.

Sections 1653.3 (g) and (h) require the Board to determine whether court orders accepted for review under this subpart constitute qualifying orders and to provide an explanation of the decision. If the order is found to be qualifying, the decision will state the effect of the order on the TSP account of the participant. In many cases, the effect of a final divorce decree will be a payment from the participant's account to the spouse of former spouse. In the case of a preliminary order, the effect is often maintenance of a freeze on the account until a further court order is received by the Board.

Under current Board procedures, the Board's decisions provide a 30-day appeal period for the parties to request an administrative review of the decision by the Executive Director. Section 1653.3(i) of the proposed regulations eliminates that appeal period and makes the Board's initial decision the final administrative action. In the Board's experience, the appeal period has been used primarily as a time for seeking from the divorce court a new order to supersede the earlier order, rather than to raise substantive issues relating to the Board's decision.

The Board believes that it is appropriate for the divorce court, rather than the Board, to clarify any question concerning the meaning of the order. Elimination of the appeal period will not, however, eliminate any opportunity for the parties to return to the divorce court for an amended order, since § 1653.5(a) provides that even after a determination that an order awards a portion of a TSP account, payment cannot be made until at least 30 days after appropriate tax notification has been provided. Similarly, if the Board determines that an order is not qualifying, § 1653.3(j)(4) provides that the account will remain frozen for 45 days from the date of the Board's determination. Thus, the spouse or former spouse is protected against disbursement of a loan or withdrawal to the participant during the 45-day period, and may seek a new order from the divorce court during that time.

Section 1653.3(j) describes when a freeze imposed under § 1653.3(c) will be removed. Section 1653.3(j)(1) reiterates the provision in paragraph (f) that if the Board receives an incomplete order the parties will be notified that a complete document must be received within 30 days. If it is not received within that time, the freeze will be removed.

Section 1653.3(j)(2) provides that, where a qualifying order precludes disbursements from the participant's account, the freeze will remain on the account until the order is either superseded or vacated by a subsequent order of the court. Of course, if the subsequent order itself requires freezing the account, then the account will not be unfrozen. A common situation involves a preliminary order entered to preserve the status quo by precluding the participant from obtaining a loan or withdrawal from his or her account while the divorce proceedings are pending. The court then enters a final divorce decree, which dissolves the preliminary order but also includes an award of a portion of the TSP account to the former spouse. Because the final divorce decree will itself require that the account be frozen, the freeze will remain on the account until payment of the former spouse's share.

Section 1653.(j)(3) provides that, where it is determined that an order makes an award of a portion of a TSP account, the freeze will be removed upon payment.

As discussed in connection with the elimination of the appeal period § 1653.3(j)(4) provides that, where the Board determines that an order is not qualifying, the account will remain frozen for 45 days after that determination. This enables the parties to seek and submit to the Board a new, qualifying order from the divorce court, without concern that the participant may withdraw or borrow from his or her account during the 45-day period. Alternatively, a party may seek to challenge the Board's determination in Federal court. The freeze may be removed sooner than the expiration of the 45-day period only upon written agreement from both parties to the divorce proceedings.

Section 1653.3(k) provides the rules for processing multiple court orders. Section 1653.3(k)(1) provides that, where there are conflicting orders arising from the same divorce

proceeding and involving the same spouse of former spouse, the order bearing the latest date will supersede any earlier orders, regardless of the dates on which they are received by the Board. The date will be determined by using the date the order was entered by the clerk of the court or the date the order was filed by the clerk of the court, if the order does not show a date entered. If the order does not indicate a date entered or filed, the date the order was signed by the judge will be used. Since 5 U.S.C. 8467(a) provides that "[a]ny payment under this subsection to a person bars recovery by any other person," the general rule set forth in § 1643.3(k)(1) obviously cannot be applied if payment on the first order received has already been made before the Board receives a later order that would have superseded the first order. Moreover, consistent with the last sentence of § 1653.2(b)(1), no court order will be honored to the extent that doing so would require the Board to accept the return of money already properly paid pursuant to another order.

Section 1653.3(k)(2) provides that where there are conflicting orders involving different spouses of former spouses, the order with the earliest date (determined in the same manner as under § 1653.3(k)(1)) will be given priority (again, unless payment on the first order received has already been made). Any payments from the account will be made first based on the order bearing the earliest date, and proceeding through and additional orders until the account is exhausted. It is presumed that the earliest order established rights for the spouse or former spouse named in that order which cannot be affected by subsequent orders in different cases in which the first spouse is not a party.

Section 1653.4 sets forth rules for calculation of the amount of an entitlement. TSP accounts are valued once a month as of the last day of the month. Under § 1653.4(a), if the date or event specified in the order for calculating the award falls on any day except the last day of the month, the account balance on which the amount of the entitlement is based is determined as of the last day of the previous month. Unless otherwise provided by the court order, any outstanding loan balance as of the end of the month used for calculating the entitlement will be included in the account balance for this calculation. If the date or event specified in the order falls on the last day of a month, the account balance is determined as of that day.

The actual month-end account balance used to calculate the entitlement must be adjusted by transactions which are processed before the payment is processed but which relate to the period on or before the month-end used for the calculation. For example, assume that in March 1995 the Board receives a qualifying court order awarding the former spouse one-half of the participant's account balance as of the end of February 1995. In May 1995, the Board processes an adjustment record received from the participant's employing agency which removes from the account $100 that was determined by the agency to be an excess contribution erroneously made by the agency in January 1995. If payment pursuant to the court order is made in July 1995, the amount paid would be computed based on the February 1995 month-end account balance, minus the $100 which was removed from the account in May 1995 but which related to the period prior to the February month-end computation date. On the other hand, if the adjustment record was for an erroneous contribution made in April 1995, then the February balance would be used in the calculation of the former spouse's award without reduction for the $100 adjustment.

Section 1653.4(b) provides that, where the award does not cite a specific date or event, the entitlement will be calculated based on the month-end balance on or immediately preceding the date the order was entered by the clerk of the court or the date the order was filed by the clerk of the court, if the order does not show a date entered. If the order does not indicate a date entered or filed, the date the order was signed by the judge will be used. Once the appropriate date is established, the rules of paragraph (a) are applied as if that date had been specified in the order.

Section 1653.4(c) provides that, if the court awards a specific dollar amount, but indicates that the amount awarded must be paid out of the balance that is in the account on a certain date, the award will be for the lesser of the amount awarded or the appropriate month-end account balance, determined and adjusted under the same rules as in paragraph (a). This approach is based on the notion that the court has no power to award a sum that is greater than the amount in the account on the particular date cited in the order. Also similar to the rules set forth in paragraph (a), if no date is specified in the court order, the award will be assumed to be based on the date the order was entered, filed or signed as appropriate.

Under § 1653.4(d), unless the court order specifies otherwise, no earnings will be credited to the amount awarded. If the court specifies that interest or earnings are to be credited, but does not specify a rate or method of calculation, the Board will use the actual rate of return on the participant's account for the time period involved based on the funds in which the account is invested. The participant's account may be invested in one or more of the following funds: the Government Securities Investment (G) Fund, the Common Stock Index Investment (C) Fund, the Fixed Income Index Investment (F) Fund. Because the earnings may be based in whole or in part on the earnings of the Common Stock Index Investment (C) Fund or the Fixed Income Index Investment (F) Fund, and those funds may suffer losses for any given period of time, the earnings credited to the award could be either positive or negative. The earnings calculation will begin with the month after the month-end balance used in calculating the principal amount of the award, and will end with the month preceding payment. If the court specifies a different method for calculating interest to be credited to the award, that method will be used.

Section 1653.4(e) makes it clear that under no circumstances may a participant's Agency Automatic (1%) Contributions be paid pursuant to a court order it those funds are not vested under 5 U.S.C. 8432(g) at the time of payment. While the entitlement may initially be calculated to include such nonvested sums for purposes of advising the parties of the amount awarded, the amount will be recalculated excluding those sums if they have not become vested by the date of payment.

Section 1653.5 sets forth the procedures for making payments pursuant to qualifying retirement benefits court orders. Under § 1653.5(a), if a qualifying order is found to require payment, an appropriate tax notification will be provided to the payee after issuance of the Board's decision. Payment will not be made less than 30 days after issuance of the tax notification because, under the Internal Revenue Code, the payee will often have the right to elect a transfer to an Individual Retirement Arrangement (IRA) or other eligible retirement plan, or to make a tax withholding election. As discussed with respect to the elimination of the period for appeal of the Board's decision, this minimum waiting period of 30 days also provides the participant an opportunity to seek an amended order from the state divorce court or to challenge the Board's determination in Federal court under 5 U.S.C. 8477.

Section 1653.5(b) states that payment must be made directly to the individual(s) specified in the court order. However, as required by the Internal Revenue Code, this paragraph also provides for a spouse or former spouse to elect to have all or a part of the payment transferred directly to an IRA or other eligible retirement plan.

Section 1653.5(c) provides that no payment may be made from an account that exceeds the vested account balance at the time of payment, excluding any outstanding loan at the time of payment. Although outstanding loan balances are included for purposes of computing the amount of an award as of the appropriate computation date as determined in accordance with § 1653.4, payment cannot include any amount that is outstanding as a loan, because the money is not in the account and thus is not available to be paid. Payment of more than the vested account balance excluding the outstanding loan balance would require a payment from the Plan that would have to be absorbed by the rest of the TSP participants.

Section 1653.5(d) provides that orders requiring a series of payments will not be deemed qualifying orders. If an order requires a payment greater than the account balance as of the date of the payment, the full amount of the account will be paid pursuant to the order. If the account subsequently receives additional money, that money will not be paid pursuant to the court order. A new court order would be required for payment of the additional sums. In essence, a payment pursuant to a court order extinguishes all entitlements under that court order; further payment can only be made pursuant to a subsequent order.

Section 1653.5(e) provides that joint payments are not permitted. If more than one person is awarded a portion of the account, the amount awarded to each must be specified in the order. Although the checks will be made payable only to the payee(s) named in the order, the Board will permit each payee to specify the address to which the check should be sent, even if that address is different from an address listed in the court order. However, only the payee may designate an address to which the check should be sent, and such designation must be done in writing. The Board will not honor a change of address submitted, for example, by the payee's attorney. A strict rule against accepting address changes from anyone other than the payee is necessary to protect against forbidden alienations of the benefits to which the payee, as a beneficiary of the TSP, has become entitled. Unless the address is changed by the payee, the check will be sent to an address provided in the court order. If an order provides an address that is "in care of" another individual, the check will be issued to the payee but sent to the "in care of" address.

Section 1653.5(f) provides that prior to payment the TSP recordkeeper must have the payee's full name, mailing address, and Social Security number. This information may be provided in the court order or separately by the parties or their representatives. However, as discussed in connection with paragraph (e), only the payee may change the mailing address for the check to an address other than his or her own address. The payee's representative may not do so.

Section 1653.5(g) provides that payment will be made to the payee's estate if the payee dies before payment is made pursuant to a court order. It is not necessary that the court order be submitted to the Board prior to the death of the payee, as long as the order was issued prior to the payee's death and in all other respects constitutes a qualifying order. The court may, in the order, provide for an individual or entity other than the payee's estate to receive payment in the event of the payee's death.

If the participant dies prior to payment of the account, a court order entered prior to the participant's death will be honored. It does not matter that the order may not have been received by the Board prior to the participant's death. However, if the order is not received by the Board prior to otherwise proper payment of the account to someone other than the payee(s) specified in the court order, then the court order will not be honored. The Board will neither seek nor accept a return of funds properly paid prior to receipt of a court order.

Section 1653.5(h) provides that remarriage or termination of a legal separation does not nullify a court order that has already been submitted to the Board. The Board does not believe it can be presumed that in all cases in which a domestic relations court divides property, including a TSP account, the division should be rendered void merely because the parties choose to remarry. If that is the court's intent, then the parties must obtain an order to that effect and submit it to the Board before payment is made pursuant to the original court order.

Section 1653.5(i) reflects the last sentence of 5 U.S.C. 8467(a), which provides that, "Any payment under this subsection to a person bars recovery by any other person." Once payment pursuant to a court order has been properly made, the Board will not accept return of the money disbursed. Nor will an additional payment be made to another payee.

Section 1653.5(j) provides that payments will be made from the TSP investment funds on a *pro rata* basis. For example, if a participant's $10,000 account balance is invested 50% ($5,000) in the G Fund, 30% ($3,000) in the C Fund and 20% ($2,000) in the F Fund, then an award of $1,000 would be paid $500 from the G Fund, $300 from the C Fund, and $200 from the F Fund. The Board will not honor any provision in a court order that requires the payment to be made other than *pro rata* from the TSP investment funds.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only internal Board procedures relating to the processing of and payment pursuant to retirement benefits court orders.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

List of Subjects

5 CFR Part 1650

Employment benefit plans, Government employees, Retirement, Pensions.

5 CFR Part 1653

Employment benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Roger W. Mehle,

Executive Director.

For the reasons set out in the preamble, 5 CFR Chapter VI is proposed to be amended as follows:

PART 1650—METHODS OF WITHDRAWING FUNDS FROM THRIFT SAVINGS PLAN

1. The authority citation for Part 1650 continues to read as follows:

Authority: 5 U.S.C. 8351, 8433, 8434(a)(2)(E), 8434(b), 8435, 8436, 8467, 8474(b)(5), 8474(c)(1), and sec. 4437, Pub. L. 102–484, 106 Stat. 2724.

2. Subpart I of Part 1650, consisting of §§ 1650.27 through 1650.43, is removed and reserved.

3. A new Part 1653 is added to read as follows:

PART 1653—DOMESTIC RELATIONS ORDERS AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

Subpart A—Retirement Benefits Court Orders

Subpart B—[Reserved]

Authority: 5 U.S.C. 8435, 8436(b), 8467, 8474(b)(5) and 8474(c)(1).

Subpart A—Retirement Benefits Court Orders

§ 1653.1 Purpose.

This subpart contains regulations prescribing the Board's procedures for processing retirement benefits court orders.

§ 1653.2 Qualifying retirement benefits court orders.

(a) The TSP will only honor the terms of a retirement benefits court order that is qualifying under paragraph (b) of this section.

(b) A retirement benefits court order must meet each of the following requirements to be considered qualifying:

(1) The court order must be a court decree of divorce, of annulment, or of legal separation, or any court order or court-approved property settlement agreement incident to a decree of divorce, of annulment, or of legal separation. Orders may be issued at any stage of a divorce, annulment, or legal separation proceeding. Orders issued prior to a final decree, such as orders for the purpose of preserving the *status quo* pending the final resolution of the proceeding, are referred to as "preliminary" court orders, and will be considered "incident to" a final decree, notwithstanding that a final decree has not yet been, and may not be, issued. Orders issued subsequent to a final decree, such as orders for the purpose of amending such decree, are referred to as "subsequent" court orders, and will also be considered "incident to" such decree. However, any subsequent order that requires the return of money properly paid pursuant to an earlier court order will not constitute a qualifying order.

(2) The court order must "expressly relate" to the Thrift Savings Plan account of a current TSP participant. This means that:

(i) The order must on its face specifically describe the TSP in such a way that it cannot be confused with other Federal Government retirement benefits or non-Federal retirement benefits; and

(ii) The order must be written in terms appropriate to a defined contribution plan rather than a defined benefit plan. For example, it should generally refer to the individual participant's "account" or "account balance" rather than a "benefit formula" or the participant's "eventual benefits."

(3) If the court order awards an amount to be paid from the participant's TSP account, the award must be for:

(i) A specific dollar amount;

(ii) A stated percentage or stated fraction of the account;

(iii) A portion of the account to be calculated by applying a formula that yields a mathematically possible result. Any variables in the formula must have values that are readily ascertainable from the face of the order or from Government employment records; or

(iv) A survivor annuity as provided in 5 U.S.C. 8435(e).

(4) Court orders that make awards from the TSP may only provide for payments to:

(i) Spouses or former spouses of the participant;

(ii) Attorneys for spouses or former spouses of the participant;

(iii) Dependent children or other dependents of the participant;

(iv) Attorneys for dependent children or other dependents of the participant.

(c) The following retirement benefits court orders will be considered non-qualifying:

(1) Orders relating to a TSP account that contains only nonvested money, unless the money will become vested within 90 days of the date of receipt of the order if the participant remains in Federal service;

(2)(i) Orders that award an amount to be paid at a future specified date or upon the occurrence of a future specified event, unless:

(A) The amount of the entitlement can be currently calculated; and

(B) The award provides for the payment of interest or earnings from the date of calculation to the specified date or event for payment.

(ii) If an order meets the requirements of paragraphs (c)(2)(i) (A) and (B) of this section, a current payment will be made in accordance with the procedures set forth in § 1653.5, rather than a payment at the future date stated in the order.

(d) For purposes of paragraph (c)(2) of this section, orders that require only that the amount of the award be calculated on the date of payment, without stating a future date or event for payment, will not be considered as awarding an amount to be paid at a future date or upon the occurrence of a future event. In such cases, the date of payment will be determined in accordance with the procedures set forth in § 1653.5, and the amount of the entitlement will be determined in accordance with § 1653.4 using that date of payment.

(e) *Definition.* For purposes of this part, the term *former spouse* shall have the same meaning as set forth in 5 U.S.C. 8401(12).

§ 1653.3 Processing retirement benefits court orders.

(a) The Board's review of retirement benefits court orders is governed solely by the Federal Employees' Retirement System Act (FERSA), 5 U.S.C. Chapter 84, and by the terms of this part. The Board will honor retirement benefits court orders properly issued by a court of any state, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, or the Virgin Islands, and any Indian court. However, those courts have no jurisdiction over the Board and the Board cannot be made a party to the underlying domestic relations proceedings.

(b) Retirement benefits court orders should be submitted to the Board's recordkeeper at the following address: Thrift Savings Plan Service Office, National Finance Center, P.O. Box 61500, New Orleans, Louisiana 70161–1500. Receipt by the recordkeeper will be considered receipt by the Board.

(c) Upon receipt of a document that purports to be a qualifying retirement benefits court order, including preliminary and subsequent court orders, the participant's account will be frozen. After an account is frozen, no withdrawals or loans will be allowed until the account is unfrozen. All other account activity, including contributions, adjustments, and interfund transfers, will be permitted. The parties will be notified that the participant's account has been frozen.

(d) The following documents will not be treated as purporting to be qualifying retirement benefits court orders. Therefore accounts of participants to whom such orders relate will not be frozen and these documents will not be reviewed by the Board:

(1) A document that does not indicate on its face (or accompany a document that establishes) that it has been issued or approved by a court;

(2) A court order relating to a TSP account that has been closed;

(3) A court order dated prior to June 6, 1986;

(4) A court order that fails to award all or any part of the TSP account to anyone other than the participant;

(5) A court order that does not mention retirement benefits.

(e) After the participant's account is frozen, the document will be reviewed initially to determine if it is a complete original or copy of a retirement benefits court order.

(f) It it is determined that the document is not complete, a complete document will be requested. If it is not received within 30 days of the date of such request, the account will be unfrozen and no further action will be taken with respect to the document.

(g) Upon receipt of a complete order that is either an original or a copy of a retirement benefits court order, the Board will review the order and will determine whether it is a qualifying order as described in § 1653.2 and, if it awards an amount to be paid from a participant's TSP account, the amount of the entitlement. The Board will advise all parties in writing of its decision.

(h) The Board's decision will contain the following information:

(1) The Board's determination regarding whether the court order is qualifying;

(2) A statement of the applicable statute or regulations;

(3) If the order is determined to be qualifying, a statement regarding the effect that compliance with the court order will have on the participant's TSP account;

(4) If the order requires payment, a description of the method by which the entitlement under the court order was calculated and the circumstances under which payment will be made.

(i) The Board's decision will be final. There is no administrative appeal from the decision.

(j) An account frozen under this section will be unfrozen as follows:

(1) If a complete document has not been received within 30 days from the date of a request described in paragraph (f) of this section, upon expiration of the 30-day period.

(2) If the order is a preliminary order or other order precluding payment from the account, as soon as practicable after receipt of a certified copy or original court order vacating or superseding such order (unless the order vacating or superseding the preliminary order itself warrants placing a freeze on the account).

(3) If the order is valid to award a payment from the TSP account of a participant under this part, upon payment.

(4) If the Board determines that the order is not a qualifying order under this part, 45 days after issuance of the Board's decision. The 45-day period will be terminated if both parties submit a written request for such a termination to the Board.

(k) Multiple court orders pending before the Board will be processed in accordance with the procedures set forth in this part in the following order:

(1) As between conflicting qualifying court orders relating to the same spouse or former spouse, the Board will process only the court order bearing the latest date entered by the clerk of the court. If any order does not have a date entered, then the date the order was filed by the clerk shall be used; if there is no date entered or date filed, then the date the order was signed by the judge shall be used.

(2) As between conflicting qualifying court orders relating to two or more former spouses, the Board will process the orders in the order of the dates entered by the clerk of the court, starting with the order bearing the earliest date, and continuing until the account is exhausted. If any order does not have a date entered, then the date the order was filed by the clerk shall be used; if there is no date entered or date filed, then the date the order was signed by the judge shall be used.

§ 1653.4 Calculating entitlement under a retirement benefits court order.

(a) If the court order awards a percentage or fraction of the account as of a specific date or event, the amount of the entitlement will be calculated based upon the balance of the account as of the end of the month on or immediately preceding the date or event, plus any transactions posted after the date or event, but before payment, that are effective on or before the month-end date used for calculating the entitlement. For purposes of computing the amount of an entitlement, any loan amount outstanding as of the month-end date used for calculating the entitlement shall be treated as included in the account balance, unless the court order provides otherwise.

(b) If the court order awards a percentage or fraction of an account but does not contain a specific date as of which to apply the percentage or fraction to the account, the amount of the entitlement will be calculated as described in paragraph (a) of this section, using the account balance as of the end of the month on or immediately prior to the date the order was entered by the clerk of the court or, if the order does not show a date entered, the date the order was filed by the clerk of the court or, if the order does not contain a date entered or a date filed, the date signed by the judge.

(c) If the court order awards a specific dollar amount, the amount of the entitlement will be the lesser of:

(1) The amount of order awards; or

(2) The amount in the account as of the end of the month on or before the date specified in the order (or, if no date is specified, the date the order was entered by the clerk of the court or, if the order does not show a date entered, the date the order was filed by the clerk of the court, or, if the order does not contain a date entered or a date filed, the date signed by the judge) plus any transactions posted after the date or event, but before payment, that are effective on or before the month-end date used for calculating the entitlement. For purposes of computing the amount of entitlement, any loan amount outstanding as of the month-end date used for calculating the entitlement shall be treated as included in the account balance, unless the court order provides otherwise.

(d) Unless the court order specifically provides otherwise, the entitlement calculated under this section will not be credited with interest or earnings. If interest or earnings are awarded, the Board will use the monthly rates of return credited to the account unless the court order specifies a different rate. The TSP monthly rates of return may be either positive or negative. Interest or earnings will be calculated beginning with the month following the month-end valuation date used for calculating the entitlement and ending with the month prior to the month of payment.

(e) All entitlements will be calculated initially under this section including both vested and nonvested amounts in the participant's account. If at the time of payment the non-vested portion of the account has not become vested or has been forfeited, the entitlement will be recalculated using only the participant's vested account balance.

§ 1653.5 Procedures for payment pursuant to retirement benefits court orders.

(a) If a qualifying court order creates an entitlement to a portion of a TSP account under this part, payment will be made no sooner than 30 days after the Board's decision has been issued and the appropriate tax withholding notification has been provided.

(b) A payment made pursuant to a qualifying court order will be made only to the person(s) specified in the court order. If payment is to be made to the spouse or former spouse of the

participant, he or she may request that the TSP transfer all or a portion of his or her payment to an Individual Retirement Arrangement (IRA) or other eligible retirement plan. Such a request must be made by filing a Spouse Election to Transfer to IRA or Other Eligible Retirement Plan, and must be received prior to payment.

(c) In no case may a payment made pursuant to a qualifying court order exceed the participant's vested account balance, excluding any outstanding loan amount as of the end of the month preceding the date of payment. If the entitlement calculated pursuant to this subpart exceeds the participant's vested account balance (excluding any outstanding loan amount), then only the vested amount in the account (excluding the outstanding loan balance) will be paid.

(d) The entire amount of an entitlement created by a qualifying court order must be disbursed at one time. A series of payments will not be made even if the court order provides for such a method of payment. A payment pursuant to a court order extinguishes all further rights to any payment under that order even if the entire amount of the entitlement could not be paid. Any further award must be contained in a separate court order.

(e) Payment cannot be made jointly to more than one person. If payment is to be made more than one individual, the order must separately indicate the amount to be paid to each.

(f) In order to make a payment pursuant to a retirement benefits court order, the Board's recordkeeper must be provided with the full name, mailing address, and Social Security number of the payee, even if the payment is being mailed to another address.

(g) If the payee dies before a payment is made pursuant to a qualifying retirement benefits court order, payment will be made to the estate of the payee, unless otherwise specified by the court order. If the participant dies before payment is made pursuant to a qualifying retirement benefits order entered prior to the participant's death, the order will be honored as long as it is submitted to the Board before payment of the account, regardless of whether the order was received by the Board prior to the participant's death.

(h) If the parties to a divorce or annulment are remarried, or a legal separation is terminated, a new court order will be required to prevent payment pursuant to a previously submitted qualifying retirement benefits court order.

(i) Payment to a person (including the estate of the payee) pursuant to a qualifying retirement benefits court order, made in accordance with this subpart, bars recovery by any other person pursuant to that order.

(j) Payments pursuant to qualifying court orders will be paid *pro rata* from the TSP investment funds, based on the balance in each fund on the date as of which the payment is made. The Board will not honor provisions of court orders that require payment to be made from specific investment funds.

Subpart B—[Reserved]

[FR Doc. 94–26492 Filed 10–25–94; 8:45 am]
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Federal Register

Wednesday
October 26, 1994

Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

Notification and Permit Processing; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 773

RIN 1029–AB80

Notification and Permit Processing

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) proposes to amend its regulations in response to a petition for rulemaking. The rulemaking would require that the regulatory authority provide to each person who was a party to an informal conference its written findings granting, requiring modification of, or denying a permit application. The rulemaking would also require both that an approved permit contain in its permit area only lands for which the applicant has established a right-to-enter and commence surface coal mining and reclamation operations, and that compliance with an approved permit be based on activities to be conducted solely upon such lands.

DATES: *Written comments:* OSM will accept written comments on the rule until 5 p.m. Eastern time on December 27, 1994.

Public hearings: OSM will hold a public hearing on the proposed rule, at a time and place to be announced, in Vincennes, Indiana.

Individuals wishing to attend, but not testify at the hearing, should contact the person identified under **FOR FURTHER INFORMATION CONTACT** beforehand to verify that it will be held. Any disabled individual who has need for a special accommodation to attend a public hearing should also contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: *Written comments:* Hand-deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 660, 800 North Capitol Street, NW., Washington, DC 20001; or mail to the Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, Room 660NC, Washington, DC 20240.

Comments may also be sent through the Internet to the Branch of Research and Technical Standards, Internet address:
171B@osm.doi.CompuServe.com.
Copies of any messages received electronically will be filed with the Administrative Record.

FOR FURTHER INFORMATION CONTACT: Scott Boyce, Branch of Research and Technical Standards, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Room 640NC, Washington, DC 20240; Telephone: (202) 343–3839.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written Comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit three copies of their comments (see **ADDRESSES**). Comments received after the close of the comment period or delivered to addresses other than those listed above (see **DATES**) may not be considered or included in the Administrative Record for the final rule.

Public Hearings

OSM will hold a public hearing on the proposed rule, at a time and place to be announced, in Vincennes, Indiana. Any person interested in participating in the hearing should inform Scott Boyce (see **FOR FURTHER INFORMATION CONTACT**) either orally or in writing by 5 p.m. Eastern time, December 27, 1994. If no one has contacted Mr. Boyce to express an interest in participating in a hearing by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at the hearing give the transcriber a copy of their testimony. To assist OSM in preparing appropriate questions, OSM also requests that persons who plan to testify submit to OSM at the address previously specified for the submission of written comments (see **ADDRESSES**) an advance copy of their testimony.

II. Background

In a letter dated September 29, 1992, Mr. Jim B. Wyant of Vincennes, Indiana, presented a petition for rulemaking to OSM. A "Notice of availability of a petition to initiate rulemaking and request for comment" was published in the **Federal Register**, November 12, 1992, (57 FR 53670). After consideration of the petitioner's requests and public comments received on the petition, the Director of OSM published his "Notice of decision on petition for rulemaking" and stated that "OSM will initiate Federal rulemaking proposing to revise the permit application provisions of 30 CFR 773.15 to require notification of all parties to an informal conference of any decision to require modification of the permit application. OSM will also initiate a rulemaking to revise the provisions of 30 CFR 778.15 to address the degree to which lands may be included in the permit area where the permittee does not have the right-to-enter." (August 24, 1993, 58 FR 44630)

III. Discussion of Proposed Rule

Notification Requirements

OSM proposes to modify 30 CFR 773.15, Review of Permit Applications at 773.15(a)(1). The sentences of this subparagraph would be redesignated as (1), (i) and (ii) with an additional sentence added as subsection (iii). The added sentence would require that the regulatory authority "(p)rovide a copy of the written decision granting, requiring modification of, or denying the permit, and stating the specific reasons for the decision to the permit applicant and to each person who was a party to the conference."

OSM is proposing to revise § 773.15(a) because its current regulations 30 CFR 773.19(b)(1) only require the regulatory authority to provide written notification of its final decision on the permit application to all parties to an informal conference. Its regulations at § 773.15(a) do not, however, require the regulatory authority to provide the same notification to the same parties when that authority requires a modification of the permit application. Section 773.15(a) would, therefore, be revised to require the regulatory authority to provide parties to an informal conference the same notification of decisions modifying the permit application as for decisions approving or denying the application.

The 1979 final permanent regulations at 30 CFR 786.23(c) originally required the regulatory authority to notify all parties to an informal conference of any decision granting, modifying or denying the permit application, and stating the specific reasons therefor in the decision. (March 13, 44 FR 15381) This required notice provision was dropped without explanation in the 1983 revision of OSM's permitting regulations.

(September 28, 48 FR 44371, 44395) Thus, under the current 30 part 773 regulations, and as noted by the petitioner, concerned parties who have taken an active role in the permitting process through participation in informal conferences may find that regulatory authority decisions requiring modification of the permit application are conveyed solely to the applicant. These concerned parties would receive no feedback on important permit application issues until the regulatory authority's final decision on the application is conveyed to all parties pursuant to § 773.19(b)(1). The proposed revisions to § 773.15(a) would address this inequity by reinstating the 1979 requirement that all parties to an informal conference be provided the regulatory authority's written decision granting, modifying, or denying the permit application and stating the specific reasons therefore in the decision.

Permit Processing

In OSM's notice of decision on the petition for rulemaking published in the **Federal Register** August 24, 1993, the agency stated that it would "initiate a rulemaking to revise the provisions of 30 CFR 778.15 to address the degree to which lands may be included in the permit area where the permittee does not have the right-to-enter." Later, in considering this commitment, OSM concluded that it could be more appropriately implemented by proposing revisions to § 773.15, Review of permit applications, and 30 CFR 773.17, Permit conditions, rather than to § 778.15, Right-of-entry information. Existing section 773.15 would therefore be revised to add paragraph (c)(13) requiring both that the approved permit contain only lands for which the applicant has established a right-to-enter and conduct surface mining and reclamation operations and that compliance with the operation and reclamation plans be based upon activities conducted solely upon such lands.

Note: A new but different subparagraph § 773.15(c)(13) has also been proposed under the remining rulemaking. (June 2, 1994, 59 FR 28744) If both this and the remining rulemaking are finalized as proposed, the (c)(13) subparagraph of the second effective rule will be redesignated as (c)(14).

Existing § 773.17 would also be revised to be consistent with proposed § 773.15(c)(13) and would, as a permit condition, impose a similar requirement that the permit area of an approved permit contain only lands for which the applicant has established a right-to-enter and conduct surface mining and reclamation operations.

Section 507(b)(9) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act), 30 U.S.C. 1201 *et seq.*, states, "the applicant shall file with the regulatory authority on an accurate map or plan, to an appropriate scale, clearly showing the land to be affected as of the date of the application, the area of land within the permit area upon which the applicant has the legal right-to-enter and commence surface mining operations on that area affected, and whether that right is the subject of pending court litigation. *Provided*, That nothing in this Act shall be construed as vesting in the regulatory authority the jurisdiction to adjudicate property title disputes."

The Act and its implementing regulations are silent on the specific question of whether the approved permit can include land for which the applicant does not have right-of-entry ("uncontrolled land") and which will not be disturbed under the permit until such right-of-entry is obtained. It has, however, been OSM's practice under its Federal and Indian lands programs to allow inclusion in the permit application of land for which the applicant can not establish right-of-entry but to prohibit inclusion of such land in the permit at the time of issuance.

Promulgation of this Federal practice as a national rule would end the practice in a minority of approved program States of allowing inclusion in the approved permit of land for which the applicant does not have right-of-entry. The owners of such lands often complain that this inclusion clouds their title, depresses their property values, and interferes with their ability to enjoy their property rights.

The language of proposed § 773.15(c)(13) "(t)he applicant has demonstrated that the approved permit area contains only lands for which the applicant has established a right-to-enter and conduct surface coal mining and reclamation operations" and similar language in proposed § 773.17(a) are intended to prohibit the inclusion of uncontrolled land in the permit area of approved permits.

OSM's oversight of those State programs allowing uncontrolled land in the permit area of approved permits has shown that the validity of the operation and reclamation plans required by 30 CFR part 780 may be substantially compromised by the applicant's subsequent inability to gain access to blocks of land within the permit area upon which the plans were predicated. Examples exist where central elements upon which approval was based required modification when the applicant subsequently was unable to obtain access to required land. In various instances, proposed spoil and soil storage areas, borrow areas, and facility areas have been unavailable for use. Sediment control strategies have been compromised when land for sediment ponds and diversion ditches in the approved operation and reclamation plans was unavailable. Changes have occurred which require recalculation of the bond amount. While OSM recognizes the need for operation and reclamation plans to be dynamic enough to accommodate new information and unexpected conditions that may develop, changes such as those described militate against the credibility of OSM's regulatory scheme which is to be based upon the approval or rejection of accurate and reliable operation and reclamation plans. Accordingly, and in partial response to industry's comments discussed below, OSM is also proposing that § 773.15(c)(13) include the requirement that compliance with the operation and reclamation plans be based upon activities to be conducted solely upon lands for which the applicant has the right-to-enter and conduct surface mining and reclamation operations. This language is intended to put all parties on notice that operation and reclamation plans included in the approved permit cannot be based on activities to be conducted on uncontrolled land.

Several commenters opposing the petition argued that the inclusion of uncontrolled land in the permit areas of permit applications and approved permits is necessary to accommodate the complexities of real estate transaction involved in mine plan development and to allow for environmental planning based on a more conceptually complete mining and reclamation plan. While OSM acknowledges that inclusion of uncontrolled lands in an approved permit may allow the formulation of a comprehensive and cumulative operation and reclamation plan and environmental analysis, such plans and analysis may not prove reliable and, therefore, may not provide the regulatory authority with a reasonable basis for concluding that the lands for which the applicant has right-of-entry can actually be mined and reclaimed in accordance with the Act and in compliance with its implementing regulations. 30 CFR 773.15(c) (1), (2) and 780.2. Neither would the commenter's suggestion that the approved permit be conditioned to

authorize mining only on lands for which right-of-entry is obtained address this potential defect in the permitted operation and reclamation plans and associated environmental analysis.

Proposed §§ 773.15(c)(13) and 773.17(a) would not preclude inclusion under § 778.15(a) of a reasonable amount of uncontrolled land in the permit application thus accommodating the need for continued real estate transactions during the permit review process and facilitating the development of environmental projections based on mining and reclamation on a scale the applicant plans to achieve. However, under the proposed rule permit issuance would be predicated upon the existence of a clearly discernible and finite permit area in the operation and reclamation plans where the applicant's ability to obtain right-of-entry is not a variable that would influence the execution of the plans as approved.

In practical terms, the requirement of proposed § 773.15(c)(13) that "compliance with the operation and reclamation plans is based upon activities to be conducted solely upon such lands" means that immediately prior to permit issuance the regulatory authority must reassess the legitimacy of the applicant's operation and reclamation plans taking into account the impact of the applicant's lack of access to any uncontrolled land. Loss of a piece of land necessary for the accomplishment of the operation or reclamation plan could require permit modification or permit denial. It is anticipated that the § 773.15(c)(13) requirement will militate against inclusion in the permit application of properties for which the applicant is unlikely to obtain right-of-entry by the time of permit issuance. This should in turn accrue to the benefit of landowners who never wanted their properties included in the permit application. It should also accrue to the benefit of the environment as planning would be based on more plausible real estate projections.

Proposed §§ 773.15(c)(13) and 773.17(a) are seen as striking a reasonable balance between not unnecessarily burdening the legitimate mining industry and protecting the rights of landowners while providing the regulatory authority with the accurate, comprehensive and reliable information it needs to comply with its responsibilities under 30 CFR 773.15(c)(1), (2) and 780.2. These proposals are not intended to alter existing standards for establishing right-of-entry. They merely require that the applicant must demonstrate that the permit area of the approved permit contains only lands for which he has established a right-of-entry.

IV. Procedural Matters

Federal Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12866

This proposed rule does not require Office of Management and Budget review under Executive Order 12866.

Regulatory Flexibility Act

The Department of the Interior has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities. Although OSM does not have data on the number of coal mine operations or the number of landowners and amount of land that would be affected by this rule, data obtained from OSM Field Offices on 14 States indicates that only 3 of those States do not notify participants as to the outcome of informal conferences, and that only 6 out of 18 States for which data is available allow land in the permit area of an approved permit for which the applicant does not have right-of-entry authorization. However, to notify the participants to a conference of the outcome of that conference is a procedural type of action entailing minor economic consequences comprised of the cost of mailing notices to the participants, and to require that an applicant have right-of-entry authorization to all lands included in the permit area of an approved permit does not take any economic rights from the applicant, nor does it impose significant additional costs on the applicant. Therefore, the proposed revisions are not expected to be of economic significance.

National Environmental Policy Act

OSM has prepared a draft environmental assessment (EA), and has made a tentative finding that the proposed rule would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The EA is on file in the OSM Administrative Record at the address specified previously (see **ADDRESSES**). An EA will be completed on the final rule and a finding made on the significance of any resulting impacts prior to promulgation of the final rule.

Civil Justice Reform

This proposed rule has been reviewed under the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform (56 FR 55195). In general, the requirements of section 2(b)(2) of Executive Order 12778 are covered by the preamble discussion of this proposed rule. Additional remarks follow concerning individual elements of the Executive Order:

A. What is the preemptive effect, if any, to be given to the regulation?

The proposed rule would have the same preemptive effect as other standards adopted pursuant to SMCRA. To retain primacy, States have to adopt and apply standards for their regulatory programs that are no less effective than those set forth in OSM's rules. Any State law that is inconsistent with or that would preclude implementation of this proposed rule would be subject to preemption under SMCRA section 505 and implementing regulations at 30 CFR 730.11. To the extent that the proposed rules would result in preemption of State law, the provisions of SMCRA are intended to preclude inconsistent State laws and regulations. This approach is established in SMCRA, and has been judicially affirmed. See *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n*, 452 U.S. 264 (1981).

B. What is the effect on existing Federal law or regulation, if any, including all provisions repealed or modified.

This rule modifies the implementation of SMCRA as described herein, and is not intended to modify the implementation of any other Federal statute. The preceding discussion of this rule specifies the Federal regulatory provisions that are affected by this rule.

C. Does the rule provide a clear and certain legal standard for affected conduct rather than a general standard, while promoting simplification and burden reduction?

The standards established by this rule are as clear and certain as practicable, given the complexity of the topics covered and the mandates of SMCRA.

D. What is the retroactive effect, if any, to be given to the regulation?

This rule is not intended to have retroactive effect.

E. Are administrative proceedings required before parties may file suit in court? Which proceedings apply? Is the exhaustion of administrative remedies required?

No administrative proceedings are required before parties may file suit in court challenging the provisions of this rule under section 526(a) of SMCRA, 30 U.S.C. 1276(a).

Prior to any judicial challenge to the application of the rule, however, administrative procedures must be exhausted. In situations involving OSM application of the rule, applicable administrative procedures may be found at 43 CFR part 4. In situations involving State regulatory authority application of provisions equivalent to those contained in this rule, applicable administrative procedures are set forth in the particular State program.

F. Does the rule define key terms, either explicitly or by reference to other regulations or statutes that explicitly define those items.

Terms which are important to the understanding of this rule are set forth in 30 CFR 700.5 and 701.5.

G. Does the rule address other important issues affecting clarity and general draftsmanship of regulations set forth by the Attorney General, with the concurrence of the Director of the Office of Management and Budget, that are determined to be in accordance with the purposes of the Executive Order?

The Attorney General and the Director of the Office of Management and Budget have not issued any guidance on this requirement.

Author: The principal author of this rule is Scott Boyce, Branch of Research and Technical Standards, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Room 640NC, Washington, DC 20240; Telephone: (202) 343–3839.

List of Subjects in 30 CFR Part 773

Administrative practice and procedure, Permit processing, Public participation, Notification of decisions, Reporting and recordkeeping requirements, Surface mining, Underground mining.

Dated: September 26, 1994.

Bob Armstrong,

Assistant Secretary, Land and Minerals Management.

Accordingly, OSM proposes to amend 30 CFR Part 773 as follows:

PART 773—REQUIREMENTS FOR PERMITS AND PERMIT PROCESSING

1. The authority citation for Part 773 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; 16 U.S.C. 470 *et seq.*; 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 661 *et seq.*; 16 U.S.C. 703 *et seq.*; 16 U.S.C. 668a; 16 U.S.C. 469 *et seq.*; 16 U.S.C. 470aa *et seq.*; and Pub L. 100–34.

2. Section 773.15 is amended by revising paragraph (a)(1); and adding a new paragraph (c)(13) to read as follows:

§ 773.15 Review of permit applications.

(a) * * *

(1) The regulatory authority shall—

(i) Review the application for a permit, revision, or renewal; written comments and objections submitted; and records of any informal conference or hearing held on the application and issue a written decision, within a reasonable time set by the regulatory authority, either granting, requiring modification of, or denying the application.

(ii) If an informal conference is held under § 773.13(c), make a decision within 60 days of the close of the conference, unless a later time is necessary to provide an opportunity for a hearing under paragraph (b)(2) of this section; and

(iii) Provide a copy of the written decision granting, requiring modification of, or denying the permit, and stating the specific reasons for the decision to the permit applicant and to each person who was a party to the conference.

* * * * *

(c) * * *

(13) The applicant has demonstrated that the approved permit area contains only lands for which the applicant has established a right-to-enter and conduct surface coal mining and reclamation operations and that compliance with the operation and reclamation plans is based upon activities to be conducted solely upon such lands.

* * * * *

3. Section 773.17, paragraph (a), is amended by adding a sentence at the end of the paragraph to read as follows:

§ 773.17 Permit conditions.

* * * * *

(a) * * * The permit area of an approved permit shall contain only lands for which the applicant has established a right-to-enter and conduct surface coal mining and reclamation operations.

* * * * *

[FR Doc. 94–26559 Filed 10–25–94; 8:45 am]
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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203, 234, and 3500

Real Estate Settlement Procedures Act (Regulation X): Escrow Accounting Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 203, 234, and 3500

[Docket No. R-94-1688; FR-3255-F-03]

RIN 2502-AF77

Real Estate Settlement Procedures Act (Regulation X): Escrow Accounting Procedures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes escrow accounting procedures under Sections 6(g) and 10 of the Real Estate Settlement Procedures Act, 12 U.S.C. 2605(g) and 2609 (RESPA). It establishes a nationwide standard accounting method known as aggregate accounting. The rule requires servicers to use the aggregate accounting method for escrow accounts involving federally related mortgage loans that are settled on or after the effective date of this rule. It provides a three-year phase-in period for existing escrow accounts to convert to the aggregate accounting method. In addition, the final rule establishes formats and procedures for initial and annual escrow account statements. By this rulemaking, the Department is implementing the Section 10 amendments made in section 942 of the Cranston-Gonzalez National Affordable Housing Act. Conforming changes are also made to appropriate Federal Housing Administration (FHA) provisions in parts 203 and 234.

EFFECTIVE DATE: April 24, 1995.

FOR FURTHER INFORMATION CONTACT: William Reid, Research Economist, Office of Policy Development and Research, Room 8212, phone (202) 708-0421 or (202) 708-0770 (TDD). For legal questions, contact Grant E. Mitchell, Senior Attorney for RESPA, Room 10252, phone (202-708-1552), or Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, Room 10252, phone (202-708-3137) (these are not toll-free numbers). The address for the above-listed persons is: Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2502-0501.

I. Background

Section 10 of the Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2609) sets out the statutory limits on the amounts that lenders may legally require borrowers to deposit in escrow accounts. The statutory language of Section 10 is complex. It has been subject to increasing controversy. At times the statute uses the term "lender" and at other times it uses the term "servicer." A lender creates a loan obligation but may or may not service the loan. Within this rule, HUD uses the term servicer to include the lender when the lender performs the servicing function.

Section 10(a) of RESPA limits the amounts that a lender may charge a borrower at the creation of an escrow account and during the lifetime of the account. Section 10(a)(1) sets limits on charges to a borrower when a lender creates an escrow account. At the time the lender creates an escrow account, the lender may only charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, that are attributable to the period from the date such payment(s) were last paid until the first full installment payment under the mortgage. In addition, the lender may charge the borrower a cushion to cover unanticipated expenses. The statute limits the cushion to one-sixth of the estimated total annual payments from the account.

Section 10(a)(2) sets limits on charges to a borrower over the rest of the lifetime of the escrow account. It provides that a lender may charge a borrower a monthly sum equal to one-twelfth of the total annual escrow payments that the lender reasonably anticipates paying from the account. In addition, a lender may add an amount to maintain a cushion equal to one-sixth of the estimated total annual payments from the account.

Section 10(c) of RESPA requires a servicer to provide a borrower with initial and annual escrow account statements. Section 10(d) sets forth the penalty provisions for a servicer's failure to provide the required statements. Section 6(g) of RESPA provides that if the servicer has required an escrow account, then the servicer shall make disbursement payments for the escrow account items in a timely manner as such payments become due.

Historically, HUD had only interpreted the escrow accounting portions of Section 10 by informal opinion and one Interpretive Rule, dated January 21, 1993 (58 FR 5520). Litigation initiated by various State Attorneys General and private class-action plaintiffs raised serious questions about what RESPA permitted in this regard and fueled a debate about the extent of "overescrowing" in the industry. The Secretary decided that HUD needed to fulfill its responsibility to protect consumers by setting forth clear, specific guidance on escrow practices. Therefore, the Department initiated this rulemaking process.

On December 3, 1993 (58 FR 64065), the Department published its proposed rule seeking public comments. After reviewing the comments, the Department developed this final rule, which is consistent with the consumer-oriented approach announced by the Secretary in the proposed rule. This final rule will:

(1) Reduce the cost of homeownership, by ensuring that funds are not held in escrow accounts in excess of the amounts necessary to protect the lenders' interests in preserving the collateral;

(2) Establish reasonable, uniform practices for escrow accounting; and

(3) Provide servicers with clear, specific guidance on the requirements of Section 10.

In the proposed rule, new § 3500.17 set out HUD's regulations for escrow accounts subject to RESPA. The proposed rule covered any escrow account established in connection with a federally related mortgage loan. It provided HUD's interpretation of what was a permissible cushion and what was an overcharge to the borrower's escrow accounts. The proposed rule articulated HUD's new policy requiring aggregate accounting analysis on all new escrow accounts. The proposed rule set out the requirements for initial and annual escrow account statements. The rule also proposed a delayed effective date to provide sufficient time for servicers to implement the regulatory requirements.

When issuing the proposed rule, HUD reviewed existing escrow accounting procedures. A prevalent practice exists, called single-item analysis, where a lender accounts for each escrow item separately. The lender may collect more money under a single-item analysis accounting than under aggregate analysis accounting. An aggregate accounting method is one in which the sufficiency of the funds is determined by analyzing the escrow account as a whole. Attorneys General of numerous

States have claimed that single-item analysis has resulted in substantial over-escrowing of consumers' money. The Attorneys Generals interpreted Section 10 as requiring aggregate accounting practices to determine the maximum account balances.

HUD's own escrow study found that too many accounts were over-escrowed and too much of consumers' funds was being held by mortgage servicers. In the proposed rule, HUD announced its determination that servicers should be required to analyze all new escrow accounts on an aggregate accounting basis. HUD proposed to provide a three-year phase-in period after the rule's publication date for existing accounts to be converted to an aggregate accounting methodology. HUD requested comments on its proposed rule and received 142 comments through the February 1, 1994, due date.

Discussion of the Comments HUD Received

General

Five commenters specifically supported the proposed rule (two mortgage companies, one attorney, one bank, and a government agency). Seven comments supported the rule, but with recommended clarifications or revisions. Twenty commenters supported industry standardization. Fifteen flatly opposed the proposed rule for various reasons. Some argued that HUD was overly interfering in escrow industry practices.

HUD believes that the final rule will end uncertainty that now exists within the industry. HUD is providing clear standards for the servicing industry to follow. Congress explicitly provided HUD with regulatory authority to interpret the Act to further its purpose. This regulation is well within HUD's rulemaking authority.

Eighteen commenters requested an additional comment period or the opportunity to participate in hearings. Although the Department considered requests for additional time for comments and hearings, it concludes that it has sufficient information to complete rulemaking without more input.

Costs of Implementation

Forty-four commenters (19 mortgage companies, 16 banks, 4 attorneys, 4 associations, and 1 government agency) expressed concern about the cost of redesigning software systems to perform the aggregate analysis and to complete the required statements. Many commenters indicated that the expense of systems design and implementation, staff training, and additional administrative efforts would far outweigh any potential benefit provided to consumers. In reviewing these comments, the Department balanced the short-term cost considerations against the long-term advantages of standardized nationwide requirements for escrow accounts and consumer savings. The Department concludes that the long-term benefits outweigh the short-term costs.

Phase-in and Implementation Periods

The proposed rule provided a 180-day period for persons to implement its provisions concerning aggregate accounting practices for new escrow accounts. Sixty-seven commenters (33 mortgage companies, 20 banks, 7 associations, 5 attorneys, and 2 government agencies) requested that the 180-day period be extended to 12 or 18 months. They cited changes in software, staff training, and other administrative burdens as reasons for the implementation extension. Several commenters also stated that there would be no incentive to maintain dual systems for pre- and post-rule accounts because dual systems would be too costly and difficult to administer. Sixteen commenters observed that if the implementation period was extended to at least one year, the phase-in period for pre-rule activity should be eliminated. Three commenters supporting the phase-in of pre-rule escrow accounts suggested that HUD should not require the disclosures proposed in the rule during the phase-in period. Four commenters requested that the implementation date be extended to two to three years.

While recognizing that a 180-day implementation period for new accounts is demanding, the Secretary concludes that this rule will save consumers money and that it should be implemented as quickly as possible. Moreover, HUD alerted the mortgage servicing and software industry in December 1993 of its intention to implement aggregate accounting requirements. The Secretary believes the affected industries are capable of developing the necessary systems within the 180-day implementation period. This final rule therefore carries forward the 180-day implementation period.

The Department further believes that permitting a three year phase-in period for existing accounts is appropriate.[1] It is a fair way to apply aggregate accounting requirements to existing escrow accounts. During the three year phase-in period, a considerable number of existing escrow accounts will likely be terminated as residential property is sold or mortgages are refinanced and new escrow accounts established. The three-year requirement sets an appropriate balance between sensitivity to servicer expectations regarding the price of servicing and concern that the desired policy is implemented for consumers as quickly as reasonable. The three year phase-in period provides a specific date when all escrow accounts are subject to aggregate accounting requirements. HUD acknowledges that servicers may have purchased servicing rights at premiums based, among other things, on the expectation of doing single-item accounting. However, because HUD has provided notice nearly four years in advance of the conversion date, the pricing of servicing will adjust accordingly (if it has not already).

Interest on Escrow Accounts and Single-Item Escrow Accounts

Commenters asked whether the final rule would address interest on escrow accounts. Seven commenters suggested that the rule specifically exempt servicers that either pay interest on escrow accounts or service only one escrow item. These commenters believed that a required interest payment on escrow account balances would create a disincentive to servicers to over-escrow.

After considering the comments, the Department determines that it will not create the requested exemptions. The Department does not interpret Section 10 of RESPA as providing the Department with legal authority to require payment of interest on escrow accounts. Where interest is required, it is a matter of State law, with fourteen States requiring that some amount of interest be paid on escrow account funds.

Where there is only one escrow account item in the escrow account, there is no difference in the outcome between these two accounting methods. Nonetheless, HUD believes it appropriate for escrow accounts with only one escrow item to conform to the

[1] Until the conversion date for pre-rule accounts, both single-item (individual-item) analysis and aggregate analysis methods are acceptable accounting methods, as are accounting methods that combine characteristics of both the foregoing methods (sometimes termed "hybrid accounting methods"), as long as use of any such method does not result in payments or cushions in excess of those that result from escrow account analysis using the single-item analysis method. For post-rule accounts, aggregate analysis is the only acceptable accounting method to conduct escrow account analysis to ensure compliance with the limits imposed by this regulation.

rule requirements. To enhance industry standardization, HUD applies the final rule to all escrow accounts involving a federally related mortgage loan, regardless of the number of escrow account items within the escrow account.

Termination of Escrow Accounts

Two commenters asked HUD to address whether a borrower could terminate his/her escrow account when the loan was paid down to a certain amount (similar to provisions included in a proposed escrow account reform bill introduced in Congress). The Department believes it has no authority under Section 10 to regulate when a borrower may terminate an escrow account based on a loan-to-value ratio or otherwise. HUD encourages borrowers to turn to the mortgage documents for guidance. Additionally, major secondary market purchasers have established standards for termination of escrow accounts. Also, a borrower may simply ask the servicer to exercise discretion in terminating an escrow account.

Definitions

Annual Escrow Account Statement

Many commenters requested that HUD clarify its terms or definitions to be consistent with industry terminology, the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990) (NAHA), or terms used by other Federal agencies. Thirteen commenters requested clarification of the term "annual escrow account statement". Many commenters thought that the Department had commingled the requirements for the annual escrow account statement, as set forth in NAHA, with the requirements for an annual escrow analysis. The Mortgage Bankers Association (MBA) recommended that "HUD retain the definition of annual escrow account statement as defined in the proposed rule for escrow account statements published in the **Federal Register** on December 9, 1991." (56 FR 64445.) The MBA argued that the previous definition would alleviate any confusion about the timing of the annual escrow account statements and annual escrow analysis. In addition, the MBA stated that the previous definition of "annual escrow account statement" took into account the industry practice of generally performing escrow analyses after the largest escrow account item was paid.

HUD defines an annual escrow account statement as a statement containing the information required in § 3500.17(i) that a servicer must submit to the borrower within 30 days of the end of the escrow account computation year. This definition comports with the MBA recommendation. The comments correctly observed that the annual statements and the escrow account analysis are "commingled." HUD considers an escrow account analysis necessary to make the annual escrow account statement meaningful. Thus, the rule clearly requires the servicer to conduct an escrow account analysis at the end of the escrow account computation year. However, the final rule provides servicers with flexibility in setting the escrow account computation year. HUD's rule therefore allows the industry to continue the practice of conducting the escrow analysis after paying the largest escrow account item.

Cushion and Pre-Accrual

Nine commenters requested clarification of the definitions of cushion and pre-accrual. The proposed rule defined the cushion to mean funds that a servicer could require a borrower to pay into an escrow account to cover unanticipated disbursements or to cover disbursements made before the borrower's payments are available in the account. The proposed rule defined "pre-accrual" to be a practice that some servicers employed under which funds needed for disbursement from an escrow account are required to be on deposit in the account at a date prior to the disbursement date. Both terms were subject to the limitations of paragraph (c) of the section. Paragraph (c)(6) of the proposed rule prohibited the use of pre-accrual on post-rule accounts and limited its use on pre-rule accounts to within the limits set in paragraph (c)(4). Commenters stated that the pre-accrual disallowance language in the proposed § 3500.17(c)(6) effectively modified previously allowable cushions. This was HUD's intent.

HUD received 30 comments questioning HUD's prohibition of pre-accrual practices for post-rule accounts. Many commented that HUD had long accepted pre-accrual as a legal methodology for analyzing escrow balances. Seventeen commented that servicers may be discouraged from establishing escrow accounts because of the increased costs and prohibitions against pre-accrual practices. They stated that if servicers ceased handling escrow accounts, some borrowers would be delinquent in their tax payments and the taxing authorities would experience greater administrative expenses.

The Department believes that pre-accrual practices allow servicers to acquire the equivalent of up to another month of cushion in the escrow account. Coupled with a cushion of greater than one month, a pre-accrual practice could result in escrow account balances that exceed RESPA's limits. HUD believes that the cushion provides sufficient extra funds to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account. Therefore, pre-accrual is unnecessary.

The final rule eliminates the use of pre-accrual on all new accounts. Generally, for existing escrow accounts, a servicer may not require any pre-accrual that exceeds one month or that results in an account balance larger than the limits set forth in § 3500.17(c). In addition, the Department considered the arguments of servicers who claimed they would discontinue handling escrow accounts under the proposed rule. The Department concludes that servicers are unlikely to abandon the practice of handling escrow accounts.

Disbursement Date

Forty-two commenters (25 mortgage companies, 11 banks, 2 associations, 3 attorneys, and Fannie Mae) requested clarification of the definition of disbursement date. Fannie Mae's response noted that the proposed disbursement date definition permits the payment to occur "* * * without regard to the lender's normal lending practice or local custom or prudent lending practice." Further, several commenters suggested that the proposed definition does not reflect that the disbursement date may be in a month or in a period prior to the month it is due, in order to take advantage of discounts. GE Capital Mortgage Services, Inc. stated that "although HUD may not have intended to require a disbursement date to always be in the same calendar month as the due date, the language could be read to require this."

In its proposed definition, HUD intended to define the disbursement date as the date the servicer actually pays the escrow item. HUD intended to apply a standard that conformed with prudent lending practices to pay escrow account items promptly and to take advantage of discounts, when available, and avoid penalties. The proposed definition required a servicer to pay an escrow item in time to take advantage of available discounts, or at least in time to avoid a penalty. In the final rule, HUD defines the disbursement date as the date the servicer actually pays an escrow item. In § 3500.17(k), HUD provides that in calculating the disbursement date, the servicer must pay the disbursement on or before the

earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The disbursement date may be in a month other than the due date established by the payee. In cases of payments to obtain a discount, the disbursement date may be in a month before the payee's due date. In cases of payments to avoid a penalty, the disbursement date may be in a month after the payee's due date, but before the penalty would be assessed.

Escrow Account

Eight commenters requested clarification of the proposed "escrow account" definition. Commenters stated that the final rule definition should exclude voluntarily escrowed funds. They believed that such payments should be excluded from the trial running balance calculations of an escrow account. The Department rejects this argument.

The term escrow account encompasses all escrow accounts, including those that are "voluntarily" agreed to by borrowers and under the control of servicers. Because most borrowers are anxious to obtain a loan, they are likely to agree to a lender's request for a voluntary escrow account that is under the lender's control. Arguably all escrow accounts are voluntarily entered into when the parties agree to the mortgage loan. Thus, an exemption for servicer controlled accounts involving "voluntarily" escrowed funds would nullify the statute's purpose of protecting consumers. Therefore, the final rule provides a uniform standard for all servicers who control escrow accounts. In the final rule, the term "escrow account" excludes any account that is totally under the borrower's control.

Escrow Account Analysis

Twenty-one commenters requested clarification of the "escrow account analysis" definition (14 mortgage companies, 4 banks, 2 attorneys, and the MBA). These comments complained that the proposed definition of "escrow analysis" required that an analysis be done to prepare the initial and annual escrow account statements. The commenters viewed these functions as completely separate. They argued against the linkage of the analysis with the preparation of the escrow account statements.

The Department considered these comments but concludes that an escrow analysis is ordinarily needed to provide an initial and annual escrow account statement. Otherwise, the statements may be meaningless. In the final rule, however, the Department no longer requires the servicer to provide the initial escrow account statement at settlement. Section 3500.17(g) now permits servicers to submit the initial escrow account statement to the borrower within 45 calendar days after settlement. In this way the servicer, rather than the closing agent, is likely to perform the escrow account analysis, and the initial escrow account statement will more accurately reflect the first year's projections.

Escrow Account Computation Year

Twenty-eight commenters sought clarification of the term "escrow account computation year" (17 mortgage companies, 6 banks, 3 attorneys, and 2 associations). Twenty comments asked for clarification of the term "escrow account computation year" as HUD used it in the definition of "trial running balance." Several commenters requested that HUD revise the final definition to be consistent with HUD's definition in an earlier proposed rule of December 9, 1991. There, HUD defined "escrow account computation year" to mean "any escrow account year whose date of establishment begins on or after January 1, 1991." (56 FR 64445, § 3500.17(a)(1).) January 1, 1991, was the statutory initiation date. In HUD's December 3, 1993, proposed rule, the definition of "escrow account computation year" is a 12-month period starting on the initial payment date (58 FR at 64071). Several commenters argued for greater flexibility to set the escrow account computation year, rather than have it established by the initial payment date.

HUD is aware that servicers may need to spread out their workload throughout the year. The final rule permits the servicer to have some flexibility in setting the computation year by allowing for "short year" statements. In the final rule, an escrow account computation year begins at the initial payment date. However, the servicer may use a "short year" statement to level its production load and reestablish an escrow account computation year that best meets its business cycle.

Installment Payment

Four commenters requested clarification of the "installment payment" definition. They stated that HUD's proposed definition lacked clarity regarding tax or insurance statements that are payable on a quarterly or semi-annual basis, but are actually paid by the servicers annually.

The Department believed the proposed definition adequately described installment payments, but has given an example to clarify its usage in the final rule. Unless there is a discount to the borrower for early payments, the regulation does not allow servicers to pay installment payments on an annual or other prepayment basis.

Payment Date and Payments Other Than Monthly

Six commenters suggested the definition of "payment date" be changed to "payment due date" to distinguish the term from the disbursement date. In response to these comments, the Department uses the phrase "payment due date" in the final rule. These commenters also suggested that the reference to monthly payments be revised to "periodic payments." HUD makes this change when appropriate. Four commenters requested detailed guidance on escrow accounts when payments are made biweekly or for periods other than monthly. The proposed rule did not explicitly address this issue. It used monthly and yearly phrases because those terms follow the statute's language. The final rule, however, provides illustrations of biweekly accounting in Appendix H.

Refinancing Loans

The proposed rule stated that the refinancing of a pre-rule escrow account would turn it into a post-rule account. One commenter indicated that a refinancing between the same lender and borrower should not change the account from a pre-rule to post-rule status. Four commenters questioned whether modifications or assumptions of pre-rule escrow accounts would result in a pre- or post-rule escrow account.

Congress amended RESPA in Section 908 of the Housing and Community Development Act of 1992 specifically to change the definition of "federally related mortgage loan" to include "any such secured loan, the proceeds of which are used to prepay or pay off an existing loan secured by the same property." 12 U.S.C. 2602(1)(A). This amendment became effective on October 28, 1992, its enactment date. As of December 2, 1992 (57 FR 49600), HUD's regulations withdrew the previous exemption for refinancing transactions from RESPA coverage.

Thus, when HUD issued the proposed escrow accounting rule of December 3, 1993, refinancing transactions were covered by RESPA. HUD issued a final rule implementing the section 908 amendments of RESPA on February 10, 1994. In that final rule, the Department defined a refinancing to mean "a transaction in which an existing obligation that was subject to a secured

lien on residential real property is satisfied and replaced by a new obligation undertaken by the same borrower and with the same or a new lender." (59 FR 6506, at 6512.) HUD also adopted certain Regulation Z requirements for refinancing transactions with the same lender. This final rule uses the § 3500.2 definition to determine whether a transaction is a refinancing that requires post-rule treatment. If the transaction involves only a modification or other change to existing terms of a mortgage document, then it will remain a pre-rule account during the three-year implementation period.

Fees for Escrow Accounts

Several States Attorneys General commented that they were concerned that "lenders, in the absence of * * * an express provision will try to circumvent the express limits on profiteering contained in the proposed rule by charging consumers annual maintenance fees." In response, the Department considered whether servicers would charge borrowers escrow account maintenance fees or document storage fees to defray lost revenue resulting from changes in accounting practices required by this final rule. An examination of the standard Fannie Mae-Freddie Mac Uniform Instrument (Section 2 of the Uniform Covenants) indicates that such fees are prohibited in most circumstances (except where interest is paid on escrow accounts and state law allows such charges).

The Department has not seen evidence that servicers, as a common practice, currently charge maintenance or storage fees in conjunction with escrow accounts. HUD's existing regulations for FHA insured loans already prohibit the FHA mortgagee or servicer from charging the borrower for servicing activities. 24 CFR 203.552(a)(12)(i). If the Department sees such fees develop with respect to any other loans to thwart the statutory and regulatory limitations, then HUD is likely to reconsider this issue in conjunction with applicable State law provisions. At this time, the Department intends to monitor the servicing industry carefully to insure compliance with Sections 8 and 10 of RESPA.

Servicer Estimates of Disbursement Amounts

Twenty-nine comments sought guidance on how to estimate disbursement amounts for the next year. They specifically questioned how to determine whether increases or decreases in amounts "are known or should be known." They questioned how they "should know" a change in the charge. Twenty-two comments supported the use of estimates based on the prior year's actual disbursements modified by a defined CPI index. They also supported using actual increases or decreases, if known. Nineteen comments requested more explicit guidance, specifically questioning which CPI index to use. Five commenters requested an example of how to estimate a new payment for the ensuing escrow account computation period.

In the final rule, the Department provides that if the servicer knows the charges for the subsequent escrow account computation year, then the servicer shall use those amounts in estimating the disbursement amounts. If the charge is unknown to the servicer, then the servicer may use an estimate based on the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items). In addition, the final rule establishes procedures for estimating charges for new construction where the land and structure are unassessed.

Provisions in Mortgage Documents

The proposed rule stated that the mortgage loan documents prevail if the documents prescribe escrow account limits lower than those prescribed in the rule. Six commenters observed that the final rule should permit a cushion on all escrow accounts regardless of contract provisions in the mortgage document. Twenty-five commenters indicated that the final rule should explicitly state that a one-sixth cushion could be established when the loan documents are silent. Many commenters were concerned that the language in the proposed rule would alter the contractual terms between borrowers, lenders, and servicers, and they questioned inconsistencies with standard form Fannie Mae, Freddie Mac, FHA, and VA security instruments. Six comments indicated that the final rule should pronounce common standards for contract types that address the cushions allowed under Fannie Mae, Freddie Mac, FHA, and VA contracts, using standard contract language. The joint comments from the States' Attorneys General noted that, "while HUD's proposed rule clearly states that where contracts provide for more restrictive cushions than the two-month aggregate cushion, the contracts control, however the proposed rule leaves unnecessary ambiguity as to which contracts those are, and how explicit the contract language must be in order for the contract to take precedence." One comment also stated that pre-rule loan documents that violate the final rule should not have to be revised or be considered a violation of RESPA if the servicer complies with the final rule.

The rule requires servicers to examine the mortgage loan documents to determine their escrow limits in preparing the initial escrow account statements. If the loan document provides that an escrow account may hold amounts "up to the limits allowed by RESPA," HUD interprets this as permitting the full amount allowed by this rule. In the final rule, the Department clearly states that if the mortgage loan documents provide for lower cushion limits or less pre-accrual than the rule, then the documents apply. Where the mortgage documents allow payments to an escrow account in excess of those permitted under this rule, then this final rule and the statute control. Where the mortgage documents do not specifically establish an escrow account, whether a servicer may appropriately establish an escrow account is a matter for determination by State law.

If the loan documents are silent on the *amount* of cushion or pre-accrual limits and the servicer establishes an escrow account under State law, then this final rule governs unless State law provides for a lower amount. A lower amount would be consistent with RESPA's maximums and could be seen as giving greater protection to the consumer.

Aggregate Analysis

The proposed rule mandated aggregate account analysis for all escrow accounts established under mortgages closed after the final rule's effective date. Thirteen comments supported this position. Twenty-eight comments opposed a mandatory aggregate accounting method (15 banks, 7 mortgage companies, 3 associations, and 3 attorneys). Many comments stressed that increased costs associated with aggregate analysis—redesigning software, staff training, and additional administrative efforts—would be passed on to borrowers as either higher interest rates, higher origination fees, or escrow management/servicing fees. They also suggested that low- and moderate-income borrowers would be the most affected by cost increases. Four comments noted an inconsistency between HUD's rationale for requiring aggregate accounting and the conclusions in HUD's Phase II study results published in May 1991. They suggested that aggregate analysis could result in more overall funds being

escrowed than currently result under single-item accounting. They claimed that because a majority of servicers currently escrow below the RESPA limitations, under this final rule they would raise their cushions to the maximum allowable.

Although there will be some initial costs associated with a conversion to aggregate accounting, HUD believes that this cost is outweighed by the long-term consumer savings that will be accomplished. HUD believes that aggregate analysis will result in lower escrow balances in the long run. Moreover, the Phase II study concluded unambiguously that aggregate accounting results in lower escrow balances than single-item accounting with the same cushion and pre-accrual practices. HUD acknowledges that servicers who have maintained escrow balances below RESPA's limits may increase the accounts to the allowable maximum amounts.

The proposed rule provided an arithmetic example of an aggregate analysis computation. It also gave a detailed narrative of the steps to use in calculating the maximum cushion. Two comments requested that Step B in the calculation be simplified and Step C deleted. Many stated that HUD should describe the aggregate accounting method using only a narrative paragraph and should not attempt to set out the arithmetic steps to use.

Others disagreed with HUD's calculations. For example, 38 commenters stated that when they determine the lowest monthly trial balance calculations of an escrow account, they first consider disbursements (debits) before receipts (credits). They claim that borrowers often do not make their mortgage payments until the end of a grace period. Disbursements are often due at the first of the month. Because HUD did not consider the timing of payments and disbursements, the commenters argued that the low-point balance may be understated. They claim this could result in shortages and deficiencies.

The final rule contains both narrative and arithmetic descriptions of the steps to be used in an escrow account analysis under either method. The Department believes that it is providing useful guidance to the industry by giving both descriptions and examples. If HUD failed to provide a step-by-step algorithm, some servicers might be uncertain about the allowable limits.

To consider all disbursements before receipts is to effectively reintroduce one month pre-accrual. Under the final rule, the escrow account analysis is a picture of the escrow account at month's end. Consequently, the timing of the payments and disbursements within a month do not change the computations. If a servicer pays a disbursement before the borrower makes a monthly mortgage payment, then the servicer may use the allowable cushion, if necessary.

Single-Item Analysis

Nineteen comments stated that HUD should reaffirm its past policy in support of single-item analysis method. They argued that Section 10 of RESPA permits single-item analysis. HUD's previous informal interpretations and an opinion of the Comptroller General supported this view. They claim that Congress did not intend aggregate analysis limits to be imposed on escrow account balances.

Other comments indicated that HUD's example in Appendix F of a single-item analysis was inconsistent with the methodology used by the majority of the industry. The commenters claimed that the industry does not use a trial running balance to determine single-item analysis limits. The commenters expressed concern that they would have to conform their current systems and software to the proposed single-item analysis during the phase-in period. They claimed that this would further increase costs and the burden of compliance. Five suggested that HUD delay the implementation of the "new" single-item analysis provisions for one year, to permit time to reprogram systems and train staff.

When the Secretary issued the proposed rule, he was well aware of prior HUD interpretations concerning single-item analysis. Through informal legal opinions, HUD allowed servicers to use single-item analysis in calculating Section 10's limitations. HUD also issued an Interpretive Rule, dated January 21, 1993, in which HUD allowed single-item analysis within Section 10's limitations. The Interpretive Rule is effective until the effective date of this final rule.

HUD reconsidered its position on single-item accounting because HUD's Phase II report showed that aggregate accounting would result in lower escrow balances. When RESPA was first enacted the vast majority of servicers employed single-item analysis. The development of computer software and the increased availability of computer office equipment, however, makes the aggregate accounting computations easier than before. The statute describes the cushion as "one-sixth of the estimated total amount" of such charges. This rule represents the policy decision that aggregate accounting shall be the new standard.

In reaching this decision, the Secretary has seriously considered the countervailing interests. Servicers have had the benefit of greater escrow account balances under a single-item analysis accounting than they would have had if an aggregate analysis were employed. On the other hand, borrowers have had more money tied up in escrow accounts under a single-item accounting practice than would have been the case if aggregate accounting were practiced. Because the application of single-item analysis almost always means that servicers collect more money from borrowers than would be the case if the account were computed on an aggregate basis, the final rule requires an aggregate analysis prospectively.

During the three-year phase-in period, servicers may still use single-item analysis for pre-rule accounts. The proposed rule contained a description and an illustration of single-item analysis that some commenters argued inaccurately described their practices. HUD does not intend for servicers to develop new single-item analysis systems. However, any application of single-item analysis must be within Section 10's limits as interpreted by this rule in § 3500.17(d)(2). As long as servicers are within these limits, they may use a single-item accounting procedure on pre-rule accounts for three years from the publication date of this rule.

Completion of HUD–1 or HUD–1A Settlement Statement

Four comments noted that the HUD settlement statements currently use single-item analysis at closing. They raised questions concerning the proper procedures for collecting the cushion at settlement after the effective date of this rule. Some commenters were concerned that aggregate accounting at settlement could cause confusion if that method replaced the relatively simple method of adding a two-month cushion to the amounts due by the initial payment date. Several commenters suggested that single-item analysis be permitted at closing and aggregate analysis be used for all post-closing escrow activity.

In consideration of these concerns, HUD is offering two alternative methods for completing the HUD settlement statements during a phase-in period ending three years from the date of publication of this rule. However, one of the Department's goals in this rule is to reduce the amount borrowers must pay at closing into escrow accounts. HUD intends to implement this goal by requiring aggregate accounting practices at closing. The Department intends to make computer software available to

interested persons to help make the necessary calculations.

Under the first of the 2 methods permitted during the phase-in period, the settlement agent may use an aggregate accounting method to adjust the initial entries on the last line of the 1000 series on the HUD–1 or HUD–1A settlement statement. The Department anticipates that software and implementation materials will be generally available to settlement agents by the effective date of this rule. Alternatively, during the phase-in period the settlement agent may initially calculate the deposits using a single-item analysis approach, but with only a one-month cushion. HUD's studies indicate that a one-month cushion roughly yields the equivalent aggregate accounting result. This option is available only where aggregate accounting is not performed as part of the closing process. The final rule permits the servicer to provide the initial escrow account statement within 45 days of closing, and the servicer shall then adjust the escrow account at that time to an aggregate accounting calculation.

The Federal Reserve Board also was concerned about how lenders would calculate the amount for the mortgage insurance premium cushion in making a Truth in Lending disclosure of the annual percentage rate. HUD consulted with Federal Reserve Board officials, who indicated that the Federal Reserve Board will issue, in conjunction with the issuance of this final rule, clarifying instructions for lenders and servicers to use in completing the HUD settlement statements and in computing the annual percentage rate. Whichever of the alternative methods is used during the phase-in period, the figures currently required by the Federal Reserve Board for Regulation Z purposes will still be reported, in the same form under which they have always been reported. This practice will minimize inconvenience for both the Federal Reserve Board and lenders under Regulation Z.

Appendix F in the rule sets out examples of aggregate analysis. Appendix A contains instructions for completing the HUD–1 or HUD–1A settlement statements during the phase-in period.

Initial Escrow Account Statements

The proposed rule required servicers to provide borrowers an initial escrow account statement at settlement. For escrow accounts established after settlement, the proposed rule allowed an additional 45 days for the servicer to provide an initial escrow account statement to the borrowers. Fifteen commenters wanted to eliminate this requirement. Thirteen indicated that creating the initial escrow account statement is cumbersome and costly for servicers and confusing to borrowers. Others argued that the provisions of the proposed regulation that required delivery of the initial escrow account statement at settlement contradicted Section 10(c)(1)(B) of the statute. They claimed that the statute permitted up to 45 days from settlement within which servicers could submit initial escrow account statements to borrowers.

The proposed rule did not specifically address table-funded transactions. Six commenters asked who would be responsible for preparing the initial escrow account statement in table-funded transactions. They noted that loan correspondents, brokers, and closing attorneys typically do not have the software and systems to produce the statement.

Three comments asked how to compute the initial escrow deposits for a post-rule account. Three others suggested that the final rule specifically state that the settlement agent may collect funds at closing for items that have a disbursement date between the settlement and the initial payment date. Five commenters pointed out that some of the information on the initial escrow account statement duplicated the HUD–1 settlement statement. They claimed that borrowers received no additional benefit or disclosure from the separate statement. Four comments stated that HUD should provide a suggested, rather than required, format for the initial escrow account statement.

In response to these comments, HUD notes that the RESPA statute as amended in 1990 requires servicers to provide borrowers with initial escrow account statements. HUD is implementing that statutory requirement through this final rule. In this final rule, the Department amends its proposed rule by expanding the timing requirements. The final rule permits servicers to provide the initial escrow account statement at settlement or within 45 days of settlement for escrow accounts that are established as a condition of the loan. The statute and rule also allow servicers to incorporate the initial escrow account statement in the HUD–1 or HUD–1A settlement statement. Thus, some servicers may avoid a purported duplication of information by including the initial escrow account statement in the HUD–1 settlement statement at closing. For escrow accounts established after settlement (and not as a condition of the loan), the final rule allows an additional 45 days from the date the account is established for the servicer to provide an initial escrow account statement to the borrowers.

Because of these changes, the actual servicer of the loan, rather than a settlement agent, is more likely to prepare the initial escrow account statement. HUD expects that in many table-funded transactions, for example, the servicer that sets up the escrow account will be responsible for delivering the initial escrow account statement to the borrowers.

As noted above, the Department provides examples of how to compute the initial escrow deposits for a post-rule account. The initial escrow account statement is a forward-looking projection of anticipated activity in the account's first year. HUD's changes in the final rule should assure a higher degree of accuracy in the initial escrow account statements. In addition, borrowers are likely to find less errors or discrepancies when comparing later annual escrow account statements with the initial statement.

Annual Escrow Account Statements and Escrow Account Analyses

HUD's December 3, 1993, proposed rule required servicers to submit annual escrow account statements to borrowers for every federally related mortgage loan for which there is an outstanding escrow account. In its proposed definitions, HUD defined an "escrow account analysis" as a practice of computing a trial running balance that a servicer performs to prepare the initial and annual escrow account statements. Twenty-six commenters asked HUD to clarify the difference between the annual escrow account statement and the escrow account analysis.

HUD considers the annual escrow account statement to be the borrower's tool to check the past year's escrow account activities and the projections for the next year. As such, HUD believes that servicers need to perform an escrow account analysis to make the statements meaningful. An escrow account analysis, therefore, is one step in the process of preparing the escrow account statements.

Twenty-two commenters stated that when preparing the escrow account analysis, servicers should exclude from the trial running balance calculations unexpected deposits to the escrow account, such as "loss drafts" (insurance payments), and anticipated or actual earnings, such as interest. HUD concurs and excludes these deposits from the trial running balance calculations. However, if there is a special assessment to the borrower that impacts the escrow account within the

escrow account computation year (e.g., water purification, road or utility assessments or special condominium assessments), then the servicer may choose to conduct an escrow account analysis at the time of the assessment and adjust the account accordingly. Some assessments may be billed for periods longer than a year. For example, flood insurance or water purification escrow funds may be payable on a three-year cycle. HUD's final rule provides guidance on how to calculate the account limits when the account includes such payables.

The proposed rule specified that the servicer deliver the annual escrow account statement to a borrower within 30 days of the conclusion of the escrow account computation year. Four commenters thought that the term escrow account computation year should be changed to escrow computation cycle. They believed that this name change would allow servicers to spread out the work load more efficiently during the year.

Seventeen commenters advocated more flexibility in when to conduct the escrow analyses, especially when servicers experience delays in obtaining pertinent information (*e.g.*, tax bills). These commenters recommended delaying the escrow analysis to provide a more meaningful statement, rather than performing one on schedule merely to comply with a regulatory requirement.

Seven commented that the escrow analysis is generally prepared after the largest disbursement is made from the escrow account. Two commenters were not sure whether the proposed rule permitted the escrow account analysis to be performed on more than an annual basis.

In response to these comments, HUD maintains a requirement of at least one escrow account analysis per year. Servicers are free to do more. The servicer will need to perform the analysis in preparing the annual escrow account statements. HUD retains the definition of escrow account computation year because it corresponds to the statute's 12 month period reference. Through the use of short year statements, servicers may set the escrow account computation year to coincide with the largest payment in the account, normally taxes.

Sixty-nine commenters claimed that HUD's proposed annual escrow account statement requirements were confusing to borrowers and costly for servicers to implement and prepare. (These comments came from 26 banks, 30 mortgage companies, 7 attorneys, and 6 associations.) Three commenters requested elimination of the trial running balance, since it appeared unnecessary and confusing to borrowers. They also believed that the annual escrow account statements should be more general. The comments argued that it was too costly to develop and administer programs to provide tailored explanations. One software company stated that "several statements on the annual statement may be impossible to provide using an automated system. * * * Generally, data processing systems are not designed to provide this type of annotated explanations. This type of artificial intelligence is cost prohibitive." Further, the commenters stated that the final rule should provide suggested, not required, disclosures and format.

In response, the Department simplifies the format for the annual escrow account statement in the final rule. HUD provides sample statements for both single-item accounting and aggregate accounting practices. In each, the annual escrow account statement includes a historical description of what actually was paid in and out of the account in the previous computation year. It also contains a forward-looking projection of anticipated activity in the account for the next year. The escrow account statements are prepared like bank statements, in a format that is familiar to the borrowers. By doing so, the Department intends that the borrowers will be able to better understand account activity.

HUD is sensitive to the concern that the statements may be too specific in nature. However, some specific information is necessary to make the disclosure useful to borrowers. If the account has exceeded the RESPA limits during the year, then the servicer must explain why. If the mortgage documents require a lower cushion, then the servicer will use that amount. The example provides a checklist for servicers to complete to explain why an account exceeded RESPA's limits. The Department concludes that borrowers need this explanation; otherwise, over-escrowing of accounts may continue. In addition, for borrowers who closely monitor their escrow accounts, HUD believes that the annual escrow account statements will provide sufficient information to borrowers to save servicers time otherwise spent in responding to borrower inquiries.

Twenty-one commenters suggested that the annual escrow account statement be divided into two separate statements: (1) An annual escrow account statement providing historical information that the servicers mail to borrowers with Internal Revenue Service (IRS) information at calendar year-end; and (2) an escrow analysis statement, including the projection of the next cycle's calculations, that the servicers deliver to borrowers within 30 to 60 days of completing the escrow computation cycle. This practice would benefit servicers by combining part of the annual escrow account statement with existing IRS requirements. It would also benefit the borrowers by providing information in a useful and understandable fashion.

The Department considers these comments informative. Many servicers will provide two such accountings to borrowers anyway. The IRS information requires calendar year-end totals. The year-end statements, however, do not necessarily correspond with the servicer's escrow account computation year. At any time, however, servicers may change the escrow account computation year to a calendar year-end period by using short year statements.

Twenty-five comments wanted HUD to exclude foreclosures and loans that are 60 days or more delinquent from the rule's requirements for annual escrow account analysis and statements. In the final rule, HUD provides that servicers need not submit an annual escrow account statement if the mortgage loan account is delinquent (30 days or more) or if the servicer has initiated a foreclosure action.

Short Year Annual Escrow Account Statements

The proposed rule required the servicer to issue a short year annual escrow account statement to a borrower within 60 days of a loan payoff or 30 days of a transfer of servicing. Fifty-five commenters opposed these requirements, including 32 mortgage companies, 16 banks, 3 associations, and 4 attorneys. They stated that the IRS requires such information at calendar-year end; thus, they claimed, HUD's requirement was unnecessary.

The Department believes that servicers should provide borrowers with relevant information at a meaningful time, when borrowers will focus their attention on the information. HUD believes that borrowers should have the opportunity to correct escrow account errors when servicing is transferred or soon after loan pay-off. If servicers fail to deliver this information to borrowers for up to 12 months after the event, borrowers will be less likely to obtain corrective action of any errors made. Consequently, the final rule retains the short year escrow account statement provisions, although the Department has extended to 60 days the time for a

transferor servicer to submit a short year statement to the borrower.

Transfer of Servicing

Upon the transfer of loan servicing to a new servicer, the proposed rule required the new servicer to perform an escrow account analysis before making any change to a borrower's escrow deposits. The proposed rule required the new servicer to submit an initial escrow account statement to the borrower within 45 days after establishing the new escrow account. Thirty-seven commenters asked HUD to eliminate this requirement. They questioned the benefit to the borrower and the time and cost involved in preparing the statement. Seven commenters suggested that HUD extend to at least 90 days the deadline for submitting the initial escrow account statement, because of integration issues associated with transfers of servicing. Three commenters were unclear whether the initial escrow account statement was required if the new servicer does not change the borrower's required escrow deposits or if the method of escrow account analysis does not change between servicers. Two comments stated that if the initial escrow account statement is required, it should be prepared by the transferor servicer, because that servicer performs an escrow account analysis before transferring the account. One comment questioned whether the initial escrow account statement applied to transfers of servicing between affiliates.

The Department concludes that borrowers will benefit by receiving initial escrow account statements from new servicers under certain circumstances. The final rule requires a new servicer to provide a borrower with an initial escrow account statement if the servicer changes either the monthly payment amount or the accounting method previously used by the transferor servicer. Because post-rule accounts will be using aggregate accounting methods, no initial escrow account statement is needed for post-rule account transfers of servicing. In pre-rule accounts where there is a change in the escrow account balances, the new servicer shall use the effective date of the transfer of servicing to establish the new escrow account computation year. Where there is no change in the escrow account balances, the new servicer shall continue the escrow account computation year that the transferor servicer started. (The Department expects to publish soon a final rule on mortgage servicing transfers, adding a new § 3500.21 to Regulation X.)

In response to comments, HUD extends the time for new servicers to deliver the initial escrow account statement from 45 to 60 days from the date of servicing transfer. The new servicer shall treat shortages, surpluses, and deficiencies in the transferred escrow account according to the procedures set forth in § 3500.17(f). A pre-rule account remains a pre-rule account upon the transfer to a new servicer, as long as the transfer occurs before the conversion date.

Surpluses

Eleven comments requested clarification of HUD's proposed "surplus" definition. HUD's proposal defined a surplus to be an amount, determined at the time of escrow analysis, by which an escrow account balance exceeds the target balance for the account. The comments indicated that HUD's definition should state that a surplus is a balance in excess of the allowable cushion, if any. HUD disagrees. HUD believes that its definition in the final rule more accurately describes the surplus to be the excess of the current balance over the target balance. The target balance reflects the borrower's accrued payments for escrow account items *and* the cushion selected by the servicer. A servicer may choose to use no cushion or one that is less than the maximum set by RESPA. It is therefore incorrect to state that the surplus is the balance that exceeds the allowable cushion. HUD retains the term target balance, rather than allowable cushion, in its definition.

The proposed rule required servicers to refund surpluses to a borrower within 30 days of the escrow analysis unless the borrower timely instructed the servicer to apply the surplus to the escrow account balance. Many commenters saw HUD's requirement as increasing their administrative burdens. Fifteen commenters pointed out that the 30-day period was unrealistic. They argued that HUD should either extend the timeframe or eliminate the requirement.

HUD's proposal set no dollar threshold for refunding surpluses. Fifty-three commenters advocated that the final rule require servicers to refund automatically surpluses above a minimum threshold ($25 to $50). This way servicers would not have to wait for the borrower's instructions. Thirteen others suggested that servicers be permitted discretion to retain a surplus below a nominal amount. Forty comments opposed refunding surpluses if the borrower is delinquent or in default. Sixteen comments stated that the rule should allow servicers the discretion to refund surpluses immediately or to spread out the payments over a 12-month period. Several comments requested clarification on whether the existence of a surplus violated RESPA. Two comments specifically stated that a servicer who handles a surplus according to these rules is in compliance with RESPA.

In response to these comments, the Department has revised the final rule to require the servicer to refund to the borrower any surplus that is greater than or equal to $50. This provision responds to the comments concerning timing and administrative problems in obtaining borrower instructions. At the servicer's option, the servicer may refund to the borrower or credit to the borrower's escrow account a surplus of less than $50. Again, the servicer need not interact with the borrower to handle this surplus.

HUD's final rule provides that if the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the mortgage loan document. It also provides that if the servicer has brought an action for foreclosure under the mortgage loan, then the servicer may retain any surplus in the escrow account according to the mortgage loan documents. If a servicer meets the provisions of this final rule, then HUD will deem the servicer in compliance with RESPA.

Shortages and Deficiencies

The proposed rule defined a shortage to be the amount that the servicer estimates at the time of an escrow account analysis will be needed to meet the target balance for the escrow account. A deficiency, on the other hand, is the amount that a servicer has actually advanced to pay a disbursement from the escrow account. HUD had proposed that servicers allow borrowers up to 12 months to pay shortages or deficiencies in the escrow account. Many commenters thought HUD's proposal required servicers to extend interest-free loans to borrowers. For example, Fannie Mae stated that "* * * this requires the servicer to extend what is in essence a 12-month interest-free loan to the borrower. We believe that this financial burden on the servicer is inequitable." Fifteen commenters wanted servicers to charge borrowers interest at the note rate while advances for a deficiency are outstanding.

HUD received numerous suggestions to change these provisions. Thirty-nine

commenters suggested that the rule allow servicers to collect shortages from borrowers within 30 days to 6 months from the date of the analysis. The comments indicated that servicers could always allow borrowers more time (12 or more months) to pay a projected shortage than is required by law. Sixty-six comments recommended that the rule allow servicers to collect deficiencies from borrowers within 30 days to 6 months from the disbursement date. These comments also stated that servicers could choose to provide borrowers with more time than legally mandated. Another comment sought immediate payment of servicer advances arising from borrower-initiated changes (e.g., additional or optional insurance). Six comments noted that there is no need for a separate servicer notice to borrowers of shortages in the escrow account, because the annual escrow statement fulfills this function.

HUD sees a distinction between a shortage and a deficiency in the escrow account. In a situation where the servicer has advanced its own funds (a deficiency), HUD believes that the servicer may collect this advance quickly. In the final rule, HUD provides servicers with three possible ways of handling borrower deficiencies that amount to less than one month's escrow payment:

(1) The servicer may allow a deficiency to exist and do nothing to change it;

(2) The servicer may require the borrower to pay the deficiency within 30 days; or

(3) The servicer may allow the borrower to repay the deficiency in 2 or more equal monthly payments over a period of up to 12 months.

If the deficiency is equal to or more than one month's escrow payment, then the servicer may allow a deficiency to exist and do nothing to change it, or the servicer may allow the borrower to repay the deficiency in 2 or more equal monthly payments over a period of up to 12 months. Moreover, if the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the mortgage loan documents.

Because a shortage is the difference between the current escrow account balance and the target balance, HUD believes that shortages warrant different treatment than deficiencies. Borrowers' escrow accounts are likely to be influenced by yearly changes in taxes, insurance, or other items that may cause a shortage at the time of an escrow account analysis. At that time, servicers may easily adjust the borrower's monthly escrow payments for the next year. Thus, in the final rule, HUD provides that if the servicer's escrow account analysis indicates a shortage of less than one month's escrow payment, the servicer has three options:

(1) The servicer may allow a shortage to exist and do nothing to change it;

(2) The servicer may allow the borrower to pay the shortage amount within 30 days; or

(3) The servicer may allow the borrower to pay off the shortage in equal monthly payments over a 12-month period.

If the shortage is greater than or equal to one month's escrow account payment, then the servicer has two options: the servicer may allow a shortage to exist and do nothing to change it; or the servicer may allow the borrower to pay off the shortage in equal monthly payments over a 12-month period.

An escrow account analysis may indicate a shortage at the time of the analysis that will produce a deficiency at a later date. This rule does not allow servicers to anticipate deficiencies and collect on a deficiency in advance. However, at the time of a deficiency, a servicer may conduct an escrow account analysis and seek repayment from a borrower according to these provisions.

Timely Payments

In implementing Section 6(g) of RESPA, HUD had proposed that servicers make disbursements in a timely manner from the escrow account, even if the escrow account had insufficient funds for such payments, as long as the borrower was current in the borrower's principal, interest, and escrow account payments. Twenty-eight commenters opposed this requirement. On the other hand, Fannie Mae noted that "while the proposed rule states that servicers are not required to make escrow account payments on delinquent accounts, Fannie Mae holds the servicer responsible for the timely payment of taxes and insurance premiums even in situations where the borrower is delinquent on the mortgage."

After considering these comments and reviewing the legislative history of Section 6(g) of RESPA, the Department clarifies the requirement. Section 3500.17(k) of this rule implements Section 6(g) of the statute, by requiring servicers to advance funds to make disbursements in a timely manner as long as the servicer receives the borrower's payment within 30 days of the payment due date. HUD clarifies that a timely payment is one in which the servicer pays the disbursement on or before the *earlier* of the deadline for available discounts or the deadline to avoid penalties. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to § 3500.17(f). If the servicer advances payments for a borrower who is in default, however, then the servicer may recover the deficiency pursuant to the terms of the mortgage loan documents. The Department expects that servicers will continue to make disbursements on delinquent accounts to protect their security interests in the mortgaged properties.

Recordkeeping

The proposed rule established a five-year recordkeeping requirement. Sixteen commenters stated that this requirement would be expensive and burdensome. Several suggested that two years was a more reasonable period. Seventeen commenters requested that HUD provide a *de minimis* standard describing the information that servicers should retain. They wanted the final rule to specify whether servicers can retain records in hard-copy, electronic, or microfiche format. Seventeen comments requested that the rule provide examples of noncompliance subject to penalties.

In the December 1993 proposed rule, HUD responded to earlier comments critical of HUD's specific recordkeeping provisions in the December 1991 proposal. In this final rule, HUD adds clarifying language that servicers may maintain records in hard-copy, electronic, microfiche, or any other format that reasonably assures retrieval. The Department maintains the five-year record retention provision. It is consistent with RESPA's other retention requirements.

Penalties

Forty-eight commenters suggested that the final rule not reflect the strict liability language of the proposed rule. The majority believed that servicers should not be held liable for clerical errors, inadvertent acts, or acts of nature. They also indicated that servicers should not be liable for expending "best and reasonable efforts" in complying with the requirements. The comments advocated that penalties be based on practices and patterns of noncompliance. The MBA concurred and stated that "* * * HUD should determine violations that warrant a monetary penalty based on a pattern or practice of noncompliance. Penalties would be justified in those cases where the servicer made the same error repeatedly." Ten comments suggested

that the rule include a cure period, in which the servicer could submit a corrective statement to a borrower within 60 days of discovering the error. They pointed out that similar defenses are permitted by other consumer protection statutes.

Strict liability is a term used in product liability law and HUD misapplied the term in the proposed rule. The final rule removes any reference to a strict liability standard. However, HUD continues the statutory distinction between unintentional and intentional violations. Violations do not require any proof of intent. The statute provides for more serious penalties in cases of a servicer's intentional disregard for the statute's requirements.

As a statement of its enforcement policy, the Department is likely to pursue cases involving a pattern and practice of noncompliance more vigorously than solitary or minor transgressions of these provisions. HUD is less likely to enforce penalties in cases where the servicer has taken prompt corrective action on its own initiative.

Civil Penalties Procedures

HUD received eight comments concerning the civil penalties procedures provisions. They suggested that HUD lengthen the time for servicers to prepare an adequate defense. The commenters suggested that the time to respond to a notice of intent to impose penalties be extended from 20 to 30 days. They wanted HUD to extend the period in which a servicer presents its evidence from 45 to 60 days. They also recommended extending the period for filing for judicial review of a decision from 20 to 30 days.

In response, the Department extends from 20 to 30 days the initial response period to HUD's notice of intent to impose penalties. Because the rule permits the servicer to request additional time from the administrative law judge, HUD sees no need to extend the time for presenting evidence. Responding to comments, the final rule provides 30 days for a party to file a petition seeking judicial review.

Financial Comments

Seventeen commenters were concerned about the rule's effect upon the value of mortgage servicing rights. They estimated that servicing rights may be reduced in value by 3 to 20 percent. Three commenters requested that the final rule be applicable only to loans originated after the effective date, thus resulting in less impact on the value of servicing rights. Four stated that capital structures would be negatively affected for institutions with servicing rights regulated by government agencies (e.g., FDIC, OCC, OTS, Federal Reserve Board).

The Department recognizes that the rule has an adverse effect on the pricing of mortgage servicing. HUD's issuance of the December 3, 1993, proposed rule has already affected the value of mortgage servicing pricing. However, as indicated above, the Department believes that the three-year phase-in period somewhat tempers this effect. The phase-in period allows servicers to recoup the greatest value on their servicing rights in the early years of a mortgage loan, while the rule moves the industry to a simpler system that protects consumers as soon as practicable.

Legal Comments

Twenty-three commenters questioned HUD's statutory authority to mandate interest-free loans to borrowers under RESPA. Five stated that the final rule should address compliance issues with individual State requirements. One commenter indicated that HUD left unaddressed how State rules take precedence or supersede the final rule. One respondent requested that the rule clarify whether RESPA establishes an escrow ceiling cushion and does not preempt State law or contracts between lenders and borrowers. A second stated that the final rule should address the impact the regulations will have on contractual relationships related to securitization arrangements. A third requested clarification of loans that are exempt from RESPA provisions pending HUD's final rule. Four commenters believed that the proposed rule could lead to an increase in escrow class action suits.

The Department believes that it has full legal authority and administrative discretion to implement these escrow accounting regulations. Section 19(a) of RESPA empowers the Secretary to prescribe rules and regulations to achieve the purpose of the Act. This final rule reflects HUD's interpretation of the statute and HUD's reaction to public comments on the proposed rule. In issuing this rule, HUD considers the needs of borrowers and servicers and interprets the statute to respond to those needs. For example, in response to comments regarding interest-free loans, HUD recast certain provisions in the final rule. One of HUD's goals here is to promote Section 6's provisions that disbursements from escrow be made timely. At the same time, the final rule responds to servicers' needs for prompt reimbursement of their advances, and is fair to the borrower.

Regarding the possible preemption of State laws, the Department recognizes that many of the States have enacted laws relating to escrow accounts. Section 18 of RESPA provides: "This Act does not annul, alter, or affect, or exempt any person subject to the provisions of (RESPA) from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of (RESPA), and then only to the extent of the inconsistency." 12 USC 2616. Given this statutory language, and further statutory instruction that a state statute is not to be preempted if it gives greater protection to the consumer, the Department believes it should make specific preemption decisions on a case-by-case basis. The current RESPA rule (§ 3500.13(c)) sets forth provisions for requesting preemption determinations.

Conforming FHA Regulations

Because some provisions in this final rule affect existing FHA regulations, this rule amends 24 CFR parts 203 and 234 to conform with these regulatory changes. HUD therefore amends § 203.550(a) to clarify that the FHA mortgagee shall use the procedures contained in § 3500.17 to compute the amount of escrow, the methods of collection and accounting, and the disbursement of escrow account items. HUD also amends § 234.38 to conform with the final rule, and retains the language of § 203.550(c) that permits FHA mortgagees to estimate escrow requirements based on the probable payments required for special assessment items, such as water purification escrow funds.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20 of the HUD regulations, the policies and procedures contained in this rule do not affect a physical structure or property and relate only to statutorily required accounting and reporting procedures, and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Executive Order 12866

This rule constitutes a "significant regulatory action" as that term is defined in section 3(f) of Executive Order 12866 on Regulatory Planning and Review issued by the President on September 30, 1993. A preliminary review of the rule indicated that it

might, as defined in that Order, have an annual effect on the economy of $100 million or more. Accordingly, a regulatory impact analysis was prepared and is available for review and inspection in Room 10276, Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. The requirements of the proposed rule are directed toward the accounting procedures used in the mortgage servicing industry and the disclosure to consumers of related information.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule would not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The requirements of the rule are directed toward the accounting procedures used in the mortgage servicing industry and the disclosure to consumers of related information.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have the potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as item number 1615 in the Department's Semiannual Agenda of Regulations published on April 25, 1994, (59 FR 20424, 20455) under Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 3500

Consumer protection, Housing, Mortgages, Real property acquisition, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Interpretive Rule 1993–1, published in the **Federal Register** on January 21, 1993 (58 FR 5520), is withdrawn, and parts 203, 234, and 3500 of title 24 of the Code of Federal Regulations are amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1715b; 42 U.S.C. 3535(d).

2. Section 203.23(a) is amended in paragraph (a)(5) by revising the first sentence and adding a new sentence at the end of the paragraph, to read as follows:

§ 203.23 Mortgagor's payments to include other charges.

(a) * * *

(5) Fire and other hazard insurance premiums, if any. * * * Such payments shall be held in an escrow subject to § 203.550.

* * * * *

3. Section 203.550 is amended by revising the last sentence in paragraph (a), removing and reserving paragraph (b), and revising paragraph (c), to read as follows:

§ 203.550 Escrow accounts.

(a) * * * The mortgagee shall use the procedures set forth in § 3500.17 of this title, implementing Section 10 of the Real Estate Settlement Procedures Act (12 U.S.C. 2609), to compute the amount of the escrow, the methods of collection and accounting, and the payment of the bills for which the money has been escrowed.

(b) [Reserved]

(c) In the case of escrow accounts created for purposes of § 203.52 or § 234.64 of this chapter, mortgagees may estimate escrow requirements based on the best information available as to probable payments that will be required to be made from the account on a periodic basis throughout the period during which the account is maintained.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

4. The authority citation for part 234 is revised to read as follows:

Authority: 12 U.S.C. 1715b and 1715y; 42 U.S.C. 3535(d). Section 234.520(a)(2)(ii) is also issued under 12 U.S.C. 1707(a).

5. Section 234.38(a) is revised to read as follows:

§ 234.38 Mortgage provisions for additional payments and covenants.

(a) The mortgage shall provide for such equal monthly payments by the mortgagor to the mortgagee as will amortize any ground or lease rents and the estimated amount of any taxes, special assessments, and any property insurance premiums that may be required by the mortgagee. These payments shall be held in an escrow subject to § 203.550 of this title, which is incorporated by reference in § 234.800.

* * * * *

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

6. The authority citation for part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et seq.*

7. Section 3500.8 is amended by adding a new paragraph (c), to read as follows:

§ 3500.8 Use of HUD–1 or HUD–1A settlement statements.

* * * * *

(c) *Aggregate Accounting At Settlement.* (1) If the settlement agent uses a cushion in determining the initial entries for lines 1000–1008 of the HUD–1 or HUD–1A settlement statement, then the settlement agent shall make an adjustment to reflect the appropriate starting balance in the escrow account under the aggregate accounting method. The cushion using the aggregate accounting is computed according to the steps set out in § 3500.17(d). The adjustment reflects the difference between the amounts collected as a cushion in the 1000 series for individual

escrow items under the single-item accounting method and the permissible cushion under the aggregate accounting method. The servicer shall enter the aggregate adjustment amount on the last line in the 1000 series of the HUD–1 or HUD–1A statement.

(2) During the phase-in period, as defined in § 3500.17(b), an alternative procedure is available. The settlement agent may initially calculate the 1000 series deposits for the HUD–1 and HUD–1A settlement statement using single-item analysis with only a one-month cushion (unless the mortgage loan documents indicate a smaller amount). In the escrow account analysis conducted within 45 days of settlement, however, the servicer shall adjust the escrow account to reflect the aggregate accounting balance. Appendix F to this part sets out examples of aggregate analysis. Appendix A to this part contains instructions for completing the HUD–1 or HUD–1A settlement statements using an aggregate analysis adjustment and the alternative process during the phase-in period.

8. A new § 3500.17 is added, to read as follows:

§ 3500.17 Escrow accounts.

(a) *General.* This section sets out the requirements for an escrow account that a lender establishes in connection with a federally related mortgage loan. It sets limits for escrow accounts using calculations based on monthly payments and disbursements within a calendar year. If an escrow account involves biweekly or any other payment period, the requirements in this section shall be modified accordingly. Appendix H to this part provides an example of the transposition from monthly to biweekly accounting and Appendix J to this part provides an example of a 3-year accounting cycle that may be used in accordance with paragraph (c)(9) of this section.

(b) *Definitions.* As used in this section:

Acceptable accounting method means an accounting method that a servicer uses to conduct an escrow account analysis for an escrow account subject to the provisions of § 3500.17(c).

Aggregate (or) composite analysis, hereafter called *aggregate analysis,* means an accounting method a servicer uses in conducting an escrow account analysis by computing the sufficiency of escrow account funds by analyzing the account as a whole. Appendix F to this part sets forth examples of aggregate escrow account analyses.

Annual Escrow Account Statement means a statement containing all of the information set forth in § 3500.17(i). As noted in § 3500.17(i), a servicer shall submit an annual escrow account statement to the borrower within 30 calendar days of the end of the escrow account computation year, after conducting an escrow account analysis.

Conversion date means the date three years after the publication date of the rule adding this section (i.e., October 27, 1997) by which date all servicers shall use aggregate analysis.

Cushion or *reserve* (hereafter cushion) means funds that a servicer may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account, as limited by § 3500.17(c).

Date of establishment of an escrow account means the date the servicer establishes the escrow account.

Deficiency is the amount of a negative balance in an escrow account. As noted in § 3500.17(f), if a servicer advances funds for a borrower, then the servicer must perform an escrow account analysis before seeking repayment of the deficiency.

Delivery means the placing of a document in the United States mail, first-class postage paid, addressed to the last known address of the recipient. Hand delivery also constitutes delivery.

Disbursement date means the date on which the servicer actually pays an escrow item from the escrow account. Section 3500.17(k) provides that the servicer shall use as the disbursement date a date on or before the *earlier* of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty.

Escrow account means any account that a servicer establishes or controls on behalf of a borrower to pay taxes, insurance premiums (including flood insurance), or other charges with respect to a federally related mortgage loan, including charges that the borrower and servicer have voluntarily agreed that the servicer should collect and pay. The definition encompasses any account established for this purpose, including a "trust account", "reserve account", "impound account", or other term in different localities. An "escrow account" includes any arrangement where the servicer adds a portion of borrower's payments to principal and subsequently deducts from principal the disbursements for escrow account items. For purposes of this section, the term "escrow account" excludes any account that is under the borrower's total control.

Escrow account analysis means the accounting that a servicer conducts in the form of a trial running balance for an escrow account to:

(1) Determine the appropriate target balances;

(2) Compute the borrower's monthly payments for the next escrow account computation year and any deposits needed to establish or maintain the account; and

(3) Determine whether shortages, surpluses or deficiencies exist.

Escrow account computation year is a 12-month period that a servicer establishes for the escrow account beginning with the borrower's initial payment date. The term includes each 12-month period thereafter, unless a servicer chooses to issue a short year statement under the conditions stated in 3500.17(i)(4).

Escrow account item or *separate item* means any separate expenditure category, such as "taxes" or "insurance", for which funds are collected in the escrow account for disbursement. An escrow account item with installment payments, such as local property taxes, remains one escrow account item regardless of multiple disbursement dates to the tax authority.

Federally related mortgage loan has the meaning set forth in § 3500.2.

Initial escrow account statement means the first disclosure statement that the servicer delivers to the borrower concerning the borrower's escrow account. The initial escrow account statement shall meet the requirements of § 3500.17(g) and be in substantially the format set forth in § 3500.17(h).

Installment payment means one of two or more payments payable on an escrow account item during an escrow account computation year. An example of an installment payment is where a jurisdiction bills quarterly for taxes.

Mortgage loan means a federally related mortgage loan as that term is defined in § 3500.2.

Payment due date means the date each month when the borrower's monthly payment to an escrow account is due to the servicer. The *initial payment date* is the borrower's first payment due date to an escrow account.

Phase-in period means the period beginning on the effective date of this final rule and ending on the conversion date, i.e., October, 27, 1997], by which date all servicers shall use the aggregate accounting method in conducting escrow account analyses.

Post-rule account means an escrow account established in connection with a federally related mortgage loan whose settlement date is on or after the effective date of this section.

Pre-accrual is a practice some servicers use to require borrowers to deposit funds, needed for disbursement and maintenance of a cushion, in the escrow account some period before the disbursement date. Pre-accrual is subject to the limitations of § 3500.17(c).

Pre-rule account is an escrow account established in connection with a federally related mortgage loan whose settlement date is before the effective date of this rule.

Refinancing has the meaning set forth in § 3500.2.

Servicer means the person responsible for the servicing of a loan (including the person who makes or holds a loan if such person also services the loan). The term does not include:

(1) The Federal Deposit Insurance Corporation (FDIC) or the Resolution Trust Corporation (RTC), in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)) or as receiver or conservator of an insured depository institution; or

(2) The Federal National Mortgage Corporation (FNMA); the Federal Home Loan Mortgage Corporation (Freddie Mac); the Resolution Trust Corporation (RTC), the Federal Deposit Insurance Corporation (FDIC); the Department of Housing and Urban Development (HUD), including the Government National Mortgage Association (GNMA) and the Federal Housing Administration (FHA); the National Credit Union Administration (NCUA); the Farmers Home Administration (FmHA); and the Department of Veterans Affairs (VA) in cases when the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by termination of the contract for servicing the loan for cause, commencement of proceedings for bankruptcy of the servicer, or commencement of proceedings by the FDIC or RTC for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(3) The Federal Housing Administration (FHA), in cases where a mortgage insured under the National Housing Act (12 U.S.C. 1701 *et seq.*)is assigned to HUD.

Servicing means the process of receiving any scheduled periodic payments from a borrower pursuant to the terms of any mortgage servicing loan, including amounts for escrow accounts under section 10 of RESPA, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower to the owner of the loan or other third parties as may be required pursuant to the terms of the mortgage loan documents or servicing contract.

Settlement has the same meaning set forth in § 3500.2.

Shortage means an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

Single-item analysis means an accounting method servicers use in conducting an escrow account analysis by computing the sufficiency of escrow account funds by considering each escrow item separately. Appendix F to this part sets forth examples of single-item analysis.

Submission (of an escrow account statement) means the delivery of the statement.

Surplus means an amount by which the current escrow account balance exceeds the target balance for the account.

System of recordkeeping means the servicer's method of keeping information that reflects the facts relating to that servicer's handling of the borrower's escrow account, including, but not limited to, the payment of amounts from the escrow account and the submission of initial and annual escrow account statements to borrowers.

Target balance means the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion, if any.

Trial running balance means the accounting process that derives the target balances over the course of an escrow account computation year. Section 3500.17(d) provides a description of the steps involved in performing a trial running balance.

(c) *Limits on payments to escrow accounts; acceptable accounting methods to determine limits.*

(1) A lender or servicer (hereafter servicer) shall not require a borrower to deposit into any escrow account, created in connection with a federally related mortgage loan, more than the following amounts:

(i) *Charges at settlement or upon creation of an escrow account.* At the time a servicer creates an escrow account for a borrower, the servicer may charge the borrower an amount sufficient to pay the charges respecting the mortgaged property, such as taxes and insurance, which are attributable to the period from the date such payment(s) were last paid until the initial payment date. In addition, the servicer may charge the borrower a cushion that shall be no greater than one-sixth (⅙) of the estimated total annual payments from the escrow account.

(ii) *Charges during the life of the escrow account.* Throughout the life of an escrow account, the servicer may charge the borrower a monthly sum equal to one-twelfth (1/12) of the total annual escrow payments which the servicer reasonably anticipates paying from the account. In addition, the servicer may add an amount to maintain a cushion no greater than one-sixth (⅙) of the estimated total annual payments from the account. However, if a servicer determines through an escrow account analysis that there is a shortage or deficiency, the servicer may require the borrower to pay additional deposits to make up the shortage or eliminate the deficiency, subject to the limitations set forth in § 3500.17(f).

(2) *Escrow analysis at creation of escrow account.* Before establishing an escrow account, the servicer shall conduct an escrow account analysis to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of § 3500.17(c)(1)(i) and the amount of the borrower's periodic payments into the escrow account, subject to the limitations of § 3500.17(c)(1)(ii). In conducting the escrow account analysis, the servicer shall estimate the disbursement amounts according to § 3500.17(c)(7). Pursuant to § 3500.17(k), the servicer shall use a date on or before the *earlier* of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty as the disbursement date for the escrow item. Upon completing the initial escrow account analysis, the servicer shall prepare and deliver an initial escrow account statement to the borrower, as set forth in § 3500.17(g). The servicer shall use the escrow account analysis to determine whether a surplus, shortage or deficiency exists since settlement and shall make any adjustments to the account pursuant to § 3500.17(f).

(3) *Subsequent escrow account analyses.* For each escrow account, the servicer shall conduct an escrow account analysis at the completion of the escrow account computation year to determine the borrower's monthly escrow account payments for the next computation year, subject to the limitations of § 3500.17(c)(1)(ii). In conducting the escrow account analysis, the servicer shall estimate the disbursement amounts according to § 3500.17(c)(7). Pursuant to § 3500.17(k), the servicer shall use a date on or before the *earlier* of the deadline to take advantage of discounts, if available, or

the deadline to avoid a penalty as the disbursement date for the escrow item. The servicer shall use the escrow account analysis to determine whether a surplus, shortage or deficiency exists and shall make any adjustments to the account pursuant to § 3500.17(f). Upon completing an escrow account analysis, the servicer shall prepare and submit an annual escrow account statement to the borrower, as set forth in § 3500.17(i).

(4) *Acceptable accounting methods to determine escrow limits.* The following are acceptable accounting methods that servicers may use in conducting an escrow account analysis.

(i) *Pre-rule accounts.* For pre-rule accounts, servicers may use either single-item analysis or aggregate-analysis during the phase-in period. In conducting the escrow account analysis, servicers shall use "month-end" accounting. Under month-end accounting, the timing of the disbursements and payments within the month is irrelevant. As of the conversion date, all pre-rule accounts shall comply with the requirements for post-rule accounts in paragraph (c)(4)(ii) of this section. During the phase-in period, the transfer of servicing of a pre-rule account to another servicer does not convert the account to a post-rule account. After the effective date of this rule, refinancing transactions (as defined in § 3500.2) shall comply with the requirements for post-rule accounts.

(ii) *Post-rule accounts.* For post-rule accounts, servicers shall use aggregate accounting to conduct an escrow account analysis. In conducting the escrow account analysis, servicers shall use "month-end" accounting. Under month-end accounting, the timing of the disbursements and payments within the month is irrelevant.

(5) *Cushion.* For post-rule accounts, the cushion shall be no greater than one-sixth (⅙) of the estimated total annual disbursements from the escrow account using aggregate analysis accounting. For pre-rule accounts, the cushion may not exceed the total of one-sixth of the estimated annual disbursements for each escrow account item using single-item analysis accounting. In determining the cushion using single-item analysis, a servicer shall not divide an escrow account item into sub-accounts, even if the payee requires installment payments.

(6) *Restrictions on pre-accrual.* For pre-rule accounts, a servicer shall not require any pre-accrual that results in the escrow account balance exceeding the limits of paragraph (c)(1) of this section. In addition, if the mortgage documents in a pre-rule account are silent about the amount of pre-accrual, the servicer shall not require in excess of one month of pre-accrual, subject to the additional limitations provided in paragraph (c)(8) of this section. For post-rule accounts, a servicer shall not practice pre-accrual.

(7) *Servicer estimates of disbursement amounts.* To conduct an escrow account analysis, the servicer shall estimate the amount of escrow account items to be disbursed. If the servicer knows the charge for an escrow item in the next computation year, then the servicer shall use that amount in estimating disbursement amounts. If the charge is unknown to the servicer, the servicer may base the estimate on the preceding year's charge, or the preceding year's charge as modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items). In cases of unassessed new construction, the servicer may base an estimate on the assessment of comparable residential property in the market area.

(8) *Provisions in mortgage documents.* The servicer shall examine the mortgage loan documents to determine the applicable cushion and limitations on pre-accrual for each escrow account. If the mortgage loan documents provide for lower cushion limits or less pre-accrual than this rule, then the terms of the loan documents apply. Where the terms of any mortgage loan document allow greater payments to an escrow account than allowed by this rule, then this rule controls the applicable limits. Where the mortgage loan documents do not specifically establish an escrow account, whether a servicer may establish an escrow account for the loan is a matter for determination by State law. If the mortgage loan document is silent on the escrow account limits (for cushion or pre-accrual) and a servicer establishes an escrow account under State law, then the limitations of this rule apply unless State law provides for a lower amount. If the loan documents provide for escrow accounts up to the RESPA limits, then the servicer may require the maximum amounts consistent with this rule, unless an applicable State law sets a lesser amount.

(9) *Assessments for periods longer than one year.* Some escrow account items may be billed for periods longer than one year. For example, servicers may need to collect flood insurance or water purification escrow funds for payment every three years. In such cases, the servicer shall estimate the borrower's payments for a full cycle of disbursements. For a flood insurance premium payable every 3 years, the servicer shall collect the payments reflecting 36 equal monthly amounts. For two out of the three years, however, the account balance may not reach its low monthly balance because the low point will be on a three-year cycle, as compared to an annual one. The annual escrow account statement shall explain this situation (see example in Appendix J to this part).

(d) *Methods of escrow account analysis.* Paragraph (c) of this section prescribes acceptable accounting methods. The following sets forth the steps servicers shall use to determine whether their use of an acceptable accounting method conforms with the limitations in § 3500.17(c)(1). The steps set forth in this section derive maximum limits. Servicers may use accounting procedures that result in lower target balances. In particular, servicers may use a cushion less than the permissible cushion or no cushion at all. This section does not require the use of a cushion.

(1) *Aggregate analysis.* (i) When a servicer uses aggregate analysis in conducting the escrow account analysis, the target balances may not exceed the balances computed according to the following arithmetic operations:

(A) The servicer first projects a trial balance for the account as a whole over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make monthly payments equal to one-twelfth of the estimated total annual escrow account disbursements.

(B) The servicer then examines the monthly trial balances and adds to the first monthly balance an amount just sufficient to bring the lowest monthly trial balance to zero, and adjusts all other monthly balances accordingly.

(C) The servicer then adds to the monthly balances the permissible cushion. The cushion is two months of the borrower's escrow payments to the servicer or a lesser amount specified by State law or the mortgage document (net of any increases or decreases because of prior year shortages or surpluses, respectively).

(ii) *Lowest monthly balance.* Under aggregate analysis, the lowest monthly target balance for the account shall be less than or equal to one-sixth of the estimated total annual escrow account disbursements or a lesser amount specified by State law or the mortgage

document. The target balances that the servicer derives using these steps yield the maximum limit for the escrow account. Appendix F to this part illustrates these steps.

(2) *Single-item or other non-aggregate analysis method.* (i) When a servicer uses single-item analysis or any hybrid accounting method in conducting an escrow account analysis during the phase-in period, the target balances may not exceed the balances computed according to the following arithmetic operations:

(A) The servicer first projects a trial balance for each item over the next computation year (a trial running balance). In doing so the servicer assumes that it will make estimated disbursements on or before the earlier of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty. The servicer does not use pre-accrual on these disbursement dates. The servicer also assumes that the borrower will make periodic payments equal to one-twelfth of the estimated total annual escrow account disbursements.

(B) The servicer then examines the monthly trial balance for each escrow account item and adds to the first monthly balance for each separate item an amount just sufficient to bring the lowest monthly trial balance for that item to zero, and then adjusts all other monthly balances accordingly.

(C) The servicer then adds the permissible cushion, if any, to the monthly balance for the separate escrow account item. The permissible cushion is two months of escrow payments for the escrow account item (net of any increases or decreases because of prior year shortages or surpluses, respectively) or a lesser amount specified by State law or the mortgage document.

(D) The servicer then examines the balances for each item to make certain that the lowest monthly balance for that item is less than or equal to one-sixth of the estimated total annual escrow account disbursements for that item or a lesser amount specified by State law or the mortgage document.

(ii) In performing an escrow account analysis using single-item analysis, servicers may account for each escrow account item separately, but servicers shall not further divide accounts into sub-accounts, even if the payee of a disbursement requires installment payments. The target balances that the servicer derives using these steps yield the maximum limit for the escrow account. Appendix F to this part illustrates these steps.

(e) *Transfer of servicing.* (1) If the new servicer changes either the monthly payment amount or the accounting method used by the transferor (old) servicer, then the new servicer shall provide the borrower with an initial escrow account statement within 60 days of the date of servicing transfer.

(i) Where a new servicer provides an initial escrow account statement upon the transfer of servicing, the new servicer shall use the effective date of the transfer of servicing to establish the new escrow account computation year.

(ii) Where the new servicer retains the monthly payments and accounting method used by the transferor servicer, then the new servicer may continue to use the escrow account computation year established by the transferor servicer or may choose to establish a different computation year using a short-year statement. At the completion of the escrow account computation year or any short year, the new servicer shall perform an escrow analysis and provide the borrower with an annual escrow account statement.

(2) The new servicer shall treat shortages, surpluses and deficiencies in the transferred escrow account according to the procedures set forth in § 3500.17(f).

(3) A pre-rule account remains a pre-rule account upon the transfer of servicing to a new servicer so long as the transfer occurs before the conversion date.

(f) *Shortages, surpluses, and deficiencies requirements.* (1) *Escrow account analysis.* For each escrow account, the servicer shall conduct an escrow account analysis to determine whether a surplus, shortage or deficiency exists.

(i) As noted in §§ 3500.17(c)(2) and (3), the servicer shall conduct an escrow account analysis upon establishing an escrow account and at completion of the escrow account computation year.

(ii) The servicer may conduct an escrow account analysis at other times during the escrow computation year. If a servicer advances funds in paying a disbursement, which is not the result of a borrower's payment default under the underlying mortgage document, then the servicer shall conduct an escrow account analysis to determine the extent of the deficiency before seeking repayment of the funds from the borrower under this paragraph (f).

(2) *Surpluses.* (i) If an escrow account analysis discloses a surplus, the servicer shall, within 30 days from the date of the analysis, refund the surplus to the borrower if the surplus is greater than or equal to 50 dollars ($50). If the surplus is less than 50 dollars ($50), the servicer may refund such amount to the borrower, or credit such amount against the next year's escrow payments.

(ii) These provisions regarding surpluses apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may retain the surplus in the escrow account pursuant to the terms of the mortgage loan documents.

(3) *Shortages.* (i) If an escrow account analysis discloses a shortage of less than one month's escrow account payment, then the servicer has three possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it;

(B) The servicer may allow the borrower to pay the shortage amount within 30 days; or

(C) The servicer may allow the borrower to repay the shortage in equal monthly payments over a 12-month period.

(ii) If an escrow account analysis discloses a shortage that is greater than or equal to one month's escrow account payment, then the servicer has two possible courses of action:

(A) The servicer may allow a shortage to exist and do nothing to change it; or

(B) The servicer shall allow the borrower to repay the shortage in equal monthly payments over a 12-month period.

(4) *Deficiency.* If the escrow account analysis confirms a deficiency, then the servicer may require the borrower to pay additional monthly deposits to the account to eliminate the deficiency.

(i) If the deficiency is less than one month's escrow account payment, then the servicer:

(A) May allow the deficiency to exist and do nothing to change it;

(B) May require the borrower to repay the deficiency within 30 days; or

(C) May allow the borrower to repay the deficiency in 2 or more equal monthly payments over a period of up to 12 months.

(ii) If the deficiency is greater than or equal to 1 month's escrow account payment, the servicer may allow the deficiency to exist and do nothing to change it or may allow the borrower to repay the deficiency in 2 or more equal monthly payments over a period of up to 12 months.

(iii) These provisions regarding deficiencies apply if the borrower is current at the time of the escrow account analysis. A borrower is current if the servicer receives the borrower's

payments within 30 days of the payment due date. If the servicer does not receive the borrower's payment within 30 days of the payment due date, then the servicer may recover the deficiency pursuant to the terms of the mortgage loan documents.

(5) *Notice of Shortage or Deficiency in Escrow Account.* The servicer shall notify the borrower at least once during the escrow account computation year if there is a shortage or deficiency in the escrow account. The notice may be part of the annual escrow account statement or it may be a separate document.

(g) *Initial Escrow Account Statement.* (1) *Submission at settlement, or within 45 calendar days of settlement.* As noted in § 3500.17(c)(2), the servicer shall conduct an escrow account analysis before establishing an escrow account to determine the amount the borrower shall deposit into the escrow account, subject to the limitations of § 3500.17(c)(1)(i). After conducting the escrow account analysis for each escrow account, the servicer shall submit an initial escrow account statement to the borrower at settlement or within 45 calendar days of settlement for escrow accounts that are established as a condition of the loan.

(i) The initial escrow account statement shall include the amount of the borrower's monthly mortgage payment and the portion of the monthly payment going into the escrow account and shall itemize the estimated taxes, insurance premiums, and other charges that the servicer reasonably anticipates to be paid from the escrow account during the escrow account computation year and the anticipated disbursement dates of those charges. The initial escrow account statement shall indicate the amount that the servicer selects as a cushion. The statement shall include a trial running balance for the account.

(ii) Pursuant to § 3500.17(h)(2), the servicer may incorporate the initial escrow account statement into the HUD–1 or HUD–1A settlement statement. If the servicer does not incorporate the initial escrow account statement into the HUD–1 or HUD–1A settlement statement, then the servicer shall submit the initial escrow account statement to the borrower as a separate document.

(2) *Time of submission of initial escrow account statement for an escrow account established after settlement.* For escrow accounts established after settlement (and which are not a condition of the loan), a servicer shall submit an initial escrow account statement to a borrower within 45 calendar days of the date of establishment of the escrow account.

(h) *Format for initial escrow account statement.* (1) The format and a completed example for an initial escrow account statement is set out in Appendix G of this part.

(2) *Incorporation of Initial Escrow Account Statement Into HUD–1 or HUD–1A Settlement Statement.* Pursuant to § 3500.9(a)(11), a servicer may add the initial escrow account statement to the HUD–1 or HUD–1A settlement statement. The servicer may include the initial escrow account statement in the basic text or may attach the initial escrow account statement as an additional page to the HUD–1 or HUD–1A settlement statement.

(3) *Identification of Payees.* The initial escrow account statement need not identify a specific payee by name if it provides sufficient information to identify the use of the funds. For example, appropriate entries include: county taxes, hazard insurance, condominium dues, etc. If a particular payee, such as a taxing body, receives more than one payment during the escrow account computation year, the statement shall indicate each payment and disbursement date. If there are several taxing authorities or insurers, the statement shall identify each taxing body or insurer (e.g., "City Taxes", "School Taxes", "Hazard Insurance", or "Flood Insurance," etc.).

(i) *Annual Escrow Account Statements.* For each escrow account, a servicer shall submit an annual escrow account statement to the borrower within 30 days of the completion of the escrow account computation year. The servicer shall conduct an escrow account analysis before submitting an annual escrow account statement to the borrower.

(1) *Contents of Annual Escrow Account Statement.* The annual escrow account statement shall provide an account history, reflecting the activity in the escrow account during the escrow account computation year, and a projection of the activity in the account for the next year. The annual escrow account statement shall include, at a minimum, the following:

(i) The amount of the borrower's current monthly mortgage payment and the portion of the monthly payment going into the escrow account;

(ii) The amount of the past year's monthly mortgage payment and the portion of the monthly payment that went into the escrow account;

(iii) The total amount paid into the escrow account during the past computation year;

(iv) The total amount paid out of the escrow account during the same period for taxes, insurance premiums, and other charges;

(v) The balance in the escrow account at the end of the period;

(vi) An explanation of how any surplus is being handled by the servicer;

(vii) An explanation of how any shortage or deficiency is to be paid by the borrower; and

(viii) If applicable, the reason(s) why the estimated low monthly balance was not reached.

(2) *No annual statements necessary in cases of default or foreclosure.* This paragraph contains an exemption to the provision of § 3500.17(i)(1). If at the time the servicer conducts the escrow account analysis the borrower is more than 30 days overdue, then the servicer is exempt from the requirements of submitting an annual escrow account statement to the borrower under § 3500.17(i). This exemption also applies in situations where the servicer has brought an action for foreclosure under the underlying mortgage loan.

(3) *Delivery with other material.* The servicer may deliver the annual escrow account statement to the borrower with other statements or materials, including the Substitute 1098, which is provided for federal income tax purposes.

(4) *Short year statements.* A servicer may issue a short year annual escrow account statement ("short year statement") to change one escrow account computation year to another. By using a short year statement a servicer may adjust its production schedule or alter the escrow account computation year for the escrow account.

(i) *Effect of short year statement.* The short year statement shall end the "escrow account computation year" for the escrow account and establish the beginning date of the new escrow account computation year. The servicer shall deliver the short year statement to the borrower within 60 days from the end of the short year.

(ii) *Short year statement upon servicing transfer.* Upon the transfer of servicing, the transferor (old) servicer shall submit a short year statement to the borrower within 60 days of the effective date of transfer.

(iii) *Short year statement upon loan payoff.* If a borrower pays off a mortgage loan during the escrow account computation year, the servicer shall submit a short year statement to the borrower within 60 days after receiving the pay-off funds.

(j) *Formats for annual escrow account statement.* The formats and completed examples for annual escrow account statements using single-item analysis (pre-rule accounts) and aggregate

analysis are set out in Appendix I of this part.

(k) *Timely payments.* (1) If the terms of any federally related mortgage loan require the borrower to make payments to an escrow account, the servicer shall pay the disbursements in a timely manner, that is, by the disbursement date, so long as the borrower's payment is not more than 30 days overdue. In calculating the disbursement date, the servicer shall use a date on or before the *earlier* of the deadline to take advantage of discounts, if available, or the deadline to avoid a penalty.

(2) The servicer shall advance funds to make disbursements in a timely manner so long as the borrower's payment is not more than 30 days overdue. Upon advancing funds to pay a disbursement, the servicer may seek repayment from the borrower for the deficiency pursuant to § 3500.17(f).

(l) *System of recordkeeping.* (1) Each servicer shall keep records, which may involve electronic storage, microfiche storage, or any method of computerized storage, so long as the information is easily retrievable, reflecting the servicer's handling of each borrower's escrow account. The servicer's records shall include, but not be limited to, the payment of amounts into and from the escrow account and the submission of initial and annual escrow account statements to the borrower.

(2) The servicer responsible for servicing the borrower's escrow account shall maintain the records for that account for a period of at least five years after the servicer last serviced the escrow account.

(3) A servicer shall provide the Secretary with information contained in the servicer's records for a specific escrow account, or for a number or class of escrow accounts, within 30 days of the Secretary's written request for the information. The servicer shall convert any information contained in electronic storage, microfiche or computerized storage to paper copies for review by the Secretary.

(i) To aid in investigations, the Secretary may also issue an administrative subpoena for the production of documents, and for the testimony of such witnesses as the Secretary deems advisable.

(ii) If the subpoenaed party refuses to obey the Secretary's administrative subpoena, the Secretary is authorized to seek a court order requiring compliance with the subpoena from any United States district court. Failure to obey such an order of the court may be punished as contempt of court.

(4) Borrowers may seek information contained in the servicer's records by complying with the provisions set forth in 12 U.S.C. 2605(e) and § 3500.21(f).

(5) After receiving a request (by letter or subpoena) from the Department for information relating to whether a servicer submitted an escrow account statement to the borrower, the servicer shall respond within 30 days. If the servicer is unable to provide the Department with such information, the Secretary shall deem that lack of information to be evidence of the servicer's failure to submit the statement to the borrower.

(m) *Penalties.* (1) A servicer's failure to submit to a borrower an initial or annual escrow account statement meeting the requirements of this part shall constitute a violation of the RESPA and this section. For each such violation, the Secretary shall assess a civil penalty of 50 dollars ($50), except that the total of the assessed penalties shall not exceed $100,000 for any one servicer for violations that occur during any consecutive 12-month period.

(2) Violations described in paragraph (m)(1) of this section do not require any proof of intent. However, if a lender or servicer is shown to have intentionally disregarded the requirements that it submit the escrow account statement to the borrower, then the Secretary shall assess a civil penalty of $100 for each violation, with no limit on the total amount of the penalty.

(n) *Civil penalties procedures.* The following procedures shall apply whenever the Department seeks to impose a civil money penalty for violation of section 10(c) of RESPA (12 U.S.C. 2609(c)):

(1) *Purpose and scope.* This paragraph explains the procedures by which the Secretary may impose penalties under 12 U.S.C. 2609(d). These procedures include administrative hearings, judicial review, and collection of penalties. This paragraph governs penalties imposed under 12 U.S.C. 2609(d) and, when noted, adopts those portions of 24 CFR part 30, subpart E, that apply to all other civil penalty proceedings initiated by the Secretary.

(2) *Authority.* The Secretary has the authority to impose civil penalties under section 10(d) of RESPA (12 U.S.C. 2609(d)).

(3) *Notice of intent to impose civil money penalties.* Whenever the Secretary intends to impose a civil money penalty for violations of section 10(c) of RESPA (12 U.S.C. 2609(c)), the responsible program official, or his or her designee, shall serve a written Notice of Intent to Impose Civil Money Penalties (Notice of Intent) upon any servicer on which the Secretary intends to impose the penalty. A copy of the Notice of Intent must be filed with the Chief Docket Clerk, Office of Administrative Law Judges, at the address provided in the Notice of Intent. The Notice of Intent will provide:

(i) A short, plain statement of the facts upon which the Secretary has determined that a civil money penalty should be imposed, including a brief description of the specific violations under 12 U.S.C. 2609(c) with which the servicer is charged and whether such violations are believed to be intentional or unintentional in nature, or a combination thereof;

(ii) The amount of the civil money penalty that the Secretary intends to impose and whether the limitations in 12 U.S.C. 2609(d)(1), apply;

(iii) The right of the servicer to a hearing on the record to appeal the Secretary's preliminary determination to impose a civil penalty;

(iv) The procedures to appeal the penalty;

(v) The consequences of failure to appeal the penalty; and

(vi) The name, address, and telephone number of the representative of the Department, and the address of the Chief Docket Clerk, Office of Administrative Law Judges, should the servicer decide to appeal the penalty.

(4) *Appeal procedures.* (i) *Answer.* To appeal the imposition of a penalty, a servicer shall, within 30 days after receiving service of the Notice of Intent, file a written Answer with the Chief Docket Clerk, Office of Administrative Law Judges, Department of Housing and Urban Development, at the address provided in the Notice of Intent. The Answer shall include a statement that the servicer admits, denies, or does not have (and is unable to obtain) sufficient information to admit or deny each allegation made in the Notice of Intent. A statement of lack of information shall have the effect of a denial. Any allegation that is not denied shall be deemed admitted. Failure to submit an Answer within the required period of time will result in a decision by the Administrative Law Judge based upon the Department's submission of evidence in the Notice of Intent.

(ii) *Submission of evidence.* A servicer that receives the Notice of Intent has a right to present evidence. Evidence must be submitted within 45 calendar days from the date of service of the Notice of Intent, or by such other time as may be established by the Administrative Law Judge (ALJ). The servicer's failure to submit evidence within the required period of time will result in a decision by the Administrative Law Judge based upon the Department's submission of

evidence in the Notice of Intent. The servicer may present evidence of the following:

(A) The servicer did submit the required escrow account statement(s) to the borrower(s); or

(B) Even if the servicer did not submit the required statement(s), that the failure was not the result of an intentional disregard of the requirements of the RESPA (for purposes of determining the penalty).

(iii) *Review of the record.* The Administrative Law Judge will review the evidence submitted by the servicer, if any, and that submitted by the Department. The Administrative Law Judge shall make a determination based upon a review of the written record, except that the Administrative Law Judge may order an oral hearing if he or she finds that the determination turns on the credibility or veracity of a witness, or that the matter cannot be resolved by review of the documentary evidence. If the Administrative Law Judge decides that an oral hearing is appropriate, then the procedural rules set forth at 24 CFR part 30, subpart E, shall apply, to the extent that they are not inconsistent with this section.

(iv) *Burden of Proof.* The burden of proof or the burden of going forward with the evidence shall be upon the proponent of an action. The Department's submission of evidence that the servicer's system of records lacks information that the servicer submitted the escrow account statement(s) to the borrower(s) shall satisfy the Department's burden. Upon the Department's presentation of evidence of this lack of information in the servicer's system of records, the burden of proof shifts from the Secretary to the servicer to provide evidence that it submitted the statement(s) to the borrower.

(v) *Standard of Proof.* The standard of proof shall be the preponderance of the evidence.

(5) *Determination of the Administrative Law Judge.*

(i) Following the hearing or the review of the written record, the Administrative Law Judge shall issue a decision that shall contain findings of fact, conclusions of law, and the amount of any penalties imposed. The decision shall include a determination of whether the servicer has failed to submit any required statements and, if so, whether the servicer's failure was the result of an intentional disregard for the law's requirements.

(ii) The Administrative Law Judge shall issue the decision to all parties within 30 days of the submission of the evidence or the post-hearing briefs, whichever is the last to occur.

(iii) The decision of the Administrative Law Judge shall constitute the final decision of the Department and shall be final and binding on the parties.

(6) *Judicial review.* (i) A person against whom the Department has imposed a civil money penalty under this part may obtain a review of the Department's final decision by filing a written petition for a review of the record with the appropriate United States district court.

(ii) The petition must be filed within 30 days after the decision is filed with the Chief Docket Clerk, Office of Administrative Law Judges.

(7) *Collection of penalties.* (i) If any person fails to comply with the Department's final decision imposing a civil money penalty, the Secretary, if the time for judicial review of the decision has expired, may request the Attorney General to bring an action in an appropriate United States district court to obtain a judgment against the person that has failed to comply with the Department's final decision.

(ii) In any such collection action, the validity and appropriateness of the Department's final decision imposing the civil penalty shall not be subject to review in the district court.

(iii) The Secretary may obtain such other relief as may be available, including attorney fees and other expenses in connection with the collection action.

(iv) Interest on and other charges for any unpaid penalty may be assessed in accordance with 31 U.S.C. 3717.

(8) *Offset.* In addition to any other rights as a creditor, the Secretary may seek to collect a civil money penalty through administrative offset.

(9) At any time before the decision of the Administrative Law Judge, the Secretary and the servicer may enter into an administrative settlement. The settlement may include provisions for interest, attorney's fees, and costs related to the proceeding. Such settlement will terminate the appearance before the Administrative Law Judge.

(Approved by the Office of Management and Budget under control number 2502-0501)

9. Appendix A is amended by adding two new paragraphs after the paragraph for Lines 1000–1008 under the heading "Line Item Instructions" and by adding Appendices F, G, H, I, and J, to read as follows:

Appendix A to Part 3500—Instructions for Completing HUD–1 and HUD–1a Settlement Statements

* * * * *

Line Item Instructions

* * * * *

If the settlement agent uses a cushion in determining the initial entries for lines 1000–1008 of the HUD–1 or HUD–1A settlement statement, then the settlement agent shall make an adjustment to reflect the appropriate starting balance in the escrow account under an aggregate accounting method. The cushion using the aggregate accounting is computed according to the steps set out in § 3500.17(d). The adjustment reflects the difference between the amounts collected as a cushion on the lines 1000–1008 for individual escrow items and the permissible cushion under the aggregate accounting method. The servicer shall enter the aggregate adjustment amount on the final line of the 1000 series of the HUD–1 or the HUD–1A statement. The amount will always be $–0– or a negative number.

During the phase-in period, as defined in § 3500.17(b), an alternative procedure is available. If a servicer has not yet conducted the escrow account analysis to determine the aggregate accounting starting balance, the settlement agent may initially calculate the 1000 series deposits for the HUD–1 and HUD–1A settlement statement using single-item analysis with a one-month cushion (unless the mortgage loan documents indicate a smaller amount). In the escrow account analysis conducted within 45 days of settlement, the servicer shall adjust the escrow account to reflect the aggregate accounting balance.

* * * * *

Appendix F to Part 3500—[Added]

APPENDIX F—ARITHMETIC STEPS

I. Example Illustrating Aggregate Analysis:

ASSUMPTIONS:

Disbursements:
- $360 for school taxes disbursed on September 20
- $1,200 for county property taxes:
- $500 disbursed on July 25
- $700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

STEP 1.—INITIAL TRIAL BALANCE

	Aggregate		
	pmt	disb	bal
Jun	0	0	0
Jul	130	500	−370
Aug	130	0	−240
Sep	130	360	−470
Oct	130	0	−340
Nov	130	0	−210
Dec	130	700	−780
Jan	130	0	−650
Feb	130	0	−520
Mar	130	0	−390
Apr	130	0	−260
May	130	0	−130
Jun	130	0	0

STEP 2.—ADJUSTED TRIAL BALANCE—Continued

[Increase monthly balances to eliminate negative balances]

	Aggregate		
	pmt	disb	bal
Sep	130	360	310
Oct	130	0	440
Nov	130	0	570
Dec	130	700	0
Jan	130	0	130
Feb	130	0	260
Mar	130	0	390
Apr	130	0	520
May	130	0	650
Jun	130	0	780

STEP 3.—TRIAL BALANCE WITH CUSHION—Continued

	Aggregate		
	pmt	disb	bal
Oct	130	0	700
Nov	130	0	830
Dec	130	700	260
Jan	130	0	390
Feb	130	0	520
Mar	130	0	650
Apr	130	0	780
May	130	0	910
Jul	130	0	1040

STEP 2.—ADJUSTED TRIAL BALANCE

[Increase monthly balances to eliminate negative balances]

	Aggregate		
	pmt	disb	bal
Jun	0	0	780
Jul	130	500	410
Aug	130	0	540

STEP 3.—TRIAL BALANCE WITH CUSHION

	Aggregate		
	pmt	disb	bal
Jun	0	0	1040
Jul	130	500	670
Aug	130	0	800
Sep	130	360	570

II. Example Illustrating Single-Item Analysis (Existing Accounts)

ASSUMPTIONS:

Disbursements:
- $360 for school taxes disbursed on September 20
- $1,200 for county property taxes:
- $500 disbursed on July 25
- $700 disbursed on December 10

Cushion: One-sixth of estimated annual disbursements

Settlement: May 15

First Payment: July 1

STEP 1.—INITIAL TRIAL BALANCE

	Single—item					
	Taxes			School taxes	pmt	
	pmt	disb	bal		disb	bal
Jun	0	0	0	0	0	0
Jul	100	500	−400	30	0	30
Aug	100	0	−300	30	0	60
Sep	100	0	−200	30	360	−270
Oct	100	0	−100	30	0	−240
Nov	100	0	0	30	0	−210
Dec	100	700	−600	30	0	−180
Jan	100	0	−500	30	0	−150
Feb	100	0	−400	30	0	−120
Mar	100	0	−300	30	0	−90
Apr	100	0	−200	30	0	−60
May	100	0	−100	30	0	−30
Jun	100	0	0	30	0	−0

STEP 2.—ADJUSTED TRIAL BALANCE (INCREASE MONTHLY BALANCES TO ELIMINATE NEGATIVE BALANCES)

	Single-item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
Jun	0	0	600	0	0	270
Jul	100	500	200	30	0	300
Aug	100	0	300	30	0	330
Sep	100	0	400	30	360	0
Oct	100	0	500	30	0	30
Nov	100	0	600	30	0	60
Dec	100	700	0	30	0	90
Jan	100	0	100	30	0	120
Feb	100	0	200	30	0	150
Mar	100	0	300	30	0	180
Apr	100	0	400	30	0	210
May	100	0	500	30	0	240
Jun	100	0	600	30	0	270

STEP 3—TRIAL BALANCE WITH CUSHION

	Single-Item					
	Taxes			School taxes		
	pmt	disb	bal	pmt	disb	bal
Jun	0	0	800	0	0	330
Jul	100	500	400	30	0	360
Aug	100	0	500	30	0	390
Sep	100	0	600	30	360	60
Oct	100	0	700	30	0	90
Nov	100	0	800	30	0	120
Dec	100	700	200	30	0	150
Jan	100	0	300	30	0	180
Feb	100	0	400	30	0	210
Mar	100	0	500	30	0	240
Apr	100	0	600	30	0	270
May	100	0	700	30	0	300
Jun	100	0	800	30	0	330

BILLING CODE 4210-27-P

Appendix G to Part 3500—[Added]

APPENDIX G — FORMAT

[Servicer's name, address, and toll-free number.]

INITIAL ESCROW ACCOUNT DISCLOSURE STATEMENT

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE _____ OF WHICH _____ WILL BE FOR PRINCIPAL AND INTEREST AND _____ WILL GO INTO YOUR ESCROW ACCOUNT.

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$_____

[A filled-out format follows.]

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE ESCROW ACCOUNTING COMPUTATION YEAR.)

Cushion selected by servicer: $ _____

APPENDIX G — EXAMPLES

[Servicer's name, address, and toll-free number.]

INITIAL ESCROW ACCOUNT DISCLOSURE STATEMENT

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 1,324 OF WHICH $ 1,124 WILL BE FOR PRINCIPAL AND INTEREST AND $ 200 WILL GO INTO YOUR ESCROW ACCOUNT.

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,200
September	200	0		1,400
October	200	800	taxes	800
November	200	600	insurance	400
December	200	0		600
January	200	0		800
February	200	0		1,000
March	200	0		1,200
April	200	0		1,400
May	200	0		1,600
June	200	0		1,800
July	200	1,000	taxes	1,000
August	200	0		1,200

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE ESCROW ACCOUNTING COMPUTATION YEAR.)

Cushion selected by servicer: $ 400

Appendix H to Part 3500—[Added]

APPENDIX H — BIWEEKLY ACCOUNTING

[Servicer's name, address, and toll-free number.]

INITIAL ESCROW ACCOUNT DISCLOSURE STATEMENT

YOUR BIWEEKLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 750 OF WHICH $ 630 WILL BE FOR PRINCIPAL AND INTEREST AND $ 120 WILL GO INTO YOUR ESCROW ACCOUNT.

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,000
1	120	0		1,120
2	120	0		1,240
3	120	520	taxes	840
4	120	0		960
5	120	0		1,080
6	120	0		1,200
7	120	0		1,320
8	120	600	taxes	840
9	120	0		960
10	120	0		1,080
11	120	0		1,200
12	120	0		1,320
13	120	0		1,440
14	120	0		1,560
15	120	0		1,680
16	120	0		1,800
17	120	0		1,920
18	120	0		2,040
19	120	0		2,160
20	120	1,200	insurance	1,080
21	120	0		1,200
22	120	800	taxes	520
23	120	0		640
24	120	0		760
25	120	0		880
26	120	0		1,000

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE ESCROW ACCOUNTING COMPUTATION YEAR.)

Cushion selected by servicer: $ 520

Appendix I to Part 3500—[Added]

APPENDIX I —ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT: FORMATS AND EXAMPLES

[Account history of pre-rule accounts computed using single-item analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *ACCOUNT HISTORY*

THIS IS A STATEMENT OF ACTUAL ACTIVITY IN YOUR ESCROW ACCOUNT FROM _____ TO _____. {COMPARE IT TO THE ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*—WHICH WAS SENT TO YOU LAST YEAR ON _____ (ANOTHER COPY ENCLOSED).}

[INSTRUCTIONS TO PREPARER: delete material in brackets {} if initial escrow account disclosure statement or annual disclosure payment history was not delivered in previous year. Delete "{" and "}" if it was delivered. This instruction paragraph should not be included in the form.]

Your monthly mortgage payment for the past year was _____ of which _____ was for principal and interest and _____ went into your escrow account.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$_____

[A filled-out example follows.]

Last year, we anticipated that payments from your account would be made during this period equaling $_____. Under Federal law, your low monthly balance should not have exceeded $_____. Under your mortgage contract, your low monthly balance should not have exceeded $_____.

The reason(s) that your low monthly balance was greater than _____ is:

_____(a) the _____ bill was received later than expected and paid later than expected.

_____(b) the _____ bill was received on time but paid later than expected.

_____(c) the projected amount of your _____ bill was too great.

_____(d) your monthly payment for _____ was larger than expected or paid earlier than expected.

_____(e) a surplus from the previous year had yet to be eliminated.

_____(f) other:

[Projections for pre-rule accounts computed using single-item analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE _____ OF WHICH _____ WILL BE FOR PRINCIPAL AND INTEREST AND _____ WILL GO INTO YOUR ESCROW ACCOUNT.

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$_____

[A filled-out format follows.]

Your current balance, from the last month of the account history, is $_____. Your starting balance according to this analysis should be $_____.

[This means you have a surplus of $_____. This surplus must be returned to you unless it is less than $50, in which case we have the additional option of keeping it and lowering your monthly payments accordingly. (We are sending you a check for the surplus.) (We are keeping the surplus and lowering your monthly payments.)]

[This means you have a shortage of $_____. This shortage may be collected from you over a period of 12 months unless the shortage is less than 1 month's deposit, in which case we have the additional option of requesting payment within 1 month. (We have decided to collect it over 12 months.) (We will ask for it to be paid in 1 month.) (We have decided to do nothing.)]

[This means you have a deficiency of $_____. This deficiency may be collected from you over a period of 2 to 12 months unless the deficiency is less than 1 month's deposit, in which case we have the additional option of requesting payment within 1 month. (We will ask you to pay it over _____ months.) (We have decided to do nothing.)]

[INSTRUCTIONS TO PREPARER: The servicer is to use the appropriate paragraph above if there is a surplus, shortage, or deficiency. The servicer should then print the response selected from the choices given. This instruction paragraph should not be included in the form.]

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE NEXT ESCROW ACCOUNTING COMPUTATION YEAR.)

[Account history of pre-rule accounts computed using single-item analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *ACCOUNT HISTORY*

THIS IS A STATEMENT OF ACTUAL ACTIVITY IN YOUR ESCROW ACCOUNT FROM SEPT. 1993 TO AUG. 1994. COMPARE IT TO THE ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR* — WHICH WAS SENT TO YOU LAST YEAR ON AUGUST 16 (ANOTHER COPY IS ENCLOSED).

YOUR MONTHLY MORTGAGE PAYMENT FOR THE PAST YEAR WAS $ 1,324 OF WHICH $ 1,124 WAS FOR PRINCIPAL AND INTEREST AND $ 200 WENT INTO YOUR ESCROW ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,350
September	200	0		1,550
October	200	680	taxes	1,070
November	200	600	insurance	670
December	200	0		870
January	200	0		1,070
February	200	0		1,270
March	200	0		1,470
April	200	0		1,670
May	200	0		1,870
June	200	0		2,070
July	200	1,000	taxes	1,270
August	200	0		1,470

Last year, we anticipated that payments from your account would be made during this period equaling $ 2,400. Under Federal law, your low monthly balance should not have exceeded $ 550. Under your mortgage contract, your low monthly balance should not have exceeded $ 550.

The reason(s) that your low monthly balance was greater than $ 550 is:

_____(a) the _____ bill was received later than expected and paid later than expected.

_____(b) the _____ bill was received on time but paid later than expected.

XXX (c) the projected amount of your tax bill was too great.

_____(d) your monthly payment for _____ was larger than expected or paid earlier than expected.

_____(e) a surplus from the previous year had yet to be eliminated.

_____(f) other:

[Projections for pre-rule accounts computed using single-item analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 1,314 OF WHICH $ 1,124 WILL BE FOR PRINCIPAL AND INTEREST AND $ 190 WILL GO INTO YOUR ESCROW ACCOUNT.

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,230
September	190	0		1,420
October	190	680	taxes	930
November	190	600	insurance	520
December	190	0		710
January	190	0		900
February	190	0		1,090
March	190	0		1,280
April	190	0		1,470
May	190	0		1,660
June	190	0		1,850
July	190	1,000	taxes	1,040
August	190	0		1,230

Your current balance, from the last month of the account history, is $ 1,470. Your starting balance according to this analysis should be $ 1,230.

This means you have a surplus of $ 240. This surplus must be returned to you unless it is less than $50, in which case we have the additional option of keeping it and lowering your monthly payments accordingly. We are sending you a check for the surplus.

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE NEXT ESCROW ACCOUNTING COMPUTATION YEAR.)

[Account history of pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *ACCOUNT HISTORY*

THIS IS A STATEMENT OF ACTUAL ACTIVITY IN YOUR ESCROW ACCOUNT FROM _____ TO _____. {COMPARE IT TO THE ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*—WHICH WAS SENT TO YOU LAST YEAR ON _____ (ANOTHER COPY ENCLOSED).}

[INSTRUCTIONS TO PREPARER: delete material in brackets {} if initial escrow account disclosure statement or annual disclosure payment history was not delivered in previous year. Delete "{" and "}" if it was delivered. This instruction paragraph should not be included in the form.]

Your monthly mortgage payment for the past year was _____ of which _____ was for principal and interest and _____ went into your escrow account.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance

Starting balance: ..... $_____

[A filled-out example follows.]

Last year, we anticipated that payments from your account would be made during this period equaling $_____. Under Federal law, your low monthly balance should not have exceeded $_____ or 1/6 of anticipated payments. Under your mortgage contract, your low monthly balance should not have exceeded $_____.

The reason(s) that your low monthly balance was greater than _____ is:

_____(a) the _____ bill was received later than expected and paid later than expected.

_____(b) the _____ bill was received on time but paid later than expected.

_____(c) the projected amount of your _____ bill was too great.

_____(d) your monthly payment for _____ was larger than expected or paid earlier than expected.

_____(e) a surplus from the previous year had yet to be eliminated.

_____(f) other:

[Projections for pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE _____ OF WHICH _____ WILL BE FOR PRINCIPAL AND INTEREST AND _____ WILL GO INTO YOUR ESCROW ACCOUNT.

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance

Starting balance: ..... $_____

[A filled-out format follows.]

Your current balance, from the last month of the account history, is $_____. Your starting balance according to this analysis should be $_____.

[This means you have a surplus of $_____. This surplus must be returned to you unless it is less than $50, in which case we have the additional option of keeping it and lowering your monthly payments accordingly. (We are sending you a check for the surplus.) (We are keeping the surplus and lowering your monthly payments.)]

[This means you have a shortage of $_____. This shortage may be collected from you over a period of 12 months unless the shortage is less than 1 month's deposit, in which case we have the additional option of requesting payment within 1 month. (We have decided to collect it over 12 months.) (We will ask for it to be paid in 1 month.) (We have decided to do nothing.)]

[This means you have a deficiency of $_____. This deficiency may be collected from you over a period of 2 to 12 months unless the deficiency is less than 1 month's deposit, in which case we have the additional option of requesting payment within 1 month. (We will ask you to pay it over _____ months.) (We have decided to do nothing.)]

[INSTRUCTIONS TO PREPARER: The servicer is to use the appropriate paragraph above if there is a surplus, shortage, or deficiency. The servicer should then print the response selected from the choices given. This instruction paragraph should not be included in the form.]

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE NEXT ESCROW ACCOUNTING COMPUTATION YEAR.)

[Account history of pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *ACCOUNT HISTORY*

THIS IS A STATEMENT OF ACTUAL ACTIVITY IN YOUR ESCROW ACCOUNT FROM SEPT. 1993 TO AUG. 1994. COMPARE IT TO THE ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR* — WHICH WAS SENT TO YOU LAST YEAR ON AUGUST 16 (ANOTHER COPY IS ENCLOSED).

YOUR MONTHLY MORTGAGE PAYMENT FOR THE PAST YEAR WAS $ 1,324 OF WHICH $ 1,124 WAS FOR PRINCIPAL AND INTEREST AND $ 200 WENT INTO YOUR ESCROW ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,200
September	200	0		1,400
October	200	680	taxes	920
November	200	600	insurance	520
December	200	0		720
January	200	0		920
February	200	0		1,120
March	200	0		1,320
April	200	0		1,520
May	200	0		1,720
June	200	0		1,920
July	200	1,000	taxes	1,120
August	200	0		1,320

Last year, we anticipated that payments from your account would be made during this period equaling $ 2,400. Under Federal law, your low monthly balance should not have exceeded $ 400 or 1/6 of anticipated payments. Under your mortgage contract, your low monthly balance should not have exceeded $ 400.

The reason(s) that your low monthly balance was greater than $ 400 is:

_____(a) the _____ bill was received later than expected and paid later than expected.

_____(b) the _____ bill was received on time but paid later than expected.

XXX (c) the projected amount of your tax bill was too great.

_____(d) your monthly payment for _____ was larger than expected or paid earlier than expected.

_____(e) a surplus from the previous year had yet to be eliminated.

_____(f) other:

[Projections for pre-rule and post-rule accounts computed using aggregate analysis.]

[Servicer's name, address, and toll-free number.]

ANNUAL ESCROW ACCOUNT DISCLOSURE STATEMENT — *PROJECTIONS FOR COMING YEAR*

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 1,314 OF WHICH $ 1,124 WILL BE FOR PRINCIPAL AND INTEREST AND $ 190 WILL GO INTO YOUR ESCROW ACCOUNT.

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING YEAR BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$1,090
September	190	0		1,280
October	190	680	taxes	790
November	190	600	insurance	380
December	190	0		570
January	190	0		760
February	190	0		950
March	190	0		1,140
April	190	0		1,330
May	190	0		1,520
June	190	0		1,710
July	190	1,000	taxes	900
August	190	0		1,090

Your current balance, from the last month of the account history, is $ 1,320. Your starting balance according to this analysis should be $ 1,090.

This means you have a surplus of $ 230. This surplus must be returned to you unless it is less than $50, in which case we have the additional option of keeping it and lowering your monthly payments accordingly. We are sending you a check for the surplus.

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE NEXT ESCROW ACCOUNTING COMPUTATION YEAR.)

Appendix J to Part 3500—[Added]

APPENDIX J — ANNUAL ESCROW ACCOUNT STATEMENT: THREE-YEAR CYCLE

[Servicer's name, address, and toll-free number.]

INITIAL ESCROW ACCOUNT DISCLOSURE STATEMENT

YOUR MONTHLY MORTGAGE PAYMENT FOR THE COMING YEAR WILL BE $ 870 OF WHICH $ 740 WILL BE FOR PRINCIPAL AND INTEREST AND $ 130 WILL GO INTO YOUR ESCROW ACCOUNT.

THIS IS AN ESTIMATE OF ACTIVITY IN YOUR ESCROW ACCOUNT DURING THE COMING THREE YEARS BASED ON PAYMENTS ANTICIPATED TO BE MADE FROM YOUR ACCOUNT.

Month	Payments to Escrow Account	Payments from Escrow Account	Description	Escrow Account Balance
Starting balance:				$900
January	130	0		1,030
February	130	600	taxes	560
March	130	0		690
April	130	240	insurance	580
May	130	0		710
June	130	0		840
July	130	0		970
August	130	600	taxes	500
September	130	0		630
October	130	0		760
November	130	0		890
December	130	0		1,020
January	130	0		1,150
February	130	600	taxes	680
March	130	360	flood insurance	450
April	130	240	insurance	340
May	130	0		470
June	130	0		600
July	130	0		730
August	130	600	taxes	260
September	130	0		390
October	130	0		520
November	130	0		650
December	130	0		780
January	130	0		910
February	130	600	taxes	440
March	130	0		570
April	130	240	insurance	460
May	130	0		590
June	130	0		720
July	130	0		850
August	130	600	taxes	380
September	130	0		510
October	130	0		640
November	130	0		770
December	130	0		900

(PLEASE KEEP THIS STATEMENT FOR COMPARISON WITH THE ACTUAL ACTIVITY IN YOUR ACCOUNT AT THE END OF THE ESCROW ACCOUNTING COMPUTATION YEAR.)

Cushion selected by servicer: $ 260

BILLING CODE 4210-27-C

Dated: October 7, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94-26583 Filed 10-25-94; 8:45 am]

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federal register

Wednesday
October 26, 1994

Part VI

The President

Proclamation 6748—National Consumer Week

Federal Register
Vol. 59, No. 206
Wednesday, October 26, 1994

Presidential Documents

Title 3—

The President

Proclamation 6748 of October 24, 1994

National Consumers Week, 1994

By the President of the United States of America

A Proclamation

The American marketplace is the great engine of our free enterprise system. Ever-expanding as it evolves in response to consumer needs and desires, it inspires technological innovation and the development of new products and services, and it rewards efficiency and productivity. The framers of our Constitution sought to establish a free market in which competition, ingenuity, and productivity would flourish. Today, it is more apparent than ever that their intent has been realized—Americans can choose from the greatest variety of goods and services in the history of the world.

This extraordinary economic machine works most efficiently when we as consumers are at the controls: when our choices and decisions, our requirements and collective will determine the direction and the workings of the marketplace. But individuals and the Nation's economy suffer when products and services are ineffective, inferior, or unsafe; when prices are unfair; and when consumer needs for reliable information and protection are unmet. If such abuses were to become common, the consequent loss of faith in our free market system would jeopardize our American way of life.

On March 15, 1962, President John F. Kennedy acknowledged the centrality of consumers in our marketplace in his Special Message to Congress on Protecting the Consumer Interest.

> *The Federal Government—by nature the highest spokesman for all the people—has a special obligation to be alert to the consumer's needs and to advance the consumer's interests.*

Since then, what has come to be called the Consumer Bill of Rights has evolved as our marketplace has evolved. At present, it includes:

(1) The Right to Safety—the right to expect that the consumer's health, safety, and financial security will be protected effectively in the marketplace;

(2) The Right to Information—the right to have full and accurate information upon which to make free and considered decisions and to be protected against false or misleading claims;

(3) The Right to Choice—the right to make an informed choice among products and services in a free market at fair and competitive prices;

(4) The Right to Be Heard—the right to a full and fair hearing and equitable resolution of consumer problems; and,

(5) The Right to Consumer Education, added by President Gerald R. Ford in 1975—the right to continuing consumer education without which the consumer cannot enjoy the full benefit of the other enumerated rights.

In the 3 decades since President Kennedy's message, our marketplace has changed. Innovations in such vital areas as materials and electronics, telecommunications technology, health care, food processing and packaging, and financial services; the increasingly fast-paced global economy; and the urgent need to preserve our environment have altered what we buy as well as how we buy. The technological complexity of much of what we buy and, frequently, the distance between buyer and maker or seller have expanded the importance of service. Americans understand that service

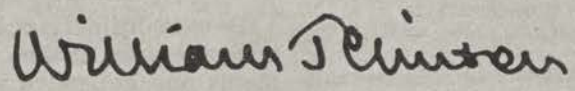
means the commitment to consumers that their experiences in the marketplace will meet all reasonable expectations of civility, responsiveness, convenience, performance, and fairness.

I propose that for National Consumers Week, 1994, we, as a Nation, declare an additional consumer right:

(6) The Right to Service—the right to convenience, courtesy, and responsiveness to consumer problems and needs and all steps necessary to ensure that products and services meet the quality and performance levels claimed for them.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week beginning October 23, 1994, as "National Consumers Week." I urge all business persons, educators, members of the professions, public officials, consumer leaders, and the media to observe this week by emphasizing and promoting the fundamental importance of consumer rights in our marketplace.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of October, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and nineteenth.



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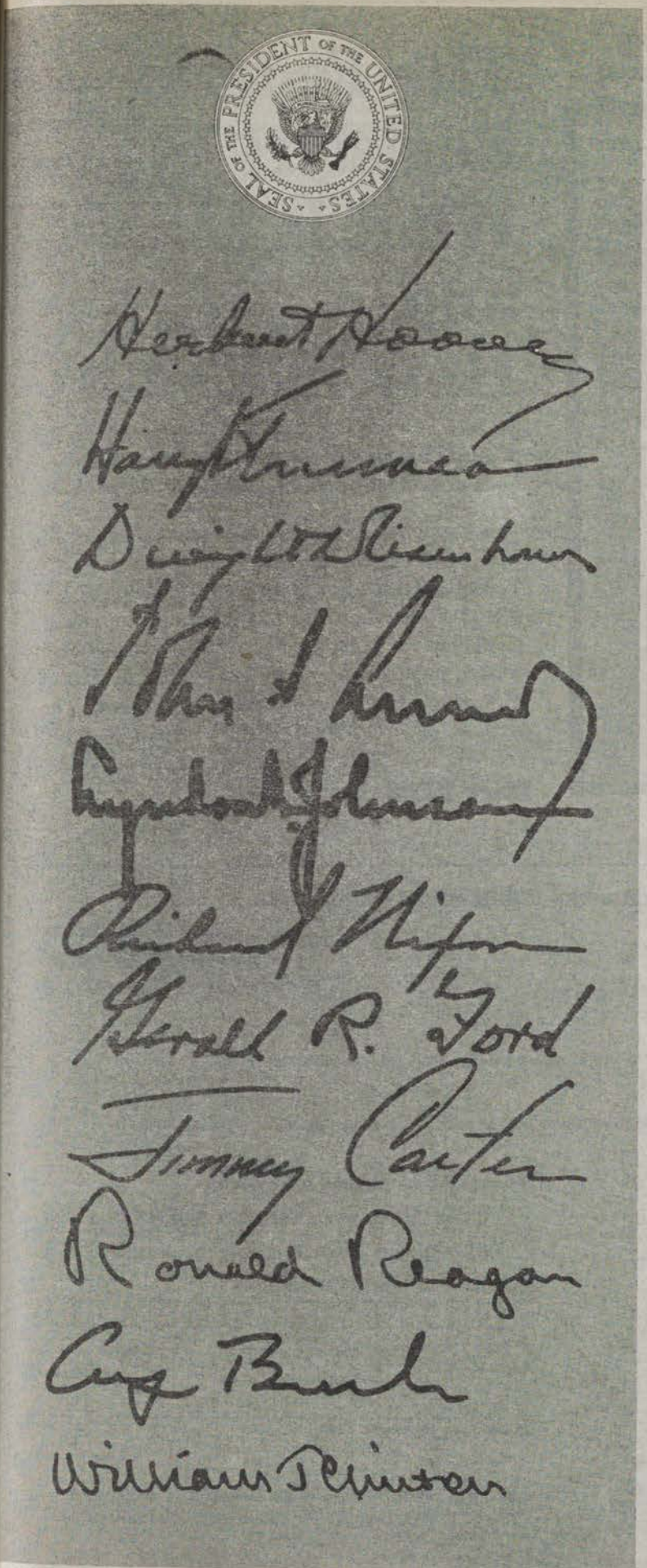
LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List October 24, 1994



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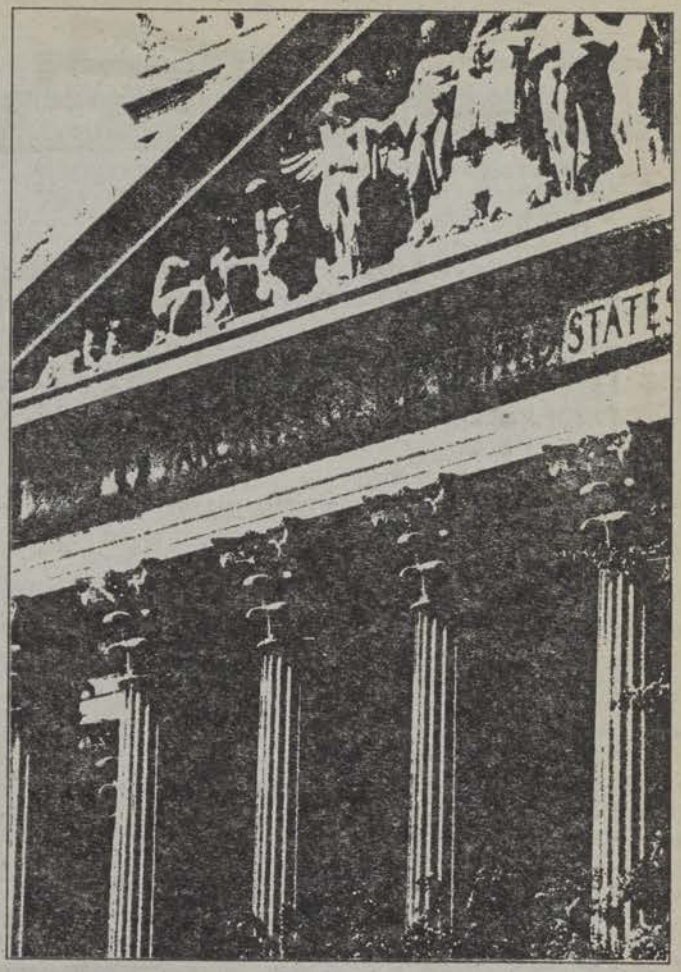

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