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[Three Sessions]

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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 581

RIN 3206–AG85, AG49

Processing Garnishment Orders for Child Support and/or Alimony

AGENCY: Office of Personnel Management.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to two sets of final regulations. This document corrects the final regulations which were published on Wednesday, January 25, 1995, (60 FR 5044), which listed the agents designated to accept service to process for governmental entities in support garnishment actions. This document also contains corrections to the final regulations which were published on Monday, July 10, 1995 (60 FR 35468), which listed the designated officials responsible for facilitating the service of legal process on members of the Uniformed Services and other Federal employees in the Executive Branch.

EFFECTIVE DATES: February 24, 1995 (60 FR 5044) and August 9, 1995 (60 FR 35468).

FOR FURTHER INFORMATION CONTACT: Murrary M. Meeker, Attorney, Office of the General Counsel, (202) 606–1980.

SUPPLEMENTARY INFORMATION: Subsequent to the publication of the final regulations on January 25, 1995, OPM was notified by the Internal Revenue Service and the Agency for International Development that corrections needed to be made. Subsequent to the publication of the final regulations on July 10, 1995, OPM was notified by the Department of Defense that corrections needed to be made. This amendment makes the requested corrections.

Correction

In rule document 95–1781, beginning on page 5044 in the issue of Wednesday, January 25, 1995, make the following corrections:

Appendix A to Part 581—List of Agents Designated to Accept Legal Process

1. On page 5052, in the first column, under the heading ''Department of the Treasury,'' the designated agent listing for (5) Internal Revenue Service is corrected as follows: Chief, Special Processing Unit, Garnishing Processing Center, 214 North Kanawha Street, Beckley, WV 25801, (304) 256–6200.

2. On page 5061, in the first column, under the heading ''Agency for International Development,'' the designated agent listing is corrected as follows: Payroll Division, Office of Financial Management (FM/P), U.S. Agency for International Development, Room 403 SA–2, Washington, DC 20523, (202) 663–2011, (fax) (202) 663–2354.

In rule document 95–16814, beginning on page 35468 in the issue of Monday, July 10, 1995, make the following corrections:

Appendix B to Part 581—List of Agents Designated to Facilitate the Service of Legal Process on Federal Employees

1. On pages 35472–35473, under the heading ''Department of Defense,'' the designated agent listing is corrected as follows:

The Department of Defense officials identified pursuant to Executive Order 12953, section 302, shall facilitate an employee's or member's availability for service of process. Additionally, these officials shall be responsible for answering inquiries about their respective organization's service of process rules. Such officials are not responsible for actual service of process and will not accept requests to make such service.

Office of Secretary of Defense

Personnel Management Specialist, DoD Civilian Personnel Management Service, 1400 Key Blvd., Level A, Arlington, VA 22209.

Department of the Army

Members of the uniformed service, active, reserve, and retired.

Office of the Judge Advocate General, ATTN: DAJA–LA, 2200 Army Pentagon, Washington, DC 20310–2200, (703) 697–3170.

Federal civilian employees of the Army, both appropriated fund and nonappropriated fund.

Deputy Assistant Secretary, (Civilian Personnel Policy/Director of Civilian Personnel), 111 Army Pentagon, Washington, DC 20310–0111, (703) 695–4237.

Active duty, reserve, and appropriated fund and nonappropriated fund employees of the Department of the Army employed within the United States.

Appropriated fund and nonappropriated fund Federal civilian employees employed in Panama.

Deputy Chief of Staff for Resource Management, U.S. Army Southern Command, Finance & Accounting Office, Civilian Personnel Section, ATTN: Unit 7153, SORM–FA–C, APO AA 34004.

Department of the Navy

In order to locate, or determine the cognizant command and mailing address of a Navy Member:

Bureau of Naval Personnel, Worldwide Locator, (Pers 324D), 2 Navy Annex, Washington, DC 20370–3000, (703) 614–3155/5011.

In order to obtain assistance in the service of legal process in civil actions pursuant to orders of State courts:

Bureau of Naval Personnel, Office of Legal Counsel (Pers 06), 2 Navy Annex, Washington, DC 20370–5006, (703) 614–4110.

Members of the Marine Corps:

Paralegal Specialist, Headquarters, U.S. Marine Corps (JAR), 2 Navy Annex, Washington, DC 20380–1775, (703) 614–2510.

For assistance in service of process on Department of the Navy civilian employees:

Department of the Navy, Office of Civilian Personnel Mgmt., Office of Counsel (Code OL), 800 N. Quincy Street, Arlington, VA 22203, (703) 696–4717.

Department of the Air Force

For all personnel, military and civilian:

AFLSA/JACA, 1420 Air Force Pentagon, Washington, DC 20330–1420, (703) 695–2450.

Defense Intelligence Agency

Defense Intelligence Agency, ATTN: Office of the General Counsel, The

Pentagon—Room 2E–238, Washington, DC 20301–7400.

Defense Mapping Agency

Defense Mapping Agency, Office of Legal Services, 3200 South Second Street, St. Louis, MO 63118.

Defense Nuclear Agency

Associate General Counsel, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398, (703) 325–7681.

On-Site Inspection Agency

General Counsel, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398, (703) 325–7681.

U.S. Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 95–26615 Filed 10–26–95; 8:45 am]

BILLING CODE 6325–01–M

5 CFR Part 838

RIN 3206–AG42

Child Abuse Accountability Act Implementation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is adopting its interim regulations to implement the Child Abuse Accountability Act. The Act requires OPM to comply with certain court orders for the enforcement of a judgment rendered against an employee or retiree for physical, sexual, or emotional abuse of a child. These regulations establish procedures under which OPM will receive and process court orders, determine the amounts available to satisfy a court order, and make payments under the Act.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: On December 28, 1994, we published (at 59 FR 66635) interim regulations to implement the Child Abuse Accountability Act, Pub. L. 103–358. The Act requires OPM, as the administrator of the Civil Service Retirement System and basic benefits under the Federal Employees Retirement System, to comply with certain court orders for the enforcement of judgments rendered against employees or retirees for physical, sexual, or emotional abuse of a child. The Act was effective on October 14, 1994, and applies to court orders that OPM receives on or after that date. To implement the Act, we issued interim regulations effective on the effective date of the Act to establish procedures for claimants to apply for benefits and for OPM to process claims under the Act. At that time we also requested comments on the interim regulations. We received no comments.

Our experience during the time that the interim regulations have been in effect has not caused us to change the procedures established in the interim regulation. Accordingly we are now adopting the interim regulation as final without change.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

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 only affect Federal employees and agencies and retirement payments to retired Government employees and their survivors.

List of Subjects in 5 CFR Part 838

Administrative practice and procedure, Claims, Disability benefits, Government employees, Income taxes, Pensions, Retirement, Courts.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, under authority of 5 U.S.C. 8345, 8347, 8461, and 8467, OPM is adopting its interim rules amending 5 CFR Part 838 published on December 28, 1994, at 59 FR 66635, as final rules without change.

[FR Doc. 95–26435 Filed 10–26–95; 8:45 am]

BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 95–048–2]

Witchweed; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the list of suppressive areas under the witchweed quarantine and regulations by adding and removing areas in North Carolina and South Carolina. These changes affected 11 counties in North Carolina and 4 counties in South Carolina. These actions were necessary in order to impose certain restrictions and to relieve unnecessary restrictions on the interstate movement of regulated articles to help prevent the spread of witchweed.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Mario Rodriguez, Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236, (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective July 31, 1995, and published in the Federal Register on August 4, 1995 (60 FR 39835–39837, Docket No. 95–048–1), we amended § 301.80–2a of the witchweed quarantine and regulations by adding areas in Greene, Pender, Pitt, Sampson, and Wayne Counties, North Carolina, and areas in Dillon County, South Carolina to the list of suppressive areas. We also amended § 301.80–2a by removing areas in Cumberland, Duplin, Greene, Harnett, Pender, and Wayne Counties, North Carolina, and Berkeley, Dillon, and Horry Counties, South Carolina from the list of suppressive areas.

Comments on the interim rule were required to be received on or before October 3, 1995. We received one comment by that date. The commenter supported the interim rule as written. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12778, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim

rule that amended 7 CFR 301 and that was published at 60 FR 39835–39837 on August 4, 1995.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 23rd day of October 1995.

Terry L. Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–26728 Filed 10–26–95; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 95–88]

Addition of Belize to the List of Nations Entitled to Special Tonnage Tax Exemption

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

ACTION: Final rule.

SUMMARY: Pursuant to information provided by the Department of State, the United States Customs Service has found that no discriminating duties of tonnage or imposts are imposed or levied in the ports of Belize upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported in the same from the United States or from any foreign country. Accordingly, vessels of Belize are exempt from special tonnage taxes and light money in ports of the United States. This document amends the Customs Regulations by adding Belize to the list of nations whose vessels are exempt from payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money.

EFFECTIVE DATE: The exemption from special tonnage taxes and light money for vessels registered in Belize became effective on March 7, 1995. This amendment is effective October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Barbara E. Whiting, Entry and Carrier Rulings Branch, (202) 482–7040.

SUPPLEMENTARY INFORMATION:

Background

Generally, the United States imposes regular and special tonnage taxes, and a duty of a specified amount per ton called ''light money'' on all foreign vessels which enter United States ports (46 U.S.C. App. 121, 128). However, vessels of a foreign nation may be exempted from the payment of special tonnage taxes and light money upon presentation of satisfactory proof that no discriminatory duties of tonnage or impost are imposed by that foreign nation on U. S. vessels or their cargoes (46 U.S.C. App. 141).

Section 4.22, Customs Regulations (19 CFR 4.22), lists those nations whose vessels have been found to be exempt from the payment of any higher tonnage duties than are applicable to vessels of the United States and from the payment of light money. The authority to amend this section of the Customs Regulations has been delegated to the Chief, Regulations Branch.

Finding

On the basis of information received from the Department of State regarding the absence of discriminating duties of tonnage or impost imposed on U.S. vessels in the ports of Belize, the Customs Service has determined that vessels of Belize are exempt from the payment of the special tonnage tax and light money, effective March 7, 1995. The Customs Regulations are amended accordingly.

Inapplicability of Public Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act and Executive Order 12866

Because this amendment merely implements a statutory requirement and confers a benefit upon the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary; further, for the same reasons, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d)(1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, U. S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 4

Cargo vessels, Customs duties and inspection, Maritime carriers, Vessels.

Amendment to the Regulations

Part 4, Customs Regulations (19 CFR part 4), is amended as set forth below.

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority for Part 4 and relevant specific authority continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.22 also issued under 46 U.S.C. App. 121, 128, 141;

* * * * *

§ 4.22 [Amended]

2. Section 4.22 is amended by adding ''Belize'' in appropriate alphabetical order.

Dated: October 23, 1995.

Harold M. Singer,

Chief, Regulations Branch.

[FR Doc. 95–26717 Filed 10–26–95; 8:45 am]

BILLING CODE 4820–02–P

19 CFR Part 12

[T.D. 95–87]

RIN 1515–AB44

Enforcement of ITC Exclusion Orders

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations regarding unfair competition to reflect Customs authority to enforce seizure and forfeiture orders issued by the United States International Trade Commission (ITC). These orders would be issued for articles which had previously been denied entry pursuant to an ITC exclusion order. Such seizure and forfeiture orders may be issued only when the owner, importer or consignee of such articles has previously attempted to import articles subject to an exclusion order into the U.S.; the articles have previously been denied entry; and the owner, importer or consignee has been notified in writing of the previous denial of entry. The amendment sets forth the procedures Customs will follow when seizures are made for violations of the ITC exclusion orders. It also describes the appeal rights and procedures available to parties who have an interest in the seized property.

EFFECTIVE DATE: November 27, 1995.

FOR FURTHER INFORMATION CONTACT: Vicki Allums, Intellectual Property Rights Branch, U.S. Customs Service, (202) 482–6960.

SUPPLEMENTARY INFORMATION:

Background

Under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), the International Trade Commission applies U.S. statutory law and the common law of unfair competition to the importation of products into the United States and their subsequent sale in the United States. Section 337 declares unlawful unfair methods of competition and unfair acts in the importation and sale of products in the United States, the threat or effect of which is to destroy or substantially injure a domestic industry, prevent establishment of such an industry, or restrain or monopolize trade and commerce in the United States. Section 337 also declares as unlawful per se infringement of a valid and enforceable U.S. patent, copyright, registered trademark, or mask work; no resulting injury need be found. To obtain relief under section 337, the affected U.S. industry must file a complaint with the United States International Trade Commission (ITC). A formal hearing before an administrative law judge will then be conducted in order to determine whether a violation under section 337 exists. The administrative law judge then issues an initial determination. The initial determination is subject to discretionary review by the ITC, which may affirm, reverse, modify, set aside, or remand the initial determination to the administrative law judge for further proceedings. If it is determined that a violation exists, the ITC may order that any articles found to be in violation of the Act be excluded from entry into the U.S.

Section 1342(a)(5)(B) of the Omnibus Trade and Competitiveness Act of 1988 amended section 337 of the Tariff Act by inserting a new subsection (I). That subsection authorizes the ITC to issue an order providing that any article determined to be imported in violation of the provisions of the law relating to unfair methods of competition and unfair acts in the importation of articles into the United States should be seized and forfeited when certain conditions stated in the law have been met. Any such order issued is to be enforced by the Secretary of the Treasury.

For such an order to be valid, the law provides that the following conditions must be met:

(a) The owner, importer, or consignee of the article must have previously attempted to import the article into the United States;

(b) The article must have been denied entry into the United States by reason of an order issued under 19 U.S.C. 1337(d); and

(c) Upon such previous denial of entry, the Secretary of the Treasury must have provided the owner, importer, or consignee of the article with written notice of—

(i) Such order, and

(ii) That seizure and forfeiture would result from any further attempt to import the article into the United States.

Section 12.39, Customs Regulations (19 CFR 12.39) currently describes the role of the ITC in determining whether an importer has engaged in unfair methods of competition or practices, and the actions the ITC can order in response to the finding of such practices. Among those actions are exclusion from entry and entry under bond of articles imported in violation of fair trade provisions, both of which are cited in § 12.39(b). The authority of the ITC to exclude articles from entry into the United States under section 337 is described in § 12.39(b)(1). Section 12.39(b)(2) permits excluded articles to be entered under a single entry bond pending the finalization of the ITC determination. Finally, § 12.39(b)(3) requires, among other things, that district directors notify each importer or consignee of articles entered under bond pursuant to § 12.39(b)(2) when the determination becomes final, and indicate that the entry of articles is refused.

Customs Notice of Proposed Rulemaking

On May 19, 1994, Customs published a Notice of Proposed Rulemaking in the Federal Register (59 FR 26151), which solicited comments on a proposal to amend the Customs Regulations so that they would reflect Customs authority to enforce seizure and forfeiture orders issued by the International Trade Commission. No comments were received in response to the NPRM.

However, in its internal review of the proposed rule, Customs identified an inconsistency between the proposal and the statute's legislative history. The legislative history indicates that Congress intended to include ''like goods'' within the scope of section 337 seizure orders. The addition of this phrase to the final regulation does not expand the final rule because Customs seizure and forfeiture authority only extends to articles and like articles which fall within the scope of the ITC order. The phrase merely serves to clarify the extent of that authority.

Summary of Amendment

This document amends § 12.39(b), Customs Regulations (19 CFR 12.39(b)) to reflect both the authority of the ITC to issue seizure and forfeiture orders against articles and like articles for which exclusion orders have been issued under certain conditions and the authority of the Secretary of the Treasury to enforce those orders.

The amendment also sets forth the procedures that Customs, on behalf of the Secretary of the Treasury, will follow when enforcing the order. The procedures provide that when the three statutory conditions are met that allow the ITC to issue a seizure and forfeiture order, and the ITC notifies the Secretary of the Treasury of the issuance of such order, Customs will notify all ports of entry of the order and identify both the article subject to the order and the owners, importers or consignees who are subject to the order.

These seizure orders would be issued by the ITC against specific importers, or their agents and consignees, and would apply only to articles and like articles which have been denied entry by reason of an exclusion order, and for which the importer has been notified in writing.

The amendment also contains procedures that are to be followed by parties having an interest in articles which are seized pursuant to ITC seizure orders and who wish to file a petition for relief.

Regulatory Flexibility Act

For the reasons set forth in the preamble, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendment will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Drafting Information

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

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Imports.

Amendment to the Regulations

Accordingly, part 12, Customs Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general and relevant specific authority citations for part 12 continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Section 12.39 also issued under 19 U.S.C. 1337, 1623;

* * * * *

2. Section 12.39 is amended by revising the heading of paragraph (b); by adding a new paragraph (b)(4); by redesignating paragraphs (c) and (d) as paragraphs (d) and (e); and by adding a new paragraph (c) to read as follows:

§ 12.39 Imported articles involving unfair methods of competition or practices.

* * * * *

(b) *Exclusion from entry; entry under bond; notice of exclusion order.* * * *

(4) In addition to the notice given to importers or consignees of articles released under bond, port directors shall provide written notice to all owners, importers or consignees of articles which are denied entry into the United States pursuant to an exclusion order that any future attempt to import such articles may result in the articles being seized and forfeited. Copies of all such notices are to be forwarded to the Commercial Enforcement, Trade Compliance Division, at Customs Headquarters, and to the Office of The General Counsel, USITC, 500 E Street, SW., Washington, DC 20436 by the district directors.

(c) *Seizure and Forfeiture Orders.* (1) In addition to issuing an exclusion order under paragraph (b)(1) of this section, the Commission may issue an order providing that any article determined to be in violation of § 337 be seized and forfeited to the United States. Such order may be issued if:

(i) The owner, importer, or consignee of the article previously attempted to import the article or like articles into the United States;

(ii) The article or like articles were previously denied entry into the United States by reason of an exclusion order issued under paragraph (b)(1) of this section; and

(iii) Upon such previous denial of entry, the port director of the port in which the entry was attempted had notified the owner, importer, or consignee of the article in writing of both the exclusion order and that seizure and forfeiture would result from any further attempt to import the article or like articles into the United States.

(2) Upon receipt of any seizure order issued by the Commission in accordance with this paragraph, Customs shall immediately notify all ports of entry of the property subject to the seizure order and identify the persons notified under paragraph (b)(4) of this section.

(3) The port director in the port in which the article was seized shall issue a notice of seizure to parties known to have an interest in the seized property. All interested parties to the property shall have an opportunity to petition for relief under the provisions of 19 CFR part 171. All petitions must be filed within 30 days of the date of issuance of the notice of seizure, and failure of a claimant to petition will result in the commencement of administrative forfeiture proceedings. All petitions will be decided by the appropriate Customs officer, based upon the value of the articles under seizure.

(4) If seized articles are found to be not includable in an order for seizure and forfeiture, then the seizure and the forfeiture shall be remitted in accordance with standard Customs procedures.

(5) Forfeited merchandise shall be disposed of in accordance with the Customs laws.

* * * * *

George J. Weise,

Commissioner of Customs.

Approved: October 10, 1995.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 95–26718 Filed 10–26–95; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable New Animal Drugs; Flunixin Meglumine Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The ANADA provides for intravenous or intramuscular use of flunixin meglumine injection for alleviation of inflammation and pain associated with musculoskeletal disorders and visceral pain associated with colic in horses.

EFFECTIVE DATE: October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1616.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th Street Ter., P.O. Box 6457, St. Joseph, MO 64506–0457, filed ANADA 200–124, which provides for intravenous or intramuscular use of flunixin meglumine injection for alleviation of inflammation and pain associated with musculoskeletal disorders and visceral pain associated with colic in horses.

Approval of ANADA 200–124 for Phoenix Scientific's flunixin meglumine injection is as a generic copy of Banamine® (flunixin meglumine) Injection in Schering-Plough Animal Health's NADA 101–479. The ANADA is approved as of September 25, 1995, and the regulations are amended in § 522.970(b) (21 CFR 522.970(b)) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.970 is amended by revising paragraph (b) to read as follows:

§ 522.970 Flunixin meglumine solution.

* * * * *

(b) *Sponsors.* See Nos. 000061, 000856, and 059130 in § 510.600(c) of this chapter.

* * * * *

Dated: October 17, 1995.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 95–26633 Filed 10–26–95; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Part 886

[Docket No. 91N–0063]

Immunology and Microbiology Devices; Revocation of the Exemption From Premarket Notification; Blood Culturing System Devices; Change of Compliance Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; change of compliance date for certain manufacturers and distributors.

SUMMARY: The Food and Drug Administration (FDA) is changing the compliance date of the final rule published on July 27, 1995 (60 FR 38480), that revoked the exemption from the requirement of premarket notification for blood culturing system devices to allow a 60-day grace period for submission of premarket notifications and to change the April 22, 1996, deadline to a December 26, 1996, deadline for obtaining premarket clearance for manufacturers or initial distributors of the device that have already begun commercial distribution under the existing premarket notification exemption. This action is being taken in response to a request to reconsider the procedural requirements of the final rule.

DATES:

Effective date: The final rule is effective October 25, 1995.

Compliance dates: A premarket notification submission is required for any automated blood culturing system intended to be introduced or delivered for introduction into commerce on or after October 25, 1995, under section 510(k) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(k)), and the procedures in subpart E of 21 CFR part 807. A manufacturer or an initial distributor of a blood culturing device that has already begun commercial distribution under the existing premarket notification exemption is required to submit a premarket notification on or before December 26, 1995, and must have a premarket notification cleared by FDA by December 26, 1996.

FOR FURTHER INFORMATION CONTACT: Lisa A. Rooney, Center for Devices and Radiological Health (HFZ–84), Food and Drug Administration, 2094 Gaither Rd., Rockville, MD 20850, 301–594–4765, ext. 164.

SUPPLEMENTARY INFORMATION: In the Federal Register of November 9, 1982 (47 FR 50814 at 50826), FDA published a final rule to classify blood culturing system devices into class I (21 CFR 866.2560). In the Federal Register of June 12, 1989 (54 FR 25042 at 25046), FDA published a final rule exempting microbial growth monitors, subject to certain limitations. In the Federal Register of April 26, 1991 (56 FR 19333), FDA proposed to revoke this exemption for blood culturing system devices because of safety and effectiveness considerations. In the proposed rule, FDA stated that a manufacturer or an initial distributor who has introduced blood culturing system devices into commerce since the premarket notification exemption became effective would be required to submit to FDA a premarket notification within 60 days after the final rule based upon the proposal became effective.

In the Federal Register of July 27, 1995 (60 FR 38480), FDA published a final rule to revise the microbial growth monitor classification regulation by revoking the exemption from the premarket notification requirements for automated blood culturing system devices used in testing blood and other normally sterile body fluids for bacteria, fungi, and other microorganisms. According to the final rule, a manufacturer or an initial distributor of a blood culturing device that had already begun commercial distribution under the existing premarket notification exemption would be required to submit a premarket notification on or before October 25, 1995, and have a premarket notification cleared by FDA by April 22, 1996.

In response to a letter requesting FDA to reconsider the procedural requirements of the final rule of July 27, 1995, FDA has decided to allow a 60-day grace period for submission of premarket notifications for manufacturers or initial distributors who have already begun introducing blood culturing system devices into commerce under the existing premarket notification exemption. However, a premarket notification submission is still required for any automated blood culturing system intended to be introduced or delivered for introduction into interstate commerce on or after October 25, 1995. Furthermore, in response to the correspondence, FDA has decided to change the April 22, 1996, deadline to a December 26, 1996, deadline for obtaining premarket clearance.

Dated: October 23, 1995,

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–26678 Filed 10–26–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8626]

RIN 1545–AT15

Continuity of Interest in Transfer of Target Assets After Qualified Stock Purchase of Target

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document prescribes final regulations under section 338 of the Internal Revenue Code regarding the transfer of target assets to the purchasing corporation or another member of the same affiliated group as the purchasing corporation after a qualified stock purchase (QSP) of target stock, if a section 338 election is not made. These regulations provide guidance to parties to such transfers.

DATES: These regulations are effective October 27, 1995.

These regulations are applicable to transfers of target assets that occur on or after October 26, 1995.

FOR FURTHER INFORMATION CONTACT: Steven M. Flanagan at (202) 622–7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Explanation of Provisions

Background

This document contains final regulations under section 338 that govern the treatment of an intragroup merger or similar transaction following a QSP of target stock, if a section 338 election is not made for the target.

Section 338 provides that, if a corporation makes a QSP of the stock of a target, the purchasing corporation may elect to have the target treated as having sold all of its assets at the close of the acquisition date in a single transaction and as a new corporation that purchased all such assets at the beginning of the following day. Under section 338(i), the

IRS and Treasury are authorized to prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 338.

On February 17, 1995, proposed regulations under section 338 were published in the Federal Register (60 FR 9309). The proposed rules are based on the conclusion that the result in *Yoc Heating* v. *Commissioner*, 61 T.C. 168 (1973), is inconsistent with the legislative intent behind section 338 when there is a QSP of target stock.

Public Comments and the Final Regulations

The IRS received comments from the public on the proposed regulations, and a public hearing was held on June 7, 1995. Commentators generally support the proposed regulations. Accordingly, the final regulations adopt the proposed regulations with minor technical changes. The principal comments on the proposed regulations are discussed below.

Treatment of minority shareholders. The proposed regulations generally treat the purchasing corporation's target stock acquired in the QSP as an interest on the part of a person who is an owner of the target's business enterprise prior to the transfer that can be continued in a reorganization. Thus, if the purchasing corporation purchases the bulk of the stock of a target corporation in a QSP and subsequently merges the target into a subsidiary of the purchasing corporation in exchange for the subsidiary's stock, the continuity of interest requirement is treated as satisfied. However, this treatment does not extend to minority shareholders of the target whose stock is not acquired by the purchasing corporation.

Several commentators argue that the proposed regulations are inconsistent because they provide tax-free treatment to the purchasing corporation, but not minority shareholders who are the true historic owners of the target. Therefore, they suggest that the proposed regulations are contrary to traditional notions of shareholder continuity, and that the final regulations should extend tax-free treatment to minority shareholders who exchange their target stock for stock in the acquiring entity.

The final regulations do not adopt this suggestion. The legislative history of section 338 indicates a congressional intent to repeal the *Kimbell-Diamond* doctrine and protect the exclusivity of the section 338 election for obtaining a cost rather than a carryover basis in the target's assets after a QSP. See H.R. Conf. Rep. No. 760, 97th Cong., 2d Sess. 467, 536 (1982), 1982–2 C.B. 600, 632. The regulations apply the reorganization rules to the target corporation and purchasing group because the IRS and Treasury believe it is the simplest and most effective means of achieving this intent, as they provide a pre-existing set of rules with well-understood consequences.

The legislative history does not indicate any intention to provide reorganization treatment for all purposes to exchanges of stock incident to asset transfers after QSPs. Under general income tax rules, an exchange of shares is only accorded reorganization treatment if the continuity of interest requirement is satisfied with respect to the target shareholders generally. This requirement is not satisfied if the acquisition of the target in a QSP and the merger of the target into the purchasing corporation's subsidiary are pursuant to an integrated transaction in which the owner of the majority stake in the target receives solely cash. See, e.g., *Yoc Heating*, 61 T.C. 168; *Kass* v. *Commissioner*, 60 T.C. 218 (1973), *aff'd*, 491 F.2d 749 (3d Cir. 1974). Thus, extension of reorganization treatment to the minority shareholders in this case would inappropriately alter general reorganization principles, and would not be grounded in the policies of section 338.

Scope of minority shareholder exclusion provision. One commentator suggests that if the final regulations continue to deny reorganization treatment to the preexisting minority shareholders, the exclusion should expressly apply to both the continuity of interest and control rules, rather than only the continuity of interest rule (as proposed). The final regulations adopt the commentator's suggestion by moving the minority shareholder exclusion to the scope section. This change is intended to clarify that the minority shareholder exclusion applies to any transaction that qualifies as a tax-free reorganization by operation of these regulations.

Effect of section 338(h)(8). Section 338(h)(8) provides that stock and asset acquisitions made by members of the same affiliated group shall be treated as made by one corporation. One commentator suggests that the final regulations should specifically provide that section 338(h)(8) does not apply in determining whether the merger of target qualifies as a reorganization. Otherwise, the commentator contends, a transaction in which target ''sprinkles'' its assets among several members of the purchasing corporation's affiliated group would qualify as a reorganization, because section 338(h)(8) treats the purchasing corporation and its affiliates as one corporation.

The final regulations do not adopt this suggestion because section 338(h)(8) (including section 338(h)(8)), by its terms, only applies for purposes of section 338 (e.g., determining whether a transaction qualifies as a QSP). The final regulations only modify the continuity of interest and control requirements for reorganizations, and any transaction in which the target ''sprinkles'' its assets among several purchasing corporation affiliates would likely fail other reorganization requirements.

Guidance regarding mergers after a section 338 election. The Preamble to the proposed regulations requests comments on whether guidance is necessary on the proper treatment of post-QSP mergers if a section 338 election is made for target. Because this request did not receive a strong response, the IRS and Treasury have decided not to provide such guidance in this document.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f), the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Steven M. Flanagan, Office of Assistant Chief Counsel (Corporate), Internal Revenue Service. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.338–0 is amended by adding contents entries for § 1.338–2(c)(3) in numerical order to read as follows:

§ 1.338–0 Outline of topics.

* * * * *

§ 1.338–2 Miscellaneous issues under section 338.

* * * * *

(c) * * *

(3) Consequences of post-acquisition elimination of target.

(i) Scope.

(ii) Continuity of interest.

(iii) Control requirement.

(iv) Example.

(v) Effective date.

* * * * *

Par. 3. Section 1.338–2 is amended by adding paragraph (c)(3) to read as follows:

§ 1.338–2 Miscellaneous issues under section 338.

* * * * *

(c) * * *

(3) *Consequences of post-acquisition elimination of target*—(i) *Scope.* The rules of this paragraph (c)(3) apply to the transfer of target assets to the purchasing corporation (or another member of the same affiliated group as the purchasing corporation) (the transferee) following a qualified stock purchase of target stock, if the purchasing corporation does not make a section 338 election for target. Notwithstanding the rules of this paragraph (c)(3), section 354(a) (and so much of section 356 as relates to section 354) cannot apply to any person other than the purchasing corporation or another member of the same affiliated group as the purchasing corporation unless the transfer of target assets is pursuant to a reorganization as determined without regard to this paragraph (c)(3).

(ii) *Continuity of interest.* By virtue of section 338, in determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied on the transfer of assets from target to the transferee, the purchasing corporation's target stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of the target's business enterprise prior to the transfer that can be continued in a reorganization.

(iii) *Control requirement.* By virtue of section 338, the acquisition of target stock in the qualified stock purchase will not prevent the purchasing corporation from qualifying as a shareholder of the target transferor for the purpose of determining whether, immediately after the transfer of target assets, a shareholder of the transferor is in control of the corporation to which the assets are transferred within the meaning of section 368(a)(1)(D).

(iv) *Example.* This paragraph (c)(3) is illustrated by the following example:

Example. (A) *Facts.* P, T, and X are domestic corporations. T and X each operate a trade or business. A and K, individuals unrelated to P, own 85 and 15 percent, respectively, of the stock of T. P owns all of the stock of X. The total adjusted basis of T's property exceeds the sum of T's liabilities plus the amount of liabilities to which T's property is subject. P purchases all of A's T stock for cash in a qualified stock purchase. P does not make an election under section 338(g) with respect to its acquisition of T stock. Shortly after the acquisition date, and as part of the same plan, T merges under applicable state law into X in a transaction that, but for the question of continuity of interest, satisfies all the requirements of section 368(a)(1)(A). In the merger, all of T's assets are transferred to X. P and K receive X stock in exchange for their T stock. P intends to retain the stock of X indefinitely.

(B) *Status of transfer as a reorganization.* By virtue of section 338, for the purpose of determining whether the continuity of interest requirement of § 1.368–1(b) is satisfied, P's T stock acquired in the qualified stock purchase represents an interest on the part of a person who was an owner of T's business enterprise prior to the transfer that can be continued in a reorganization through P's continuing ownership of X. Thus, the continuity of interest requirement is satisfied and the merger of T into X is a reorganization within the meaning of section 368(a)(1)(A). Moreover, by virtue of section 338, the requirement of section 368(a)(1)(D) that a target shareholder control the transferee immediately after the transfer is satisfied because P controls X immediately after the transfer. In addition, all of T's assets are transferred to X in the merger and P and K receive the X stock exchanged therefor in pursuance of the plan of reorganization. Thus, the merger of T into X is also a reorganization within the meaning of section 368(a)(1)(D).

(C) *Treatment of T and X.* Under section 361(a), T recognizes no gain or loss in the merger. Under section 362(b), X's basis in the assets received in the merger is the same as the basis of the assets in T's hands. X succeeds to and takes into account the items of T as provided in section 381.

(D) *Treatment of P.* By virtue of section 338, the transfer of T assets to X is a reorganization. Pursuant to that reorganization, P exchanges its T stock solely for stock of X, a party to the reorganization. Because P is the purchasing corporation, section 354 applies to P's exchange of T stock for X stock in the merger of T into X. Thus, P recognizes no gain or loss on the exchange. Under section 358, P's basis in the X stock received in the exchange is the same as the basis of P's T stock exchanged therefor.

(E) *Treatment of K.* Because K is not the purchasing corporation (or an affiliate thereof), section 354 cannot apply to K's exchange of T stock for X stock in the merger of T into X unless the transfer of T's assets is pursuant to a reorganization as determined without regard to § 1.338–2(c)(3). Under general income tax principles applicable to reorganizations, the continuity of interest requirement is not satisfied because P's stock purchase and the merger of T into X are pursuant to an integrated transaction in which A, the owner of 85 percent of the stock of T, received solely cash in exchange for A's T stock. See, e.g., *Yoc Heating* v. *Commissioner,* 61 T.C. 168 (1973); *Kass* v. *Commissioner,* 60 T.C. 218 (1973), *aff'd,* 491 F.2d 749 (3d Cir. 1974). Thus, the requisite continuity of interest under § 1.368–1(b) is lacking and section 354 does not apply to K's exchange of T stock for X stock. K recognizes gain or loss, if any, pursuant to section 1001(c) with respect to its T stock.

(v) *Effective date.* The provisions of this paragraph (c)(3) are effective for transfers of target assets on or after October 26, 1995.

* * * * *

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: October 3, 1995.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 95–26739 Filed 10–26–95; 8:45 am]

BILLING CODE 4830–01–U

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26 CFR Part 301

[TD 8625]

RIN 1545–AS61

Seals of Office

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the authority contained within section 7514 of the Internal Revenue Code to prescribe or modify seals of office. These regulations provide an additional or alternative uniform seal for use by internal revenue offices throughout the country. In addition this regulation publishes what will be the newly reorganized regional and district offices, computing centers, submission processing centers, and customer service centers of the IRS.

EFFECTIVE DATE: October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Robert A. Walker, (202) 622–3640 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

These final regulations amend the Procedure and Administration Regulations (26 CFR part 301) under section 7514 of the Internal Revenue Code (Code) and are issued under the

authority contained in section 7805 (68A Stat. 917; 26 U.S.C. 7805). Section 7514 was enacted by section 91 of the Technical Amendments Act of 1958 (Public Law 85–866, 72 Stat. 1667) and amended by section 1906(b)(13)(A), (M) of the Tax Reform Act of 1976 (Public Law 94–455, 90 Stat. 1834, 1835). The IRS published a notice of proposed rulemaking in the Federal Register on January 3, 1995, (60 FR 83) providing proposed rules under section 7514 of the Code. No public comments were received. Subsequent to publication of the notice of proposed rulemaking, the IRS announced that it was reorganizing its offices as a streamlining measure, and, beginning October 1, 1995, would be eliminating some offices and adding others. These final regulations list the IRS offices that will result from the full implementation of the reorganization, and indicates that the Commissioner can designate other offices that are authorized to use the uniform seal.

Explanation of Provisions

Section 301.7514–1 currently provides for several different seals of office for various offices of internal revenue throughout the country. These final regulations permit internal revenue offices to keep the official seal currently in use, but provide for a uniform Internal Revenue Service seal for use when replacement of the current seal becomes necessary, or for other reasons such as the establishment of a new office or the relocation of an office to a new geographic area. The uniform seal can be used by all internal revenue offices throughout the country that are currently authorized by the Commissioner to use a seal, the new internal revenue offices created as the result of the impending reorganization of the IRS that is to be implemented starting October 1, 1995, and any other internal revenue office authorized by the Commissioner to use a seal.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robert A. Walker of the General Litigation Division, Office of Chief Counsel, IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

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

Par. 2. Section 301.7514–1 is amended as follows:

a. Paragraphs (a)(2) through (a)(7) are redesignated as paragraphs (a)(3) through (a)(8).

b. New paragraph (a)(2) is added.

The addition reads as follows:

§ 301.7514–1 Seals of office.

(a) * * *

(2) *Establishment of uniform seal.* (i) In addition to the seals of office prescribed for those offices set forth in paragraphs (a) (3) through (8) of this section, a uniform seal for use by any office of internal revenue is established. The uniform seal is described as follows, and is illustrated in this paragraph (a)(2)(i). A circle within which shall appear that part of the seal of the Treasury Department represented by the shield with a dark background. Exterior to this circle and within a circumscribed circle forming the exterior of the seal shall appear words describing the specific office of internal revenue authorized to use the seal under this section. This paragraph (a)(2) is effective on October 27, 1995. The uniform seal is as follows:

BILLING CODE 4830–01–U

BILLING CODE 4830–01–C

(ii) The uniform seal may be used by any office of internal revenue set forth in paragraphs (a) (3) through (8) of this section, and any other office designated by the Commissioner to use a seal, including the following internal revenue offices resulting from a reorganization of the IRS that will be implemented beginning October 1, 1995:

Office of Regional Commissioner for:
- Midstates Region (Dallas)
- Northeast Region (Manhattan)
- Southeast Region (Atlanta)
- Western Region (San Francisco)

Office of District Director for:
- Arkansas-Oklahoma District (Oklahoma City)
- Brooklyn District
- Central California District (San Jose)
- Connecticut-Rhode Island District (Hartford)
- Delaware-Maryland District (Baltimore)
- Georgia District (Atlanta)
- Gulf Coast District (New Orleans)
- Houston District
- Illinois District (Chicago)
- Indiana District (Indianapolis)
- Kansas-Missouri District (St. Louis)
- Kentucky-Tennessee District (Nashville)
- Los Angeles District
- Manhattan District
- Michigan District (Detroit)
- Midwest District (Milwaukee)
- New Jersey District (Newark)
- New England District (Boston)
- North Central District (St. Paul)
- North Florida District (Jacksonville)
- North-South Carolina District (Greensboro)
- North Texas District (Dallas)
- Northern California District (Oakland)
- Ohio District (Cincinnati)
- Pacific-Northwest District (Seattle)
- Pennsylvania District (Philadelphia)
- Rocky Mountain District (Denver)
- South Florida District (Fort Lauderdale)
- South Texas District (Austin)
- Southern California District (Laguna Niguel)
- Southwest District (Phoenix)
- Upstate New York District (Buffalo)
- Virginia-West Virginia District (Richmond)

Office of Director of Computing Centers in:
- Detroit
- Memphis
- Martinsburg

Office of Director of Submission Processing Centers in:
- Austin
- Cincinnati
- Memphis
- Kansas City
- Ogden

Office of Director of Customer Service Centers in:
- Andover
- Atlanta
- Austin
- Baltimore
- Brookhaven
- Buffalo
- Cincinnati
- Cleveland
- Dallas
- Denver
- Fresno
- Indianapolis
- Jacksonville
- Kansas City
- Memphis
- Nashville
- Ogden
- Philadelphia
- Pittsburgh
- Portland, OR
- Richmond
- St. Louis
- Seattle.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: October 10, 1995.

Leslie Samuels,
Assistant Secretary of the Treasury.

[FR Doc. 95–26630 Filed 10–26–95; 8:45 am]
BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH70–1–6780a; FRL–5302–6]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: USEPA is approving the plan revision that Ohio submitted to address high lead concentrations measured near the Master Metals secondary lead smelter in central Cleveland. This revision subjects this smelter to strict emissions limits and operating restrictions and will ensure that lead concentrations in this area are reduced sufficiently to meet the health-based air quality standard.

DATES: This action is effective December 26, 1995 unless adverse or critical comments are received by November 27, 1995. If the effective date is delayed,

timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the SIP revision and USEPA's analysis are available for public inspection during normal business hours at the following addresses: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AE–17J), Chicago, Illinois 60604; and Office of Air and Radiation (OAR), Docket and Information Center (Air Docket 6102) Room M1500, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Regulation Development Branch (AE–17J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION:

I. Review of State Submittal

On October 28, 1992, the United States Environmental Protection Agency (USEPA) notified the Governor of the State of Ohio that its State Implementation Plan (SIP) for lead for the unclassified portion of Cuyahoga County was inadequate. This SIP call was based on monitoring in the area showing quarterly average concentrations as high as 28 micrograms per cubic meter ($\mu g/m^3$), well above the quarterly average air quality standard of 1.5 $\mu g/m^3$. Announcement of the notification of SIP inadequacy and accompanying call for a SIP revision (''SIP call'') was published in the Federal Register on March 2, 1993, at 58 FR 11967. The remainder of Cuyahoga County has no significant sources of lead, has no designation, and has an adequate SIP.

Ohio submitted the required SIP revision on October 7, 1994. USEPA notified Ohio that this was a complete submittal on November 17, 1994.

The primary cause of the high monitored concentrations is a secondary lead smelter owned by Master Metals, Inc. This is the only significant source of emissions in this area; other emissions are appropriate to address as background contributors. On October 14, 1992, the Ohio Environmental Protection Agency (''Ohio'') issued an order to Master Metals providing that the facility would be shut down unless various specified improvements in emissions control were implemented at the facility. Master Metals failed to implement these improvements. Therefore, on August 5, 1993, Ohio required an immediate shutdown of the facility, and stated that no further operations were to occur at the facility until the required improvements were made. This facility remains shut down at this time. Therefore, the rules adopted by Ohio will have practical effect only if the present owner or a future owner elects to make the improvements demanded by Ohio.

Summary of Submittal

Attached to the cover letter of Ohio's submittal are eight attachments. The first and most important of these attachments is the adopted set of rules that limit lead emissions. Five attachments pertain to the modeled demonstration that these limits assure attainment. Specifically, the attachments include a summary of the modeling analysis, documentation of the estimation of allowable emissions and stack parameters, documentation of the analysis of background concentrations, a copy of the model inputs, and copies of the model outputs. Finally, the last two attachments address administrative requirements, specifically a completed completeness checklist and materials relating to the public hearing on the issue.

Ohio submitted four of the rules in Chapter 3745–71 of the Ohio Administrative Code, a chapter of rules entitled ''Lead Emissions.'' The first rule is Rule 3745–71–01, entitled ''Definitions,'' which now defines lead to include gaseous as well as solid lead and defines calendar quarter. The second rule is Rule 3745–71–03, entitled ''Methods of ambient air measurement,'' which specifies the monitoring method to be used to assess whether the ambient air quality standard is being attained. The third rule is Rule 3745–71–05, entitled ''Emissions test methods and procedures and reporting requirements for new and existing sources.'' This rule provides that stack tests for lead emissions are to be based on Method 12 in Appendix A of Title 40 Code of Federal Regulations Part 60 (40 CFR part 60), and establishes various reporting requirements and test methods that accompany limitations established in Rule 3745–71–06 for the Master Metals smelter. The fourth rule is Rule 3745–71–06, entitled ''Source specific emission limits,'' which provides numerous emission and operational limitations and currently exclusively addresses the Master Metals smelter. Specifically, the rule sets emission limits for the rotary furnaces, pot furnaces, and casting shop, requires enclosing all these operations within a building maintained at ''negative pressure'' (i.e. less that ambient pressure), requires venting these sources such that their emissions pass through a secondary control system, sets a limit on emissions from the secondary control system, requires no visible emissions from materials handling, requires a specified road dust suppression program, sets a status quo-based quarterly production cap, and sets a five percent opacity limit on stack emissions. Although Ohio also previously adopted Rule 3745–71–02 (setting the national ambient air quality standard as a State standard as well) and Rule 3745–71–04 (setting a 1981 attainment deadline), these rules were not included in this submittal nor approved previously by USEPA.

The rules adopted and submitted by Ohio provide clear and enforceable limitations on emissions from the Master Metals secondary lead smelter. Stack emissions are subject to specific emissions limitations, to be measured by the method delineated and recommended by USEPA in 40 CFR part 60, appendix A. The requirement for building enclosure is straightforward. Although USEPA has not recommended test methods for assessing reduced pressure inside enclosed space, Ohio has included an appropriate method with its rule, and so the rule should provide enforceable assurances that the specified operations are indeed enclosed and that their emissions in fact pass through the secondary control device. The road dust suppression program is adequately specific, given the moderate control efficiency which the program is designed to achieve. In summary, the rules satisfy the criteria for the rules to be enforceable.

A second criterion that the rules must satisfy is that they limit emissions sufficiently to assure attainment of the lead standard. As noted above, Ohio submitted a modeling analysis assessing the adequacy of its rules for assuring attainment. USEPA requires such analyses to satisfy modeling guidance given in Appendix W of 40 CFR part 51.

Since lead has a quarterly average standard, Ohio used the Long Term version of the Industrial Source Complex model (Version 2, known as ISCLT2), run in regulatory default mode. Receptors were placed at a spacing of 50 to 75 meters apart along the facility's fenceline, 100 meters apart on a rectangular grid out to about 500 meters in the four main compass

directions from the facility, and an additional set of points 250 meters further out. For meteorological data, Ohio used quarterly stability array (STAR) data from the Cleveland weather station for each quarter from 1987 to 1991. Ohio developed a background concentration by averaging concentrations for those days and monitors determined to represent concentrations upwind of the Master Metals smelter, thereby concluding that the background concentration was 0.222 ($\mu g/m^3$).

Ohio's attainment demonstration necessarily reflects assumptions about hypothetical emission rates and emission release characteristics that would be expected were the facility to recommence operations. Ohio of course assumed that resumption of operations would involve resumed use of the existing two rotary furnaces, the existing two pot furnaces, and the existing casting shop. Rule 3745–71–06 specifies limits both on emissions per ton of lead product and on maximum total hourly emissions from each of these sources and specifies a maximum quarterly lead production rate reflecting historic production levels. Ohio's attainment demonstration reflects a quarterly average allowable emission rate based on the allowable emissions per ton of lead product and the allowable quarterly production rate, and uses historic emission release characteristics. Similarly, the analysis includes emissions for the secondary control device based on its hourly emissions limit. More speculative are the emissions release characteristics of this required but currently nonexistent device, which Ohio based on a supplier's proposed design. The attainment demonstration further reflects historic levels of emissions from facility roadways, using the equation in AP–42 for estimating particulate matter emissions, assuming the particulate matter emissions are 100 percent lead, and assuming 34 percent control for the sweeping program mandated in Rule 3745–71–06.

Ohio used the dispersion model recommended for this situation in USEPA guidance that was current at the time of its submittal. Although USEPA has more recently modified its guidance to recommend a revised version of ISC known as ISC3, USEPA's grandfathering policy clearly provides that the use of ISC2 in this case is approvable. Ohio has used emission inputs, meteorological inputs, and modeling procedures that are also in accordance with USEPA guidance. This modeling shows a maximum concentration of 0.430 ($\mu g/m^3$), at a receptor approximately 100 meters from Master Metals' lead smelter. Concentration estimates are lower at receptors farther from the smelter. Therefore, Ohio has suitably demonstrated that its rules assure attainment throughout the area of concern.

A third criterion that Ohio's submittal must satisfy is that proper procedures were followed in adopting the rules such that they will withstand legal challenge. Ohio's submittal includes materials demonstrating that the public had suitable opportunity to comment on draft rules and that other procedural requirements for State rule adoption were also followed. This criterion has been satisfied.

II. Rulemaking Action

The regulations in Ohio's submittal impose strict limits on the types of emissions that caused the previous high monitored concentrations of lead. These regulations are enforceable, and Ohio has demonstrated that these regulations assure attainment of the lead standard in the area. Therefore, USEPA is approving Ohio's submittal, and is concluding that Ohio's SIP for lead is no longer inadequate.

The USEPA is publishing this action without prior proposal because USEPA views this action as a noncontroversial revision and anticipates no adverse comments. However, USEPA is publishing a separate document in today's Federal Register, which constitutes a ''proposed approval'' of the requested SIP revision and clarifies that the rulemaking will not be deemed final if timely adverse or critical comments are filed. The ''direct final'' approval shall be effective on December 26, 1995, unless USEPA receives adverse or critical comments by November 27, 1995. If USEPA receives comments adverse to or critical of the approval discussed above, USEPA will publish a Federal Register document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking document.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.,* USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, Part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *USEPA,* 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA has determined that the approval action promulgated today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 26,

1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

Note.—Incorporation by reference of the State Implementation Plan for the State of Ohio was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 13, 1995.

David A. Ullrich,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is 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 KK—Ohio

2. Section 52.1870 is amended by adding paragraph (c)(106) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(106) On October 7, 1994, Ohio submitted four rules in Chapter 3745–71 of the Ohio Administrative Code, entitled ''Lead Emissions,'' and submitted a modeling demonstration that the limitations in these rules assure attainment of the lead standard in central Cleveland.

(i) Incorporation by reference. Rules 3745–71–01, 3745–71–03, 3745–71–05, and 3745–71–06, all adopted September 22, 1994, and effective October 4, 1994.

(ii) Additional material. A submittal letter from the Director of the Ohio Environmental Protection Agency, with attachments documenting a modeling analysis of lead concentrations near the Master Metals secondary lead smelter.

[FR Doc. 95–26656 Filed 10–26–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 372

[OPPTS–400097; FRL–4970–6]

2,2-Dibromo-3-nitrilopropionamide; Toxic Chemical Release Reporting; Community Right-to-Know; Stay of Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Administrative stay; request for comment on petition to delist.

SUMMARY: EPA is granting a request submitted by the Dow Chemical Co. for an administrative stay of the reporting requirements under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and section 6607 of the Pollution Prevention Act of 1990 (PPA), for 2,2-dibromo-3-nitrilopropionamide (DBNPA)(Chemical Abstracts Service (CAS) No. 10222–01–2). This chemical was added to the 40 CFR part 372 Subpart D list of toxic chemicals in a final rule published in the Federal Register of November 30, 1994. Since promulgation of the final rule, the Agency has preliminarily determined that it categorized certain effects that supported the listing decision incorrectly. The effect of this stay is to suspend reporting on this chemical while the Agency completes its reassessment of the data for this chemical. The Agency has also received a petition to delist DBNPA based on new information. The Agency is making this information available for public comment and is seeking comment on whether DBNPA should remain on the EPCRA section 313 list of toxic chemicals. After evaluating public comment, the Agency will issue a final decision on the delisting petition which will either delete or retain this chemical on the section 313 list. In either case, the Agency's decision on the petition to delist will serve to dissolve this administrative stay. This action affects only EPCRA section 313 and PPA section 6607 toxic chemical reporting for DBNPA.

DATES: The administrative stay is effective October 27, 1995. Written comments on the petition to delist must be received by November 27, 1995.

ADDRESSES: Written comments should be submitted in triplicate to : OPPT Docket Clerk (7407), TSCA Nonconfidential Information Center (NCIC), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number OPPTS–400097. No confidential business information (CBI) should be submitted through e-mail. Electronic comments on the information presented in this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit VII. of this document. Comments should include the docket control number for this document, OPPTS–400097.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Project Manager, 202–260–9592, e-mail: doa.maria@epamail.epa.gov for specific information on this action. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1–800–535–0202, in Virginia and Alaska: 703–412–9877 or Toll free TDD: 1–800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Background

Section 313 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11023 (EPCRA) requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106). Section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

EPA issued a statement of petition policy and guidance in the Federal

Register of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. EPA has published a statement clarifying its interpretation of the section 313(d)(2) and (3) criteria for adding and deleting chemicals from the section 313 toxic chemical list (November 30, 1994; 59 FR 61439).

In the Federal Register of November 30, 1994 (59 FR 61432), the Agency published a final rule adding 286 chemicals and chemical categories to the EPCRA section 313 list of toxic chemicals. DBNPA was included among the 286 chemicals and chemical categories in the November 1994 final rule. The Agency found that DBNPA met the section 313(d)(2)(B) criteria for chronic human toxicity because of chronic respiratory effects. (See 59 FR 61452).

II. Description of Request and Basis for Administrative Stay

Since the promulgation of the final rule adding DBNPA to the list of toxic chemicals, it has been brought to the Agency's attention that it may have incorrectly categorized the effects observed in studies which were reviewed prior to promulgation. Some members of the regulated community have also expressed concern that the basis for the Agency's final action on this chemical was inadequately described in the rulemaking record.

On December 29, 1994, Dow Chemical Co. requested that the Agency administratively stay the reporting requirements for DBNPA, based on their contention that the new information submitted with their request (which includes a study report dated August 2, 1994 and further analyses of studies in the record) demonstrates that the original basis for listing (chronic respiratory toxicity) is not valid (Ref. 1). Subsequently, on February 24, 1995, Dow Chemical Co. petitioned the Agency pursuant to EPCRA section 313(e) to delete DBNPA from the EPCRA section 313 list of toxic chemicals, contending that the new information submitted with the request for an administrative stay demonstrates that DBNPA does not meet the listing criteria (Ref. 2).

Based on its reassessment of the information supporting the listing of DBNPA, EPA agrees preliminarily that DBNPA does not cause chronic respiratory toxicity. Therefore, the Agency believes that it is important and appropriate to administratively stay the effective date of the listing of this chemical.

EPCRA section 313(d)(2) states that a chemical may be listed if any of the listing criteria are met. Therefore, in order to add a chemical, EPA must demonstrate that at least one criterion is met, but does not need to examine whether all other criteria are also met. Conversely, in order to remove a chemical from the list, EPA must demonstrate that none of the criteria are met. In reviewing the petition to delist DBNPA pursuant to EPCRA section 313(d)(3), EPA believes that DBNPA meets the criteria described in section 313(d)(2)(B), based on subchronic gastric toxicity; and the criteria described in section 313(d)(2)(C), based on environmental toxicity. Because the bases for meeting these criteria are different than those for which comments were originally received in response to the January 12, 1994 Federal Register notice, EPA is seeking comment on the initial determination for this chemical; the additional information which has been brought to the Agency's attention; and, generally, comments (and any supporting data) on whether the Agency should either grant or deny the petition to delete DBNPA.

Under the November 1994 final rule, reporting for DBNPA is required to begin for activities during the 1995 calendar year, with the first reports due on or before July 1, 1996. However, because of the decision to issue this administrative stay, facilities will not have to prepare and submit Toxic Release Inventory (TRI) Form R reports for the 1995 reporting year. Moreover, pending a decision by the Agency of whether to grant the petition and propose a rule to delete DBNPA or to deny the petition and affirm the listing, the reporting requirements of EPCRA section 313 and PPA section 6607 for DBNPA will continue to be administratively stayed. EPA's decision will be made promptly after consideration of public comment submitted on this Federal Register document.

III. EPA's Technical Review of the Petition

A. Chemistry/Use Profile

1. *Physical properties*. DBNPA is a white, crystalline solid in its pure state. It has moderate water solubility (15 grams per liter (g/L)) and a very low vapor pressure at room temperature (less than 4×10^{-5} mm Hg at 25 °C). DBNPA is degraded through hydrolysis in water, but this is a pH-dependent process which is most rapid under alkaline conditions (Ref. 4).

2. *Industrial uses*. DBNPA is used as an algicide, bactericide, fungicide, and a preservative additive. The target microorganisms are coliform bacteria; slime- and odor-forming algae, bacteria and fungi; yeasts; and sulfide producing bacteria (as found in enhanced oil recovery applications). DBNPA's use as a pesticide is regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). It is used to control microorganisms in industrial water systems (such as cooling water and pulp and paper manufacturing); oil field applications; and a variety of products such as adhesives, glues, industrial coatings, metal cutting fluids, paints, emulsions, waxes, polishes, and inks. Currently, 26 companies have a total of 44 FIFRA registrations for DBNPA or products containing this chemical. At the present time, 80 percent of the total consumption of DBNPA in the U.S. (approximately 850,000 pounds in 1994) is in paper mills, 18 percent is used in recirculating water cooling systems and 2 percent is used in once-through cooling water systems. DBNPA is expected to be commonly used in rotation with other biocides in order to prevent acquired resistance by strains of the target organism or in combination with other biocides if there is a build-up of a particular organism. DBNPA is believed to be too expensive to be used as a primary biocide in many applications (Ref. 6).

B. Toxicological Evaluation of DBNPA

1. *Acute toxicity*. EPA has reviewed the clinical signs, such as dyspnea, evidenced in 4- and 13–week rat studies by gavage. When EPA originally reviewed these studies for the November 1994 rule, EPA concluded that the effects observed in these studies represented chronic respiratory toxicity. Upon further analysis, EPA agrees with Dow Chemical's contention that the observed dyspnea was secondary to the method of treatment and that it is the result of acute irritation of the trachea and epiglottis due to reflux of the test material. Although some uncertainty exists as to the mechanism by which the dyspnea (and in some cases death) occurred, a NOEL (no observed effect level) of 5 milligrams per kilogram per day (mg/kg/day) and a LOEL (lowest observed effect level) of 13 mg/kg/day were established. DBNPA is corrosive, particularly to the eyes and, at least, is severely irritating to the respiratory tract (Refs. 3 and 7).

2. *Developmental toxicity*. In a developmental study in rabbits,

developmental effects were reported at a dose of 30 mg/kg/day, with no evidence of maternal toxicity until the next higher dose (60 mg/kg/day). Because the 30 mg/kg/day dose group was performed at a different time than the rest of the study (this group was initiated after the death of six rabbits) and did not have a concurrent control group for comparison, no statistical analysis can be validly performed. This treatment group cannot be considered as a valid part of the study (Refs. 3, 7, and 12).

3. *Chronic toxicity.* As indicated above, a developmental study in rabbits showed evidence of maternal toxicity at a dose of 60 mg/kg/day. Deaths due to treatment were caused by ulcerative and hemorrhagic gastritis and occurred in 6 of 14 treated rabbits (dams). Evidence of effects did not occur immediately in the study, and deaths did not occur until after 10 days of dosing. These effects are considered to be subchronic in nature. Further support for the subchronic, rather than acute, nature of the effect is that in a range finding study in which rats were administered the test material by gavage at similar doses for up to 2 weeks, no gastritis was seen (except in one female at the end of 2 weeks treatment). Due to the deletion of the 30 mg/kg/day dose level from the evaluation of the developmental study, the maternal NOEL for this study has been reassessed as 10 mg/kg/day (no effects were observed at dose levels of 0 and 10 mg/kg/day), with a maternal LOEL of 60 mg/kg/day (Refs. 3 and 7).

4. *Environmental toxicity.* Only the 96–hour (h) EC_{50} (median effective concentration) of 0.300 mg/L (milligram per liter) for DBNPA was reported for freshwater green algae based on the growth rate. This result was based on nominal concentrations derived from a water-based stock solution used to initiate the test. Had this effective concentration been based on mean measured concentrations of the test substance during the test period, EPA believes that the EC_{50} values would have been lower. Assuming a hydrolysis rate ($t_{1/2}$) of 63 hours at pH 7 (the pH of the algal medium was 7.5), concentrations were predicted at time (t)=0 h, t=63 h, and t=98.5 h and averaged. The mean concentrations were predicted to be 64 percent of the concentrations at t=0 h. Based on these predicted mean concentrations, EPA calculated the green algal 96-h EC_{50} as 0.010 mg/L. Saltwater green algal toxicity was not measured. The reported value for daphnid chronic toxicity is a LOEC (lowest observed effect concentration) of 0.020 mg/L; this was the lowest dose tested. Using the dose-response curve data from the test report, chronic EC_{10} (ten percentile effective concentration) values were predicted for total mean young per female (0.005 mg/L) and for total young (0.008 mg/L). DBNPA slows oyster shell deposition and has a 48–h EC_{50} less than 0.070 mg/L. It is not known whether this is a direct effect of DBNPA on the oysters themselves or an indirect effect of DBNPA on oysters because of direct effects on oyster food sources, i.e., phytoplankton or saltwater green algae. Because the toxicity of DBNPA towards saltwater green algae was never measured, this issue could not be resolved (Refs. 8, 9, and 10).

C. Exposure to DBNPA in the Environment

In making listing determinations under EPCRA section 313, there are limited circumstances under which it is appropriate for EPA to consider exposure factors (See 59 FR 61440). The Agency believes that exposure considerations are appropriate in making determinations (1) under section 313(d)(2)(A), (2) under section 313(d)(2)(B) for chemicals that exhibit low to moderately low toxicity based on a hazard assessment (i.e., those chemicals for which the value of listing on the EPCRA section 313 list on hazard alone is marginal), and (3) under section 313 (d)(2)(C) for chemicals that are low or moderately ecotoxic or do not induce well-documented serious adverse effects. The Agency believes that exposure considerations are not appropriate in making determinations (1) under section 313(d)(2)(B) for chemicals that exhibit moderately high to high human toxicity based on a hazard assessment, and (2) under section 313(d)(2)(C) for chemicals that are highly ecotoxic or induce well-established adverse environmental effects. Based on its most recent reassessment, EPA has preliminarily determined that DBNPA is acutely toxic to humans, highly chronicly toxic to humans and highly ecotoxic.

EPA has, as part of the review of DBNPA, conducted an exposure analysis. Based on a screening level assessment, EPA estimated the likelihood of exposure at facility boundaries at levels which are reasonably likely to cause acute toxicity. Further, because of uncertainties encountered initially regarding the degree of environmental toxicity of DBNPA, EPA also conducted an exposure analysis which estimated the likelihood of exposure to the environment. Because the analyses were conducted, the results of this environmental exposure analysis are presented below. However, the determination that the listing criterion of EPCRA section 313(d)(2)(C) is met is based solely on the hazard of the chemical, not on estimated exposures.

Due to its very low vapor pressure, DBNPA is not expected to be released in significant quantities to air. Since DBNPA is manufactured and imported as a liquid and is soluble in water, land releases are also anticipated to be low. However, there is a concern for aqueous releases of DBNPA to the environment; especially from paper mills and cooling water systems (Ref. 10).

1. *Paper mills.* There are a variety of applications for which DBNPA can be used in paper mills. DBNPA is used to control microorganisms which can grow in aqueous systems affected by machine deposits (such as starch, which acts as a nutrient) and other sources of biological contamination. Many of the additives used in this industry are preserved with biocides. DBNPA is continuously added at a rate of 0.03-0.1 lb per ton of pulp or paper (on a dry basis) and it is assumed that DBNPA is used to treat the pulp or paper every day (Ref. 6). DBNPA's primary removal mechanism is hydrolysis, which is highly pH sensitive. At neutral pH, the overall removal during wastewater treatment operations with a total residence time of 12 hours is estimated to be 15 percent (the typical pH of waste water treatment plants in the United States is 7.2). All of the DBNPA used within the mill is expected to be sent to on-site treatment or directly to a publicly owned treatment works (POTW) (Refs. 5 and 6).

Based on these assumptions, EPA calculated the predicted releases of DBNPA daily at each site, stream concentrations at low and mean flow, and potential daily dose rates for human exposure to drinking water for a variety of paper mill operations. Based on this screening level assessment, EPA believes there is little to no likelihood for dyspnea associated with general population drinking water exposures in this use application. However, at the usage rate indicated, the concentration of concern for environmental effects on freshwater green algae and daphnids would be exceeded essentially every day throughout the year (364-365 days) (Ref. 10).

2. *Cooling water systems.* Cooling systems are treated to maintain efficient heat exchange, to prevent plugging of orifices, to prevent potential health concerns and for aesthetics. Typical biocide treatments have use levels of less than 100 mg/L and the biocide may be added continuously or intermittently. There are an estimated 40,000

recirculating open-water cooling systems in the U.S. (average size 20,000 gallons) and an estimated 4,000 once-through water cooling systems with an average size of 1,000,000 to 20,000,000 gallons. Although there are far more recirculating than once-through systems, the total volume of water discharged from once-through towers is estimated to be approximately the same as from recirculating systems. In recirculating systems, DBNPA is used at a rate of 2.5-24 mg/L. DBNPA is used to treat the water 1-3 times per week throughout the year (Refs. 5 and 6). Based on the above usage rate and the estimated annual use of DBNPA in recirculating water cooling systems (153,000 lb/yr), the annual use of DBNPA is calculated at 64-640 lb/site-yr at 239-2,390 sites. All of the DBNPA used in recirculating water cooling systems is expected to be sent to on-site treatment or directly to a POTW (Refs. 5 and 6). Calculated at the maximum usage rate for DBNPA and the lowest stream flow, a screening level assessment similar to that conducted for paper mills demonstrated no likelihood for dyspnea to the general population (Ref. 10). For recirculating water cooling systems, the concentration of concern for environmental effects on freshwater green algae and daphnids would be exceeded 160 days per year (Ref. 10). The average use rate of DBNPA in once-through cooling systems is estimated at 200 pounds per site-year (lb/site-yr). DBNPA is used to treat the water less than 100 days during the year, which is an application rate of less than 2 lb/site-day. All of the DBNPA used in recirculating water cooling systems is expected to be sent to on-site treatment or directly to a POTW (Refs. 5 and 6). A screening level assessment indicated that there is little to no likelihood for dyspnea associated with general population drinking water exposures in this use application (Ref. 10). For once-through water cooling systems, the concentration of concern for environmental effects on freshwater green algae and daphnids would be exceeded 99 days per year (Ref. 10).

IV. Technical Summary

Based on EPA's most recent assessment, the Agency has preliminarily determined that DBNPA: (1) Can reasonably be anticipated to cause subchronic gastrointestinal effects; and (2) can reasonably be anticipated to cause toxicity to freshwater green algae, chronic effects on freshwater invertebrates, and chronic effects on oysters, at relatively low concentrations. EPA's toxicological evaluation of DBNPA indicates that it exhibits acute toxicity only at levels that exceed the expected releases and resultant exposures.

V. Administrative Stay

A. Rationale for Decision

EPA is granting the request for an administrative stay of the listing of DBNPA on the EPCRA section 313 list of toxic chemicals. EPA proposed to list DBNPA because scientific evidence showed that it exhibited chronic human toxicity effects, specifically citing respiratory toxicity (59 FR 1807). The Agency affirmed this finding in the final rule (59 FR 61452). In the final rule, the Agency responded to commenters who argued that the respiratory effects cited were a result of an acute toxic reaction to direct exposure to the respiratory system from the gavage dosing methodology. At that time the Agency stated that ''. . .the dyspnea observed in the 4–week and 13–week rat gavage studies cited in the proposed rule may have been due to severe irritation of the trachea and lungs from accidental or incidental delivery of small amounts of the DBNPA dosing solutions into the larynx, pharynx, trachea, and/or lungs during the procedure. However, this suggestion of possible cause can be neither refuted nor confirmed based upon the available data.'' Since the publication of the final rule, the Agency has preliminarily determined that it had incorrectly categorized the effects in studies which were reviewed prior to promulgation. EPA currently believes that these data serve to confirm the acute nature of the respiratory toxicity of DBNPA. EPA's further review of DBNPA data also indicates that DBNPA causes gastric toxicity and environmental toxicity, and meets the 313(d)(2)(B) and 313(d)(2)(C) listing criteria on that basis.

Although the statutory basis for the determination that DBNPA meets the listing criteria of EPCRA section 313(d)(2) would not change, the Agency now believes that the listing should be based on effects other than that listed in the final rule. EPA recognizes that, although its ultimate decision would remain unchanged, interested parties may disagree with the Agency's position that the information on subchronic gastric effects supports a finding under section 313(d)(2)(B) or its position that the information on environmental toxicity supports a finding under section 313(d)(2)(C). EPA believes good cause exists to issue this Administrative Stay to allow parties time to prepare and submit comment and information on these points.

B. Legal Authority

The Agency believes that this administrative stay is appropriate and in the interest of justice, given the fact that EPA incorrectly categorized the effects observed in certain data relating to DBNPA prior to promulgation of the final rule adding this chemical to the EPCRA section 313 list of toxic chemicals. Although the Agency does not regard today's stay as a rule, were it to be viewed as a rule, the Agency believes that there is good cause for issuing it without prior notice and opportunity for comment and for making it immediately effective. Under section 313(a), facilities face a current and ongoing obligation to collect information about releases, transfers, and waste management of DBNPA. Until such time as the issues described in this document are resolved, EPA believes that this administrative stay is necessary. As stated above, EPA has begun addressing these issues and will move quickly toward final resolution of the status of DBNPA under EPCRA section 313.

In addition, this administrative stay is authorized by 5 U.S.C. section 705, which provides that an agency may postpone the effective date of any action taken by it when justice so requires, pending judicial review. Although no petition for review has been formally filed as of this date with respect to DBNPA, the Agency believes that rather than going through costly and potentially protracted litigation, an Administrative Stay coupled with a Federal Register notice and opportunity to comment is both consistent with the goal of the TRI program to involve the public in the resolution of important issues and in the interest of justice.

C. Effective Date of Administrative Stay

This administrative stay, which applies only to the listing of DBNPA on the EPCRA section 313 list of toxic chemicals is effective October 27, 1995.

VI. Request for Public Comment

EPA requests public comment on the information presented in this document regarding the continued listing of DBNPA on the EPCRA section 313 list of toxic chemicals. Comments should be submitted to the address listed under the ADDRESSES unit. All comments must be received on or before November 27, 1995.

VII. Administrative Record

A record has been established for this administrative stay under docket number OPPTS–400097 (including comments and data submitted electronically as described below). A

public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information (CBI), is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this administrative stay described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official rulemaking record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

VIII. References

(1) Crowell Morring; *Petition for Administrative Stay of SARA Section 313 Reporting Requirements for 2,2-Dibromo-3-nitrilopropionamide (DBNPA, CAS No. 001 222-01-2) Pending Consideration of New Information*. Dated December 29, 1994.

(2) Crowell Morring; *Petition of the Dow Chemical Company to Delete 2,2-Dibromo-3-nitrilopropionamide (DBNPA, CAS No. 001 222-01-2) from the List of Chemicals Subject to Section 313 of the Emergency Planning and Community Right to Know Act of 1996*. Dated February 24, 1995.

(3) USEPA/OPP; Doyle, Elizabeth A., *DBNPA - Response to Comments Filed by Dow Chemical Company in Support of a Petition to Delist (Dated February 24, 1995 and April 13, 1995)* memorandum dated May 15, 1995.

(4) USEPA/OPPT; Bushman, Daniel R., *Chemistry Report for the EPCRA § 313 Petition to Delist 2,2-dibromo-3-nitrilopropionamide (DBNPA)* dated March 31, 1995.

(5) USEPA/OPPT; Hollister, Sondra L., *Exposure Assessment : 2,2-Dibromo-3-nitrilopropionamide Delisting Petition* dated July 14, 1995.

(6) USEPA/OPPT; Jackson, Eric M., *Engineering Report for the EPCRA § 313 Petition to Delist 2,2-Dibromo-3-Nitrilopropionamide (DBNPA)* dated July 11, 1995.

(7) USEPA/OPPT; Murphy, James J., *Review of Toxicology Summary on 2,2-Dibromo-3-Nitrilopropionamide for EPCRA 313 Delisting Petition* memorandum dated May 22, 1995.

(8) USEPA/OPPT; Nabholz. J. V., Petition to Remove DBNPA from EPCRA § 313: Environmental Toxicity (Addendum #2) dated August 8, 1995.

(9) USEPA/OPPT; Nabholz. J. V., Petition to Remove DBNPA from EPCRA § 313: Environmental Toxicity dated May 16 (second dated July 25), 1995.

(10) USEPA/OPPT; Rusak, Linda M., *DBNPA Delisting Petition; Revised CSRAD Report* dated July 19, 1995.

(11) USEPA/OPPT; Silagi, William, *Economic Analysis of Petition to Delist 2,2,-Dibromo-3-Nitrilopropionamide (DBNPA) from the EPCRA Section 313 List* dated April 10, 1995.

(12) USEPA/ORD; Preuss, Peter W., *ORD's Response to the Petition to Delist DBNPA from SARA Section 313* memorandum dated June 13, 1995.

IX. Paperwork Reduction Act

There are no information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., associated with this action.

List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: October 13, 1995.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore 40 CFR part 372 is amended to read as follows:

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

§ 372.65 [Amended]

2. Section 372.65 is amended by adding an identical note to the end of the table in both paragraphs (a) and (b) to read as follows:

Note: The listing of 2,2-dibromo-3-nitrilopropionamide (DBNPA) (CAS No. 10222–01–2) is stayed. The stay will remain in effect until further administrative action is taken.

[FR Doc. 95–26324 Filed 10–26–95; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 95–89; RM–8639]

Radio Broadcasting Services; Healdsburg, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 244A to Healdsburg, California, as that community's third local FM service, in response to a petition for rule making filed on behalf of Phil Squyres. *See* 60 FR 32934, June 26, 1995. With this action, the proceeding is terminated.

DATES: Effective December 4, 1995. The window period for filing applications will open on December 4, 1995, and close on January 4, 1996.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the window application filing process for Channel 244A at Healdsburg, California, should be addressed to the Audio Services Division, FM Branch, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 95–89, adopted October 10, 1995, and released October 20, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's 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, located at 1919 M Street, NW., Room 246, or 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:

PART 73—[AMENDED]

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

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 244A at Healdsburg.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–26698 Filed 10–26–95; 8:45 am]

BILLING CODE 6712–01–F

47 CFR Part 73

[MM Docket No. 93–17; RM–8170]

Radio Broadcasting Services; Sharon, CT, Rosendale, WA and West Hurley, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of the State University of New York, allots Channel 273A to Rosendale, New York. *See* 58 FR 11204 (Feb. 24, 1993). The Commission denies that portion of petitioner's request that sought modification of Station WFNP's license from Channel 204A to Channel 273A. The counterproposals filed jointly by Sacred Heart University, Inc. and Radio South Burlington to modify Sharon, Connecticut, Station WQQQ's license from Channel 277A to Channel 273A, reallot Channel 273A to Washington, New York, and reserve Channel 277A at Sharon for noncommercial educational use, was dismissed.

DATES: Effective December 4, 1995. The window period for filing applications will open on December 4, 1995, and close on January 4, 1996.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 93–17, adopted October 3, 1995, and released October 20, 1995. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Additionally a proposal by Raymond Natole to allot Channel 255A to West Hurley, New York, will be the subject of a separate Notice of Proposed Rule Making. Channel 273A can be allotted to Rosendale in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.7 kilometers (2.9 miles) southeast, at coordinates North Latitude 41–49–14 and West Longitude 74–02–13, to avoid a short-spacing to Station WUUU, Channel 273B, Rome, New York. Canadian concurrence has been received since Rosendale is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

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:

PART 73—[AMENDED]

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

Authority: Secs 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, 303.

§ 73.202 [Amended]

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

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 95–26697 Filed 10–26–95; 8:45 am]

BILLING CODE 6712–01–F

DEPARTMENT OF DEFENSE

48 CFR Parts 219 and 252

Defense Federal Acquisition Regulation Supplement; Small Disadvantaged Business Utilization Program

AGENCY: Department of Defense (DoD).

ACTION: Suspension.

SUMMARY: The Under Secretary of Defense for Acquisition and Technology has suspended those sections of the Defense Federal Acquisition Regulation Supplement (DFARS) which prescribe set-aside of acquisitions for small disadvantaged businesses. This action has been reviewed by the Office of Management and Budget under Executive Order 12866.

DATES: *Effective Date:* October 23, 1995. *Comment Date:* Comments on the suspension should be submitted in writing to the address below on or before November 27, 1995.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, D.C. 20301–3062. Telefax number (703) 602–0350. Please cite Holding File 95–H746 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Schneider, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This suspends Defense Federal Acquisition Regulation Supplement (DFARS) sections 219.501(S–70), 219.502–2–70, 219.502–4, 219.504(b)(i), 219.506, 219.508(e), 219.508–70, and contract clause 252.219–7002. This suspension takes account of the Supreme Court's decision in *Adarand Constructors, Inc.* v. *Pena,* 63 U.S.L.W. 4523 (U.S. June 12, 1995).

B. Regulatory Flexibility Act

This suspension may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the suspension precludes contracting officers from setting aside acquisitions for small disadvantaged business. The objective of the suspension is to take account of the decision of the Supreme Court in *Adarand Constructors, Inc.* v. *Pena,* 63 U.S.L.W. 4523 (U.S. June 12, 1995) while an interagency government-wide review of affirmative action programs is conducted. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and may be obtained from the address specified herein. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Regulatory Flexibility Act. Such comments must be submitted separately and cite DFARS Holding File 95–H746 in correspondence.

C. Paperwork Reduction Act

This suspension does not impose any additional information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Accordingly, Parts 219 and 252 are amended as follows:

PARTS 219 AND 252—[AMENDED]

1. The authority citation for 48 CFR Parts 219 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

219.501 (S–70), 219.502–2–70, 219.502–4, 219.506, 219.508, and 219.508–70 [Suspended]

2. Sections 219.501(S–70), 219.502–2–70, 219.502–4, 219.504(b)(i), 219.506, 219.508(e), and 219.508–70, are suspended.

252.219–7002 [Suspended]

3. Section 252.219–7002 is suspended.

[FR Doc. 95–26683 Filed 10–26–95; 8:45 am]
BILLING CODE 5000–04–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 501, 504, 507, 508, 509, 515, 516, 519, 528, 536, 541, 549, and 552

[APD 2800.12A, CHGE 68]

RIN 3090–AF80

General Services Administration Acquisition Regulation; Miscellaneous Changes

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to implement portions of the Federal Acquisition Streamlining Act of 1994 (FASA). This change to the GSAR implements those Federal Acquisition Regulation (FAR) changes, makes other changes to reflect suggestions previously submitted for streamlining the regulations or implementing themes in the Vice President's National Performance Review, and makes miscellaneous changes and corrections.

EFFECTIVE DATE: October 30, 1995.

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

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the Federal Register for public comment because it merely revises the GSAR to conform to the FAR and makes other changes in agency internal operating procedures.

B. Executive Order 12866

This rule was not submitted to the Office of Management and Budget because it is not a significant rule as defined in Executive Order 12866, Regulatory Planning and Review.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply because this rule is not a significant revision as defined in FAR 1.501–1.

D. Paperwork Reduction Act

This rules does not impose any information collection or recordkeeping requirements that require the approval of OMB under 44 U.S.C. 3501, *et seq.* Therefore, the requirements of the Paperwork Reduction Act do not apply.

List of Subjects in 48 CFR Parts 501, 504, 507, 508, 509, 515, 516, 519, 528, 536, 541, 549 and 552

Government procurement.

Accordingly, 48 CFR Parts 501, 504, 507, 508, 509, 515, 516, 519, 528, 536, 541, 549 and 552 are amended as follows:

1. The authority citation for 48 CFR Parts 501, 504, 507, 508, 509, 515, 516, 519, 528, 536, 549 and 552 continues to read as follows:

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

PART 501—GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION SYSTEM

501.700 [Removed]

501.704 [Removed]

501.704–70 [Removed]

2. Sections 501.700, 501.704 and 501.704–70 are removed.

3. Section 501.707 is revised to read as follows:

501.707 Signatory authority.

The FAR frequently refers to determinations being made by the agency head. Section 309 of the Federal Property and Administrative Services Act defines agency head and provides that at the option of the Administrator, the term may include the chief official of any principal organizational unit of the GSA. The Administrator has authorized the heads of contracting activities to act as agency head to facilitate the procurement of property and services under Title III of the Federal Property and Administrative Services Act. (See GSA Delegation of Authority Manual, ADM P 5450.39C.) When the applicable statute precludes redelegation of the authority, the Administrator must sign the D&F (see for example, FAR 6.302–7). Class D&Fs, if authorized, must be signed by the HCA.

PART 504—ADMINISTRATIVE MATTERS

4. Section 504.7001–2 is amended by revising paragraph (c) to read as follows, and by removing the words ''small purchases'' in paragraph (f) service/office designation M and P, and inserting ''simplified acquisition'' in their place.

504.7001–2 Basic procurement instrument identification number.

* * * * *

(c) The fifth character is a capital letter assigned to the service/office preparing the instrument as follows:

B Office of the Chief Financial Officer
F Federal Supply Service
G GSA Board of Contract Appeals
C Office of Management and Human Resources
J Office of Inspector General
K Information Technology Service
L Office of General Counsel
P Public Buildings Service
T Federal Telecommunications Service

* * * * *

PART 507—ACQUISITION PLANNING

5. Section 507.104 is amended by revising paragraphs (c), (d), and (e) to read as follows:

507.104 General procedures.

* * * * *

(c) Limited plans must be in writing, unless waived under paragraph (d) of this section.

(d) The contracting director may waive the requirement for a written limited acquisition plan (1) for recurring annual acquisitions or (2) in cases of unusual or compelling urgency. The individual responsible for preparing the plan shall present (as a minimum) an oral plan to at least the next higher level for approval. The file must summarize the content of the oral plan and the name of the individual that approved it. In cases of unusual or compelling urgency, the summary must also indicate the nature of the urgency and may be prepared after award when preparation before award would unreasonably delay the acquisition. The summary may be included in the justification required by FAR 6.302–2(c).

(e) Acquisition plans for contracts which propose using other than full and open competition must be coordinated with and concurred in by the cognizant competition advocate unless the

proposed contract will be awarded under the authority at FAR 6.302–5 or will be awarded under a class justification approved by the Associate Administrator for Acquisition Policy.

PART 508—REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subpart 508.3 [Removed and Reserved]

6. Subpart 508.3 is removed and reserved.

7. Subpart 508.7 is amended by revising the heading to read as follows:

Subpart 508.7—Acquisition From Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

8. Section 508.705–70 is amended by revising paragraphs (b) and (d) to read as follows:

508.705–70 Adding items to the Procurement List.

* * * * *

(b) The Committee for Purchase from People Who Are Blind or Severely Disabled (the Committee), if requested by the CNA, may assign the supply or service to the CNA for development by a workshop and will list the item in the Preliminary Evaluation Record. A copy of the record, updated monthly, is maintained by the Office of Enterprise Development (E).

* * * * *

(d) The Committee may request that a procurement be delayed pending Committee action. The contracting activity shall consult with E before rejecting such a request.

PART 509—CONTRACTOR QUALIFICATIONS

509.106–70 [Removed]

9. Section 509.106–70 is removed.

PART 515—CONTRACTING BY NEGOTIATION

10. Section 515.501 is revised to read as follows:

515.501 Definitions.

Coordinating office, as used in this subpart, means the (a) Office of GSA Acquisition Policy, (b) Office of Acquisition, FSS, (c) Office of Information Technology Acquisition, ITS, (d) Office of the Acquisition Executive, PBS, or the office designated in writing by the regional administrator in the regions. The Office of GSA Acquisition Policy serves as the coordinating office for Central Office activities outside of FSS, ITS, and PBS.

PART 516—TYPES OF CONTRACTS

Subpart 516.3—[Removed]

11. Subpart 516.3 is removed.

516.403 [Removed]

12. Section 516.403 is removed.

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

519.502–1 [Removed]

13. Section 519.502–1 is removed.

PART 528—BONDS AND INSURANCE

14. Section 528.103–2 is amended by revising paragraph (a) to read as follows:

528.103–2 Performance bonds.

(a) Performance bonds shall not be required for building service contracts unless a written determination is made by the contracting officer explaining why the bond is essential to protect the Government's interest and justifying the additional cost of the bonding requirement.

* * * * *

528.106–1 [Removed]

15. Section 528.106–1 is removed.

PART 536—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

536.302–70 [Removed]

16. Section 536.302–70 is removed.

17. Part 541 is added to read as follows:

PART 541—ACQUISITION OF UTILITY SERVICES

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

Subpart 541.4—Administration

541.401 Monthly and annual review.

Unless other procedures are established, the contracting officer shall perform or cause to be performed the reviews required by FAR 41.401.

PART 549—TERMINATION OF CONTRACTS

18. Section 549.111 is revised to read as follows:

549.111 Review of proposed settlements.

The HCA may establish procedures for the review and approval of settlement agreements at a level above the contracting officer.

Dated: October 12, 1995.

Ida M. Ustad,

Associate Administrator for Acquisition Policy.

[FR Doc. 95–26687 Filed 10–26–95; 8:45 am]

BILLING CODE 6820–61–M

48 CFR Parts 502, 514, 525 and 542

[APD 2800.12A, CHGE 67]

RIN 3090–AF85

General Services Administration Acquisition Regulation; Implementation of FAC 90–31

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration Acquisition Regulation (GSAR) is amended to conform to the Federal Acquisition Regulation (FAR) as amended by Federal Acquisition Circular (FAC 90–31) which amended the FAR to implement several sections of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355), and to make a GSA internal organizational change in Part 502.

EFFECTIVE DATE: October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of GSA Acquisition Policy, (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Public Comments

This rule was not published in the Federal Register for public comment because it merely revises the GSAR to conform to the FAR as amended by FAC 90–31.

B. Executive Order 12866

This rule was not submitted to the Office of Management and Budget (OMB) for review because it is not a significant rule as defined in Executive Order 12866, Regulatory Planning and Review.

C. Regulatory Flexibility Act

This rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because the regulations primarily relate to internal contracting procedures.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget 44 U.S.C. 3501 *et seq.*

List of Subject in 48 CFR Parts 502, 514, 525 and 542

Government procurement.

Accordingly, 48 CFR Parts 502, 514, 525 and 542 are amended to read as follows:

1. The authority citation for 48 CFR Parts 514, 525 and 542 continues to read as follows:

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

PART 502—DEFINITIONS OF WORDS AND TERMS

2. Section 502.101 is amended by revising the definition ''Head of the contracting activity'' to read as follows:

§ 502.101 Definitions.

* * * * *

Head of the contracting activity means the Associate Administrator for Acquisition Policy, Associate Administrator for Federal Telecommunications Service (FTS), Commissioners of the Federal Supply Services (FSS), Information Technology Services (ITS), Public Buildings Service (PBS), or Regional Administrators. The Associate Administrator for Acquisition Policy serves as the HCA for Central Office contracting activities outside of FTS, FSS, ITS and PBS.

* * * * *

PART 514—SEALED BIDDING

3. Section 514.408–1 is amended by revising paragraph (a) to read as follows:

514.408–1 General.

(a) Oral notices of award shall not be used.

* * * * *

PART 525—FOREIGN ACQUISITION

4. Subpart 525.9 is added to read as follows:

Subpart 525.9—Additional Foreign Acquisition Clauses

525.901 Omission of audit clause.

The heads of contracting activities shall make the determination under FAR 25.901(c)(1) to waive the right to examination of records by the Comptroller General.

PART 542—CONTRACT ADMINISTRATION

5. Subpart 542.7 is added to read as follows:

Subpart 542.7—Indirect Cost Rates

542.703 Policy.

The contracting directors may waive the certification requirement under FAR 42.703–2.

Dated: October 10, 1995.

Ida M. Ustad,

Associate Administrator, Office of Acquisition Policy.

[FR Doc. 95–26693 Filed 10–26–95; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register
Vol. 60, No. 208
Friday, October 27, 1995

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 HOUSING FINANCE BOARD

12 CFR Part 933

[No. 95–34]

Membership Approval

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation on membership in the Federal Home Loan Banks (Bank). The proposed rule will allow the 12 Banks, rather than the Finance Board, to approve applications for Bank membership subject to the standards provided in the rule. The proposed rule will require the Banks to apply tests and criteria for determining compliance with the statutory eligibility requirements for Bank membership currently used by the Finance Board in approving applications. The proposed rule is part of an effort by the Finance Board and the Banks to transfer as many governance functions as possible from the Finance Board to the Banks.

DATES: Comments must be submitted in writing to the Finance Board by December 26, 1995.

ADDRESSES: Written comments may be mailed to: Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Amy R. Maxwell, Associate Director, District Banks Secretariat, Office of Managing Director, (202) 408–2882, or James H. Gray Jr., Associate General Counsel, Office of General Counsel, (202) 408–2538, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

In its role as primary regulator of the savings association industry and as overseer of the Banks, the Finance Board's predecessor agency, the former Federal Home Loan Bank Board (FHLBB), reviewed and approved all applications for Bank membership from federal and state chartered savings associations, institutions for which Bank membership was required. The FHLBB delegated the authority to approve membership applications from insurance companies and state-chartered savings banks insured by the Federal Deposit Insurance Corporation (FDIC), for which Bank membership was voluntary, to the Bank presidents acting as Principal Supervisory Agents of the FHLBB. *See* 12 U.S.C. 1437 (1988), *repealed by* Financial Institutions Reform, Recovery and Enforcement Act of 1989, Pub. L. No. 101–73, 103 Stat. 183 (Aug. 9, 1989) (FIRREA).

FIRREA amended the membership provisions of the Federal Home Loan Bank Act, 12 U.S.C. 1421–1449 (Bank Act). Section 704 of FIRREA amended section 4 of the Bank Act to make commercial banks and credit unions eligible for Bank membership for the first time. Section 704 of FIRREA also revised the membership eligibility criteria. Section 702 of FIRREA added sections 2A and 2B to the Bank Act, establishing the Finance Board and enumerating its powers and duties. Section 2B of the Bank Act limited the Finance Board's authority to delegate responsibilities to the Banks. From the enactment of FIRREA in 1989 until July, 1993, all Bank membership applications were reviewed and approved by the Finance Board. In July 1993, the Finance Board delegated to its Managing Director the authority to approve all applications for Bank membership from institutions that met all of the statutory criteria and received a composite rating of ''1,'' ''2'' or ''3'' under the Uniform Financial Institutions Rating System (the regulatory examination rating system). *See* Finance Board Res. No. 90–143 (Dec. 18, 1990); Chairman's Order No. 93–05 (July 19, 1993).

In August 1993, the Finance Board amended its membership regulation to incorporate the FIRREA changes to the Bank Act. The revised membership regulation established the Finance Board's general policies pertaining to Bank membership, including specifying the appropriate Bank district for applicants and, member stock requirements, outlining procedures for consolidation of members with other members and with nonmembers, and for withdrawal and removal from membership. Other than defining certain terms, the membership regulation did not establish standards for compliance with the statutory membership eligibility criteria. *See* 58 FR 43542 (1993), *codified at* 12 CFR Part 933.

In November 1993, the Finance Board adopted policy guidelines to assist staff in processing applications for Bank membership. *See* Membership Application Processing Guidelines, Finance Board Res. No. 93–88 (Nov. 17, 1993) (Guidelines). The purpose of the Guidelines was to clarify the more subjective membership eligibility criteria in the Bank Act, such as ''character of management and * * * home-financing policy * * * consistent with sound and economical home financing * * *.'' 12 U.S.C. 1424(a)(2)(C). In the Guidelines, the Finance Board also delegated to the Banks authority to approve a delineated subset of membership applications; that is, applications from institutions meeting all of the criteria in the Bank Act, the membership regulation and the Guidelines.

The Guidelines set forth specific, objective primarily financial criteria to be met in order for an applicant to be deemed in compliance with the statutory criteria. However, the Guidelines establish neither a minimum level of financial performance nor standards for evaluating applicants that fail to meet the requirements in the Guidelines. So, for instance, an application from an institution with a minimum composite regulatory examination rating that does not satisfy the criteria for delegated approval by the Banks must be evaluated by Finance Board staff and approved by the Managing Director pursuant to delegated authority. The Board of Directors of the Finance Board has not itself considered or acted upon any membership applications since authority to approve membership applications was delegated to the Managing Director in July 1993. Since December 1993, the Banks have approved 778 membership applications and the Finance Board's Managing Director has approved 834 membership applications, all pursuant to delegated authority.

The Finance Board and the Banks have been considering ways to transfer a variety of governance responsibilities from the Finance Board to the Banks since the completion of studies required by the Housing and Community Development Act of 1992, Pub. L. No. 102–550, 106 Stat. 3672 (Oct. 28, 1992), including the Finance Board's own study completed in April 1993. *See* Report on the Structure and Role of the Bank System 153 (Apr. 28, 1993). Finance Board staff and Bank staff have consistently identified membership application approval as one of the governance responsibilities that should be devolved from the Finance Board to the Banks because the Banks should be allowed broad discretion to manage their affairs as long as the Banks comply with the Bank Act and Finance Board regulations. This proposed rule is designed to transfer authority to approve all Bank membership applications from the Finance Board to the Banks. The proposed rule will codify many of the tests and criteria for determining compliance with the statutory eligibility requirements that are currently in the Finance Board's Guidelines for approving applications.

II. Analysis of the Proposed Rule

A. Membership Application Process

1. Requirements

Section 933.2 of the proposed rule sets forth the procedures for submission and review of membership applications. Under § 933.2(a), an applicant is required to submit an application which satisfies the requirements of part 933 and to certify in writing that it has reviewed the requirements of part 933, provided the most recent, accurate and complete information available, and will supplement the application if additional relevant information becomes available prior to the Bank's decision on whether to approve the application and where applicable, prior to the Finance Board's resolution of any appeal.

Under § 933.2(b), a Bank is required to prepare a written digest for each applicant that describes the reasons and findings that support the Bank's determination whether the applicant meets the requirements of this part. This requirement is consistent with the requirements in the Guidelines.

Under § 933.2(c), the Banks are required to maintain a membership file for each applicant for at least three years that includes the digest, all documents the Bank is required to obtain and review under this part, any additional documents the Bank obtains during the application process, and the Bank's decision resolution.

Under § 933.2(d), the Banks are required to use regulatory financial reports and other sources independent of the applicant to evaluate and analyze all conclusions offered by the applicant regarding its membership eligibility. ''Regulatory financial report'' is defined in § 933.1(z) of the proposed rule to include periodic financial reports filed by the applicant with its primary regulator, including quarterly call reports for commercial banks, thrift financial reports for thrifts, quarterly or semi-annual call reports for credit unions, the National Association of Insurance Commissioners' (NAIC) annual statements or quarterly reports for insurance companies, and other similar reports. ''Primary regulator'' is defined in § 933.1(x) of the proposed rule as the chartering authority for federally chartered applicants, the insuring authority for federally-insured applicants that are not federally chartered, or the appropriate state agency for all other applicants. The Finance Board included § 933.2(d) to ensure that the Banks evaluate membership applications without relying unduly on representations made by the applicants.

2. Decision on Application

Section 933.3 of the proposed rule establishes the Banks' authority and method for making decisions on applications. Under § 933.3(a), the Finance Board authorizes the Banks to approve membership applications, subject to the appeal procedure in proposed § 933.5. The proposed rule requires that the authority to approve applications be exercised only by the Bank's board of directors, a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer who has responsibility for business development. Section 933.3(b) requires the Bank to prepare for each applicant a decision resolution that includes the Bank's decision on whether to approve the applicant and the reasons therefor, and states that the information in the digest is accurate and based on a diligent and comprehensive review of all available information. If the application is approved, the decision resolution also must state that the applicant is authorized under the laws of the United States and the appropriate state to become a member of, purchase stock in, do business with and maintain deposits in the Bank to the which the applicant has applied, and that the applicant meets all of the eligibility criteria set forth in the Bank Act and part 933. The Guidelines currently require the Banks to make these certifications to the Finance Board when recommending an application for approval.

Section 933.3(c) requires the Bank to act on an application within 60 calendar days of the date the Bank deems the application to be complete. Within three business days of the Bank's decision on an application, the Bank must provide the applicant and the Finance Board's Executive Secretary with a copy of the Bank's decision resolution. Section 933.3(c) is intended to ensure expeditious action on membership applications. The current Guidelines do not establish applications-processing time frames.

3. Automatic Membership

Section 933.4 of the proposed rule provides for automatic Bank membership in appropriate circumstances. Section 933.4(a) continues the automatic membership provision in current § 933.2(d) for applicants required by law to become a member of a Bank. Section 5(f) of the Home Owners' Loan Act (HOLA) requires all federally chartered savings associations and savings banks to be members of a Bank and to qualify for Bank membership in the manner provided in the Bank Act. 12 U.S.C. 1464(f). The factors considered by the Office of Thrift Supervision when reviewing an application for a federal charter include the factors considered in determining eligibility for Bank membership. *See* 12 U.S.C. 1464(e). Therefore, it would be duplicative and unnecessarily burdensome to require these institutions to file an additional application for Bank membership. Section 933.4(b) continues the provision in current § 933.2(e) for automatic membership for insured depository institution members that convert from one charter type to another, provided that the converting institution continues to be an insured depository institution and the assets of the institution immediately before and immediately after the conversion are identical. All relationships existing between the member and the Bank at the time of such conversion may continue. Section 933.4(c) adds a new automatic membership provision for members that transfer membership from one Bank to another pursuant to § 933.18(d) of this part.

4. Appeals

Section 933.5 of the proposed rule establishes a process for appealing Bank membership decisions to the Finance Board. The appeal procedure is intended to ensure that membership standards are applied consistently by

the Banks, and that similarly situated applicants are treated similarly. Under § 933.5(a), applicants denied membership by a Bank may, within 90 calendar days of the Bank's decision, appeal the denial to the Finance Board by writing the Finance Board's Executive Secretary, with a copy to the Bank. The applicant's appeal must include a copy of the Bank's decision resolution, and a detailed statement of the basis for the appeal, including sufficient supporting facts, information, analysis and explanation.

Under § 933.5(b), within 60 calendar days of the date that a Bank approves an application for membership, another Bank (appellant Bank) may appeal to the Finance Board the determination of the appropriate district for membership, pursuant to § 933.18 of this part. The appeal must be in writing and addressed to the Finance Board's Executive Secretary with a copy to the Bank that granted membership, and must include a statement of the basis for the appeal with sufficient facts, information, analysis and explanation to support the appellant Bank's contentions. As the banking industry consolidates, the Finance Board anticipates more questions from the Banks regarding the determination of an applicant's principal place of business. The appeals procedure will permit recourse to the Finance Board when Banks cannot agree on an applicant's principal place of business. The Finance Board invites comment on alternative means of addressing this concern.

Section 933.5(c) explains how the Finance Board will obtain the information necessary to decide appeals under § 933.5(a) and (b). The Bank whose action has been appealed (appellee Bank) must provide to the Finance Board a complete copy of the applicant's membership file within five business days of receiving an appeal. Until the Finance Board resolves the appeal, the appellee Bank is required to provide to the Finance Board any new materials it receives. The Finance Board also may request additional information from the appellant (Bank or applicant), the appellee Bank, or any other party the Finance Board deems appropriate.

Section 933.5(d) provides that the Finance Board must resolve appeals based on the requirements of the Bank Act and part 933, within 90 calendar days of the date the appeal is filed with the Finance Board, after considering the record for appeal described in § 933.5(c). When it decides an appeal, the Finance Board must follow the presumptions in part 933, unless the appellant or appellee Bank presents compelling evidence to rebut a presumption. The current Guidelines do not include any provision for appeals.

B. Membership Eligibility Requirements

1. Setting Membership Standards

Like the current Guidelines, the proposed rule establishes objective standards for approving applications for Bank membership. The standard for each of the two objective statutory membership eligibility criteria and each of the four subjective statutory membership eligibility criteria are discussed below. For the objective statutory eligibility criteria, failure to comply with the standards established by the proposed rule will render an applicant ineligible for membership.

For the subjective statutory eligibility criteria, including the requirement that an applicant's financial condition be such that advances may be safely made, *id.* § 1424(a)(2)(B), and that the character of an applicant's management and its home financing policy be consistent with sound and economical home financing, *id.* § 1424(a)(2)(C), the proposed rule, like the Guidelines, establishes objective, yet flexible, standards.

The proposed rule establishes the presumption that if an applicant complies with the regulatory standards, it will be deemed to satisfy the statutory criteria; conversely, if an applicant does not meet the regulatory standards, it will be presumed, subject to rebuttal, not to satisfy the statutory eligibility criteria. The proposed rule, like the Guidelines, does allow an applicant to rebut any negative presumption, by presenting additional information.

The Finance Board considered establishing more rigid ''bright-line'' standards, but believed that the results—i.e., that an applicant not meeting every standard would be ineligible for membership, regardless of any other evidence the applicant could have presented to demonstrate its compliance with the statutory eligibility criteria—would be too harsh. ''Bright-line'' tests eliminate all discretion in the approval process. The Finance Board specifically requests comment on whether the membership eligibility standards should be adopted as ''bright-line'' tests or as presumptions.

2. General Eligibility Requirements

Section 4(a)(1) of the Bank Act defines the types of financial institutions eligible to become Bank members as any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or any insured depository institution. *Id.* § 1424(a)(1). The definition of insured depository institution in the Bank Act includes commercial banks and credit unions. *Id.* § 1422(12).

The eligibility criteria set forth in section 4(a)(1) of the Bank Act apply to all applicants for Bank membership. Under section 4(a)(1) of the Bank Act, an institution is eligible for Bank membership if the institution:

> (A) Is duly organized under the laws of any State or of the United States;
>
> (B) Is subject to inspection and regulation under the banking laws, or under similar laws, of the State or of the United States; and
>
> (C) Makes such home mortgage loans as, in the judgment of the [Finance] Board, are long-term loans * * *.

Id. § 1424(a)(1).

Section 4(a)(2) of the Bank Act establishes the following membership eligibility criteria for ''insured depository institutions'' that were not Bank members on January 1, 1989 (section 4(a)(2) criteria):

> (A) The insured depository institution has at least 10 percent of its total assets in residential mortgage loans;
>
> (B) The insured depository institution's financial condition is such that advances may be safely made to such institution; and
>
> (C) The character of its management and its home-financing policy are consistent with sound and economical home financing.

Id. § 1424(a)(2). Although the section 4(a)(2) criteria apply only to ''insured depository institutions,'' the Finance Board has determined to extend that requirement to insurance company applicants.

Sections 933.10 through 933.13 of the proposed rule apply the section 4(a)(2) criteria to insured depository institution applicants. Section 933.16 of the proposed rule applies these criteria to insurance company and all other applicants. Under the Finance Board's current membership regulation, the financial condition criterion, section 4(a)(2)(B), and the character of management and home financing policy requirement, section 4(a)(2)(C), *id.* § 1424(a)(2)(B), (C), apply to every applicant. *See* 12 CFR 933.4(a)(4), (5). In addition, prior to the enactment of FIRREA in 1989, the financial condition, character of management and home financing policy criteria were applicable to insurance companies. *See* 47 Stat. 726 (July 22, 1932). The proposed rule would maintain the current law requirements, and would extend the section 4(a)(2)(A) 10 percent requirement to all applicants. The reasons for this approach are explained more fully below in the discussion of the 10 percent requirement.

3. Duly Organized Requirement

Section 4(a)(1)(A) of the Bank Act provides that an institution is eligible for Bank membership if it is duly organized under the laws of any State or of the United States. Under § 933.7 of the proposed rule, an applicant is deemed to be duly organized as required by section 4(a)(1)(A) of the Bank Act and § 933.6(a)(1) of this part, if the applicant establishes that it is chartered by a state or federal agency as a building and loan association, savings association, cooperative bank, homestead association, insurance company, savings bank or insured depository institution. If an applicant does not satisfy this requirement, the applicant is ineligible for membership. This standard is consistent with the current Guidelines.

4. Subject to Inspection and Regulation Requirement

Section 4(a)(1)(B) of the Bank Act provides that an institution is eligible for Bank membership if it is subject to inspection and regulation under the banking laws, or under similar laws, of any State or of the United States. Under § 933.8 of the proposed rule, an applicant is deemed to meet the inspection and regulation requirement if the applicant can establish that it is subject to inspection and regulation by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a state insurance commissioner, or other state regulatory agency authorized to regulate depository institutions or insurance companies. If an applicant does not satisfy this requirement, the applicant is ineligible for membership. This standard is consistent with the current Guidelines.

5. Makes Long-Term Home Mortgage Loans Requirement

Section 4(a)(1)(C) of the Bank Act provides that an institution is eligible for Bank membership if it makes such ''home mortgage loans'' as, in the judgment of the Finance Board, are long-term home mortgage loans. Under § 933.9(a) of the proposed rule, an applicant is deemed to meet this requirement if it originates or purchases ''long-term'' ''home mortgage loans,'' as those terms are defined in the regulation. If an applicant does not satisfy this requirement, the applicant is ineligible for membership, unless the Finance Board, in its sole discretion, determines on the basis of additional information supplied by the applicant or otherwise, that the applicant does satisfy the requirement. This standard is consistent with the current Guidelines.

The proposed rule makes one change to the current definition of ''home mortgage loan'' at 12 CFR 933.1(j). A ''home mortgage loan'' is defined in the Bank Act as a loan made by a member upon the security of a ''home mortgage.'' 12 U.S.C. 1422(5). The Bank Act defines a ''home mortgage'' as a mortgage on real estate upon which is located one or more homes or other dwelling units, ''all of which may be defined by the Board,'' including ''first mortgages'' and such classes of ''first liens'' as are commonly given to secure advances on real estate. Id. § 1422(6). Based on the Bank Act definition, a ''home mortgage loan'' essentially is a loan secured by a first mortgage on real property with one or more structures designed primarily for residential use.

The definition of ''home mortgage loan,'' in § 933.1(m) of the proposed rule, includes:

a. A domestic loan, whether or not fully amortizing, or an interest in such a loan, which is secured by a mortgage, deed of trust or other security agreement that creates a first lien on one of the following interest in property:

(1) One-to-four family property or multifamily property, in fee simple;

(2) A leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years which is renewable or under a lease having a period of not less than 50 years to run from the date the mortgage was executed; or

(3) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property; or

b. A mortgage pass-through security that represents an undivided ownership interest in:

(1) Long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of this section; or

(2) A security that represents an undivided ownership interest in long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of this definition.

The Finance Board has deleted the provision allowing it to include additional items within this definition. Instead, § 933.9(b) of the proposed rule allows the Finance Board the discretion to determine on appeal in appropriate cases that an applicant satisfies the long-term home mortgage loans requirement in section 4(a)(1)(C) of the Bank Act, even though the applicant does not make long-term home mortgage loans as the terms ''long-term'' and ''home mortgage loan'' are defined in § 933.1(m) and (q) of the proposed rule.

Section 933.1(i) of the proposed rule adds a definition for ''domestic loan.'' A domestic loan is defined as a loan on property located in a state or the United States.

Section 933.1(q) of the proposed rule revises the definition of ''long-term'' at current 12 CFR 933.1(l) to delete the provision allowing the Board to change this definition without engaging in rulemaking.

Section 4(a)(1)(C) of the Bank Act provides that an institution is eligible for Bank membership if it ''makes'' such home mortgage loans as, in the judgment of the Finance Board, are long-term loans. 12 U.S.C. 1424(a)(1)(C). Thus, it is necessary to determine what constitutes ''making'' a home mortgage loan. Both the Finance Board and the FHLBB have interpreted ''makes'' to include originating and purchasing qualifying loans and purchasing mortgage pass-through securities backed by qualifying loans. Section 933.9 of the proposed rule does not change the substance of the current Finance Board regulation, 12 CFR 933.4(a)(3), which includes all such transactions within the scope of the ''makes'' requirement.

6. Ten Percent Residential Mortgage Loans Requirement

Section 4(a)(2)(A) of the Bank Act provides that an insured depository institution is eligible for Bank membership if it has at least 10 percent of its total assets in residential mortgage loans. Under § 933.10(a) an applicant is deemed to comply with the 10 percent requirement in section 4(a)(2)(A) of the Bank Act if the applicant has at least 10 percent of its total assets in ''residential mortgage loans'' as defined in § 933.1(aa) of the proposed rule. Since mortgage debt securities count toward satisfaction of the 10 percent requirement, the proposed rule, like the current regulation, excludes the assets used to secure mortgage debt securities in determining whether the applicant has 10 percent of its assets in residential mortgage loans. Under § 933.10(b), if an applicant does not satisfy the requirement of this section, the applicant is ineligible for membership, unless the Finance Board, in its sole discretion, determines on the basis of additional information supplied by the applicant or otherwise that the applicant satisfies the requirements of section 4(a)(2)(A) of the Bank Act. Once approved, an institution is not required to maintain a 10 percent residential mortgage loan ratio to retain Bank membership.

The Finance Board is considering whether to extend the 10 percent test or another specific asset test to insurance company applicants similar to the 10 percent test that applies to insured depository institution applicants. This would represent a change from the current Finance Board regulation, which requires applicants that are not insured depository institutions to have ''mortgage-related assets that reflect a commitment to housing finance, as determined by the [Finance] Board.'' 12 CFR 933.4(c). Noninsured depository institution applicants are not currently required to meet the 10 percent requirement, nor does there exist in the current regulation any objective standard to meet this requirement. 12 CFR 933.4 (b) and (c). The Finance Board realizes that, even though an insurance company may be one of the largest mortgage loan investors in its state, it might not be able to meet the 10 percent test because the dollar amount of residential mortgage loan assets it holds, when compared to the total assets of the company, could constitute less than 10 percent of the company's total assets. However, the Finance Board also sees value in applying consistent membership eligibility standards to all applicants to ensure that all Bank members demonstrate a quantifiable minimum commitment to residential housing finance before they are admitted to membership.

The Finance Board also is considering continuing the status quo by applying the 10 percent requirement only to depository institution applicants. The proposed rule continues this approach and does not specifically require that insurance companies have 10 percent of their assets in residential mortgage loans. The Finance Board requests comment on whether the 10 percent requirement should apply to insurance company applicants and whether a different test that would achieve the same objectives as the 10 percent test should be applied to insurance company applicants, and if so, what that test should be.

a. *Definition of ''residential mortgage loans.''*

To implement the Bank Act's 10 percent requirement, § 933.10 of the proposed rule provides that an applicant is eligible for membership if it has at least 10 percent of its total assets in ''residential mortgage loans.'' The term ''residential mortgage loans'' is not defined in the Bank Act. The definition of ''residential mortgage loans'' in § 933.1(aa) of the proposed rule includes the current definition, *see* 12 CFR 933.1(r), and additional loans the Finance Board has decided to add to the definition or is considering adding to the definition.

The definition of ''residential mortgage loans'' in § 933.1(aa) of the proposed rule, includes any one of the following types of domestic loans, whether or not fully amortizing:

(1) Home mortgage loans;

(2) Funded residential construction loans;

(3) Loans secured by manufactured housing whether or not defined by state law as secured by an interest in real property;

(4) Loans secured by junior liens on one-to-four family property or multifamily property;

(5) Qualified private activity exempt facility bonds where 95 percent or more of the net proceeds are used for the construction of qualified residential rental projects as defined in 26 U.S.C. 142(a)(7).

(6) Mortgage pass-through securities representing an undivided ownership interest in:

(i) Loans that meet the requirements of this definition at the time of issuance of the security;

(ii) Securities representing an undivided ownership interest in loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of this definition; or

(iii) Mortgage debt securities as defined herein;

(7) Mortgage debt securities secured by:

(i) Loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of this definition;

(ii) Securities that meet the requirements of this definition; or

(iii) Securities secured by assets, provided that, at the time of issuance of the security, all of the assets meet the requirements of this definition; or

(8) Home mortgage loans secured by leasehold interests, as defined in § 933.1(m)(1)(ii) of the proposed rule, except that the period of the lease term may be for any duration.

The Finance Board proposes to add qualified private activity exempt facility bonds where 95 percent or more of the net proceeds are used for the construction of qualified residential rental property as defined in 26 U.S.C. 142(a)(7). The Internal Revenue Code (IRC) excludes the income from these bonds from a taxpayer's gross income, when used to construct qualified residential rental property. *See* 26 U.S.C. 103, 141(e)(1)(A), 142(a)(7). To be ''qualified'' under the IRC, a multifamily residential rental project must meet one of two tests to ensure that it serves moderate- or low-income tenants:

(1) 20–50 test. Twenty percent or more of the units occupied by individuals whose income is 50 percent or less of the area median income; or

(2) 40–60 test. Forty percent or more of the units are occupied by individuals whose income is 60 percent or less of the area median income. 26 U.S.C. 142(d). The Finance Board has determined that such bonds are consistent with other instruments that are treated as ''residential mortgage loans.'' Further, treating such bonds as ''residential mortgage loans'' is consistent with the purpose of the 10 percent requirement, to ensure that new members hold at least 10 percent of their assets in instruments that facilitate home mortgage lending.

The Finance Board also is considering including within the definition of ''residential mortgage loans'' shares of open-end management companies, also known as ''mutual funds,'' where the assets in the open-end management company's portfolio are comprised solely of instruments that are ''residential mortgage loans.''

The Finance Board has deleted the provision allowing it to include additional items within the definition of residential mortgage loans. Instead, § 933.10(b) of the proposed rule allows the Finance Board the discretion to determine on appeal in appropriate cases that the applicant has 10 percent of its assets in ''residential mortgage loans'' as required by section 4(a)(2)(A) of the Bank Act, even though the applicant does not have 10 percent of its assets in ''residential mortgage loans'' as that term is defined in § 933.1(aa) of the proposed rule.

The Finance Board specifically requests comment on how it should define ''residential mortgage loans'' in the final rule.

b. *Definition of ''total assets.''*

Section 4(a)(2)(a) of the Bank Act and § 933.10 of the proposed rule provide that an applicant is eligible for membership if it has at least 10 percent of its ''total assets'' in residential mortgage loans. Section 933.1(cc) of the proposed rule adds a definition of ''total assets'' that includes all assets of a financial institution's consolidated subsidiaries located in a state or the United States, and all assets otherwise required to be reported on a regulatory financial report. Applicants will use this definition of total assets to determine whether they comply with the 10 percent requirement.

7. Financial Condition Requirement

Section 4(a)(2)(B) of the Bank Act requires that, in order to be eligible for Bank membership, an insured depository institution's financial condition must be such that advances

may be safely made to it. 12 U.S.C. 1424(a)(2)(B). Section 933.11 of the proposed rule implements this requirement and applies it to all applicants for membership, including applicants (such as insurance companies) that are not insured depository institutions. However, as discussed below, § 933.16 of the proposed rule establishes financial condition standards for insurance companies that recognize the specialized nature of the insurance business. Section 933.11 of the proposed rule is modeled on the current Guidelines.

a. *Review requirement.*

Section 933.11(a) of the proposed rule, like the current Guidelines, sets forth the documents pertaining to financial condition that must be reviewed for each applicant. These documents include:

(1) The regulatory financial reports for at least the last six calendar quarters and three year-ends;

(2) The most recent annual audited financial statement, or if unavailable, any other such independent external annual financial report as the applicant's primary regulator may require, or if unavailable, such financial statements as the applicant may otherwise have available;

(3) The most recent available regulatory examination report, a summary of the applicant's strengths and weaknesses as cited in the examination report, and a summary of actions taken by the applicant to respond to examination weaknesses;

(4) A description of any outstanding enforcement actions, responses by the applicant and reports as required by the enforcement action; and

(5) Any other relevant information that comes to the Bank's attention or reasonably should come to the Bank's attention in reviewing the applicant's financial condition.

The final review requirement, that a Bank consider other relevant information that comes to its attention or reasonably should come to its attention in reviewing the applicant's financial condition, is intended to incorporate a due diligence concept into the membership approval process. For example, if the Bank were to receive information through the media or other sources that is inconsistent with the information supplied by the applicant, the Bank should evaluate the reliability of the alternative source. The Finance Board does not intend to hold the Banks accountable for finding information that might have been discovered only through extraordinary means, but the Finance Board does expect the Banks to make reasonable efforts to find information relevant to an applicant's financial condition.

b. *Standards of adequate ''financial condition.''*

The Bank Act does not define the term ''financial condition'' for purposes of membership, except that financial condition must be ''such that advances may be safely made.'' 12 U.S.C. 1424(a)(2)(B). The Finance Board believes that specific, uniform and quantifiable standards for evaluating financial condition are necessary to ensure that Bank funding may be extended in a safe and sound manner. For applicants other than insurance companies, § 933.11(b) enumerates those factors to be reviewed. Because of the special nature of insurance companies, the Finance Board is proposing a separate section, § 933.16 discussed below, to establish the minimum standards for evaluating the financial condition of insurance company applicants.

Section 933.11(b) of the proposed rule establishes a standard for adequate financial condition similar to the interpretation of the term ''financial condition'' in the current Guidelines and Finance Board practice. An applicant that complies with the standard is presumed to be in adequate financial condition for purposes of section 4 of the Bank Act. This presumption is rebuttable if the Bank obtains information to the contrary. Under § 933.11(b), an applicant is presumed to be in adequate financial condition if:

(1) The applicant received a composite regulatory examination rating by its primary regulator within two years from the date of the application. The Finance Board requires that the applicant be examined within two years of the date of the application to ensure the accuracy of critical information used for eligibility determinations. Federal and state examiners typically examine regulated entities at least every two years.

(2) The applicant meets all of its minimum statutory and regulatory capital requirements as reported in its most recent quarter-end regulatory financial report filed with its primary regulator. This provision, modeled on the current Guidelines, supports the other banking regulators' efforts to ensure the safety and soundness of the industry by recognizing the importance of capital adequacy and compliance with statutory and regulatory minimum capital standards.

(3) The applicant's most recent composite regulatory examination rating was ''1;'' or was ''2'' or ''3'' and the applicant also satisfies certain performance trend criteria.

The term ''regulatory examination rating'' is defined in § 933.1(y) of the proposed rule, as a rating of capital, assets, management, earnings and liquidity following the guidelines of the Uniform Financial Institutions Rating System contained in a written report of examination conducted by the applicant's appropriate regulator, including a CAMEL rating, a MACRO rating or other similar ratings. The composite regulatory examination rating for an insured depository institution is determined according to the Uniform Financial Institutions Rating System (CAMEL, MACRO or equivalent scale). This rating system is based on an evaluation of the five critical dimensions of an institution's operations that reflect, in a comprehensive fashion, an institution's financial condition, compliance with banking statutes and regulations, and overall operating soundness. A composite regulatory examination rating of ''1'' is the highest possible rating on a 5 point scale. A ''5'' rating is assigned to institutions that require immediate corrective action and constant supervisory attention. The probability of failure for ''5'' rated institutions is high.

The importance of the composite regulatory examination rating in the membership approval process may be illustrated in the breakdown of the ratings assigned to applicants approved by the Finance Board since FIRREA—all but one institution approved for membership have been rated ''1,'' ''2'' or ''3''; the single ''4'' rated institution approved for membership has since been upgraded. No ''5'' rated institutions have been approved for membership.

Using the Uniform Financial Institutions Rating System to evaluate membership applicants reduces the documentation requirements for applicants, limits the potential for the Banks to be perceived by applicants as another layer in the financial regulatory structure, adds considerable efficiency to the application process and provides an independent assessment by those responsible for the soundness of the entity. The Uniform Financial Institutions Rating System is not used to evaluate insurance company applicants.

Under the proposed rule, an applicant with a recent composite regulatory examination rating of ''1'' meets the minimum performance standard in § 933.11(b)(3). A composite regulatory examination rating of ''2'' or ''3'' may be an acceptable performance standard under § 933.11(b)(3) if the applicant also meets additional performance trend

thresholds. These thresholds are designed to identify trends in the institution's key performance areas by reviewing six calendar quarters of financial data. The performance trend measures include: (1) positive earnings in 4 of the 6 most recent calendar quarters, (2) nonperforming assets not exceeding 10 percent of the applicant's total assets in the most recent calendar quarter, and (3) a ratio of loan loss reserves to nonperforming assets of 60 percent or greater during 4 of the 6 most recent calendar quarters. These performance trends are in the current Guidelines. The Finance Board also is considering setting the performance trend for nonperforming assets at eight percent of the applicant's total assets in the most recent calendar quarter and specifically requests comment on this alternative.

The term ''nonperforming assets'' is defined in § 933.1(u) of the proposed rule as the sum of loans and leases reported on a regulatory financial report that have been past due for 90 days or longer; loans and leases on a nonaccrual basis; restructured loans and leases (not already reported as nonperforming); and foreclosed real estate, except that nonperforming assets shall be as defined by the National Credit Union Administration (NCUA) for credit union applicants. The Finance Board is considering substituting a specific list of assets that the NCUA would regard as nonperforming assets for a credit union. The term ''loan loss reserves'' is defined in § 933.1(p) of the proposed rule as a specified balance sheet account held to fund potential losses on loans or leases. The Finance Board requests comment on all aspects of the standard for adequate financial condition.

The Finance Board has designed the proposed rule to ensure that no single measure of financial condition is determinative. An applicant with a regulatory examination rating of ''1'' may not have an adequate financial condition if the Bank uncovers compelling evidence to the contrary, as described below in the discussion of § 933.17 of the proposed rule. Similarly, an applicant with a low regulatory examination rating could be admitted to membership if the applicant demonstrates other compelling evidence of an adequate financial condition. The Finance Board encourages all financial institutions interested in home mortgage lending to apply for Bank membership.

The performance trend thresholds in § 933.11(b)(3) measure financial performance based on quarterly financial data. However, § 933.11(b)(3)(iv) provides that applicants that are not required to report financial data on a quarterly basis to their primary regulator may report the information required in § 933.11(b)(3)(i)–(iii) on a semiannual basis.

c. *Eligible collateral not considered.* The Bank Act requires that an institution have a ''financial condition such that advances may be safely made.'' 12 U.S.C. 1424(a)(2)(B). The Finance Board considered interpreting the Bank Act to presume that any applicant with ''eligible collateral'' would meet the financial condition requirement of section 4(a)(2)(B) of the Bank Act. However, since the Finance Board seeks to avoid having the Banks become lenders of last resort to failing or weak institutions, the Finance Board has determined that a minimum level of financial analysis should be required for all applicants as a prerequisite to membership. Section 933.11(c) of the proposed rule states that the availability of sufficient eligible collateral to secure advances to the applicant is presumed and will not be considered in determining whether an applicant meets the financial condition criteria required by section 933.6(a)(5).

The Finance Board seeks public comment on whether the financial condition standards incorporated in the proposed rule or other performance trends or measures of financial condition should be incorporated in the final regulation.

8. Character of Management Requirement

Section 4(a)(2)(C) of the Bank Act requires that the ''character'' of an applicant's management be ''consistent with sound and economical home financing.'' 12 U.S.C. 1424(a)(2)(C).

a. *Review requirement.* Section 933.12 of the proposed rule sets out the review requirement and the standards to be used to determine whether an applicant may be presumed to have the character of management required by the Bank Act and § 933.6(a)(6) of this part. Section 933.12(a) requires the Bank to review the following to evaluate an applicant's character of management:

(1) The names of directors and senior officers;

(2) The most recent regulatory financial report;

(3) The most recent audited financial statement, or if unavailable, other such independent external financial report that the applicant's primary regulator may require, or if unavailable, such financial statements that the applicant may otherwise have available;

(4) Enforcement actions;

(5) Certain pending criminal, civil or administrative matters;

(6) Information concerning potential monetary liabilities, material pending law suits or unsatisfied judgments; and

(7) Any other document that comes to the Bank's attention or reasonably should come to the Bank's attention in reviewing the applicant's character of management.

The term ''enforcement action'' is defined in § 933.1(k) of the proposed rule as any written notice, directive, order or agreement initiated by an applicant or its appropriate regulator to address any operational, financial, managerial or other deficiencies of the applicant identified by the appropriate regulator. ''Appropriate regulator'' is defined in § 933.1(e) of the proposed rule and includes the applicant's primary regulator and any officer, agency, supervisor or other entity that has regulatory authority over, or is empowered to institute enforcement action against, an applicant.

As explained above in the discussion of the financial condition review requirement, the Finance Board realizes that § 933.12(a)(7) makes the Bank responsible for determining what additional documents it should review to evaluate an applicant's character of management. The Banks will have to make this determination on a case-by-case basis. The Finance Board expects the Banks to exercise due diligence, but does not expect the Banks to take extraordinary measures or incur great expense to comply with this review requirement. For example, in the past, several Banks have performed computer database searches to verify that an applicant was making full disclosure of potential character of management issues. The Finance Board cites this practice as one relatively quick and inexpensive means by which a Bank may verify character of management.

b. *Standards of adequate ''Character of Management.''*

Section 933.12(b) of the proposed rule establishes the character of management standards. An applicant that meets these standards is deemed to have the character of management required by the Bank Act and § 933.6(a)(6) of this part. This presumption is rebuttable. The elements of the character of management standard are that:

(1) Neither the applicant nor any of its directors or senior officers is subject to or operating under any enforcement action instituted by an appropriate regulator;

(2) Neither the applicant nor any of its directors or senior officers has been the subject of criminal, civil or administrative proceedings reflecting upon creditworthiness, business

judgment or moral turpitude since the most recent examination;

(3) There are no known or potential civil, criminal, or administrative monetary liabilities, material pending law suits or unsatisfied judgments against the applicant, its directors or senior officers since the most recent examination; and

(4) The applicant provides the written certification required in § 933.12(c), described below.

An applicant that does not meet the character of management standards can still be considered for membership as provided in § 933.17 of the proposed rule, if the applicant presents a sufficient explanation of its failure to meet the character of management standards. The character of management standards in the proposed rule are based on the current Guidelines.

c. *Written certification.*

Section 933.12(c) of the proposed rule requires a written certification either by a majority of the board of directors of the applicant, or by an individual with authority to act on behalf of the board of directors of the applicant, concerning the character of management standards described above. An applicant must provide either an unqualified certification that there are no enforcement actions, objectionable proceedings, or objectionable liabilities, or, if that is not possible, the applicant must provide a qualified certification that includes a detailed explanation regarding any exceptions noted. An applicant that provides a qualified certification is presumed not to have the character of management required by the Bank Act and § 933.6(a)(6) of this part, but this presumption may be rebutted.

The Finance Board is continuing the current policy of applying the character of management requirements in § 933.12 to all applicants, rather than just insured depository institution applicants.

The Finance Board has found the written certification to be the best way to surface any character of management issues, and to get an explanation of those issues because the burden of disclosure is placed on the applicant. The Finance Board requests public comment on the character of management review requirement and standards incorporated in the proposed rule, including alternative character of management measures that should be considered for the final regulation.

9. Home Financing Policy Requirement

Section 4(a)(2)(C) of the Bank Act also requires that an applicant's home financing policy be ''consistent with sound and economical home financing.'' 12 U.S.C. 1424(a)(2)(C).

Section 933.13(a) of the proposed rule establishes the standards a Bank must use to evaluate an applicant's home financing policy. If an applicant meets the standards, the applicant is deemed to comply with the home financing policy requirement of section 4(a)(2)(C) of the Bank Act and § 933.6(a)(7) of this part. This presumption is rebuttable. Section 933.13(a) of the proposed rule is based on the home financing policy standards in the Guidelines.

Under § 933.13(a), an applicant that has been evaluated for Community Reinvestment Act (CRA) performance within four years from the date of application and has received a CRA rating of ''satisfactory'' or better on its most recent compliance examination, is presumed to meet the home financing policy requirement.

Section 933.13(b) requires an applicant that is not subject to the CRA, or an applicant that received a ''needs to improve'' rating on its most recent CRA performance evaluation but received a ''satisfactory'' or better rating on its prior CRA performance evaluation, to file as part of its application a written justification that demonstrates how and why the applicant's credit policies and lending practices (if applicable) are consistent with the Bank System's housing finance mission.

The Finance Board acknowledges that CRA is not a perfect method for evaluating whether an institution's home financing policy is ''consistent with sound and economical home financing.'' CRA evaluations are based on whether a financial institution meets the credit needs of its assessment area, rather than on its mortgage lending activity. *See* 60 FR 22180 (May 4, 1995) to be codified at 12 CFR 25.22. Further, CRA does not consider whether a financial institution's home financing policy is ''sound and economical.'' *Id.* The Finance Board seeks comment on the use of CRA as a proxy for the home financing policy criterion and suggestions for alternative measures that the Finance Board might consider.

Since neither the Congress nor the Finance Board have yet specifically defined the Bank System's housing finance mission, the Finance Board also acknowledges limitations in requesting a written justification demonstrating how and why an applicant's policies are consistent with the Bank System's housing finance mission. The Finance Board requests comment on how institutions might best provide the requisite justification.

The Finance Board is continuing its current policy of applying the home financing policy requirements in § 933.17 to all applicants. Currently, to determine whether an insurance company applicant's home-financing policy is adequate, the Guidelines require that the applicant provide evidence that the applicant engages in, or intends to engage in, various housing related activities. Under the proposed rule, an insurance company will be subject to the same requirements as all other applicants.

An applicant that does not comply with the home financing policy standard may still be considered for membership if the applicant can rebut the presumption that it does not have an adequate home financing policy, as provided in § 933.17 of the proposed rule.

The Finance Board requests comment on the home financing policy standards in the proposed rule and on alternative measures of the adequacy of an applicant's home financing policy that should be considered for the final regulation.

10. De Novo Insured Depository Institution Applicants

Section 933.14 of the proposed rule codifies certain exceptions to the membership eligibility standards for de novo or newly chartered insured depository institution applicants that are currently in the Guidelines. An insured depository institution applicant that provides to a Bank written confirmation from its primary regulator that it has been chartered for less than three years or is otherwise considered a de novo insured depository institution by the applicant's primary regulator will receive special consideration for membership eligibility.

Under § 933.14(a)(1), a de novo applicant that has not filed regulatory financial reports for the last six quarters and three year-ends shall provide any such regulatory financial reports as the applicant has filed. Under § 933.14(a)(2), a de novo applicant shall provide its most recent annual audited financial statement, or if unavailable, other such independent external annual financial report as the applicant's primary regulator may require, or if unavailable, a de novo applicant shall, at a minimum, provide financial reports for at least six calendar quarters of operation.

Section 933.14(a)(3) of the proposed rule provides that if a de novo applicant has not yet received a composite regulatory examination rating from its primary regulator, the applicant shall provide a preliminary or informal

written regulatory examination rating from the applicant's primary regulator, if a preliminary or informal rating is acceptable to the Bank. Under § 933.14(a)(4) of the proposed rule, a de novo applicant need not meet the performance trend criteria in § 933.11(b)(3)(i)–(iii) of the proposed rule, if the de novo applicant has completed regulatory financial reports for at least six full quarters of operation and has complied with its regulatory business plan, either as confirmed in writing by the de novo applicant's primary regulator or based on a written analysis provided by the applicant that demonstrates its substantial compliance with its regulatory business plan as determined by the Bank.

Section 4(a)(2) of the Bank Act makes a special exception to the 10 percent requirement for de novo insured depository institution applicants. The Bank Act specifically provides that a de novo applicant may be admitted to membership if it complies with the 10 percent requirement within 1 year after commencement of its operations. *See* 12 U.S.C. § 1424(a)(2). The proposed rule continues the practice in current Guidelines requiring that applicants, other than mandatory members, must provide financial reports for at least six calendar quarters of operation in order for the Bank to evaluate the applicant's financial condition. Therefore, most de novo applicants already will have been in operation for more than one year at the time of application. However, the provision in section 4(a)(2) of the Bank Act currently applies and, under the proposed rule, will continue to apply during the first year of operation of a de novo applicant that is required by law to be a member and is automatically admitted to membership without satisfying the 10 percent requirement pursuant to § 933.4(a) of the proposed rule.

Under § 933.14(b) of the proposed rule, the Bank may presume that a de novo applicant that has not yet received a CRA performance evaluation has a home financing policy as required by section 4(a)(2)(C) of the Bank Act and § 933.6(a)(7), if the Bank's digest establishes that the de novo applicant has a preliminary or informal written CRA performance evaluation of ''satisfactory'' or better. Alternatively, the Bank may presume compliance with the home financing policy requirement if the Bank's digest establishes that the de novo applicant has submitted a written justification acceptable to the Bank of how the applicant intends to support the Bank System's housing finance mission. The Guidelines are consistent with the approach taken in the proposed rule.

11. Recent and Pending Merger Applicants

The Finance Board, based on its general supervisory authority over the Banks, 12 U.S.C. 1422a, 1422b(a)(1), and its authority to interpret the statutory membership eligibility requirements, *id.* § 1424, proposes special standards for applicants involved in a recent or pending merger to ensure that the information evaluated to determine eligibility is appropriate for the entity that results from the merger. Standards for recent and pending merger applicants are not provided in the Bank Act.

Section 933.15 of the proposed rule largely codifies the special eligibility requirements that recent and pending merger applicants must satisfy under the current Guidelines, in addition to or in place of the previously described eligibility requirements. To be considered a ''pending merger applicant'' or a ''recent merger applicant,'' an applicant must meet two tests, a timing test and a materiality test defined in § 933.15(a) of the proposed rule. For ''pending merger applicants,'' the timing test is whether the applicant is a party to a merger or acquisition agreement that is expected to be consummated within two calendar quarters of submission of the membership application. The materiality test is whether the applicant accounts for 75 percent or less of the combined assets of the resulting entity at the time of application.

For ''recent merger applicants,'' the timing test is whether the applicant has merged with or acquired another institution within the six calendar quarters prior to submission of the membership application. The materiality test is whether the applicant accounts for 75 percent or less of the combined assets of the resulting entity at the time of application.

Section 933.15(b) of the proposed rule establishes an additional review requirement that a Bank shall include in its digest for each recent or pending merger applicant. The general information required includes: (1) The name of each entity involved and its charter type; (2) a general statement of the financial condition of each entity; (3) a brief statement of the business reasons for the merger or acquisition; and (4) the names and positions of management of the resulting entity.

Section 933.15(c) of the proposed rule establishes the special membership eligibility standards for recent and pending merger applicants. A recent or pending merger applicant shall be deemed to be in compliance with section 4(a) of the Bank Act and § 933.6(a) of the proposed rule, subject to rebuttal, only if the recent or pending merger applicant satisfies the requirements of part 933 as modified and supplemented by § 933.15(c). Section 933.15(c)(1) establishes the financial condition standard for a recent merger applicant. For recent merger applicants that do not yet have a composite regulatory examination rating subsequent to the merger or acquisition, each party (other than existing Bank members) to the merger or acquisition must satisfy the recent examination requirement, the capital requirements and the minimum performance standards in § 933.11(b). Section 933.15(c)(1)(A) of the proposed rule provides that, to the extent a recent merger applicant does not yet have regulatory financial reports for the six most recent calendar quarters needed to calculate performance trends, the applicant must prepare pro forma combined financial statements for those calendar quarters in which actual combined regulatory financial reports are unavailable.

Section 935.15(c)(2) establishes the financial condition standard for a pending merger applicant. Since a pending merger has by definition not been consummated, the applicant cannot provide a composite regulatory examination rating for the combined entity as required by § 933.11(b)(1). In lieu of that, each party to the merger or acquisition, except an incumbent Bank member, is required by § 933.15(c)(2)(A) of the proposed rule to satisfy all of the requirements of § 933.11(b).

Section 933.15(c)(2)(B) of the proposed rule requires that in addition to each party to a pending merger individually satisfying all of the financial condition standards in § 933.11(b), the pending merger applicant must satisfy the capital requirements and the performance trend requirements in § 933.11(b)(2) and (3) as a combined entity based on pro forma combined financial statements to be prepared by the applicant for the six most recent calendar quarters.

Section 933.15(c)(3) provides that the determination of the character of management of a recent or pending merger applicant for purposes of § 933.12 of the proposed rule shall be based on an evaluation of the directors and senior officers of the resulting entity. Section 933.15(c)(4) provides that for a pending merger applicant or for a recent merger applicant that does not yet have a CRA performance evaluation on a combined basis for the

merged entity, the determination of whether the merger applicant's home financing policy satisfies the requirements of § 933.13 shall be based on a review of the most recent CRA performance evaluation available for each party to the merger or acquisition.

12. Insurance Company Applicants

To become a Bank member, the Bank Act requires that an insurance company applicant meet the membership eligibility requirements set forth in section 4(a)(1) of the Bank Act. *See* 12 U.S.C. 1424(a)(1)(A)–(C); § 933.6(a)(1), (2) and (3) of the proposed rule, discussed in part II(B) above. For the reasons discussed in part II(B)(6) above, the Finance Board proposes to apply the section 4(a)(2) criteria to all applicants for Bank membership, including insurance company applicants, even though the Bank Act specifically applies the section 4(a)(2) criteria only to insured depository institution applicants. *See* 12 U.S.C. 1424(a)(2).

a. *Inspection and regulation.*

Insurance companies are subject to state, not federal, regulation and, therefore, the standards applicable to insurance companies are not uniform. Every United States insurance company is subject to examination and regulation by the state insurance department in its domiciliary state, as well as to some level of regulation by the state insurance department in each state where the insurance company applicant is licensed to do business. State insurance laws are similar to federal banking laws in that they require the appropriate regulator to monitor whether the insurance company has complied with minimum capital and reserve, financial condition, asset valuation and various consumer related requirements.

The standards used to examine and regulate insurance companies vary from state to state. Some states adhere to the uniform standards established by the National Association of Insurance Commissioners (NAIC), while other states either do not conduct examinations of insurance companies pursuant to the NAIC standards or do not conduct on-site examinations. Thus, there is no single objective measurement applicable to all insurance companies. The Finance Board specifically requests comment on whether the degree of inspection and regulation imposed by a particular state should be a factor in determining whether an insurance company applicant satisfies the ''inspection and regulation'' requirement. For example, the Finance Board seeks comment on whether it should require that an insurance company applicant be regulated and examined by an NAIC accredited state insurance commissioner in order to satisfy the ''inspection and regulation'' requirement.

b. *Financial condition.*

The differences between the regulatory scheme for insurance companies and the regulatory scheme for insured depository institutions has led the Finance Board to propose a separate set of financial condition standards for insurance company applicants. Section 933.16 of the proposed rule establishes financial condition standards for insurance company applicants that differ from the financial condition standards applicable to other applicants under § 933.11.

Section 933.16(a) of the proposed rule defines certain terms that are used only in this section.

Section 933.16(b) of the proposed rule establishes performance standards for insurance company applicants.

(1) Examination rating and independent rating.

Section 933.16(b)(1) requires the Bank to review the most recent examination report of an insurance company applicant by its primary regulator. Most insurance company examination reports do not include a rating; however, several private firms rate insurance company performance. Therefore, the Finance Board also requires that an insurance company applicant have a rating from one of the five principal private companies that rate insurance companies, A.M. Best Company, Duff & Phelps, Inc., Moody's Investor Service, Inc., Standard & Poor's Corp., or Weiss Research, Inc. Relying in part on the independent rater's evaluation of an insurance company applicant reduces documentation requirements and makes the application process more efficient.

Section 933.16(b)(2) of the proposed rule requires that an insurance company applicant's most recent examination indicate no major adverse findings pertaining to the applicant's financial condition.

(2) Capital requirement.

Section 933.16(b)(3) of the proposed rule requires that an insurance company applicant meets all of its minimum statutory and regulatory capital requirements and the NAIC capital standards as reported in its most recent quarter-end or year-end regulatory financial report filed with its primary regulator.

(3) Minimum performance standard.

Section 933.16(b)(4) of the proposed rule establishes the minimum performance standard for an insurance company applicant. Under § 933.16(b)(4)(i), the applicant's most recent composite insurance company rating must have been ''strong,'' defined in the proposed rule as: ''A-'' or above from A.M. Best Company; ''AA-'' or above from Duff & Phelps, Inc.; ''Aa'' or above from Moody's Investor Service, Inc.; ''AA'' or above from Standard & Poor's Corp.; or ''A'' from Weiss Research, Inc.

Alternatively, under § 933.16(b)(4)(ii), an insurance company applicant can establish an acceptable financial condition if it has an ''adequate'' rating and earnings. An ''adequate'' rating is defined in the proposed rule as: ''C+'' to ''B++'' from A.M. Best Company; ''BB-'' to ''A+'' from Duff & Phelps, Inc.; ''Ba'' to ''A'' from Moody's Investor Service, Inc.; ''BB'' to ''A'' from Standard & Poor's Corp.; or ''B'' or ''C'' from Weiss Research, Inc. To establish that it has adequate earnings, an insurance company applicant must have positive annualized earnings in two of the three most recent calendar years.

(4) Minimum performance ratios.

(i) Overall ratios.

All insurance company applicants also must meet certain minimum performance ratios established by § 933.16(b)(5) of the proposed rule during the most recent year-end or quarter-end period. Section 933.16(b)(5)(i) defines certain terms that are used only in this paragraph. Section 933.16(b)(5)(ii) establishes the overall minimum performance ratios for insurance company applicants.

Section 933.16(b)(5)(ii)(A) establishes a premium to surplus ratio standard that is designed to measure the adequacy of an insurance company's reserves for absorbing above-average losses. To calculate this ratio, divide net premiums written by total capital and surplus. To meet the standard, an applicant's net premiums may not exceed three times the level of capital and surplus. Section 933.16(a)(7) defines the term ''net premiums written'' as the total consideration paid for an insurance contract during a specified period of time, net of reinsurance assumed and ceded.

Section 933.16(a)(8) defines the term ''reinsurance'' as transactions in which an assuming enterprise, known as a reinsurer, assumes, for a premium, all or part of a risk undertaken originally by another insurer.

Section 933.16(a)(9) defines the term ''reinsurance assumed'' as all premiums generated by policies issued to assume a liability, in whole or in part, of another insurer that is already covering the risk with a policy.

Section 933.16(a)(10) defines the term ''reinsurance ceded'' as all premiums generated by policies or coverage purchased from another insurer that

transfer liability, in whole or in part, from direct or reinsurance policies.

Section 933.16(a)(14) defines the term ''surplus'' as the total of common and preferred capital stock, aggregate write-ins for other than special surplus funds, gross paid-in and contributed surplus, surplus notes and unassigned funds, less treasury stock.

Section 933.16(b)(5)(ii)(B) establishes a change in net premiums written ratio standard that is designed to measure the stability of an insurance company's operation. Major increases or decreases in net premiums written may indicate a lack of stability in company operations or an abrupt entry into new product lines or sales territory. To calculate this ratio, divide the change in net premiums written between the two most recent consecutive calendar years by the total net premiums written in the first year. To meet the standard, an applicant's ratio must be between −10 percent and +50 percent.

Section 933.16(b)(5)(ii)(C) establishes a surplus relief ratio standard that is designed to measure the insurance company's level of dependence on net income generated by reinsurance activities to fund capital and surplus. Dependence on income from reinsurance ceded premiums may indicate that company management believes current capital and surplus to be inadequate. To calculate the surplus relief ratio, divide the net of commissions and expenses generated by reinsurance ceded and assumed by total capital and surplus. To meet the standard, an applicant's surplus relief ratio must be less than 30 percent.

Section 933.16(b)(5)(ii)(D) establishes an adequacy of investment income ratio standard that is designed to measure whether the insurance company's investment income is adequate to cover contractual interest obligations on policies and funds held on deposit. To calculate this ratio, divide net investment income by the sum of total tabular interest required on life insurance, accident and health reserves, and total interest credited on funds held on deposit. Section 933.16(a)(15) defines the term ''tabular interest'' as interest, required by the primary regulator, to be set aside to cover all contractual obligations.

Section 933.16(a)(11) defines the term ''reserves'' as funds set aside for possible losses on insurance policies, annuities, claims unpaid, funds held for policyholders, and deposit funds.

To meet the adequacy of investment income ratio standard, an applicant's net investment income must provide no less than 1.25 times the coverage on total funds held in reserves to pay interest on contractual obligations and funds held on deposit.

Section 933.16(b)(5)(ii)(E) establishes a change in capital and surplus ratio standard that is designed to provide an overall measurement of improvement or deterioration in an insurance company's financial condition. To calculate this ratio, divide the net change in capital and surplus between the two most recent consecutive calendar years, by total capital and surplus in the first year. To meet this standard, an applicant's ratio must be between -10 percent and +50 percent.

(ii) Solvency ratios.

Section 933.16(b)(5)(iii) establishes the solvency ratios for insurance company applicants.

Section 933.16(b)(5)(iii)(A) establishes a highly liquid ratio standard that is designed to measure the relationship between highly liquid assets and those liabilities that can be withdrawn or must be paid by the company in less than 30 days.

Section 933.16(a)(4) defines the term ''highly liquid assets'' as cash or cash equivalent assets readily convertible to cash, including marketable Class 1 (highest investment grade) publicly traded bonds, marketable preferred and common stock, short-term investments, and investment income due. To calculate this ratio, divide highly liquid assets by annuity and deposit fund reserves less reserves with no withdrawal privileges, separate accounts and reinsurance.

To meet the standard, an applicant's highly liquid ratio must be no less than: (1) 75 percent on traditional life insurance products; (2) 85 percent on interest sensitive life insurance products; (3) 85 percent on individual annuity insurance products; (4) 100 percent on group annuity insurance products; (5) 79 percent on property and liability insurance products; (6) 75 percent on accident and health insurance products; and (7) 50 percent on disability income insurance products.

Section 933.16(b)(5)(i)(A) defines ''traditional life insurance products'' as insurance business that consists of individual term life insurance contracts, individual permanent fixed value life insurance contracts, or policies that consist of fixed premiums, fixed dollar amounts of contract, or fixed reserves (cash value) established by each state.

Section 933.16(b)(5)(i)(B) defines ''interest sensitive life insurance products'' as insurance business that consists of individual life insurance policies characterized by flexible premiums, dollar amounts of contract that can vary, and reserves which represent a pool of assets such as mutual funds that are held for the benefit of, and support the investment return to, policy holders.

Section 933.16(b)(5)(i)(D) defines ''individual and group annuity insurance products'' as insurance business that consists of contracts that accumulate and disburse retirement benefits to individual policyholders or to companies for their employees, hold pension deposit funds, or distribute and hold funds under guaranteed interest contracts.

Section 933.16(b)(5)(i)(F) defines ''property insurance products'' as insurance business that consists of policies where the majority of premiums go to cover losses to real property, automobiles or similar tangible assets.

Section 933.16(b)(5)(i)(G) defines ''liability insurance products'' as insurance business that consists of policies that cover losses arising from actions taken by individuals or companies, including losses from litigation or mutual agreements as to the amount of a claim, such as product liability, medical malpractice and worker's compensation.

Section 933.16(b)(5)(i)(C) defines ''accident and health insurance products'' as insurance business that consists of coverage for care such as basic hospital expense, basic surgical expense, dental care, specific hospital reimbursement, long-term nursing home or home care expenses for the aged or disabled, major medical expense, and Medicare supplemental insurance.

Section 933.16(b)(5)(i)(E) defines ''disability income insurance products'' as insurance business that consists of contracts that pay income periodically to insureds who are unable to work as a result of sickness or injury.

Section 933.16(b)(5)(iii)(B) establishes a current ratio standard that is designed to measure the relationship between liquid assets and liabilities that are available to meet a company's obligations if the obligations are paid in an orderly fashion in the normal course of business. Section 933.16(a)(6) defines the term ''liquid assets'' as installment premiums booked but deferred and not yet due, cash, accrued investment income, marketable Class 1 (highest investment grade quality) publicly traded bonds and marketable Class 2 (high investment grade quality) publicly traded bonds, marketable preferred and common stock, cash, short-term investments, and investment income due, less investments in affiliated companies and excess of real estate over five percent of liabilities.

To calculate the current ratio, divide liquid assets by annuity, ordinary life,

and deposit fund reserves, less reserves with no withdrawal privileges, separate accounts, reinsurance, and policy loans.

Section 933.16(a)(12) defines the term ''separate accounts'' as assets and liabilities maintained by an insurance company predominately to fund fixed-benefit or variable annuity contracts and pension plans. The contract holder assumes the investment risk while the insurance company receives a fee for managing or maintaining the investments.

To meet the standard, an applicant's current ratio must be no less than: (1) 60 percent on traditional life insurance products; (2) 75 percent on interest sensitive life insurance products; (3) 75 percent on individual and group annuity insurance products; (4) 87 percent on property and liability insurance products; (5) 75 percent on accident and health insurance products; and (6) 50 percent on disability income insurance products.

Section 933.16(b)(5)(iii)(C) establishes an adjusted liabilities to adjusted surplus ratio standard that is designed to measure whether an insurance company's surplus account is adequate in relation to its level of current contractual obligations outstanding.

Section 933.16(a)(1) defines the term ''adjusted liabilities'' as total statutory liabilities less separate account liabilities, asset valuation reserves, and interest maintenance reserves. Section 933.16(a)(13) defines the term ''statutory liabilities'' as the total of funds set aside to pay future claims and operating expenses, including separate account liabilities and funds held for the benefit of others, as established under the accounting rules and techniques permitted by the NAIC. Examples of statutory liabilities are policy reserves, premiums collected in advance, commissions and expenses payable, and provisions for policyholder dividends.

Section 933.16(a)(3) defines the term ''asset valuation reserves'' as reserves on the liability side of the balance sheet that are established by the primary regulator to guard against fluctuations in the value of securities and to absorb all unrealized capital gains and losses and certain realized gains and losses on investment activity.

Section 933.16(a)(5) defines the term ''interest maintenance reserves'' as reserves on the liability side of the balance sheet that are established to hold the amount of realized capital gains and losses on fixed income securities that result from overall interest rate changes.

Section 933.16(a)(2) defines the term ''adjusted surplus'' as surplus plus asset valuation reserves and interest maintenance reserves.

To calculate the adjusted liabilities to adjusted surplus ratio, divide adjusted liabilities by adjusted surplus. To meet the standard, an applicant's adjusted liabilities to adjusted surplus ratio must not exceed: (1) 10 to 1 on traditional life insurance products; (2) 10 to 1 on interest sensitive life insurance products; (3) 10 to 1 on individual and group annuity insurance products; (4) 3 to 1 on property and liability insurance products; (5) 3 to 1 on accident and health insurance products; and (6) 5 to 1 on disability income insurance products.

13. Rebuttable Presumptions

For each membership eligibility criteria required by the Bank Act and this part, the Finance Board, based on its general supervisory authority over the Banks, 12 U.S.C. 1422a, 1422b(a)(1), and its authority to interpret the Bank Act's membership requirements, *id.* § 1424, is proposing to establish flexible standards. In the proposed rule, an applicant that meets those standards is presumed to be in compliance with the statutory membership eligibility criteria. So, too, applicants not meeting the standards are presumed not to be in compliance with the Bank Act criteria. The proposed rule provides that these presumptions may be rebutted if the applicant provides compelling or substantial evidence, depending on the standard at issue, or if the Bank otherwise obtains compelling evidence to the contrary. Section 933.17 of the proposed rule establishes the method by which a presumption may be rebutted.

This approach is similar to the current Guidelines, in that it allows an applicant that fails to meet a standard to establish an alternative basis for complying with the statutory membership eligibility criteria.

Under § 933.17(a) of the proposed rule, even if an applicant meets all of the standards, it may not be admitted to membership if the Bank obtains compelling evidence to overcome the presumption that the applicant is in compliance with the Bank Act and the general eligibility requirements of § 933.6(a).

Section 933.17(b) provides that an applicant that does not meet all of the standards or that is unable to provide information sufficient for the Bank to evaluate whether it meets the standards, may nevertheless have the opportunity to rebut the presumption that it is therefore not in compliance with the Bank Act and the general eligibility requirements in § 933.6(a).

The remaining provisions of section 933.17 describe specific rebuttal procedures. Section 933.17(c) of the proposed rule sets out the requirements for rebutting the presumption of noncompliance with the financial condition standards. Under § 933.17(c)(1), for each variance from the required minimum regulatory examination rating, an applicant must prepare a written justification that provides compelling evidence that the applicant is in the financial condition required by § 933.6(a)(4) of the proposed rule, notwithstanding the variance. The Finance Board is proposing a compelling evidence standard to rebut a low regulatory examination rating, a rating of ''4'' or ''5,'' because of the importance of the regulatory examination rating in determining an applicant's financial condition.

Under section 933.17(c)(2) of the proposed rule, for each variance from a performance trend criterion required by § 933.11(b)(3), the applicant must prepare a written justification that provides substantial evidence that the applicant is in an adequate financial condition, notwithstanding the variance. The Finance Board is proposing a substantial evidence standard to rebut the failure to meet a performance trend standard because, while the performance trend criteria are important, they are less important than the regulatory examination ratings in evaluating financial condition.

Section 933.17(d) of the proposed rule sets out the requirements for rebutting the presumption of noncompliance with the character of management standards. Under § 933.17(d)(1) of the proposed rule, if an applicant or any of its directors or senior officers is subject to or operating under an enforcement action, the applicant must provide written confirmation from its appropriate regulator that the applicant, its directors or senior officers are in substantial compliance with all aspects of the enforcement action. Alternatively, an applicant may prepare a written analysis stating each action the applicant, director or senior officer is required to take by the enforcement action, the actions actually taken by the applicant, director or senior officer, and whether the applicant regards this as substantial compliance. If the Bank is not certain that the applicant has substantially complied with all aspects of the enforcement action, the Bank must consult the applicant's appropriate regulator.

Under § 933.17(d)(2) of the proposed rule, if an applicant or any of its directors or senior officers is subject to criminal, civil or administrative

proceedings that reflect on creditworthiness, business judgment or moral turpitude since the last examination, the applicant must provide written confirmation from the applicant's primary regulator that the proceedings will not likely result in enforcement action. Alternatively, the applicant may prepare a written analysis of the severity of the pending charges and any mitigating actions taken by the applicant, director or senior officer. If the Bank is uncertain whether the proceedings will result in enforcement action, the Bank must consult the applicant's primary regulator.

Under § 933.17(d)(3) of the proposed rule, if there are any material known or potential civil, criminal or administrative monetary liabilities, pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers as of the most recent quarter-end, the applicant must provide written confirmation from its primary regulator that the matter will not likely cause the applicant to fall below its minimum capital requirements. Alternatively, the applicant may provide a written analysis of each matter, the likelihood of the applicant or its directors or senior officers prevailing and the financial consequences if the applicant or its directors or senior officers do not prevail. If the Bank is uncertain whether the matter will cause the applicant to fall below its minimum capital requirements, the Bank must consult the applicant's primary regulator.

Section 933.17(e) of the proposed rule sets out the requirements for rebutting the presumption of noncompliance with the home financing policy standards. If an applicant received a ''substantial non-compliance'' rating on its most recent CRA performance evaluation, or two consecutive ''needs to improve'' CRA ratings, or has not received a CRA performance evaluation within four years from the date of the membership application, the applicant must provide written confirmation from its primary regulator of the applicant's recent satisfactory CRA performance, including any corrective action that substantially improved upon the deficiencies cited in any recent CRA performance evaluation. Alternatively, the applicant may provide a written analysis demonstrating that the applicant's low CRA rating is unrelated to housing finance, or providing substantial evidence that the applicant's home financing credit policies and lending practices (if applicable) are consistent with the Bank System's housing finance mission. The Finance Board is proposing a compelling evidence standard to overcome the presumption of an inadequate home financing policy because of the likelihood that a ''substantial non-compliance'' rating or two consecutive ''needs to improve'' ratings indicate a poor home financing policy.

The Finance Board has made no change to § 933.18, Determination of appropriate Bank district for membership, other than conforming citations to the proposed rule. For the sake of brevity, conforming change to the citations in subparts D through I of part 933 are set out in a table. Part 933 as revised will be set out in its entirety when the final rule is published.

III. Regulatory Flexibility Act

The proposed rule implements statutory requirements binding on all applicants for Bank membership, regardless of their size. The Finance Board is not at liberty to make adjustments in those requirements to accommodate small entities. The Finance Board has not imposed any additional regulatory requirements that will have a disproportionate impact on small entities. The proposed rule would, to some extent, reduce the tests and criteria for determining compliance with statutory eligibility requirements that currently are used by the Finance Board in approving membership applications. Therefore, it is certified, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this proposed rule, if promulgated as a final rule, would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Finance Board has submitted to the Office of Management and Budget (OMB) an analysis of membership approval collections of information contained in §§ 933.2, 933.3, 933.5, and 933.7 through 933.17 of the proposed rule, described more fully in part II of the Supplementary Information, as well as an analysis of other information collection requirements in redesignated §§ 933.18, 933.22, 933.25, 933.26 and 933.31 of the current membership regulation, which are not otherwise affected by this proposed rule. These information collections are necessary to enable the Finance Board and/or the Banks to determine whether applicants qualify for Bank membership and to satisfy various statutory requirements that apply to FHLBank members. Responses are required to obtain or retain a benefit. *See* 12 U.S.C. 1424, 44 U.S.C. 3512.

The information collections will be used by Finance Board and/or Bank staff as part of the membership process to determine the eligibility of applicants for Bank membership under the Bank Act and Finance Board regulation, the amount of stock that each member is required to hold pursuant to statutory requirements, information the Finance Board must collect to comply with statutory requirements in the event of a member's withdrawal from membership, and information the Finance Board is required by statute to collect to determine a member's actual principal place of business. Confidentiality of information obtained from respondents pursuant to the collections of information will be maintained by the Finance Board as required by applicable statute, regulation and agency policy. Books or records relating to these collections of information must be retained as provided in the regulation or proposed rule.

Likely respondents and/or recordkeepers will be the types of financial institutions eligible to become Bank members under the Bank Act, 12 U.S.C. 1424(a)(1), including any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution; the Banks; and the Finance Board. Potential respondents are not required to respond to the collections of information unless the regulation collecting the information displays a currently valid control number assigned by the OMB. *See* 44 U.S.C. 3512(a).

The estimated annual reporting and recordkeeping hour burden is:

a. Number of respondents—6,412.

b. Total annual responses—6,412.

Percentage of these responses collected electronically 0%.

c. Total annual hours requested—59,152.1.

d. Current OMB inventory—38,889.6.

e. Difference—20,262.5.

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/startup costs—0.

b. Total annual costs (O&M)—$1,683,923.95.

c. Total annualized cost requested—1,683,923.95.

d. Current OMB inventory—1,754,181.95.

e. Difference—($70,258.00).

Comments concerning the accuracy of the burden estimates and suggestions for reducing the burden may be submitted to the Finance Board in writing at the address listed above.

The collections of information have been submitted to OMB for review in accordance with section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). Comments regarding the proposed collections of information may be submitted in writing to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503, by December 26, 1995.

List of Subjects in 12 CFR Part 933

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

Accordingly, the Board hereby amends title 12, chapter IX, part 933, of the Code of Federal Regulations as follows:

PART 933—MEMBERS OF THE BANKS

1. The heading for part 933 is revised as set forth above.

1a. The authority citation for part 933 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1424, 1426, 1430, 1442.

2. The table of contents to part 933 is revised to read as follows:

Subpart A—Definitions

Sec.
933.1 Definitions.

Subpart B—Membership Application Process

933.2 Membership application requirements.
933.3 Decision on application.
933.4 Automatic membership.
933.5 Appeals.

Subpart C—Eligibility Requirements

933.6 General eligibility requirements.
933.7 Duly organized requirement.
933.8 Subject to inspection and regulation requirement.
933.9 Makes long-term home mortgage loans requirement.
933.10 Ten percent requirement
933.11 Financial condition requirement.
933.12 Character of management requirement.
933.13 Home financing policy requirement.
933.14 De novo insured depository institution applicants.
933.15 Recent and pending merger applicants.
933.16 Financial condition standards for insurance company applicants.
933.17 Rebuttable presumptions.
933.18 Determination of appropriate Bank district for membership.

Subpart D—Stock Requirements

933.19 Par value and price of stock.
933.20 Stock purchase.
933.21 Issuance and form of stock.
933.22 Adjustments in stock holdings.
933.23 Purchase of excess stock.

Subpart E—Consolidations Involving Members

933.24 Consolidation of members.
933.25 Consolidations involving nonmembers.

Subpart F—Withdrawal and Removal From Membership

933.26 Procedure for withdrawal.
933.27 Procedure for removal.
933.28 Automatic termination of membership for institutions placed in receivership.

Subpart G—Orderly Liquidation of Advances and Redemption of Stock

933.29 Orderly liquidation of advances and redemption of stock.

Subpart H—Reacquisition of Membership

933.30 Reacquisition of membership.

Subpart I—Bank Access to Information

933.31 Reports and examinations.

Subpart J—Membership Insignia

933. 32 Official membership insignia.

Subparts C Through I of Part 933 [Redesignated as Subparts D Through J]

3. Subparts C through I of Part 933 are redesignated as Subparts D through J, respectively.

§§ 933.6 Through 933.19 [Redesignated as §§ 933.19 Through 933.32]

4. Sections 933.6 through 933.19 are redesignated as §§ 933.19 through 933.32, respectively.

5. Subpart A of part 933 is revised to read as follows:

Subpart A—Definitions

§ 933.1 Definitions.

For purposes of this part:

(a) *Act* means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

(b) *Aggregate unpaid load principal* means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home purchase contracts, and similar obligations.

(c) *Annualized adjusted earnings* means net earnings, excluding extraordinary items such as income received from or expense incurred in sales of securities or fixed assets.

(d) *Appropriate Federal banking agency* has the same meaning as used in 12 U.S.C. 1813(q) and, for federally insured credit unions, shall mean the National Credit Union Administration.

(e) *Appropriate regulator* means any officer, agency, supervisor or other entity that has regulatory authority over, or is empowered to institute enforcement action against, an applicant.

(f) *Bank* means a Federal Home Loan Bank established under the authority of the Act.

(g) *Board* means the Federal Housing Finance Board.

(h) *Combination business or farm property* means real property for which the total appraised value is attributable to residential, and business or farm uses.

(i) *Domestic loan* means a loan on property located in a state or the United States.

(j) *Dwelling unit* means a single room or a unified combination of rooms designed for residential use.

(k) *Enforcement action* means any written notice, directive, order or agreement initiated by an applicant or its appropriate regulator to address any operational, financial, managerial or other deficiencies of the applicant identified by the appropriate regulator.

(l) *Funded residential construction loan* means the portion of a loan secured by real property made to finance the on-site construction of dwelling units on one-to-four family property or multifamily property disbursed to the borrower.

(m) *Home mortgage loan* means:

(1) A domestic loan, whether or not fully amortizing, or an interest in such a loan, which is secured by a mortgage, deed of trust, or other security agreement that creates a first lien on one of the following interests in property:

(i) One-to-four family property or multifamily property, in fee simple;

(ii) A leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years that is renewable, or under a lease having a period of not less than 50 years to run from the date the mortgage was executed; or

(iii) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property; or

(2) A mortgage pass-through security that represents an undivided ownership interest in:

(i) Long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (m)(1) of this section; or

(ii) A security that represents an undivided ownership interest in long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (m)(1) of this section.

(n) *Institutions which are eligible to make application to become members* means for purposes of 12 U.S.C. 1431(e)(2)(A), any building and loan association, savings association, cooperative bank, homestead association, insurance company, savings bank or any insured depository

institution, regardless of whether the institution applies for or would be approved for membership.

(o) *Insured depository institution* means an insured depository institution as defined in 12 U.S.C. 1422(12).

(p) *Loan loss reserves* means a specified balance-sheet account held to fund potential losses on loans or leases.

(q) *Long-term* means a term to maturity of five years or greater.

(r) *Manufactured housing* means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

(s) *Member* means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 or 933.24 of this part.

(t) *Multifamily property* means:

(1) Real property that is solely residential and includes five or more dwelling units; or

(2) Real property that includes five or more dwelling units combined with commercial units, provided that the property is primarily residential; and

(3) Property that includes, but is not limited to, nursing homes, dormitories and homes for the elderly.

(u) *Nonperforming assets* means the sum of loans and leases reported on a regulatory financial report that have been past due for 90 days or longer; loans and leases on a nonaccrual basis; restructured loans and leases (not already reported as nonperforming); and foreclosed real estate, except that nonperforming assets shall be as defined by the National Credit Union Administration for credit union applicants.

(v) *Nonresidential real property* means real property that is not used for residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institution buildings or facilities, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property, except as otherwise determined by the Board, in its discretion.

(w) *One-to-four family property* means:

(1) Real property that is solely residential, including one-to-four family dwelling units or more than four family dwelling units if each dwelling unit is separated from the other dwelling units by dividing walls that extend from ground to roof, such as row houses, townhouses or similar types of property;

(2) Manufactured housing if applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property which includes one-to-four family dwelling units combined with commercial units, provided the property is primarily residential.

(x) *Primary regulator* means the chartering authority for federally-chartered applicants, the insuring authority for federally-insured applicants that are not federally-chartered; or the appropriate state agency for all other applicants.

(y) *Regulatory examination rating* means a rating of capital, assets, management, earnings and liquidity following the guidelines of the Uniform Financial Institutions Rating System contained in a written report of examination conducted by the applicant's appropriate regulator, including a CAMEL rating, a MACRO rating, or other similar ratings.

(z) *Regulatory financial report* means a financial report that an applicant is required to file with its primary regulator on a specific periodic basis, including the quarterly call report for commercial banks, thrift financial report for thrifts, quarterly or semi-annual call report for credit unions, the National Association of Insurance Commissioners' annual or quarterly report for insurance companies and other similar reports.

(aa) *Residential mortgage loan* means any one of the following types of domestic loans, whether or not fully amortizing:

(1) Home mortgage loans;

(2) Funded residential construction loans;

(3) Loans secured by manufactured housing whether or not defined by state law as secured by an interest in real property;

(4) Loans secured by junior liens on one-to-four family property or multifamily property;

(5) Qualified private activity exempt facility bonds where 95 percent or more of the net proceeds are used for the construction of qualified residential rental projects as defined in 20 U.S.C. 142(a)(7);

(6) Mortgage pass-through securities representing an undivided ownership interest in:

(i) Loans that meet the requirements of paragraphs (aa)(1) through (4) of this section at the time of issuance of the security;

(ii) Securities representing an undivided ownership interest in loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraphs (r)(1) through (4) of this section; or

(iii) Mortgage debt securities as defined in paragraph (aa)(7) of this section;

(7) Mortgage debt securities secured by:

(i) Loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraphs (aa)(1) through (4) of this section;

(ii) Securities that meet the requirements of paragraph (aa)(6) of this section; or

(iii) Securities secured by assets, provided that, at the time of issuance of the security, all of the assets meet the requirements of paragraphs (aa)(1) through (5) of this section; or

(8) Home mortgage loans secured by a leasehold interest, as defined in paragraph (m)(1)(ii) of this section, except that the period of the lease term may be for any duration.

(bb) *State* means a State of the United States, the District of Columbia, Guam, Puerto Rico or the U.S. Virgin Islands.

(cc) *Total assets* means cash and balances due from depository institutions, held to maturity securities, available-for-sale securities, federal funds sold and securities purchased under agreements to resell (in domestic subsidiaries), loans and lease financing receivables, assets held in trading accounts (in domestic offices of the company and its domestic subsidiaries), premiums and fixed assets, other real estate owned, investments in unconsolidated subsidiaries and associated companies, customers' liability to the reporting bank on acceptances outstanding, intangible assets, and other assets.

6. Subpart B of part 933 is revised to read as follows:

Subpart B—Membership Application Process

§ 933.2 Membership application requirements.

(a) *Application.* An applicant for membership in a Bank shall submit to that Bank an application that satisfies the requirements of this part. The application shall include a written certification by a majority of the applicant's directors or by an individual with authority to act on behalf of the applicant of the following:

(1) *Applicant review*. Applicant has reviewed the requirements of this part and, as required by this part, has provided to the best of applicant's knowledge the most recent, accurate and complete information available; and

(2) *Duty to supplement.* Applicant will promptly supplement the application with any relevant information that comes to applicant's attention prior to the Bank's decision on whether to approve the application, and if the Bank's decision is appealed pursuant to § 933.5 of this part, prior to resolution of any appeal by the Board.

(b) *Digest.* The Bank shall prepare a written digest for each applicant stating whether or not the applicant meets each of the requirements in §§ 933.6 to 933.18 of this part, the Bank's findings and the reasons therefor.

(c) *File.* The Bank shall maintain a membership file for each applicant for at least three years after the Bank decides whether to approve membership and the resolution of any appeal to the Board. The membership file shall contain at a minimum:

(1) *Digest.* The digest required by paragraph (b) of this section.

(2) *Required documents.* All documents required by §§ 933.6 to 933.18 of this part, including those documents required to establish or rebut a presumption under this part, shall be described in and attached to the digest. If an applicant's primary regulator requires return of a regulatory examination report, the date that the report is returned shall be noted in the digest.

(3) *Additional documents.* Any document submitted by the applicant, or otherwise obtained or generated by the Bank, concerning the applicant.

(4) *Decision resolution*. Decision resolution described in § 933.3(b) of this part.

(d) *Independent evaluation*. The Bank shall use regulatory financial reports and other sources independent of the applicant to evaluate and analyze all conclusions offered by the applicant regarding the applicant's eligibility for membership. No applicant shall be admitted to membership until the Bank is satisfied that the applicant meets the requirements of the Act and this part independent of any representations by the applicant.

§ 933.3 Decision on application.

(a) *Authority*. The Board authorizes the Banks to approve or deny all applications for membership, subject to § 933.5 of this part. The Bank may delegate the authority to approve membership applications only to a committee of the Bank's board of directors, the Bank president or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development.

(b) *Decision resolution*. For each applicant, the Bank shall prepare a resolution of its board of directors signed by a majority of the directors or by an officer with delegated authority to approve membership applications. The decision resolution shall state:

(1) That the information in the digest is accurate and is based on a diligent and comprehensive review of all available information; and

(2) The Bank's decision and the reasons therefor. Decisions to approve an application should specifically state that the applicant is authorized under the laws of the United States and the laws of the appropriate state to become a member of, purchase stock in, do business with and maintain deposits in the Bank to which the applicant has applied; and, that the applicant meets all of the membership eligibility criteria of the Act and this part.

(c) *Action on applications*. The Bank shall act on an application within 60 calendar days of the date the Bank deems the application to be complete. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and the Board's Executive Secretary with a copy of the Bank's decision resolution.

§ 933.4 Automatic membership.

(a) *Automatic membership for mandatory members*. Any institution required by law to become a member of a Bank automatically shall become a member of the Bank of the district in which its principal place of business is located upon the purchase of stock in that Bank pursuant to § 933.20(b)(1) of this part.

(b) *Automatic membership for certain charter conversions*. An insured depository institution member that converts from one charter type to another automatically shall become a member of the Bank of which the converting institution was a member on the effective date of such conversion, provided that the converting institution continues to be an insured depository institution and the assets of the institution immediately before and immediately after the conversion are identical. In such case, all relationships existing between the member and the Bank at the time of such conversion may continue.

(c) *Automatic membership for transfers*. Any member whose membership is transferred pursuant to § 933.18(d) of this part automatically shall become a member of the Bank to which it transfers.

§ 933.5 Appeals.

(a) *Appeals by applicants*—(1) *Filing procedure*. Within 90 calendar days of the date of a Bank's decision to deny an application for membership, the applicant may file a written appeal of the decision with the Board.

(2) *Documents*. The applicant's appeal shall be addressed to the Executive Secretary, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006, with a copy to the Bank, and shall include the following documents:

(i) *Bank's decision*. A copy of the Bank's decision resolution; and

(ii) *Basis for appeal*. A statement of the basis for the appeal by the applicant with sufficient facts, information, analysis and explanation to support the applicant's contentions.

(b) *Appeals by Banks*. Within 60 days of the date that a Bank grants an application for membership, another Bank (appellant Bank) may file a written appeal with the Board of the determination of the appropriate district for membership pursuant to § 933.18 of this part, by writing to the Board's Executive Secretary with a copy to the Bank that granted membership. The appeal shall include a statement of the basis for appeal by the appellant Bank with sufficient facts, information, analysis and explanation to support the appellant Bank's contentions.

(c) *Record for appeal.*—(1) *Copy of membership file*. Within five business days of receiving an appeal, the Bank whose action has been appealed (appellee Bank) shall provide the Board with a complete copy of the applicant's membership file. Until the Board resolves the appeal, the appellee Bank shall supplement the materials provided to the Board as new materials are received.

(2) *Additional information*. The Board may request additional information or further supporting arguments from the appellant, the appellee Bank or any other party that the Board deems appropriate.

(d) *Deciding appeals*. The Board shall consider the record for appeal described in paragraph (c) of this section and shall resolve the appeal based on the requirements of the Act and this part within 90 calendar days of the date the appeal is filed with the Board. In deciding the appeal, the Board shall follow the presumptions in this part, unless the appellant or appellee Bank presents compelling evidence to rebut a presumption.

7. Subpart C of part 933 is added to read as follows:

Subpart C—Eligibility Requirements

§ 933.6 General eligibility requirements.

(a) *Requirements.* Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution, upon application satisfying all of the requirements of the Act and this part, shall be eligible to become a member of a Bank if:

(1) It is duly organized under the laws of any State of the United States;

(2) It is subject to inspection and regulation under the banking laws, or under similar laws, of any State or the United States;

(3) It makes long-term home mortgage loans;

(4) It has at least ten percent of its total assets in residential mortgage loans;

(5) Its financial condition is such that advances may be safely made to it;

(6) The character of its management is consistent with sound and economical home financing; and

(7) Its home-financing policy is consistent with sound and economical home financing.

(b) *Ineligibility.* Except as otherwise provided in this part, if an applicant does not satisfy the requirements of this part, the applicant is ineligible for membership.

§ 933.7 Duly organized requirement.

An applicant shall be deemed to be duly organized as required by section 4(a)(1)(A) of the Act and § 933.6(a)(1) of this part, subject to rebuttal, if it is chartered by a state or federal agency as a building and loan association, savings association, cooperative bank, homestead association, insurance company, savings bank or insured depository institution.

§ 933.8 Subject to inspection and regulation requirement.

An applicant shall be deemed to meet the inspection and regulation requirement of section 4(a)(1)(B) of the Act and § 933.6(a)(2) of this part, subject to rebuttal, if it is inspected and regulated by the Federal Deposit Insurance Corporation, the Federal Reserve Board, the National Credit Union Administration, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, a state insurance commissioner or other state regulatory agency authorized to regulate depository institutions or insurance companies.

§ 933.9 Makes long-term home mortgage loans requirement.

(a) *Requirement.* An applicant shall be deemed to meet the makes long-term mortgage loans requirement of section 4(a)(1)(C) of the Act and § 933.6(a)(3) of this part, subject to rebuttal, if the applicant originates or purchases long-term home mortgage loans.

(b) *Ineligible.* If an applicant does not satisfy the requirement in paragraph (a) of this section, the applicant is ineligible for membership, unless the Board, in its sole discretion, determines on appeal, on the basis of additional information supplied by the applicant or otherwise, that the applicant satisfies the requirements of section 4(a)(1)(C) of the Act.

§ 933.10 Ten percent requirement.

(a) *Insured depository institution applicants.* Except as provided in § 933.14(b) of this part, an insured depository institution applicant shall be deemed to be in compliance with the ten percent requirement of section 4(a)(2)(A) of the Act and § 933.6(a)(4) of this part, subject to rebuttal, if, as of the date of the application, the applicant had at least ten percent of its total assets, as reported to its primary regulator, in residential mortgage loans, except that any assets used to secure mortgage debt securities as described in § 933.1(aa)(7) of this part shall not be used to meet this requirement.

(b) *Noninsured depository institution applicants.* A noninsured depository institution applicant shall be deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Act and § 933.6(a)(4) of this part, subject to rebuttal, if the applicant has mortgage-related assets that reflect a commitment to housing finance, as determined by the Board.

(c) *Ineligible.* If an applicant does not satisfy the requirements of this section, the applicant is ineligible for membership, unless the Board, in its sole discretion, determines on appeal, on the basis of additional information supplied by the applicant or otherwise, that the applicant otherwise satisfies the requirements of section 4(a)(2)(A) of the Act.

§ 933.11 Financial condition requirement.

(a) *Review requirement.* Except as provided in § 933.14 of this part, in determining whether an applicant has complied with the financial condition requirement of section 4(a)(2)(B) of the Act and § 933.6(a)(5) of this part, the Bank shall obtain as a part of the membership application, and consider each of the following documents:

(1) *Financial report.* The regulatory financial reports for the last six calendar quarters and three year-ends;

(2) *Financial statement.* The most recent annual audited financial statement, or if unavailable, any other such independent external annual financial report as the applicant's primary regulator may require, or if unavailable, such financial statements as the applicant may otherwise have available;

(3) *Examination report.* The most recent available regulatory examination report, a summary of the applicant's strengths and weaknesses as cited in the examination report, and a summary of actions taken by the applicant to respond to examination weaknesses;

(4) *Enforcement actions.* A description of any outstanding enforcement actions, responses by the applicant and reports as required by the enforcement action; and

(5) *Additional information.* Any other relevant information that comes to the Bank's attention or reasonably should come to the Bank's attention in reviewing the applicant's financial condition.

(b) *Standards.* Except as provided in §§ 933.14(a) and 933.16 of this part, an applicant shall be deemed to be in compliance with the financial condition requirement of section 4(a)(2)(B) of the Act and § 933.6(a)(5) of this part, subject to rebuttal, if:

(1) *Recent examination.* The applicant has received a composite regulatory examination rating by its primary regulator within two years from the date of application;

(2) *Meets capital requirement.* The applicant meets all of its minimum statutory and regulatory capital requirements as reported in its most recent quarter-end regulatory financial report filed with its primary regulator; and

(3) *Minimum performance standard.* (i) The applicant's most recent composite regulatory examination rating was ''1;'' or, was ''2'' or ''3'' and, based on the applicant's most recent regulatory financial report, the applicant satisfied all of the following performance trend criteria:

(A) *Earnings.* Applicant had positive annualized adjusted earnings in four of the six most recent calendar quarters;

(B) *Nonperforming assets.* Applicant's nonperforming assets did not exceed ten percent of its total assets in the most recent calendar quarter; and

(C) *Loan loss reserves.* Applicant had a ratio of loan loss reserves to nonperforming assets of 60 percent or greater during 4 of the 6 most recent calendar quarters.

(ii) For applicants that are not required to report financial data to their primary regulator on a quarterly basis, the information required in paragraphs (b)(3)(i) of this section may be reported on a semiannual basis.

(c) *Eligible collateral not considered.* The availability of sufficient eligible collateral to secure advances to the applicant is presumed and shall not be considered in determining whether an applicant is in the financial condition required by § 933.6(a)(5) of this part.

§ 933.12 Character of management requirement.

(a) *Review requirement.* For each applicant, the Bank shall review:

(1) The names of directors and senior officers;

(2) The most recent regulatory financial report;

(3) The most recent audited financial statement, or if unavailable, other such independent external financial report that the applicant's primary regulator may require, or if unavailable, such financial statements that the applicant may otherwise have available;

(4) Enforcement actions as described in paragraph (b)(1) of this section;

(5) Certain pending criminal, civil or administrative matters as described in paragraph (b)(2) of this section;

(6) Information concerning potential monetary liabilities, material pending law suits or unsatisfied judgments as described in paragraph (b)(3) of this section; and

(7) Any other document that comes to the Bank's attention or reasonably should come to the Bank's attention in reviewing the applicant's character of management.

(b) *Standards.* An applicant shall be deemed to be in compliance with the character of management required by section 4(a)(2)(C) of the Act and § 933.6(a)(6) of this part, subject to rebuttal, if:

(1) *No enforcement actions.* Neither the applicant nor any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by an appropriate regulator;

(2) *No objectionable proceedings.* Neither the applicant nor any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent examination; and

(3) *No objectionable liabilities.* There are no known or potential civil, criminal or administrative monetary liabilities, material pending law suits, or unsatisfied judgments against the applicant, its directors or senior officers since the most recent examination; and

(4) *Applicant certification.* The applicant makes the unqualified certification described in paragraph (c)(1) of this section.

(c) *Applicant certification.* Either a majority of the members of the board of directors of the applicant, or an individual with authority to act on behalf of the board of directors of the applicant shall provide to the Bank:

(1) *Unqualified certification.* An unqualified written certification that the statements submitted in response to the requirements of paragraphs (b) (1) through (3) of this section are true and correct without exception; or

(2) *Qualified certification.* A qualified written certification that the statements submitted in response to the requirements of paragraphs (b) (1) through (3) of this section are true and correct and detailed explanations of any exceptions noted.

§ 933.13 Home financing policy requirement.

(a) *Standards.* An applicant shall be deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Act and § 933.6(a)(7) of this part, subject to rebuttal, if the applicant has received:

(1) *Recent evaluation.* A Community Reinvestment Act (CRA) performance evaluation within four years from the date of application; and

(2) *Minimum rating.* A CRA rating of ''Satisfactory'' or better in the most recent compliance examination.

(b) *Written justification required.* An applicant that is not subject to CRA or an applicant that received a ''needs to improve'' rating in its most recent CRA performance evaluation but has received a ''satisfactory'' or better rating on its prior CRA performance evaluation, shall file as a part of its application, a written justification that demonstrates how and why the applicant's home financing credit policies and lending practices (if applicable) are consistent with the Bank System's housing finance mission.

§ 933.14 De novo insured depository institution applicants.

An insured depository institution applicant that provides a Bank with written confirmation from its primary regulator that it has been chartered for less than three years or is otherwise considered to be a de novo insured depository institution (de novo applicant) by the applicant's primary regulator shall receive special consideration for eligibility as follows:

(a) *Financial condition*—(1) *Financial report.* For purposes of § 933.11(a)(1) of this part, a de novo applicant that has not filed regulatory financial reports for the last six calendar quarters and three year-ends shall provide any regulatory financial reports the applicant has filed.

(2) *Financial statement.* For purposes of § 933.11(a)(2) of this part, a de novo applicant shall provide the most recent annual audited financial statement, or if unavailable other such independent external annual financial report as the applicant's primary regulator may require, or if unavailable, a de novo applicant shall, at a minimum, provide financial reports for six calendar quarters of operation.

(3) *Regulatory examination rating.* For purposes of § 933.11(b)(1) of this part, if a de novo applicant has not yet received a composite regulatory examination rating from its primary regulator, the applicant shall provide a preliminary or informal written regulatory examination rating from the applicant's primary regulator, if a preliminary or informal rating is acceptable to the Bank.

(4) *Performance trends.* A de novo applicant need not meet the performance trend criteria in § 933.11(b)(3)(i) of this part; if:

(i) *Reports for six quarters.* Applicant has completed regulatory financial reports for at least six calendar quarters of operation; and

(ii) *Business plan compliance.* Applicant has provided written confirmation from its primary regulator that applicant is in compliance with the terms of its regulatory business plan; or applicant has prepared a written analysis demonstrating that it is in substantial compliance with its regulatory business plan as determined by the Bank.

(b) *Home financing policy.* For purposes of § 933.13(b) of this part, a de novo applicant that has not yet received a CRA performance evaluation shall be deemed to have a home financing policy as required by § 933.6(a)(7) of this part if it has received a preliminary or informal written CRA performance evaluation of ''Satisfactory'' or better; or it has submitted a written justification acceptable to the Bank of how the applicant intends to support the Bank System's housing finance mission.

§ 933.15 Recent and pending merger applicants.

(a) *Definitions*—(1) *Pending merger applicant* means an institution that meets both of the following tests:

(i) *Timing test.* The institution is a party to a merger or acquisition agreement expected to be consummated within two calendar quarters of submission of the membership application; and

(ii) *Materiality test.* The institution will account for 75 percent or less of the

combined assets of the resulting entity at the time of the merger or acquisition.

(2) *Recent merger applicant* means an institution that meets both of the following tests:

(i) *Timing test.* The institution merged with or acquired another institution within the six calendar quarters prior to submission of the membership application; and

(ii) *Materiality test.* The institution accounts for 75 percent or less of the combined assets of the resulting entity at the time of the merger or acquisition.

(b) *Review requirement.* For each recent or pending merger applicant, the digest shall include the following additional information:

(1) The name of each entity involved and its charter type;

(2) A general statement of the financial condition of each entity;

(3) A brief statement of the business reasons for the merger or acquisition; and

(4) The names and positions of management of the resulting entity.

(c) *Standards.* A recent or pending merger applicant shall be deemed to be in compliance with section 4(a) of the Act and § 933.6(a) of this part, subject to rebuttal, only if the recent or pending merger applicant satisfies the requirements of this part as modified and supplemented by this section.

(1) *Recent merger applicant financial condition*—(i) *Recent examination and minimum performance standards.* A recent merger applicant that does not have a composite regulatory examination rating subsequent to the merger or acquisition, shall satisfy the requirements of § 933.11(b) of this part on a combined basis and for each party to the merger or acquisition, except an incumbent Bank member.

(ii) *Performance trends.* To the extent that a recent merger applicant does not yet have regulatory financial reports for the six most recent calendar quarters, the applicant shall prepare pro forma combined financial statements for those calendar quarters in which an actual combined regulatory financial report is unavailable to determine whether the applicant meets the performance trend requirements of § 933.11(b)(3) of this part.

(2) *Pending merger applicant financial condition*—(i) *Recent examination and minimum performance standards.* In lieu of a composite regulatory examination rating for the combined entity, as required by § 933.11(b)(1) of this part, each party to the merger or acquisition, except an incumbent Bank member, must satisfy all of the requirements of § 933.11(b) of this part.

(ii) *Capital requirements and performance trends.* In addition to each party to a pending merger individually satisfying all of the requirements of § 933.11(b) of this part, the pending merger applicant shall satisfy the requirements in § 933.11(b) (2) and (3) of this part as a combined entity based on pro forma combined financial statements to be prepared by the applicant for the six most recent calendar quarters.

(iii) *Character of management.* For purposes of § 933.12 of this part, the determination of the character of management of a recent or pending merger applicant shall be based on an evaluation of the directors and senior officers of the resulting entity.

(iv) *Home financing policy.* For a pending merger applicant or for a recent merger applicant that does not yet have a CRA performance evaluation on a combined basis for the merged entity, the determination of whether the merger applicant's home financing policy satisfies the requirements of § 933.13 of this part, shall be based on a review of the most recent CRA performance evaluation for each party to the merger or acquisition.

§ 933.16 Financial condition standards for insurance company applicants.

(a) *Definitions.* For purposes of this section:

(1) *Adjusted liabilities* means total statutory liabilities less separate account liabilities, asset valuation reserves, and interest maintenance reserves.

(2) *Adjusted surplus* means surplus plus asset valuation reserves and interest maintenance reserves.

(3) *Asset valuation reserves* means reserves on the liability side of the balance sheet that are established by the primary regulatory to guard against fluctuations in the value of securities and to absorb all unrealized capital gains and losses and certain realized gains and losses on investment activity.

(4) *Highly liquid assets* means cash or cash equivalents readily convertible to cash, including marketable Class 1 (highest investment grade) publicly traded bonds, marketable preferred and common stock, short-term investments, and investment income due.

(5) *Interest maintenance reserves* means reserves on the liability side of the balance sheet that are established to hold the amount of realized capital gains and losses on fixed income securities that result from overall interest rates changes.

(6) *Liquid assets* means installment premiums booked but deferred and not yet due, cash, accrued investment income, marketable Class 1 (highest investment grade quality) publicly traded bonds and marketable Class 2 (high investment grade quality) publicly traded bonds, marketable preferred and common stock, cash, short-term investments, and investment income due, less investments in affiliated companies and excess of real estate over five percent of liabilities.

(7) *Net premiums written* means the total consideration paid for an insurance contract during a specified period of time, net of reinsurance assumed and ceded.

(8) *Reinsurance* means transactions in which an assuming enterprise, known as a reinsurer, assumes, for a premium, all or part of a risk undertaken originally by another insurer.

(9) *Reinsurance assumed* means all premiums generated by policies issued to assume a liability, in whole or part, of another insurer that is already covering the risk with a policy.

(10) *Reinsurance ceded* means all premiums generated by policies or coverage purchased from another insurer that transfer liability, in whole or part, from direct or reinsurance policies.

(11) *Reserves* means funds set aside for possible losses on insurance policies, annuities, claims unpaid, funds held for policyholders, and deposit funds.

(12) *Separate accounts* means assets and liabilities maintained by an insurance company predominately to fund fixed-benefit or variable annuity contracts and pension plans. The contract holder assumes the investment risk while the insurance company receives a fee for managing or maintaining the investments.

(13) *Statutory liabilities* means the total of funds set aside to pay future claims and operating expenses, including separate account liabilities and funds held for the benefit of others, as established under the accounting rules and techniques permitted by the National Association of Insurance Commissioners. Examples of statutory liabilities are policy reserves, premiums collected in advance, commission and expenses payable, and provisions for policyholder dividends.

(14) *Surplus* means the total of common and preferred capital stock, aggregate write-ins for other than special surplus funds, gross paid-in and contributed surplus, surplus notes and unassigned funds less treasury stock.

(15) *Tabular interest* means interest, required by the primary regulator, to be set aside to cover all contractual obligations.

(b) *Performance standards.* An insurance company applicant shall be

deemed to meet the financial condition requirement of section 4(a)(2)(B) of the Act and § 933.6(a)(5) of this part, subject to rebuttal, if:

(1) *Recent examination and rating.* The applicant has received a regulatory examination by its primary regulator and a composite independent insurance company rating from A.M. Best Company, Duff & Phelps, Inc., Moody's Investor Service, Inc., Standard & Poor's Corp. or Weiss Research Inc. within three years of the date of application;

(2) *Satisfactory examination.* The applicant's most recent regulatory examination by its primary regulator indicates no major adverse findings pertaining to the company's financial condition;

(3) *Meets capital requirements.* The applicant meets all of its minimum statutory and regulatory capital requirements and the capital standards established by the National Association of Insurance Commissioners as reported in the applicant's most recent regulatory financial report filed with its primary regulator;

(4) *Minimum performance standard*—(i) *Strong rating.* The applicant's most recent composite independent insurance company rating was:

(A) A.M. Best Company: ''A−'' or above;

(B) Duff & Phelps, Inc.: ''AA−'' or above;

(C) Moody's Investor Service, Inc.: ''Aa'' or above;

(D) Standard & Poor's Corp.: ''AA'' or above; or

(E) Weiss Research, Inc.: ''A''; or

(ii) *Adequate rating and earnings*—(A) *Adequate rating.* The applicant's most recent composite independent insurance company rating was:

(*1*) A.M. Best Company: ''C+'' to ''B++'';

(*2*) Duff & Phelps, Inc.: ''BB-'' to ''A+'';

(*3*) Moody's Investor Service, Inc.: ''Ba'' to ''A'';

(*4*) Standard & Poor's Corp.: ''BB'' to ''A''; or

(*5*) Weiss Research, Inc.: ''B'' or ''C''; and

(B) *Earnings.* The applicant had positive annualized adjusted earnings in two of the three most recent calendar years; and

(5) *Minimum performance ratios.* The applicant meets the minimum performance ratios in paragraph (b)(5)(ii) of this section during the most recent year-end or quarter-end period.

(i) *Definitions.* For purposes of this paragraph (b)(5):

(A) *Traditional life insurance products* means insurance business that consists of individual term life insurance contracts, individual permanent fixed value life insurance contracts, or policies that consist of fixed premiums, fixed dollar amounts of contract, or fixed reserves (cash value) established by each state.

(B) *Interest sensitive life insurance products (universal or whole life)* means insurance business that consists of individual life insurance policies characterized by flexible premiums, dollar amounts of contract that can vary, and reserves which represent a pool of assets such as mutual funds that are held for the benefit of, and support the investment return to, policy holders.

(C) *Accident and health insurance products (indemnity)* means insurance business that consists of coverage for care such as basic hospital expense, basic surgical expense, dental care, specific hospital reimbursement, long-term nursing home or home care expenses for the aged or disabled, major medical expense, and Medicare supplemental insurance.

(D) *Individual and group annuity insurance products* means insurance business that consists of contracts that accumulate and disburse retirement benefits to individual policyholders or to companies for their employees, hold pension deposit funds or distribute and hold funds under guaranteed interest contracts.

(E) *Disability income insurance products* means insurance business that consists of contracts that pay income periodically to insureds who are unable to work as a result of sickness or injury.

(F) *Property insurance products* means insurance business that consists of policies where the majority of premiums go to cover losses to real property, automobiles or similar tangible assets.

(G) *Liability insurance products* means insurance business that consists of policies that cover losses arising from actions taken by individuals or companies, including losses from litigation or mutual agreements as to the amount of a claim such as product liability, medical malpractice and worker's compensation.

(ii) *Overall minimum performance ratios.*—(A) *Premium to surplus ratio.* (*1*) *Calculation.* Divide net premiums written by total capital and surplus.

(*2*) *Standard.* The applicant's net premiums may not exceed three times the level of capital and surplus.

(B) *Change in net premiums written ratio.*—(*1*) *Calculation.* Divide the change in net premiums written between the two most recent consecutive calendar years by the total net premiums written in the first year.

(*2*) *Standard.* The applicant's ratio must be between −10 percent and +50 percent.

(C) *Surplus relief ratio.*—(*1*) *Calculation.* Divide the net of commissions and expenses generated by reinsurance ceded and assumed by total capital and surplus.

(*2*) *Standard.* The applicant's ratio must be less than 30 percent.

(D) *Adequacy of investment income ratio.*—(*1*) *Calculation.* Divide net investment income by the sum of total tabular interest required on life insurance, accident and health reserves, and total interest credited on funds held on deposit.

(*2*) *Standard.* The applicant's net investment income must provide no less than 1.25 times the coverage on total funds held in reserves to pay interest on contractual obligations and funds held on deposit.

(E) *Change in capital and surplus ratio.*—(*1*) *Calculation.* Divide the net change in capital and surplus between the two most recent consecutive calendar years, by total capital and surplus in the first year.

(*2*) *Standard.* The applicant's ratio must be between −10 percent and +50 percent.

(iii) *Solvency ratios.*—(A) *Highly liquid ratio.*—(*1*) *Calculation.* Divide highly liquid assets by annuity and deposit fund reserves less reserves with no withdrawal privileges, separate accounts and reinsurance.

(*2*) *Standard.* The applicant's ratio must be no less than:

(*i*) 75 percent on traditional life insurance products;

(*ii*) 85 percent on interest sensitive life insurance products;

(*iii*) 85 percent on individual annuity insurance products;

(*iv*) 100 percent on group annuity insurance products;

(*v*) 79 percent on property and liability insurance products;

(*vi*) 75 percent on accident and health insurance products; and

(*vii*) 50 percent on disability income insurance products.

(B) *Current ratio.*—(*1*) *Calculation.* Divide liquid assets by annuity, ordinary life, and deposit fund reserves, less reserves with no withdrawal privileges, separate accounts, reinsurance, and policy loans.

(*2*) *Standard.* The applicant's ratio must be no less than:

(*i*) 60 percent on traditional life insurance products;

(*ii*) 75 percent on interest sensitive life insurance products;

(*iii*) 75 percent on individual and group annuity insurance products;

(*iv*) 87 percent on property and liability insurance products;

(*v*) 75 percent on accident and health insurance products; and

(*vi*) 50 percent on disability income insurance products.

(C) *Adjusted liabilities to adjusted surplus ratio.*—(*1*) *Calculation.* Divide adjusted liabilities by adjusted surplus.

(*2*) *Standard.* The applicant's ratio must not exceed:

(*i*) 10 to 1 on traditional life insurance products;

(*ii*) 10 to 1 on interest sensitive life insurance products;

(*iii*) 10 to 1 on individual and group annuity insurance products;

(*iv*) 3 to 1 on property and liability insurance products;

(*v*) 3 to 1 on accident and health insurance products; and

(*vi*) 5 to 1 on disability income insurance products.

§ 933.17 Rebuttable presumptions.

(a) *Overcoming presumptive compliance.* The presumption that an applicant meeting the standards described in §§ 933.7 to 933.16 of this part is in compliance with the Act and § 933.6(a) of this part, may be overcome if the Bank obtains compelling evidence to the contrary.

(b) *Overcoming presumptive noncompliance.* An applicant that does not meet all of the standards in §§ 933.7 to 933.16 of this part, or that is unable to provide the information required to evaluate whether or not it meets those standards, shall be deemed not to be in compliance with the Act and § 933.6(a) of this part unless the applicant rebuts the presumption, as described in this section, and the Bank determines that the applicant has complied with the Act and § 933.6(a) of this part.

(c) *Noncompliance with financial condition standards.*—(1) *Compelling written justification.* For each variance from the minimum regulatory examination rating required by § 933.11(b)(3) of this part, an applicant shall prepare a written justification that provides compelling evidence that the applicant is in the financial condition required by § 933.6(a)(4) of this part, notwithstanding the variance.

(2) *Substantial written justification.* For each variance from a performance criterion required by § 933.11(b)(3), of this part, the applicant shall prepare a written justification pertaining to that performance criterion that provides substantial evidence that the applicant is in the financial condition required by § 933.6(a)(4) of this part, notwithstanding the variance.

(d) *Noncompliance with character of management standards.*—(1) *Enforcement actions.* If an applicant or any of its directors or senior officers is subject to or operating under an enforcement action, the applicant shall provide:

(i) *Regulator confirmation.* Written confirmation from the applicant's appropriate regulator that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action; or

(ii) *Written analysis.* A written analysis stating each action the applicant or its directors or senior officers is required to take by the enforcement action, the actions actually taken by the applicant or its directors or senior officers, and whether the applicant regards this as substantial compliance. If the Bank is uncertain whether the applicant has substantially complied with all aspects of the enforcement action, the Bank shall consult the applicant's appropriate regulator.

(2) *Certain criminal, civil or administrative proceedings.* If an applicant or any of its directors or senior officers is subject to criminal, civil or administrative proceedings that reflect on creditworthiness, business judgment or moral turpitude since the last examination, the applicant shall provide:

(i) *Regulator confirmation.* Written confirmation from the applicant's primary regulator that the proceedings will not likely result in enforcement action; or

(ii) *Written analysis.* A written analysis of the severity of the pending charges and any mitigating action taken by the applicant or its directors or senior officers. If the Bank is uncertain whether the proceedings will result in enforcement action, the Bank shall consult the applicant's primary regulator.

(3) *Material monetary liabilities.* If there are any material known or potential civil, criminal or administrative monetary liabilities, pending law suits, or unsatisfied judgments against the applicant or its directors or senior officers as of the most recent quarter-end, the applicant shall provide:

(i) *Regulator confirmation.* Written confirmation from the applicant's primary regulator that the matter will not likely cause the applicant to fall below its minimum capital requirements; or

(ii) *Written analysis.* A written analysis of each matter, the likelihood of the applicant or its directors or senior officers prevailing and the financial consequences if the applicant or its directors or senior officers do not prevail. If the Bank is uncertain whether the matter will cause the applicant to fall below its minimum capital requirements, the Bank shall consult the applicant's primary regulator.

(e) *Noncompliance with home financing policy standards.* If an applicant received a ''substantial non-compliance'' rating on its most recent CRA performance evaluation, two consecutive ''needs to improve'' CRA ratings, or has not received a CRA performance evaluation within four years from the date of the membership application, the applicant shall provide:

(1) *Regulator confirmation.* Written confirmation from the applicant's primary regulator of the applicant's recent satisfactory CRA performance, including any corrective action that substantially improved upon the deficiencies cited in any recent CRA performance evaluation; or

(2) *Written analysis.* A written analysis demonstrating that the CRA rating is unrelated to housing finance, or providing substantial evidence that the applicant's home financing credit policies and lending practices (if applicable) are consistent with the Bank System's housing finance mission.

§ 933.18 Determination of appropriate Bank district for membership.

(a) *Eligibility.* (1) An institution eligible to become a member of a Bank under the Act and this part may become a member only of the Bank of the district in which the institution's principal place of business is located, except as provided in paragraph (a)(2) of this section.

(2) An institution eligible to become a member of a Bank under the Act and this part may become a member of the Bank of a district adjoining the district in which the institution's principal place of business is located, if demanded by convenience and then only with the approval of the Board.

(b) *Principal place of business.* Except as otherwise designated in accordance with this section, the principal place of business of an institution is the state in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized.

(c) *Designation of principal place of business.* (1) A member or an applicant for membership may request in writing to the Bank in the district where the institution maintains its home office that a state other than the state in which it maintains its home office that a state other than the state in which it maintains its home office be designated as its principal place of business. Within 90 days of receipt of such written request, the board of directors of the Bank in the district where the

institution maintains its home office shall designate a state other than the state where the institution maintains its home office as the institution's principal place of business, provided all of the following criteria are satisfied:

(i) At least 80 percent of the institution's accounting books, records and ledgers are maintained, located or held in such designated state;

(ii) A majority of meetings of the institution's board of directors and constituent committees are conducted in such designated state; and

(iii) A majority of the institution's five highest paid officers have their place of employment located in such designated state.

(2) Written notice of a designation made pursuant to paragraph (c)(1) of this section shall be sent to the Bank in the district containing the designated state, the Board and the institution.

(3) The notice of designation made pursuant to paragraph (c)(1) of this section shall include the state designated as the principal place of business and the resulting Bank to which membership will be transferred.

(4) If the board of directors of the Bank in the district where the institution maintains its home office fails to make the designation requested by the member or applicant pursuant to paragraph (c)(1) of this section, then the member or applicant may request in writing that the board make the designation.

(d) *Transfer of membership.* (1) No transfer of membership from one Bank to another Bank shall take effect until the Banks involved reach agreement on a method of orderly transfer.

(2) In the event that the Banks involved fail to agree on a method of orderly transfer, the Board shall determine the conditions under which the transfer shall take place.

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes including directorial representation under section 7(c) of the Act, 12 U.S.C. 1427(c), and § 932.11 of this chapter, but shall not be subject to the provisions on termination of membership set forth in section 6 of the Act, 12 U.S.C. 1426, or §§ 933.26, 933.27 and 933.29 of this part, including the restriction on reacquiring Bank membership set forth in § 933.30 of this part.

8. In the list below, for each section indicated in the left column, remove the reference indicated in the middle column from where it appears and add the reference indicated in the right column:

Section	Remove	Add
933.20(b)(1)	§§ 933.2(c) or 933.3	§ 933.3
	§ 933.2(d)	§ 933.4(a)
933.20(b)(2)	§ 933.2(d)	§ 933.4(a)
933.22(b)(1)	§ 933.7(a)	§ 933.20(a)
	§ 933.18(d)	§ 933.31(d)
933.23	§ 933.7(a)	§ 933.20(a)
933.24(a)(2)	§ 933.7(a)	§ 933.20(a)
933.24(b)(2)	§ 933.16	§ 933.29
933.25(c)	§ 933.2	Subpart B
933.25(d)(2)(ii) (A) and (B)	§ 933.7(a)	§ 933.20(a)
933.25(d)(3)	§ 933.16	§ 933.29
933.26(c)	§ 933.16	§ 933.29
933.27(e)	§ 933.16	§ 933.29
933.28(b)	§ 933.16	§ 933.29
933.29(a)(1)	§§ 933.13, 933.14 or 933.15	§§ 933.26, 933.27 or 933.28
	§§ 933.11(b) or 933.12(d)(3)	§§ 933.24(b) or 933.25(d)(3)
933.30 introductory text	§ 933.13	§ 933.26
933.30(a)	§ 933.5	§ 933.18
933.30(b)	§ 933.2(d)	§ 933.4(a)
933.31(d)	§ 933.9(b)(1)	§ 933.22(b)(1)

Dated: October 5, 1995.

By the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 95–25823 Filed 10–26–95; 8:45 am]

BILLING CODE 6725–01–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 882

[Docket No. FR–3709–C–02]

RIN 2577–AB48

Section 8 Moderate Rehabilitation; Rent Adjustments; Annual and Special Adjustments; Comparability Studies; Rent Reductions; Technical Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule; technical correction.

SUMMARY: On October 2, 1995 (60 FR 51658), HUD published a proposed rule that would revise the current regulations on adjusting Section 8 Moderate Rehabilitation Contract Rents. The rule proposed to modify the method used by Public Housing Agencies (PHAs) to determine the amount of the annual increase in the Contract Rents by providing for PHAs to conduct comparability studies for Moderate Rehabilitation projects to prevent the application of the Annual Adjustment Factors from resulting in a material difference between rents charged for assisted units and similar unassisted units.

The purpose of this document is to correct certain technical errors that appeared in the October 2, 1995 proposed rule.

DATES: Comment Due Date: December 1, 1995.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Madeline Hastings, Rental Assistance Division, Room 4226, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, D.C. 20410; telephone (202) 708–2841 (voice) or (202) 708–4594 (TDD). (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: On October 2, 1995 (60 FR 51658), HUD published a proposed rule that would revise the current regulations on adjusting Section 8 Moderate Rehabilitation Contract Rents. The rule proposed to modify the method used by Public Housing Agencies (PHAs) to determine the amount of the annual increase in the Contract Rents by providing for PHAs to conduct comparability studies for Moderate Rehabilitation projects to prevent the application of the Annual Adjustment Factors from resulting in a material difference between rents charged for assisted units and similar unassisted units.

The proposed rule also provides a substitute method of determining the initial difference between Moderate Rehabilitation rents and rents charged for comparable unassisted units, if the PHA failed to establish the amount of the difference when the initial Contract Rents were determined. Additionally, the proposed rule provides, subject to the availability of appropriations, for special adjustments when an exemption from real property tax expires under certain circumstances, and insurance to the categories of cost increases that may result in a special adjustment.

The October 2, 1995 proposed rule would be applicable to all projects which are currently, or will be in the future, under a Section 8 Moderate Rehabilitation Housing Assistance Payments (HAP) Contract, as provided in the regular Section 8 Moderate Rehabilitation Program, and the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals.

The purpose of this document is to correct certain technical errors that appeared in the October 2, 1995 proposed rule.

Technical Corrections to October 2, 1995 Proposed Rule

Corrections to the Preamble. In the preamble to the proposed rule, under the discussion in Section B on Comparability Studies, which begins at the bottom of page 51658, HUD notes in the last paragraph of this section (page 51659, first column) that: ''The rule also would provide that Contract Rents will never be reduced as a result of a comparability study.'' The word ''never'' also should have been inserted in the last sentence of the first full paragraph, first column of that page. The last sentence of the first paragraph should read: ''However, the Contract Rent would never be reduced below its current level based upon the comparability study.''

In the second full paragraph of the first column on page 51659, a phrase was inadvertently omitted from the first sentence pertaining to monthly rehabilitation debt service. The first sentence should have read as follows: ''A material difference between the assisted and comparable unassisted rents exists if the adjusted base rent plus any amount attributable to the monthly rehabilitation debt service is greater than the maximum allowable Contract rent plus any amount attributable to an initial difference.''

In the second sentence of that same second paragraph, the word ''contract'' rather than ''base'' should have been inserted in between the words ''allowable'' and ''rent'' so that it reads as follows: ''The maximum allowable Contract rent is a dollar amount equal to 105 percent of the comparable rent.''

Corrections to Regulatory Text. Two corrections need to be made to the text of the regulation, and both corrections involve substituting the word ''contract'' for ''base.'' This correction needs to be made in the last sentence of § 882.410(b)(1) and in the last clause of § 882.410(c)(3).

Accordingly, the foregoing corrections are made by this document.

List of Subjects in 24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, FR Doc. 95–24368, Section 8 Moderate Rehabilitation; Rent Adjustments; Annual and Special Adjustments; Comparability Studies, Rent Reductions, Proposed Rule, published on October 2, 1995 at 60 FR 51658 is corrected as follows.

1. On page 51659, in the preamble, in column one, under item B., the last sentence of the first full paragraph beginning with ''Under the proposed rule, when the application of the AAF to the base rent,* * *'', and the second full paragraph, are corrected to read as follows:

B. Comparability Studies

* * * * *

Under the proposed rule, when the application of the AAF to the base rent, * * *. However, the Contract Rent would never be reduced below its current level based upon the comparability study.

A material difference between the assisted and comparable unassisted rents exists if the adjusted base rent plus any amount attributable to the monthly rehabilitation debt service is greater than the maximum allowable Contract rent plus any amount attributable to an initial difference. The maximum allowable Contract rent is a dollar amount equal to 105 percent of the comparable rent.

* * * * *

2. On page 51661, in column one, in § 882.410, paragraphs (b)(1) and (c)(3) are corrected, to read as follows:

§ 882.410 Rent adjustments.

* * * * *

(b) *Overall limitation*. (1) Notwithstanding any other provisions of this part, adjustments as provided in this section must not result in material differences between the rents charged for assisted and unassisted units of similar age, quality, and type in the same market area, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (d) of this section). A material difference between the assisted and comparable unassisted rent is determined to exist if the adjusted Contract rent is greater than the maximum allowable Contract rent plus any difference which may have existed initially. The maximum allowable Contract rent is a dollar amount equal to 105 percent of the comparable rent.

* * * * *

(c) * * *

(3) If the Contract rent, adjusted by the AAF, plus the utility allowance, is 110 percent or more of the current Existing Housing FMR or if an exception rent limit (if granted for a geographical area in accordance with § 882.408(b)), the PHA will conduct a comparability study to determine and approve an adjusted Contract rent that is not materially different from rents charged for comparable unassisted units.

* * * * *

Dated: October 20, 1995.

Kevin Emanual Marchman,

Deputy Assistant Secretary for Distressed and Troubled Housing Recovery.

[FR Doc. 95–26659 Filed 10–26–95; 8:45 am]

BILLING CODE 4210–33–P

POSTAL RATE COMMISSION

[Docket No. RM95–4, Order No. 1084]

39 CFR Part 3001

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing amendments to its rules of practice and procedure that would facilitate expedited consideration of requests of the United States Postal Service to: Conduct market tests of new postal services in order to develop information necessary to support a permanent mail classification change; adopt, on a provisional basis, mail classification and associated rate changes that supplement, but do not alter, existing rates and mail classifications; and adopt permanent but narrowly focused mail classification changes that supplement, but do not alter, existing rates and mail classifications. In addition to these amendments, the Commission is proposing a rule that would allow the Postal Service to use a multi-year test period for the purpose of demonstrating the financial viability of potential new services that are the subject of a concurrent Postal Service request.

DATES: Comments must be submitted on or before December 26, 1995.

ADDRESSES: Comments and correspondence should be sent to Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW, Suite 300, Washington, DC 20268–0001 (telephone: 202/789–6840).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Legal Advisor, Postal Rate Commission, 1333 H Street NW, Suite 300, Washington, DC 20268–0001 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: On April 24, 1995, the Commission issued an Advance Notice of Proposed Rulemaking in response to a petition submitted by the United States Postal Service. The Postal Service's petition, filed April 13, 1995, asked the Commission to initiate a rulemaking with a view to adopting new procedural rules applicable to seven ratemaking and mail classification topics, for the purpose of facilitating expedited consideration and review of Postal Service requests in those areas. For the most part, the rules proposed in the Postal Service's petition pursue specific recommendations of the Joint Task Force on Postal Ratemaking.[1] The Commission summarized the Postal Service's seven proposed rules and solicited the views of interested parties on the draft rules and six other topics in the Advance Notice. 60 FR 22017–19 (May 4, 1995).

The Commission received 21 sets of comments in response to the Advance Notice.[2] In addition to their views on the merits of the Postal Service's proposed rules, several parties submitted that it would be inappropriate to go forward with the requested rulemaking in light of the current focus on mail classification reform and the parties significant commitment of resources in Docket No. MC95–1. In contrast, the Postal Service commented that it sees no utility in deferring consideration of any of its proposed rules, and that simultaneous consideration of all of them is warranted.

The Commission concurs in the Postal Service's initiative ''to reopen the dialogue over administrative reform to a new chapter, and to focus on procedural changes designed to provide more expedition and flexibility.'' Petition of United States Postal Service to Initiate Rulemaking, April 13, 1995, at 5. However, the Commission is also mindful of the current workload imposed on all those involved in Docket No. MC95–1 and mail classification reform generally, and is disinclined to occasion additional efforts now without a realistic prospect of procedural enhancements in the near term. An additional consideration, which the Postal Service acknowledges in its petition, is the existence of potential legal impediments to implementing at least some of the concepts recommended by the Joint Task Force.

In view of these competing considerations, the Commission has determined to promulgate draft rules which would implement a majority, but not all, of the Postal Service's seven procedural initiatives. Specifically, the Commission has drafted proposed rules for application in the areas of market tests, provisional new services, minor changes in permanent mail classifications, and multi-year financial test periods for new services. At this point, these initiatives appear to hold the greatest promise for procedural improvement in the near term. The Commission will endeavor to pursue the remaining initiatives, which appear to present somewhat greater challenges under the Postal Reorganization Act as currently interpreted, in subsequent proceedings.

Market tests of potential new services. While one commenter, United Parcel Service, disputes the necessity of adopting a market test rule, the Joint Task Force Report correctly observes that there is no ''well-worn path'' in Commission procedure for obtaining information that could shed light on the prospects of potential service innovations through limited testing in the marketplace. Sections 67 through 67d of the current rules of practice (39 CFR 3001.67 through .67d) establish procedures for considering mail classification requests that the Postal Service denominates as ''experimental'' in character. However, this pre-existing mechanism may not be the most efficient and effective way to facilitate market testing, as the Postal Service has commented. The Commission agrees with the Postal Service and the Governors that it would be useful to explore new procedures explicitly designed for limited market tests that would enable the Service to gain ''real world'' experience with innovative services, and that would at the same time generate information needed to support recommendation of such services as permanent mail classifications. Employing these procedures within the larger context of an ongoing proceeding to consider a Postal Service request for a permanent classification change would also assist in establishing the objectives of market tests and defining their reasonable limits.

The Postal Service's proposed market test rules would apply to requests which seek ''changes in rates or mail classification preceded by testing in the market in order to develop information necessary to support a permanent change.'' Proposed 39 CFR 3001.121. Insofar as the Postal Service has proposed rules that would apply to requests for expedited market tests of changes in existing rates only,

[1] See Postal Ratemaking in a Time of Change: A Report by the Joint Task Force on Postal Ratemaking (June 1, 1992).

[2] The Association of American Publishers, American Bankers Association, American Business Press, Air Courier Conference of America, Advo, Inc., Advertising Mail Marketing Association, Direct Marketing Association, Inc., Dow Jones & Company, Inc., Federal Express Corporation, Florida Gift Fruit Shippers Association, McGraw-Hill Companies, Inc., Major Mailers Association, Mail Order Association of America, Magazine Publishers of America, National Newspaper Association, Newspaper Association of America, the Commission's Office of the Consumer Advocate, Quality Letter Service, Inc., Time Warner Inc., United Parcel Service, and the United States Postal Service submitted comments in response to the Advance Notice.

unaccompanied by a proposed service innovation, the Service's proposal exceeds the scope of the Joint Task Force's recommendations. Those recommendations were directed toward ''potential service innovations[,]'' and contemplated implementation through ''rules for the consideration of *mail classification proposals* to allow market data to be obtained from limited tests * * *'' Joint Task Force Report at 47, 48. (Emphasis added.) In the Commission's view, market testing of pure rate changes for existing services could raise difficult issues of consistency with the fairness and equity factor in 39 U.S.C. 3622(b)(1) and the prohibition of undue discrimination or preferences among mail users in 39 U.S.C. 403(c). Accordingly, to foreclose these potential issues and thereby simplify the market testing initiative, the Commission's draft rules are limited to market tests of proposed changes in mail classification, together with the rates proposed for the proposed new mail classification.

One commenter, the Newspaper Association of America, has suggested that the Commission must reject the Service's proposed market test rules because they are unlawful in several respects: They limit the Commission's review to a ''yes or no'' determination, thereby limiting analysis and potentially precluding consideration of some applicable statutory factors; they incorporate too short a deadline for Commission action; and they set no outside parameters for the duration of a market test. Other commenters—the American Bankers Association, Air Courier Conference of America, Federal Express Corporation, and United Parcel Service—presented similar criticisms of the Service's proposed rules regarding the limited scope of the Commission's review, attenuated data requirements, and the indefinite scope and duration of market tests permissible under the rules.

At the outset, the Commission believes that it is possible to craft rules for the expedited consideration and recommendation of market tests that are consistent with both the substantive and procedural requirements of the Postal Reorganization Act. Substantively, the Act requires that the Commission's recommendations be in accordance with the policies of Title 39 and the factors specified in sections 3622 and 3623. Under ordinary circumstances, if a Postal Service request appears to be incompatible with established postal policy or applicable statutory factors, the Commission endeavors to cure those deficiencies by recommending modifications in the Service's proposal, if that is feasible and appropriate. This would certainly be the case with respect to a permanent mail classification change requested by the Postal Service. However, in the case of a market test, the Postal Service's evident intention would be to implement a plan both expeditiously and in the form in which it was designed by management. A recommendation to modify the proposed plan in any significant respect—even if the Commission considered modification to be compelled by applicable factors—could jeopardize the timeliness of the test and seriously impair its usefulness. This being the case, a relatively inflexible ''yes or no'' determination by the Commission might be viewed as the necessary price of expedition, but it seems to be a reasonable one under the terms of the Reorganization Act. The risk of proposing a market test that the Commission would find itself unable to recommend under the policies and factors of the Act would be borne entirely by the Postal Service.[3]

For these reasons, the Commission believes that it would be feasible to implement an expedited, ''yes or no'' review of proposed market tests, provided the objectives and criteria applicable to such tests are clearly specified. Accordingly, the first section of the new Subpart I proposed for addition to the Commission's rules begins by stating that the procedures apply in cases in which the Postal Service has requested a recommended decision pursuant to section 3623 ''preceded by testing in the market in order to develop information necessary to support a permanent change.'' Proposed § 3001.161. The section also declares a Commission policy in favor of recommending ''market tests that are reasonably calculated to produce information needed to support a permanent change in mail classification, and that are reasonably limited in scope, scale, duration and potential adverse impact.'' In order to clarify the issue of maximum duration, upon which some parties commented, the proposed rule would declare a limit of one year, except in extraordinary circumstances and for good cause shown.

With regard to procedural requirements, the Commission believes that it is possible to fashion expedited procedures that would accommodate the due process rights of participants and enable it to review all issues presented, but agrees with various comments that claimed the Postal Service's proposed market test rule would provide for unduly attenuated proceedings. First, the artificial limitation of issues to be considered by the Commission under the Service's proposed rule cannot be justified, as the comments of American Bankers Association and Newspaper Association of America observe. It is altogether likely that a proposed market test, conducted within the larger context of a Postal Service request for a permanent change in mail classification, will involve the determination of relatively few issues. However, in order to be able to recommend to the Governors that a proposed market test be conducted, the Commission is obliged by the Reorganization Act to assure itself that all applicable statutory factors have been duly considered. Consequently, the Commission's proposed rules do not contain any issue-limiting provision, but instead adopt a procedural mechanism for narrowing the issues that might require a hearing. *See* proposed § 3001.163(e).

The Commission also believes that the 60-day schedule dictated by the Postal Service's rules may be insufficient to provide interested parties an adequate opportunity to exercise their due process rights under section 3624. For this reason, the Commission's proposed market test rules incorporate a 90-day decisional schedule. The proposed rules also are designed to maximize the opportunity of potential participants to examine and respond to the Postal Service's request through inclusion of expedited public notice provisions similar to those in the Commission's rules applicable to Express Mail Market Response requests. These provisions allow interested persons to register for expedited receipt of Postal Service requests to conduct market tests, and direct the Service to serve copies of such requests on the registrants either by hand delivery or Express Mail service. They also direct the Postal Service to serve copies of its request on all participants in the most recent omnibus rate proceeding. See proposed § 3001.163 (b) through (d).

The Commission's proposed rules would require the Postal Service to describe the features of its requested market test in some detail, identifying the services to be provided, the rates to be charged, the number and extent of the areas to be served, the test's duration, and the anticipated number of customers who will participate. Proposed § 3001.162 would also require the Service to describe the means by which it plans to provide equal access to all potential users in the test market service areas, and its plan for gathering

[3] Of course, in any such case the Commission would express its specific concerns in its Opinion and Recommended Decision, and would provide guidance on how the identified deficiencies could be remedied.

and reporting the data needed to support a permanent mail classification change.

However, the rules would also afford the Postal Service considerable flexibility in conducting market tests, and in acting upon their results. If the Service anticipates that periodic reporting of test data would be harmful to the purposes of the test—for example, by revealing information that might lead mailers or competitors to take actions that would influence the test results—its plan could provide for presenting the test data as part of the information to be filed subsequently in support of a permanent mail classification change. Additionally, if the experience gained from the market test leads the Postal Service to change its plans regarding the new service, proposed § 3001.166(b) would allow the Service to move for revision or withdrawal of its request for a permanent mail classification change. A motion to withdraw its request would relieve the Postal Service of any obligation to produce the test data that would otherwise be submitted. Finally, while market tests to be recommended by the Commission ordinarily would be limited to one year in duration, proposed § 3001.161 states that this limitation would not necessarily bar the Postal Service from conducting more than one market test in support of a potential classification change, under appropriate circumstances.

Requests for provisional service changes of limited duration. The Joint Task Force Report recommended that the Commission adopt rules providing fast-track, ''yes or no'' review of proposed service innovations that would supplement existing rates and classifications without altering any of them. The purpose of the rules would be to enable the Postal Service to introduce a new service offering quickly, while allowing postal customers to ''either try the new service or stick with the existing service menu, or both.'' Report at 52. The Report also recommended that the Service's request for the new service denominate it as provisional, and specify an ending date in its filing.

The Postal Service has proposed provisional service change rules that nominally would apply to ''requests that the Commission recommend changes in *rates or mail classification* which supplement, but do not alter, existing classification and rates. * * *'' USPS proposed § 3001.131. (Emphasis added.) While it is unclear how a rate change unaccompanied by a change in mail classification could supplement, yet not alter, existing classification and rates, the Service's proposed rule could be read to extend to provisional changes in rates alone. Such changes would be beyond the scope of the Joint Task Force's recommendations, and the Commission's proposed § 3001.171 includes alternative language.

Several commenters—including American Bankers Association, Federal Express Corporation, and United Parcel Service—questioned the potential application of the Postal Service's proposed rules, or whether rules for provisional services would accomplish any purposes different from those addressed by the market test rules. At this point, the Commission believes that separate provisional service rules could be employed to accomplish objectives similar to those for market tests, but in somewhat different ways. For example, in appropriate instances provisional services might be introduced simultaneously throughout the postal system, rather than in just a few market testing areas. In any event, these issues merit further consideration, and the Commission invites both the Postal Service and other interested parties to submit further comments.

In light of the similarities in purpose and overall structure between the Service's proposed market test rules and the rules for provisional services, the Commission's proposed Subpart J parallels the provisions in proposed Subpart I. Proposed § 3001.171 would define applicability of the rules, and declare as Commission policy the recommendation of provisional services that enhance the range of postal services available to the public, without producing a material adverse effect overall on postal revenues or costs, and without causing unnecessary or unreasonable harm to competitors of the Postal Service. The latter criteria follow both the Joint Task Force Report's recommendations and the language of the Postal Service's proposed rules. The proposed section would also limit recommended provisional services to two years' duration ordinarily, but provide for extension to an additional year if the Postal Service has filed a request to establish the provisional service as a permanent mail classification.

Proposed § 3001.172 establishes the filing requirements applicable to requests for provisional services. Each formal request would be required to include descriptive and proposed Domestic Mail Classification Schedule language and rate schedules, documentation to support the rates proposed for the provisional service, a termination date on which the proposed service would be discontinued, and an estimate of the effect of implementing the proposal on overall Postal Service costs and revenues. The section would also establish compliance with subpart C of the current rules applicable to mail classification requests as a general standard applicable to the contents of formal requests, but would allow the Postal Service to seek waiver of particular requirements by explaining why responsive information is unavailable.

The Postal Service's proposed rules would allow requests for provisional services to include proposed rates ''which may encompass a range of rates.'' USPS proposed § 3001.132(a). As noted above, the Commission is not proposing rules at this time that would establish the concept of rate bands in Commission proceedings, and the Postal Service's proposed language is not included in the Commission's rules for provisional services. However, in light of the ''yes or no'' feature of the Service's proposal in this area, which has been retained, the Commission is reluctant to adopt rules that would compel rejection of a requested provisional service solely because of deficiencies in a single proposed rate. Interested parties are invited to comment on how this potential problem should be addressed, and to suggest specific language for inclusion in the rules.

Proposed § 3001.173 would establish expedited procedures for public notice of the Postal Service's request and for conducting the proceeding. The section closely tracks the procedures specified for market test requests in proposed § 3001.163 in order to give interested parties the earliest feasible notice of the requested provisional service and to establish whether a hearing will be necessary.

As with the Commission's proposed market test rules, proposed Subpart J does not include the issue-limiting provisions contained in the Postal Service's proposed rules, but substitutes a procedural mechanism for narrowing the issues that might require a hearing. This accommodates the concerns of commenters Air Courier Conference of America and Newspaper Association of America that the Service's proposed rules would fail to provide the thorough review provided by current procedures. The rule for decision in proposed § 3001.164 provides for issuance of a ''yes or no'' Commission decision in accordance with all applicable policies of the Postal Reorganization Act, and declares the objective of completing consideration of proposed provisional services within 90 days, consistent with the procedural due process rights of interested persons.

Proposed § 3001.175 would direct the Postal Service to collect and report data pertaining to provisional services that have been recommended by the Commission and implemented by the Board of Governors. The Service's data collection and reporting requirements would generally correspond to the periodic reporting requirements specified in § 3001.102 of the current rules. However, if the Service does not revise its regular data reporting systems to include the provisional service while it is in effect, the section would direct the Service to perform and file the results of special studies on a corresponding schedule to provide equivalent information to the extent reasonably practicable.

Finally, proposed § 3001.176 would provide for formal Postal Service requests that provisional services currently in effect be terminated, or established as permanent mail classifications either as originally recommended or in modified form. Following the provisional service's termination date, the section would allow the Postal Service to submit a request for its re-establishment under any subpart of the Commission's rules which would otherwise apply.

Expedited consideration of requests for minor mail classification changes. Noting that requests for permanent mail classification changes have been held to a uniform set of requirements regardless of whether the proposed change is complex or relatively simple, the Joint Task Force recommended that the Commission establish a streamlined version of its rules to consider ''appropriately limited proposals'' within the framework of a 90- to 150-day procedural schedule. Report at 55.

The Postal Service proposes rules that would provide expedited review of requested classification changes that are ''minor,'' which would be defined as changes that do not involve changes in current rates or fees, and which: (a) Involve only changes in current mailing requirement or eligibility standards; (b) pertain to existing or proposed mail types or services estimated to provide less than 10 percent of total Postal Service revenues; or (c) are otherwise found by the Commission to be appropriately limited. USPS proposed § 3001.69. As commenters Federal Express Corporation and United Parcel Service have noted, the 10 percent standard is problematical because of its potential scope: A threshold as high as § 5.5 billion could be expected to encompass quite a few classification changes of more than ''minor'' consequence. For this reason, the Commission's proposed § 3001.69 adopts a different standard that includes classification changes which ''would only affect categories of service with low aggregate costs and revenues.''

The Commission's proposed § 3001.69a would impose somewhat more stringent requirements on the contents of formal requests for minor classifications than the Postal Service's proposed provision. The section would require: Descriptive and proposed Domestic Mail Classification Schedule language, as well as any pertinent rate schedules; a thorough explanation of the grounds on which the Service submits that the requested change is minor in character; and an estimate, in the greatest level of detail practicable, of the overall impact of the requested change on postal costs and revenues, mail users, and competitors of the Postal Service. As with the proposed rules for provisional service requests, the section would establish compliance with subpart C as the general standard applicable to the contents of formal requests, but would allow the Postal Service to seek waiver of particular requirements by explaining why responsive information is unavailable, or should not be required in light of the minor character of the requested classification change. These provisions are intended to assure the availability of all information genuinely necessary for evaluation of the proposed classification change.

Proposed § 3001.69b specifies expedited procedures for noticing the Postal Service's request, allowing interventions and responses to the Service's request for consideration under the expedited rules, and the Commission's determination whether the request is appropriate for consideration as a minor classification change. If the Commission determines that the request is not appropriate for consideration as a minor change, the expedited rules will not apply, and the request will be considered under other appropriate provisions. If the Commission determines that the expedited rules should apply, respondents who requested a hearing will be directed to identify the material issues of fact that require a hearing, and identify the facts presented in the Postal Service's filing that it disputes. The section states that hearings will be held if the Commission determines that there are genuine issues of material fact to be resolved, and that a hearing is needed to resolve them. Unlike the Postal Service's proposed provision, this section would not exclude any category of factual issue from consideration.

The Postal Service's proposed rules would require the Commission to issue a recommended decision within 60 days after filing of the request if no party challenges it, and within 90 days if an on-the-record inquiry is conducted. The Commission is concerned that these deadlines would not allow adequate opportunities for interested persons to participate meaningfully in every phase of the proceeding, particularly in ascertaining if a hearing may be necessary. Consequently, proposed § 3001.69c provides for issuance of a recommended decision within 90 days after filing if no hearing is held, and 120 days if a hearing is held. The intervals between procedural milestones specified in proposed § 3001.69b are designed to accommodate these time limits.

Multi-year test periods for proposed new services. The Joint Task Force Report concluded that the single-year test period prescribed in the Commission's rules tends to restrict opportunities for new service innovation by the Postal Service. Such services can entail substantial initial expenditures for equipment, marketing, or other introductory investments that will not be recovered in their early, low-volume startup periods. In order to allow new services an opportunity to mature and achieve financial breakeven, the Report recommended that the Commission adopt rules providing for a multi-year test period of at least four or five years for proceedings involving new service offerings. Report at 50–52.

The Commission concurs with this rationale for multi-year test periods, but believes that their use must be supported by convincing substantial evidence in each case. Commenters Air Courier Conference of America and Federal Express Corporation expressed concerns that a multi-year test period could become a vehicle for allowing rates for new services to be set below attributable costs, and argued that it would be impermissible for the Commission to delegate a decision on breakeven to the Postal Service. These are legitimate concerns, but in the Commission's view they can be addressed by crafting a rule that will provide for full disclosure of available information and exploration on the record. Also, as a general matter, it would appear that to merit recommendation a multi-year test period should be commensurate with the horizon of the Postal Service's financial planning and be fully supported by financial analysis.

In light of these considerations, the Commission's proposed Subpart K would adopt a policy of allowing the use of multi-year test periods of up to 5 fiscal years in support of requests to

establish new postal services ''where the Postal Service has presented convincing substantial evidence in support of the test period proposed.'' Proposed § 3001.181. The new subpart would require that each such request be supported by the testimony of a witness on behalf of the Postal Service, who would be responsible for providing a complete description of the proposed multi-year test period, a detailed explanation of the Service's bases for requesting the period, and a complete description of the Service's plan for achieving an appropriate contribution to institutional costs from the new service. The rules would also require the provision of complete documentary support for, and detail underlying, the requested test period, including cost, revenue and volume estimates, Return on Investment projections, and any other pertinent analyses prepared by the Postal Service.

The remaining Postal Service initiatives. As noted in the introduction to the discussion of the proposed rules, the Commission has determined to defer consideration of the Postal Service's remaining three initiatives: rules for limited scope rate cases, rate bands for competitive services, and Negotiated Service Agreements. Each of these areas merits further study and deliberation before proposing implementation in procedural rules.

With regard to limited scope rate cases, the Commission agrees in principle that it should be possible to consider Postal Service requests for relatively minor rate adjustments on an expedited basis. However, at this juncture it is not evident that a prescriptive rule of the sort proposed by the Postal Service is either necessary or would be beneficial. As commenters American Bankers Association, Newspaper Association of America, and United Parcel Service noted, such rules present problems in defining what is a ''relatively minor adjustment'' in current rates, and the preclusion of certain potential issues from consideration may trench upon interested parties' rights to an adequate opportunity for a hearing. Additionally, it is unclear how the possible effects of the proposed rate change upon other classes and subclass of mail could be accommodated. In light of the Commission's generally favorable experience in expediting consideration of the Postal Service's omnibus rate request in Docket No. R94–1, the Commission believes it would be preferable at this point to devise measures for expediting consideration of rate requests on a case-by-case basis.

The Commission also believes it would be advisable to defer consideration of rules incorporating special procedures to establish rate bands for competitive services. The commenters generally agreed that defining what constitutes a ''competitive service'' is problematical, especially when the influence of the Private Express Statutes is taken into consideration. Additionally, as commenters Air Courier Conference of America, Florida Gift Fruit Shippers Association, Newspaper Association of America, and United Parcel Service noted, the proposed procedures raise significant statutory and public policy issues concerning the respective roles of the Postal Service and the Commission in the ratemaking process. When the Commission last addressed the rate band concept, in Docket No. RM91–1, it declined to adopt rules incorporating the concept in the absence of the four-year strategic ratemaking cycle it had proposed in furtherance of the Joint Task Force's recommended new model for the ratemaking process.[4] The Commission stated:

> (W)ithout the regular scrutiny of the institutional cost contributions made by competitive categories of service which the regular cycle of omnibus and midcycle rate cases provides, the implementation of band rates would revive concerns expressed by other commenters regarding the risk of predation, exploitation of monopoly customers, and evasion of statutory requirements.

58 FR 16393 (March 26, 1993). (Footnote omitted.) The same concerns remain pertinent today.

Finally, the concept of Negotiated Service Agreements presents its own singular set of difficulties. In responding to earlier initiatives, the Commission has expressed doubt about the utility of ''contract rate'' procedures under the Postal Reorganization Act as it has been construed by the courts.[5] In this docket, commenters have cited the decision in *UPS Worldwide Forwarding, Inc.* v. *United States Postal Service*,[6] in which an international mail service that featured prices negotiated between the Postal Service and large-volume-capable customers was found to violate several requirements of the Postal Reorganization Act. Since those comments were filed, the District Court's decision has been reversed. However, in doing so the Court of Appeals was careful to distinguish the Reorganization Act's provisions governing international rate setting, which it characterized as a ''model of simplicity,'' from the open and more technically rigorous process required for adopting domestic rates.[7] It is by no means apparent that the reviewing court's approbation would extend to domestic Negotiated Service Agreements.[8] An additional administrative consideration, which the petition of the Postal Service reflects, is the necessity of conducting a classification proceeding to recommend the adoption of Negotiated Service Agreements as a discrete type of mail classification before procedural rules can be published for notice and comment. In view of these potential impediments and uncertainties, the Commission will defer the consideration of Negotiated Service Agreements to subsequent proceedings.

Issued by the Commission on October 13, 1995.

Margaret P. Crenshaw,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 3001 is amended as follows:

1. The authority citation for 39 CFR part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662.

2. Sections 3001.69 through 3001.69c are added to Subpart C to read as follows:

§ 3001.69 Expedited minor classification cases—applicability.

This section and §§ 3001.69a through 3001.69c apply in cases where the Postal Service requests a recommended decision pursuant to section 3623 and seeks expedited review on the ground that the requested change in mail classification is minor in character. The requirements and procedures specified in these sections apply exclusively to the Commission's consideration of requested mail classification changes which the Postal Service denominates as, and the Commission finds to be,

[4] See Postal Ratemaking in a Time of Change, supra, at 10–38.

[5] See Docket No. RM89–5, Notice Inviting Further Comments, 54 FR 47223 (November 13, 1989).

[6] 853 F. Supp. 800 (D. Del. 1994), rev'd, No. 94–7423 (3d Cir., September 15, 1995).

[7] No. 94–7423, supra, slip op. 20.

[8] ''In challenging the Postal Service, its competitors characterize it as a 'public service' and 'essentially a public utility.' In the domestic area, we believe those descriptions are apt. In some ways, the skepticism surrounding the ICM service exists because the program seems antithetical to traditional notions of the Postal Service. We expect to pay the same price for a postage stamp as everyone else, not to have to bargain for the best rate. In this sense, the Postal Service is properly compared to a public utility that charges the same rate to all customers.'' Slip op. at 31.

minor in character. A requested classification change may be considered to be minor in character if it would not involve a change in any existing rate or fee and:

(a) Involves only changes in eligibility standards or requirements applicable to mail classes or services; or

(b) Would only affect categories of service with low aggregate costs and revenues.

§ 3001.69a Expedited minor classification cases—filing of formal request and prepared direct evidence.

(a) Whenever the Postal Service determines to request that the Commission submit a decision recommending a mail classification change, and to seek expedited review on the ground that the requested change is minor in character, it shall file a request for a change in mail classification pursuant to section 3623 that comports with the requirements of subpart C, part 3001, of the rules of practice and of this section. Each such formal request shall include the following particular information:

(1) A description of the proposed classification change or changes, including proposed changes in the text of the Domestic Mail Classification Schedule and any pertinent rate schedules;

(2) A thorough explanation of the grounds on which the Postal Service submits that the requested change in mail classification is minor in character; and

(3) An estimate, prepared in the greatest level of detail practicable, of the overall impact of the requested change in mail classification on postal costs and revenues, mail users, and competitors of the Postal Service.

(b) If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability, as required by § 3001.64(a)(2) (i), (ii), and (iv). If the Postal Service believes that any of the data or other information required to be filed under § 3001.64 should not be required in light of the minor character of the requested change in mail classification, it shall move for a waiver of that requirement, stating with particularity the reasons why the character of the request and its circumstances justify a waiver of the requirement. A satisfactory explanation of the unavailability of information required under § 3001.64, or of why it should not be required to support a particular request, will be grounds for excluding from the proceeding a contention that the absence of the information should form a basis for rejection of the request, unless the party desiring to make such contention:

(1) Demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the information and submitted it in accordance with § 3001.64; or

(2) Demonstrates other compelling and exceptional circumstances requiring that the absence of the information in question be treated as bearing on the merits of the proposal.

§ 3001.69b Expedited minor classification cases—expedition of procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings in which the Postal Service requests that the Commission recommend a change in mail classification and expedite consideration of that request on the ground that the change is minor in character.

(b) Within 5 days after receipt of a Postal Service request invoking the operation of §§ 3001.69 through 3001.69c, the Commission shall issue a notice of proceeding and provide for intervention by interested parties pursuant to § 3001.20. The notice of proceeding shall state that the Postal Service has denominated the mail classification change it requests a minor change, and has requested expedited consideration pursuant to §§ 3001.69 through 3001.69c. The notice shall further state the grounds on which the Postal Service submits that the requested change in mail classification is minor in character, and shall afford all interested parties 21 days after publication within which to intervene, submit responses to the Postal Service's request for consideration of its proposed mail classification change under the terms of §§ 3001.69 through 3001.69c, and request a hearing.

(c) Within 28 days after publication of the notice of proceeding pursuant to paragraph (b) of this section, the Commission shall decide whether to consider the request of the Postal Service as a minor classification change request under §§ 3001.69 through 3001.69c, and shall issue an order in the proceeding incorporating that ruling. The Commission shall order a request to be considered under §§ 3001.69 through 3001.69c if it finds that:

(1) The requested classification change is minor in character, and

(2) The effects of the requested change are likely to be appropriately limited in scope and overall impact.

(i) If the Commission determines that the request of the Postal Service is not appropriate for consideration as a minor classification change request, no further procedures under §§ 3001.69 through 3001.69c shall be ordered, and the request will be considered in accordance with other appropriate provisions of subpart C of this part.

(ii) If the Commission determines that the Postal Service request is appropriate for consideration under §§ 3001.69 through 3001.69c, those respondents who request a hearing shall be directed to state with specificity within 14 days after publication of the notice the issues of material fact that require a hearing for resolution. Respondents shall also identify the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

(d) The Commission will hold hearings on a Postal Service request which is considered under §§ 3001.69 through 3001.69c when it determines that there are genuine issues of material fact to be resolved, and that a hearing is needed to resolve those issues. Hearings on the Postal Service request will commence within 21 days after issuance of the Commission order pursuant to paragraph (c) of this section. Testimony responsive to the Postal Service request will be due 14 days after the conclusion of hearings on the Postal Service request.

§ 3001.69c Expedited minor classification cases—time limits.

The Commission will treat cases to which §§ 3001.69 through 3001.69c apply as subject to the maximum expedition consistent with procedural fairness. The schedule for adoption of a recommended decision will therefore be established, in each such case, to allow for issuance of such decision not more than 90 days after the filing of the request of the Postal Service if no hearing is held, and not more than 120 days after the filing of the request if a hearing is scheduled.

3. Subpart I is added to read as follows:

Subpart I—Rules for Expedited Review to Allow Market Tests of Proposed Mail Classification Changes

Sec.

3001.161 Applicability.
3001.162 Filing of market test proposal and supporting direct evicence.
3001.163 Procedures—expedition of public notice and procedural schedule.
3001.164 Rule for decision.
3001.165 Data collection and reporting requirements.
3001.166 Suspension, continuation or termination of proceeding.

Subpart I—Rules for Expedited Review to Allow Market Tests of Proposed Mail Classification Changes

§ 3001.161 Applicability.

The rules in this subpart apply in cases in which the Postal Service requests a recommended decision pursuant to section 3623 preceded by testing in the market in order to develop information necessary to support a permanent change. The requirements and procedures specified in this subpart apply exclusively to the Commission's determination to recommend in favor of or against a market test proposed by the Postal Service, and do not supersede any other rules applicable to the Postal Service's request for recommendation of a permanent change in mail classification. In administering this subpart, it shall be the policy of the Commission to recommend market tests that are reasonably calculated to produce information needed to support a permanent change in mail classification, and that are reasonably limited in scope, scale, duration, and potential adverse impact. Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend market tests of more than one year in duration; however, this limitation is not intended to bar the Postal Service from conducting more than one market test in support of a potential permanent change in mail classification in appropriate circumstances.

§ 3001.162 Filing of market test proposal and supporting direct evidence.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on a change in mail classification preceded by testing in the market, the Postal Service shall file with the Commission, in addition to its request for a permanent change in mail classification pursuant to section 3623, a request for a recommended decision in favor of its proposed market test of the requested change in mail classification. Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed market test, and to show that it is in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. Each formal request shall also include the following particular information:

(a) A description of the services to be provided in the market test, and the relationship between the services to be provided and the permanent change or changes in the mail classification schedule requested by the Postal Service;

(b) A statement of each rate or fee to be charged for each service to be provided during the market test, together with all information relied upon to establish consistency of those rates and fees with the factors specified in section 3622(b);

(c) A description of the number and extent of the service areas in which the market test will be conducted, including the number and type of postal facilities which will be used;

(d) A statement of the planned duration of the market test;

(e) Proposed Domestic Mail Classification Schedule provisions which incorporate the information required in paragraphs (a) through (d) of this section;

(f) An estimate of the number of customers who will participate in the market test, together with a description of the means by which the Postal Service plans to provide equal access to all potential users in the test market service areas; and

(g) A plan for testing the proposed change or changes in the market, including a plan for gathering the data needed to support a permanent change in mail classification and for reporting the test data to the Commission. If periodic reporting of the test data would be harmful to the purposes of the test, such as by revealing information that might encourage competitors or mailers to take actions that would affect the test results, the plan may provide for presentation of the test data as part of the subsequent filing of data supporting a permanent mail classification change.

§ 3001.163 Procedures—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings in which the Postal Service proposes to conduct a market test of a requested change in mail classification it has submitted to the Commission pursuant to section 3623.

(b) Persons who are interested in participating in proceedings to consider Postal Service requests to conduct a market test may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such registrants. Persons whose names appear on this list will automatically become parties to each proceeding in which the Postal Service requests to conduct a market test pursuant to this subpart. Other interested persons may intervene pursuant to § 3001.20 within 28 days after the filing of a formal request made under the provisions of this subpart. Parties may withdraw from the register or a particular case by filing a notice with the Commission.

(c) When the Postal Service files a request under the provisions of this subpart, it shall on that same day effect service by hand delivery of the complete filing to each person registered pursuant to paragraph (b) of this section who maintains an address for service within the Washington metropolitan area and service the complete filing by Express Mail service on all other registrants. Each registrant is responsible for insuring that his or her address remains current.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day send by Express Mail to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a Market Test Request to be considered under this subpart, and identify the last day for filing a notice of intervention with the Commission.

(e) Within 5 days after receipt of a Postal Service request under the provisions of this subpart, the Commission shall issue a notice of proceeding and provide for intervention by interested parties pursuant to § 3001.20. In the event that a party wishes to dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

§ 3001.164 Rule for decision.

The Commission will issue a decision in accordance with the policies of the Postal Reorganization Act recommending either in favor of or against the Postal Service's proposed market test. The purpose of this subpart is to allow for consideration of proposed market tests within 90 days, consistent

with the procedural due process rights of interested persons.

§ 3001.165 Data collection and reporting requirements.

In any case in which the Commission has issued a recommended decision in favor of a market test requested by the Postal Service, and the Board of Governors has put the market test recommended by the Commission into effect, the Postal Service shall gather test data and report them to the Commission in accordance with the plan submitted pursuant to § 3001.162(f). If the Postal Service's plan for reporting test data does not provide for periodic reporting during the conduct of the test, the Postal Service shall submit all test data to the Commission no later than 60 days following the conclusion of the test.

§ 3001.166 Suspension, continuation or termination of proceeding.

(a) In any case in which the Commission has issued a recommended decision in favor of a market test requested by the Postal Service, and the Board of Governors has put the market test recommended by the Commission into effect, the Postal Service may move for suspension of the proceeding in which its request for a permanent change in mail classification is to be considered. The Commission shall grant the Postal Service's motion for suspension if, in the Commission's opinion, it would be reasonable under the circumstances to defer consideration of the request until the information to be produced in connection with the market test becomes available.

(b) At any time during the pendency of a market test recommended by the Commission pursuant to this subpart, or following the completion of such a market test, the Postal Service may move to revise or withdraw its request for a permanent change in mail classification. If the Postal Service moves to revise its request, it shall file with the Commission all data necessary to support its amended request. If the Postal Service moves to withdraw its request, it need not produce the test data that would otherwise be submitted pursuant to § 3001.165.

4. Subpart J is added to read as follows:

Subpart J—Rules for Expedited Review of Requests for Provisional Service Changes of Limited Duration

Sec.

3001.171 Applicability.
3001.172 Filing of formal request and prepared direct evidence.
3001.173 Procedures—expedition of public notice and procedural schedule.
3001.174 Rule for decision.
3001.175 Data collection and reporting requirements.
3001.176 Continuation or termination of provisional service.

Subpart J—Rules for Expedited Review of Requests for Provisional Service Changes of Limited Duration

§ 3001.171 Applicability.

The rules in this subpart apply in cases in which the Postal Service requests that the Commission recommend the establishment of a provisional service which will supplement, but will not alter, existing mail classifications and rates for a limited and fixed duration. The requirements and procedures specified in this subpart apply exclusively to the Commission's determination to recommend in favor of or against a provisional service proposed by the Postal Service, and do not supersede the rules applicable to requests for permanent changes in rates, fees, mail classifications, and in the nature of postal services. In administering this subpart, it shall be the policy of the Commission to recommend the introduction of provisional services that enhance the range of postal services available to the public, without producing a material adverse effect overall on postal revenues or costs, and without causing unnecessary or unreasonable harm to competitors of the Postal Service. Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend provisional services of more than two years in duration; however, the Commission may grant a request to extend a provisional service for an additional year if a Postal Service request to establish the provisional service as a permanent mail classification is pending before the Commission.

§ 3001.172 Filing of formal request and prepared direct evidence.

(a) Whenever the Postal Service determines to request that the Commission submit a decision recommending the establishment of a provisional service of limited and fixed duration, it shall file a request for a change in mail classification pursuant to section 3623 that comports with the requirements of subpart C of the rules of practice and of this subpart. Each formal request shall include the following particular information:

(1) A description of the proposed classification, including proposed Domestic Mail Classification Schedule language and rate schedules;

(2) An explanation and complete documentation of the development of the rates proposed for the provisional service;

(3) A termination date on which the proposed provisional service will be discontinued;

(4) An estimate of the effect of implementing the proposed provisional service on overall Postal Service costs and revenues during the period in which it is in effect; and

(5) A plan for meeting the data collection and reporting requirements specified in § 3001.175.

(b) If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability, as required by § 3001.64(a)(2)(i), (ii), and (iv). In particular, if the provisional character of the request bears on the unavailability of the data in question, the Postal Service shall explain in detail the nexus between these circumstances. A satisfactory explanation of the unavailability of data will be grounds for excluding from the proceeding a contention that the absence of the data should form a basis for rejection of the request, unless the party desiring to make such contention:

(1) Demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the data which are unavailable, or

(2) Demonstrates other compelling circumstances requiring that the absence of the data in question be treated as bearing on the merits of the proposal.

§ 3001.173 Procedures—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings in which the Postal Service requests that the Commission recommend the establishment of a provisional service which will supplement, but will not alter, existing mail classifications and rates for a limited and fixed duration.

(b) Persons who are interested in participating in proceedings to consider Postal Service requests to establish a provisional service may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such registrants. Persons whose names appear on this list will automatically become parties to each proceeding in which the Postal Service requests establishment of a provisional service pursuant to this subpart. Other

interested persons may intervene pursuant to § 3001.20 within 28 days after the filing of a formal request made under the provisions of this subpart. Parties may withdraw from the register or a particular case by filing a notice with the Commission.

(c) When the Postal Service files a request under the provisions of this subpart, it shall on that same day effect service by hand delivery of the complete filing to each person registered pursuant to paragraph (b) of this section who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other registrants. Each registrant is responsible for insuring that his or her address remains current.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of a Request for Establishment of a Provisional Service to be considered under this subpart, and identify the last day for filing a notice of intervention with the Commission.

(e) Within 5 days after receipt of a Postal Service request under the provisions of this subpart, the Commission shall issue a notice of proceeding and provide for intervention by interested parties pursuant to § 3001.20. In the event that a party wishes to dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

§ 3001.174 Rule for decision.

The Commission will issue a decision in accordance with the policies of the Postal Reorganization Act recommending either in favor of or against the Postal Service's proposed provisional service of limited duration. The purpose of this subpart is to allow for consideration of proposed provisional services within 90 days, consistent with the procedural due process rights of interested persons.

§ 3001.175 Data collection and reporting requirements.

In any case in which the Commission has issued a recommended decision in favor of a provisional service of limited duration requested by the Postal Service, and the Board of Governors has put the provisional service recommended by the Commission into effect, the Postal Service shall collect and report data pertaining to the provisional service during the period in which it is in effect in accordance with the periodic reporting requirements specified in § 3001.102 . If the Postal Service's regular data reporting systems are not revised to include the provisional service during the period of its effectiveness, the Postal Service shall perform, and provide to the Commission on a schedule corresponding to § 3001.102 reports, special studies to provide equivalent information to the extent reasonably practicable.

§ 3001.176 Continuation or termination of provisional service.

At any time during the period in which a provisional service recommended by the Commission and implemented by the Board of Governors is in effect, the Postal Service may submit a formal request that the provisional service be terminated, or that it be established, either as originally recommended by the Commission or in modified form, as a permanent mail classification. Following the conclusion of the period in which the provisional service was effective, the Postal Service may submit a request to establish the service as a mail classification under any applicable subpart of the Commission's rules.

5. Subpart K is added to read as follows:

Subpart K—Rules for Use of Multi-Year Test Periods

Sec.

3001.181 Use of multi-year test period for proposed new services.
3001.182 Filing of formal request and prepared direct evidence.

Subpart K—Rules for Use of Multi-Year Test Periods

§ 3001.181 Use of multi-year test period for proposed new services.

The rules in this subpart apply to Postal Service requests pursuant to section 3623 for the establishment of a new postal service, with attendant rates, which in the estimation of the Postal Service cannot generate sufficient volumes and revenues to recover all costs associated with the new service in the first full fiscal year of its operation. In administering these rules, it shall be the Commission's policy to adopt tests periods of up to 5 fiscal years for the purpose of determining breakeven for newly introduced postal services where the Postal Service has presented convincing substantial evidence in support of the test period proposed.

§ 3001.182 Filing of formal request and prepared direct evidence.

In filing a request for establishment of a new postal service pursuant to section 3623, the Postal Service may request that its proposal be considered for a test period of longer duration than the test period prescribed in § 3001.54(f)(2). Each such request shall be supported by the following information:

(a) The testimony of a witness on behalf of the Postal Service, who shall provide:

(1) A complete definition of the multi-year test period requested for the proposed new service;

(2) A detailed explanation of the Postal Service's preference of a multi-year test period, including the bases of the Service's determination that the test period prescribed in § 3001.54(f)(2) would be inappropriate; and

(3) A complete description of the Postal Service's plan for achieving an appropriate contribution to institutional costs from the new service by the end of the requested test period.

(b) Complete documentary support for, and detail underlying, the test period requested by the Postal Service, including:

(1) Estimated costs, revenues, and volumes of the proposed new service for the entire requested test period;

(2) Return on Investment projections and all other financial analyses prepared in connection with determining the cost and revenue impact of the proposed new service; and

(3) Any other analyses prepared by the Postal Service that bear on the overall effects of introducing the proposed new service during the requested test period.

[FR Doc. 95–26554 Filed 10–26–95; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH70–1–6780b; AD–FRL–5302–7]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency (SEPA).
ACTION: Proposed rule.

SUMMARY: The USEPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Ohio for lead. USEPA further proposes to conclude that this revision resolves the prior inadequacy in limiting lead concentrations in central Cleveland. In the Final Rules section of this Federal Register, USEPA is fully approving the State's SIP revision as a direct final rule without prior proposal, because the USEPA views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to these actions, no further activity is contemplated in relation to this proposed rule. If USEPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before November 27, 1995.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal and USEPA's analysis of it are available for inspection at: Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6067.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the rules section of this Federal Register.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 13, 1995.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 95–26655 Filed 10–26–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD-FRL–5319–9]

Clean Air Act Proposed Disapproval or in the Alternative, Proposed Interim Approval Operating Permits Program; State of Idaho

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed disapproval or in the alternative, proposed interim approval

SUMMARY: EPA proposes alternative actions on the operating permits program submitted by the Idaho Department of Health and Welfare, Division of Environmental Quality, for the purpose of complying with Federal requirements for an approvable State program to issue operating permits to all major stationary sources, and to certain other sources. EPA proposes disapproval of the Idaho program based on existing deficiencies in Idaho's excess emissions and administrative amendments regulations. The State has advised EPA, however, that it intends to adopt and submit to EPA revised regulations that address these deficiencies before EPA takes final action on this proposal. Therefore, EPA proposes in the alternative that, if these deficiencies are addressed to EPA's satisfaction before EPA takes final action on this proposal, the Idaho program be granted interim approval.

DATES: Comments on this proposed action must be received in writing by November 27, 1995.

ADDRESSES: Comments must be submitted to Elizabeth Waddell at the address indicated. Copies of the State's submittal and other supporting information used in developing this action are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Elizabeth Waddell, 1200 Sixth Avenue, AT–082, Seattle, WA 98101, (206) 553–4303.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Background

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''the Act'')), EPA has promulgated rules which define the minimum elements of an approvable State operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of State operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 Code of Federal Regulations (CFR) part 70. Title V requires States to develop, and submit to EPA, programs for issuing these operating permits to all major stationary sources and to certain other sources.

The Act requires that States develop and submit these programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a Federal program.

B. Federal Oversight and Sanctions

EPA must apply sanctions to a State for which 18 months have passed since EPA disapproved the program. In addition, discretionary sanctions may be applied any time during the 18 month period following the date required for program submittal or program revision. If the State has no approved program 2 years after the date required for submission of the program, EPA will impose additional sanctions, where applicable, and EPA must promulgate, administer, and enforce a Federal permits program for the State. EPA has the authority to collect reasonable fees from the permittees to cover the costs of administering the program.

II. Proposed Action and Implications

A. Analysis of State Submission

1. Support Materials

On November 15, 1993, the Idaho Department of Health and Welfare, Division of Environmental Quality (referred to herein as ''IDEQ,'' ''the Department,'' ''Idaho'' or ''the State''), submitted a title V program for EPA review. EPA notified the State in writing on January 13, 1994, that the submittal was incomplete and advised the State of the changes needed for EPA to find the submittal complete. On January 20, 1995, Idaho resubmitted the State's title V program and requested approval of

the program. EPA notified Idaho by letter dated March 14, 1995, that this submittal was complete. The State submitted additional information to EPA to supplement its January 1995 submittal on July 14, 1995, and September 15, 1995. Although EPA considers these supplemental submittals to be material changes to Idaho's January 1995 program submittal, EPA has chosen not to extend its review period beyond the initial 1 year.

Section 2 of the Idaho submittal addresses the requirement of 40 CFR 70.4(b)(1) by describing how the State intends to carry out its responsibilities under the part 70 regulations. An implementation agreement is currently being developed between Idaho and EPA. EPA has deemed the program description to be sufficient for meeting the requirement of 40 CFR 70.4(b)(1).

Section 3 of the Idaho submittal includes a legal opinion from the Attorney General of Idaho addressing the thirteen program elements set forth in 40 CFR part 70 that are specifically required by title V and 40 CFR part 70, as well as several additional program elements. Together with a supplemental opinion submitted on July 20, 1995, these opinion letters demonstrate adequate legal authority to implement all aspects of the title V operating permit program in Idaho.

Appendix V of the Idaho submittal contains the relevant permitting program documentation which is not contained in regulations, such as permit application forms, permit forms and relevant guidance to assist in the State's implementation of its permit program, as required by § 70.4(b)(4). EPA has determined that the forms meet the requirements of 40 CFR 70.5(c) for standard permit application forms.

In summary, EPA believes that Idaho's title V operating permits program substantially meets the requirements of 40 CFR part 70, §§ 70.2 and 70.3 for applicability; §§ 70.4, 70.5, and 70.6 for permit content, including operational flexibility; § 70.7 for public participation and minor permit modifications; § 70.8 for permit review by EPA and affected States; § 70.5 for criteria which define insignificant activities; § 70.11 for requirements for enforcement authority; and § 70.5 for complete application forms. The issues that EPA proposes the State must address in order to obtain interim approval and full approval are discussed below under ''Options for Program Approval and Implications.''

The full program submittal and the Technical Support Document (TSD) are contained in the docket at the address noted above and provide more detailed information on the State's program.

2. Regulations and Program Implementation

a. Regulations

The Idaho title V operating permit program, known as the Tier I operating permit program, is authorized by the Environmental Protection and Health Act (EPHA), Idaho Code 39–101, *et seq.*. The State of Idaho revised its *Rules for the Control of Air Pollution in Idaho*, Volume 16, Title 1, Chapter 1 of the Idaho Administrative Code (IDAPA) to implement the requirements of 40 CFR part 70. These revisions were adopted on April 8, 1994, and became effective May 1, 1994. Additional revisions to IDAPA 16.01.01 and to 39 of the Idaho Code were made by the legislature in March of 1995 and by the Department in June of 1995 and are currently in effect. These rules and statute, as well as other rules and statutes governing State permitting and administrative actions, were submitted by Idaho with evidence of procedurally correct adoption as required by 40 CFR 70.4(b)(2).

IDAPA 16.01.01 contains regulations pertaining to both title V and non-title V sources. Therefore, this notice proposes to approve certain regulations within IDAPA 16.01.01 as part of Idaho's title V program. The Technical Support Document identifies the regulations approved in this rulemaking. The remainder of IDAPA 16.01.01 has been submitted by the State as a revision to the Idaho State Implementation Plan (SIP) and will be approved or disapproved as part of the Idaho SIP.

b. Scope of Proposed Action

The Governor's January 20, 1995, letter to EPA contains the statement that IDEQ is ''the sole implementing agency in the State of Idaho and will provide coverage to all geographic regions statewide.'' The State also submitted a list of title V sources in Idaho which included sources within the exterior boundaries of several Indian reservations in Idaho. The Shoshone-Bannock Tribes and the Kootenai Tribe of Idaho interpreted the State's submittal as an assertion by Idaho of permitting authority over sources on Tribal lands and have requested EPA to deny Idaho authority to implement Idaho's operating permits program within the exterior boundaries of Indian reservations in Idaho. These letters and EPA's response are contained in the docket. An April 5, 1995, letter from Wally N. Cory, IDEQ Administrator, to EPA clarified that Idaho did not intend for its submittal to address jurisdictional issues over Tribal lands.

Because Idaho has neither claimed nor demonstrated authority to implement and enforce its operating permits program for sources located within the exterior boundaries of Indian Reservations, EPA proposes that interim approval of the Idaho operating permits program not extend to any lands within the exterior boundaries of any Indian Reservation in Idaho.[1] *See* 59 FR 55813, 55815–55817 (Nov. 9, 1994) (detailed discussion of EPA's views on implementation of title V programs on Tribal lands). Title V sources located within the exterior boundaries of Indian Reservations in Idaho will be subject to the Federal operating permits program, to be promulgated at 40 CFR part 71 (proposed at 60 FR 20804 (April 27, 1995)), or subject to the operating permits program of any Tribe approved after issuance of regulations under 301(d) of the Clean Air Act authorizing EPA to treat Tribes in the same manner as States for appropriate Clean Air Act provisions (proposed at 59 FR 43956 (August 25, 1994)).[2]

c. Program Implementation

There are several areas where the Idaho program does not directly address certain requirements of part 70, but EPA believes either that: (1) The Idaho program, as a whole, satisfies the requirements of part 70 in that particular respect, or (2) no changes are currently required to the Idaho program to comply with part 70, but that changes will likely be required some time in the future.

i. Applicability. With one exception discussed below in the list of proposed interim approval issues, the Idaho operating permits program currently meets the requirements of 40 CFR 70.2 and 70.3 regarding sources subject to the program. See IDAPA 16.01.01.006.99 (definition of ''Tier I source''); 16.01.01.008.14 (definition of ''major facility''); 16.01.01.006.35 (definition of ''facility''). EPA notes, however, two additional areas in which Idaho's rules regarding applicability differ from the

[1] This is not a determination that Idaho could not possibly demonstrate jurisdiction over sources within the exterior boundaries of Indian Reservations in Idaho. The State has made no such showing, however. In addition, a December 18, 1985, memorandum from Cheryl Koshuta, Deputy Attorney General of Idaho, to Ken Brooks, Air Quality Bureau Chief, states that ''only the federal government and the Indian tribes have jurisdiction to enforce environmental regulations on Indian reservations; state regulations do not apply.''

[2] Tribes may also have inherent sovereign authority to regulate air pollutants from sources on Tribal lands.

requirements of part 70 and will require revision at some later date. First, part 70's definition of ''major source'' includes a ''major source'' of radionuclides, as specified by EPA by rule. The Idaho definition of ''major facility'' in IDAPA 16.01.01.008.14 does not include a comparable provision. EPA has not yet promulgated a rule defining a ''major source'' of radionuclides. This deficiency in Idaho's program will therefore have no immediate effect on the applicability of Idaho's title V operating permits program. At such time as EPA promulgates a definition of a ''major source'' of radionuclides, however, Idaho must revise its rules to incorporate the EPA definition.

In addition, part 70 requires the permitting of any source in a source category designated by EPA pursuant to 40 CFR 70.3. *See* 70.3(a)(5). The Idaho rules require the permitting of any source in a source category designated by the Department. *See* IDAPA 16.01.01.006.99.e. At this time, EPA has not designated any additional sources for permitting under 40 CFR 70.3. At such time as EPA makes such a designation, however, Idaho will be required to revise its program to cover sources so designated in order to maintain title V approval.

ii. Applicable requirements. Part 70 requires all ''applicable requirements'' to be included in a permit application and permit, and defines ''applicable requirement'' to include, among other things, any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Clean Air Act that implements the relevant requirements of the Act. *See* 40 CFR 70.2. Idaho has defined ''applicable requirements'' to include ''Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.70 though 52.690.'' *See* IDAPA 16.01.01.008.05.b. EPA interprets this definition as including as applicable requirements all provisions promulgated by EPA under title I of the Act (known as Federal Implementation Plans or ''FIPs''), because it references all of the plan provisions applicable in Idaho, not just 40 CFR 52.679, which only lists the provisions of the Idaho SIP. In any event, there is currently only one FIP in effect in Idaho, a control strategy for sulfur oxides that applies to The J.R. Simplot Company's facility in Power County, Idaho. *See* 40 CFR 52.675. If, during program implementation, Idaho issues a permit to the Simplot facility that does not include the applicable provisions of 40 CFR 52.675, EPA would have the authority to object to issuance of the permit on the grounds that the permit was not in compliance with applicable requirements. *See* 40 CFR 70.8(c).

iii. Acid rain permits. The Idaho program does not specifically require a title V permit to include a statement that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under title IV (the acid rain program), both provisions shall be incorporated into the permit and shall be enforceable by EPA. *See* 40 CFR 70.6(a)(1)(ii). IDAPA 16.01.01.322.03, however, specifically requires that a title V operating permit in Idaho contain at least one permit term or condition for every applicable requirement specifically identified in the application. In addition, IDAPA 16.01.01.322.16.m.iv requires a title V permit to specifically state that nothing in the permit shall alter or affect the applicable requirements of the acid rain program consistent with 42 U.S.C. 7651g(a). EPA believes that these provisions are together adequate to meet the requirement of 40 CFR 70.6(a)(1)(ii).

iv. Group processing of minor permit modifications. Part 70 allows a permitting authority to process as a group certain categories of applications for minor permit modifications at a single source. *See* 40 CFR 70.7(e)(3). 70.7(e)(3)(iii) requires the permitting authority to notify EPA and affected States of requested permit modifications on a quarterly basis or within five business days of receipt of an application demonstrating that the aggregate of a source's pending applications equals or exceeds the approved threshold levels. The Idaho program contains procedures for group processing of minor permit modifications. *See* IDAPA 16.01.01.385.07. Idaho regulations, however, give the Department five business days in which to identify the permit modifications that will be processed as a group and then requires the Department to notify EPA and affected States of the modifications ''promptly thereafter.'' *See* IDAPA 16.01.01.385.07.d. EPA proposes to give full approval to this aspect of Idaho's group processing procedures because EPA believes that Idaho's regulations are substantially equivalent to the requirements of part 70 in this respect, as required by 40 CFR 70.7(e)(1). EPA will review the Idaho program during implementation, however, to ensure that Idaho is ''promptly notifying'' EPA and affected States of minor modifications processed as a group.

v. Variances. IDAPA 16.01.01.140 to -.149 establish procedures for the granting of variances under certain conditions from compliance with State air pollution control rules. EPA has previously disapproved these provisions as part of the Idaho SIP. *See* 58 FR 39466 (July 23, 1993). EPA regards IDAPA 16.01.01.140 to -.149 as wholly external to the program submitted by the State of Idaho for approval under part 70, and consequently proposes to take no action on these provisions of State law in this rulemaking. EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a Federally-enforceable title V permit, except where such relief is granted through procedures allowed by part 70. In other words, a variance does not affect the title V source until the title V permit is modified pursuant to procedures approved under part 70. EPA reserves the right to enforce the terms of the title V permit where the permitting authority purports to grant relief from the source's duty to comply with a title V permit in a manner inconsistent with procedures approved under part 70. A title V permit may also incorporate, via part 70 permit issuance or modification procedures, a schedule of compliance incorporated into a variance. EPA reserves the right, however, to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

3. Permit Fee Demonstration

Section 502(b)(3) of the Clean Air Act requires each permitting authority to collect fees sufficient to cover all reasonable direct and indirect costs necessary for the development and administration of its title V operating permit program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton of emission per year (adjusted from 1989 by the Consumer Price Index). *See* 40 CFR 70.4(b)(7); 40 CFR 70.9. The adjusted amount is currently $30.07. The $30.07 per ton is presumed, for purposes of program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum.''

The Idaho fee program requires that title V sources pay an annual registration fee of thirty dollars per ton of oxides of sulfur, oxides of nitrogen, particulate matter, volatile organic compounds, and five dollars per curie of radionuclides. There is relief from fees for fugitive emissions and for hazardous air pollutants (other than radionuclides) but no relief for emissions in excess of 4,000 tons per year. *See* IDAPA 16.01.01.525 to .538. The State submittal included a demonstration that this program will result in the collection of fees equivalent to $31.58 per ton of regulated air pollutant and, therefore, meets the presumptive minimum requirement of 40 CFR 70.9.

The State also included in their submittal a detailed resource needs and financial analysis study for Idaho's Air Quality Program which includes its title V program. This study concluded that permit fees should be set at between $55 and $71 per ton of pollutant in order to meet the full cost of the title V program. 40 CFR 70.9(5) directs the Administrator to require the State to provide a detailed accounting that its fee schedule will cover the permit program costs if there are serious questions regarding the sufficiency of the fee program to cover all permit program costs. Since there were many uncertainties in the State study, EPA has not concluded that this study alone is sufficient to raise serious questions. However, EPA will closely monitor the adequacy of the State's fee program during implementation to assure that adequate fees are collected.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority for Section 112 Implementation

In its program submittal, Idaho demonstrates adequate legal authority to implement and enforce all section 112 requirements through the title V permit. Idaho defines the term ''applicable requirement'' to include, among other things, all standards under section 112 of the Clean Air Act. IDAPA 16.01.01.008.05.d. All title V permit applications are required to cite and describe all applicable requirements and all title V permits issued by the State are required to include conditions that assure compliance with all applicable requirements. IDAPA 16.01.01.314.06; 16.01.01.322.01.

b. Program for Delegation of 112 Standards as Promulgated

The requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a State program for delegation of section 112 standards promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA also proposes to grant approval, under section 112(l)(5) and 40 CFR 63.91, of Idaho's program for receiving delegation of section 112 standards that are unchanged from the Federal standards as promulgated. This approval applies to future standards but is limited to sources covered by Idaho's title V program. In addition, EPA proposes delegation of all existing standards and programs under 40 CFR parts 61 and 63 for title V sources.[3] Under this approval, Idaho will automatically assume delegation of future section 112 standards for title V sources. Details of this delegation mechanism will be set forth in an implementation agreement to be negotiated before final program approval.

c. Implementation of Title IV of the Act

In its program submittal, Idaho demonstrates adequate legal authority to implement title IV of the Clean Air Act through the title V permit. Idaho defines the term ''applicable requirement'' to include, among other things, any standard or other requirement of the acid rain program under title V of the Act. IDAPA 16.01.01.008.05.e. As discussed above, all title V permit applications are required to cite and describe all applicable requirements and all title V permits issued by the State are required to include conditions that assure compliance with all applicable requirements.

As discussed below under ''Options for Program Approval and Implications,'' IDAPA 16.01.01.301.02.b.ii does not require Phase II sources to obtain a title V permit until June 1, 1999, in direct conflict with the Federal requirement that Phase II sources obtain permits by December 31, 1997 (*See* section 408(d)(3) of the Act). Because Idaho has the discretion to issue permits to Phase II sources prior to June 1, 1999, and has committed to meeting the Federal permitting deadline, EPA does not consider this conflict between the State and Federal permitting deadlines to be a disapproval issue. EPA proposes, however, that Idaho must correct this inconsistency as a condition of full approval.

B. Options for Program Approval and Implications

1. Proposed Disapproval

EPA believes that the excess emissions provisions and administrative amendment provisions of Idaho's title V program require disapproval of the program for the following reasons.

a. Excess Emissions

IDAPA 16.01.01.326 to .332 establishes procedures and requirements related to excess emissions for title V sources in Idaho. With the exception of IDAPA 16.01.01.332, which provides an affirmative defense for emissions in excess of a technology-based permit limit due to ''emergency'' as authorized by 40 CFR 70.6(g), Idaho's excess emissions provisions for title V sources go well beyond what is authorized by part 70. For example, IDAPA 16.01.01.328 requires Idaho to incorporate into a permit all startup, shutdown and scheduled maintenance procedures if it determines that such procedures are consistent with good air pollution control practices, will minimize emissions during such period to the extent practicable and that no adverse health impact on the public will occur. IDAPA 16.01.01.329 contains a similar provision for excess emissions due to upsets and breakdowns. IDAPA 16.01.01.327.02 then allows a permittee to exceed emission limits in applicable requirements if the permittee demonstrates that the excess emissions were caused by startup, shutdown, scheduled maintenance, upset or breakdown and follows certain other procedures. Because the Idaho program requires that these provisions be included in title V permits, EPA believes that title V permits in Idaho will not assure compliance with all applicable requirements. This is a requirement for interim approval of a State operating permits program. *See* 40 CFR 70.4(c)(1) and 70.4(d)(3)(ii). EPA therefore believes that it must disapprove Idaho's program unless it demonstrates that its excess emissions provisions for title V sources are consistent with the requirements of part 70.

[3] The radionuclide National Emission Standards for Hazardous Air Pollutant (NESHAP) is a section 112 regulation and therefore, also an applicable requirement under the State operating permits program for part 70 sources. There is not yet a Federal definition of ''major'' for radionuclide sources. Therefore, until a major source definition for radionuclide is promulgated, no source would be a major section 112 source solely due to its radionuclide emissions. However, a radionuclide source may, in the interim, be a major source under part 70 for another reason, thus requiring a part 70 permit. EPA will work with the State in the development of its radionuclide program to ensure that permits are issued in a timely manner.

b. Administrative Amendments

Part 70 allows the requirements of a preconstruction permit to be incorporated into a title V permit by administrative amendment, provided that such a preconstruction permit is issued under an EPA-approved program that meets procedural requirements substantially equivalent to the part 70 procedures for public, affected State and EPA review that apply to permit modifications and compliance requirements substantially equivalent to those required for part 70 permits. *See* 40 CFR 70.7(d)(1)(v). The Idaho program allows the incorporation of terms of preconstruction permits by administrative amendment. *See* IDAPA 16.01.01.384.01.a.v. There is no requirement, however, that preconstruction permits incorporated by administrative amendment contain compliance requirements substantially equivalent to the requirements of a title V permit. Therefore, title V permits modified by administrative amendments through the incorporation of preconstruction permits would not be required to assure compliance with all applicable requirements, which is a requirement for interim approval of a State operating permits program. *See* 40 CFR 70.4(c)(1) and 70.4(d)(3)(ii). Accordingly, EPA believes that it must disapprove Idaho's program unless Idaho demonstrates that terms of preconstruction permits incorporated into a title V permit by administrative amendment must contain compliance requirements substantially equivalent to the requirements of a title V permit.[4]

2. Proposed Interim Approval

Idaho has advised EPA that it intends to revise its regulations governing excess emissions and administrative amendments in order to make them consistent with the requirements of part 70 before EPA takes final action on this proposal. Based on this assurance, EPA is proposing in the alternative to grant interim approval to the Idaho program. If promulgated, Idaho must address to EPA's satisfaction the following issues in order to receive full approval.

a. Applicability

The definition of major source in 40 CFR 70.2 requires that fugitive emissions of a stationary source be considered in determining if a source is a major stationary source under section 302(j) of the Clean Air Act if the source is in a source category regulated by a standard promulgated under section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category. The comparable provision of Idaho's regulations requires that fugitive emissions of such sources be counted only if the source category was regulated by such a standard promulgated as of August 7, 1980, and then only to the extent that the *fugitive emissions* of such sources are regulated in those source categories. *See* IDAPA 16.01.01.008.14.h.iii. Although EPA has proposed a change to the part 70 rules that would make the definition of ''major source'' in 40 CFR 70.2 consistent with the August 7, 1980, limitation in the Idaho rule, *see* 59 FR 44460, 44527 (August 29, 1994), EPA has not yet taken final action on that proposed change. If EPA finalizes its proposed revision to the definition of ''major source'' before the end of Idaho's interim approval period, Idaho will no longer be required to revise its definition of ''major facility'' to delete the ''August 7, 1980,'' limitation. In any case, however, Idaho must revise the reference to ''fugitive emissions'' in IDAPA 16.01.01.008.14.h.iii to refer instead to any ''air pollutant.'' As currently drafted, the Idaho definition would require that fugitive emissions be considered in determining whether a source is a title V source only if the standard in question regulates fugitive emissions at that source, whereas part 70 requires fugitive emissions to be considered if the standard in question regulates any air pollutant from that source.

The State of Idaho has stated that it is ''not aware of any sources'' that would be considered a major source, and thus a title V source under part 70, but would not be required to obtain a permit under Idaho's title V program. In addition, one of the deficiencies in Idaho's definition of ''major facility'' may be eliminated through proposed revisions to part 70 in the next 2 years. EPA therefore believes that Idaho's program may be granted source category-limited interim approval, rather than disapproval, based on the deficiency in the Idaho definition of ''major facility.'' *See* 57 FR 32250, 32270 (July 21, 1992). If EPA takes final action on this proposal, Idaho must demonstrate to EPA's satisfaction by the end of the interim approval period that its program covers all sources required to be permitted under part 70.

b. Temporarily Exempt Sources

Part 70 allows States to defer the permitting of sources that would otherwise be subject to part 70 but that are not major sources, affected sources (sources subject to the acid rain provisions of title IV of the Act) or solid waste incineration units required to obtain a permit under section 129(e) of the Act until such time as EPA conducts additional rulemaking. *See* 40 CFR 70.3(b)(1). Idaho rules, however, allow the State to defer the permitting of acid rain sources (known as ''Phase II sources'' in Idaho) and sources subject to title V solely because of a solid waste incineration unit until June 1, 1999. *See* IDAPA 16.01.01.301.02.b. Idaho rules also allow sources subject to title V solely because of a solid waste incineration unit until January 1, 1998, to file an application for a title V permit. *See* IDAPA 16.01.01.313.01.b. Idaho's submittal states that this deferral will have a minimal impact in Idaho for several reasons. With respect to Phase II sources, IDAPA 16.01.01.313.01.3 requires permit applications for such sources to be submitted by January 1, 1996, for sulfur dioxide and by January 1, 1998, for nitrogen oxides and IDAPA 16.01.01.367.05 provides that the permitting of Phase II sources shall occur in accordance with the deadlines specified in the Clean Air Act. The Attorney General has opined that IDAPA 16.01.01.367 gives Idaho the discretion to issue permits to Phase II sources within the time periods required by part 70. The State has advised EPA that there is currently only one Phase II source in Idaho, that the facility intends to submit a timely application to receive an operating permit prior to the Federally-mandated date of December 31, 1997, and that the State intends to meet the permitting deadlines required by part 70 for Phase II sources notwithstanding IDAPA 16.01.01.301.02.b.ii.

With respect to sources subject to title V solely because of a solid waste incineration unit, the Attorney General opines that the State has the authority under IDAPA 16.01.01.313.01 to require earlier submittal of title V applications for such sources. In addition, Idaho has advised EPA that there are no sources in Idaho which are currently subject to any solid waste incineration rules promulgated pursuant to section 129 of the Act and that, if any such sources are discovered, Idaho intends to meet the application and permitting deadlines required under part 70 for such sources.

Based on these opinions and commitments, EPA agrees that the impact of the difference between Idaho law and part 70 with respect to the permitting of Phase II sources and sources with solid waste incineration units is likely to be minimal during the

[4] As discussed below, an additional change appears to be necessary to the Idaho provision authorizing administrative amendments, IDAPA 16.01.01.01.01.384, before EPA can give full approval to the Idaho program.

interim approval period and that these difference to do not pose a bar to interim approval. As a condition of full approval, however, EPA proposes that Idaho be required to demonstrate to EPA's satisfaction that the application and permitting deadlines for Phase II sources and sources with solid waste incineration units meet the requirements of part 70.

c. New Sources

Part 70 requires title V sources applying for a permit for the first time to submit a permit application within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish. *See* 40 CFR 70.5(a)(1)(i). IDAPA 16.01.01.313 ties the date by which a title V source is required to submit an application to whether the source was in existence on or before May 1, 1994. Sources existing before that date are, subject to certain exceptions, required to submit an application by the earlier of January 1, 1996, and 12 months after EPA approval of Idaho's program. Sources that become title V sources ''due to construction, reconstruction or modification'' after May 1, 1994, are, subject to certain extensions, required to submit an application within 12 months of commencing operation. IDAPA 16.01.01.313.01. The Idaho regulations do not appear to include a permit application date for sources that become subject to title V after May 1, 1994, by means other than construction, reconstruction or modification, such as relaxation of a limit on potential to emit or by EPA lowering a threshold for determining major source status.

Again, Idaho asserts that this gap will have a minimal impact in Idaho because there are few sources that will become subject to title V through something other than construction, reconstruction or modification, the State is authorized to set permit application deadlines for sources and the State intends to require a permit application from any source that becomes subject to title V in this manner within 12 months after such source becomes subject to title V. Based on these assurances, EPA believes that this gap in the application submission dates does not pose a bar to interim approval of the Idaho program, but that, in order to receive full approval, Idaho must demonstrate to EPA's satisfaction that all sources in Idaho applying for a title V permit for the first time are required to submit a permit application within 12 months after becoming subject to title V.

d. Option to Obtain Permit

Part 70 requires States to allow any source exempt under 40 CFR 70.3(b) to opt to obtain a part 70 permit. *See* 40 CFR 70.3(b)(3). Idaho has no comparable provision and the State has not demonstrated that it has authority to issue title V permits to exempt sources. Few, if any, exempt sources would be expected to apply for a title V permit in Idaho, however, because Idaho's Tier II operating permit program provides sources with a mechanism for obtaining Federally-enforceable operating permit limits through a means other than a title V permit. *See* 16.01.01.400-.499. As a condition of full approve, EPA proposes that Idaho demonstrate to EPA's satisfaction that it has the authority required by 40 CFR 70.3(b)(3).

e. Fugitive Emissions

Part 70 requires that fugitive emissions from part 70 sources be included in permit applications and permits in the same manner as stack emissions regardless of whether the source category in question is included in the list of sources contained in the definition of major source. *See* 40 CFR 70.3(d). The Idaho regulations do not contain such a provision, and EPA proposes that Idaho address this requirement of part 70 as a condition of full approval.

f. Insignificant Activities

Part 70 authorizes EPA to approve as part of a State program a list of insignificant activities and emissions levels which need not be included in the permit application, provided that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA-approved schedule. IDAPA 16.01.01.317 contains criteria for identifying insignificant activities and consists of one list of units and activities that are defined as ''categorically exempt'' and may be omitted from the permit application, and another list of units and activities that are defined as ''insignificant'' based on size or production rate, but must be listed in the permit application. Importantly, that provision includes a so-called ''gatekeeper,'' which expressly states that no emission unit or activity subject to an applicable requirement, such as an opacity standard, may qualify as an insignificant emission unit or activity under Idaho's rules. *See* IDAPA 16.01.01.317.01.

EPA believes that, notwithstanding the gatekeeper, full approval of the lists contained in IDAPA 16.01.01.317 is inappropriate for several reasons. First, the lists use many terms and acronyms that do not appear to be defined in regulation or in guidance and Idaho has provided insufficient documentation that the units and activities included on the lists are appropriate for industries in Idaho. This will make the regulation very difficult, if not impossible, to implement. As an example, IDAPA 16.01.01.317.01.a.52 lists as a categorically insignificant activity ''materials and equipment used by, and activity related to operation of infirmary; infirmary is not the source's business activity.'' This provision could be interpreted to apply to and thus impermissibly exclude from the permit application activities subject to the radionuclide NESHAP. Similarly, IDAPA 16.01.01.317.01.a.54.d. and -317.01.a.65 define as categorically exempt certain units and activities with ''de minimis'' emissions. Again, the term ''de minimis'' is not defined. Second, IDAPA 16.01.01.317.01.a.54.d., -317.01.a.65 and -317.01.a.122 must be moved to IDAPA 16.01.01.317.01.b, which requires the identified units and activities to be listed in the application, because whether these units and activities are ''insignificant'' depends on size or production rate. Finally, IDAPA 16.01.01.317.01.b.29 defines as insignificant ''[a]ny other activity that is requested to be listed as insignificant by the applicant and agreed to by the department.'' Such a ''director's discretion'' provision is contrary to the requirement of 40 CFR 70.5(c) that EPA approve the activities and emissions limits defined as ''insignificant'' by the State because it gives the Director completes discretion to determine on a case-by-case basis that a particular activity is ''insignificant.'' EPA does not believe that these problems with Idaho's list of insignificant activities preclude interim approval of the Idaho program, however, because the ''gatekeeper'' provision of IDAPA 16.01.01.317.01 adequately assures that Idaho has authority to issue permits that assure compliance with all applicable requirements to subject sources during the interim approval period, as required by 40 CFR 70.4(d)(3)(ii) and 70.6(a)(1). EPA proposes that Idaho must address these identified issues with its designation and definition of insignificant activities, however, as a condition of full approval.

g. Permit Content

Part 70 requires that the permitting authority include in a title V permit all emission limitations and standards, including those operational

requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance. *See* 40 CFR 70.6(a)(1). IDAPA 16.01.01.322.01 and 16.01.01.322.03 qualify this requirement in that they require inclusion of only those requirements that are ''identified in the application'' at the time of permit issuance. This qualification impermissibly relieves the permitting authority from including in a permit applicable requirements that are not identified in a permit application. EPA believes that this qualification must be revised before the Idaho program qualifies for full approval. EPA does not believe this deficiency precludes interim approval, however, because sources are obligated under the Idaho program to include all applicable requirements affecting the source in the permit application, IDAPA 16.01.01.314.06, and are obligated to supplement and correct a permit application upon becoming aware that an application contains incorrect information or omits necessary information. EPA believes that these provisions minimize the likelihood that applicable requirements will be omitted from the permit during the interim approval period and that the Idaho program therefore provides the State with adequate authority to issue permits that assure compliance with the requirements of 40 CFR 70.4(c)(1), as required by 40 CFR 70.4(d)(3)(ii).

h. Exemption From Applicable Requirements

IDAPA 16.01.01.325.01.c allows Idaho to exempt sources from otherwise applicable requirements provided the source submits specified information, the exemption is included in the title V permit, the Department has determined in writing that the permittee should be exempted and the title V permit includes a concise summary of the Department's determination. Although part 70 authorizes a permitting authority to determine that a certain requirement is inapplicable to a source and to provide a source with a shield from a later determination that the source was subject to such requirement, part 70 does not authorize a permitting authority to exempt a source from otherwise applicable requirements. EPA proposes that, as a condition of full approval, Idaho must eliminate this provision or demonstrate to EPA's satisfaction that this provision is consistent with the requirements of part 70. EPA does not believe this deficiency precludes interim approval, however, because the State is not required to grant such exemptions and EPA believes it would have the authority to veto any title V permit issued by Idaho that purported to exempt a source from an otherwise applicable requirement. *See* 40 CFR 70.8(c)(EPA will object to the issuance of any proposed permit determined by EPA not to be in compliance with applicable requirements).

i. Emissions Trading

Part 70 requires a permitting authority, if a permit applicant so requests, to issue permits allowing for the trading of increases and decreases within the permitted facility solely for the purposes of complying with a Federally-enforceable emissions cap that is established in the permit independent of otherwise applicable requirements. *See* 40 CFR 70.4(b)(12)(iii). The Idaho program authorizes the permitting authority to issues permits containing emissions trading provisions. *See* IDAPA 16.01.01.322.05 and 16.01.01.383.01.a.iii. The Idaho program does not require, however, an applicant requesting a permit with emissions trading provisions to include in its permit application proposed replicable procedures and permit terms that ensure emission trades are quantifiable and enforceable, as required by 40 CFR 70.4(b)(12)(iii). Nor does the Idaho program require the permitting authority to include in the emissions trading provisions only those emission units for which emissions are quantifiable and for which there are replicable procedures to enforce the emissions trades, as is also required by that section. Finally, the Idaho regulations do not appear to require each permit to state that no permit revision is required, under any approved economic incentives, marketable permits, emissions trading or other similar programs or processes for changes that are provided for in the permit, as is required by 40 CFR 70.6(a)(8). As a condition of full approval, EPA proposes that Idaho be required to demonstrate that its emissions trading provisions meet the requirements of 40 CFR 70.4(b)(12)(iii) and 40 CFR 70.6(a)(8). EPA also recommends that the requirement of IDAPA 16.01.01.322.05 that the company contemporaneously record in a company log a change from one trading scenario to another be specifically referred to in the list of requirements a source must meet in IDAPA 16.01.01.383.03 in order to make a ''Type II'' permit deviation.

j. Alternative Emission Limits

Part 70 requires that, if an applicable implementation plan allows a determination of an alternative emission limit, equivalent to that contained in the plan, to be made in the permit issuance, renewal or significant modification process and the State elects to use such process, any permit containing such an equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable and based on replicable procedures. *See* 40 CFR 70.6(a)(1)(iii). Although the Idaho regulations require such permit terms for permits with emission trading provisions, see IDAPA 16.01.01.322.05, there is no such requirement for permits in which alternative emission limits are established. As a condition of full approval, EPA proposes that the State be required to demonstrate to EPA's satisfaction that its operating permit program meets the requirements of 40 CFR 70.6(a)(1)(iii).

k. Reporting of Permit Deviations

Part 70 requires that each permit require the prompt reporting of deviations [5] from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations and any corrective actions or preventative measures taken, and authorizes the permitting authority to define ''prompt'' in relation to the degree and type of deviation likely to occur and the applicable requirement. *See* 40 CFR 70.6(a)(3)(iii)(B). Although the Idaho regulations contain detailed requirements for defining, limiting, and reporting permit deviations due to excess emissions caused by startup, shutdown, scheduled maintenance, upset or breakdown, *see* IDAPA 16.01.01.326 to –332, they do not address other permit deviations. In order to receive full approval, EPA proposes that the Idaho program must be revised to require prompt reporting of deviations from all permit requirements.

l. Acid Rain Provisions

Part 70 requires a permit to state that no permit revision is required for increases in emissions that are

[5] The Idaho regulations use the term ''permit deviation'' to refer to certain changes authorized by the permit flexibility provisions contained in 40 CFR 70.6 (9) and (10) and section 502(b)(10) of the Act. *See* IDAPA 16.01.01.383. The part 70 regulations use the term ''permit deviation'' to refer to permit violations. *See* 40 CFR 70.6(a)(3)(iii)(B). This notice uses the term ''permit deviation'' in the same way as the part 70 regulations.

authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement. *See* 40 CFR 70.6(a)(4)(i). The Idaho regulations do not appear to contain a comparable provision. EPA proposes that Idaho must revise its regulations to address the requirements of 40 CFR 70.6(a)(4)(i) in order to obtain full approval.

m. State-Only Enforceable Requirements

Part 70 requires the permitting authority to specifically designate as not being Federally enforceable under the Clean Air Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. *See* 40 CFR 70.6(b)(2). The Idaho regulations require a permit to state that provisions specifically identified as ''State Only'' are enforceable only by the Department and not by EPA. *See* 16.01.01.322.16.k. The Idaho regulations, however, do not specify which provisions shall be designated as ''State Only,'' that is, that Idaho shall designate as ''State Only'' those provisions that are not required under the Act or under any of its applicable requirements. In order to receive full approval, EPA proposes that Idaho be required to revise its regulations to define ''State Only'' provisions in a manner consistent with 40 CFR 70.6(b)(2).

n. General Permits

Part 70 allows States to issue a ''general permit,'' which is a permit issued after notice and opportunity for public participation, that covers numerous similar sources. *See* 40 CFR 70.6(d). The Idaho program includes regulations authorizing the issuance of general permits. *See* IDAPA 16.01.01.335. These regulations fail to comply with the requirements of part 70, however, in several respects. First, part 70 requires that, if a permitting authority has issued a general permit, the permitting authority must grant the conditions and terms of the general permit to sources that qualify. *See* 40 CFR 70.6(d)(1). The Idaho program does not contain a comparable requirement. Second, part 70 allows permitting authorities to provide for applications for general permits which deviate from the requirements of 40 CFR 70.5, provided that such applications otherwise meet the requirements of title V. The Idaho regulations allow for specialized applications for general permits, but do not require that such specialized applications meet the requirements of title V. *See* IDAPA 16.01.01.335.02.c. Third, part 70 allows the permitting authority to grant a source's request for authorization to operate under a general permit without repeating the public participation procedures, provided that such grant shall not be a final permit action for purposes of judicial review. *See* 40 CFR 70.6(d)(2). IDAPA 16.01.01.335.05, however, provides that the issuance of authorization to operate under a general operating permit is a final agency action for purposes of administrative and judicial review. This directly conflicts with the requirements of 40 CFR 70.6(d)(2). Finally, section 70.6(d)(1) provides that, notwithstanding the shield provisions of 40 CFR 70.6(f), a source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit. IDAPA 16.01.01.335.06 limits this requirement by stating that the source is subject to enforcement action in such a case only if the source submitted an incomplete or inaccurate application. In order to receive full approval, EPA proposes that Idaho must revise its regulations authorizing general permits to be consistent with 40 CFR 70.6(d).

o. Operational Flexibility

Part 70 requires permit programs to include certain ''operational flexibility'' provisions and authorizes permit programs to include certain other ''operational flexibility'' provisions in an approved title V program. *See* 40 CFR 70.4(b)(12). These provisions allow a source to make certain types of changes without a permit modification but require the permittee to provide notice of the change to EPA and the permitting authority, and require the permittee, the permitting authority and EPA to each attach a copy of such notice to the relevant permit. The Idaho program meets all of the requirements of 40 CFR 70.4(b)(12), except that neither the Idaho regulations nor the rest of the program submittal require or commit the State of Idaho to attach a copy of any such notice to the relevant permit. In order to receive full approval, EPA proposes that Idaho address this requirement to EPA's satisfaction.

p. Off-Permit Provisions

Part 70 authorizes an approved permit program to include certain ''off-permit'' provisions whereby a source can make a change at the permitted facility without the need for a permit revision. *See* 40 CFR 70.4(b)(14) and (15). These provisions require the permittee to keep a record at the facility describing each off-permit change and to provide ''contemporaneous'' notice of each off-permit change to EPA and the permitting authority. *See* 40 CFR 70.4(b)(14). The Idaho program authorizes off-permit changes, and allows a source seven days in which to make a record at the facility describing the change and to provide written notice to Idaho and EPA. *See* IDAPA 16.01.01.382.02. EPA believes that seven days qualifies as ''contemporaneous,'' within the meaning of 40 CFR 70.4(b)(14)(ii), and is an acceptable period of time to allow a source to report an off-permit change to EPA and the permitting authority. EPA also believes, however, that 40 CFR 70.4(b)(14)(iv) requires a source to record an off-permit change in a log at the time the change is being implemented and does not allow a permitting authority to afford a source seven days in which to record an off-permit change in the facility log. EPA therefore proposes that, in order to receive full approval, Idaho must revise its regulations to require a source to record an off-permit change in a log at the facility on the same day that the change is made.

q. Permit Renewals

Part 70 defines a timely application for a permit renewal as one that is submitted at least six months prior to the date of permit expiration or such longer time as may be approved by EPA, but not to exceed 18 months. *See* 40 CFR 70.5(a)(iii). The Idaho regulations define a timely application for a permit renewal as one that is submitted at least nine months prior to the date of permit expiration. *See* IDAPA 16.01.01.313.03. The Idaho regulations do not place a limit, however, on how long before permit expiration a source may submit an application for a permit renewal. EPA agrees that nine months prior to permit expiration is an appropriate deadline for the submission of renewal applications in the State of Idaho. In order to receive full approval, however, EPA proposes that Idaho be required to revise its regulations to ensure that an application for a permit renewal will not be considered timely if it is filed more than 18 months before permit expiration.

r. Completeness Determination

Part 70 requires that a permit application be deemed complete within 60 days of receipt unless the permitting authority determines in that period that the application is not complete or requests additional information. *See* 40 CFR 70.5(a)(2) and 70.7(a)(3). The Idaho regulations meet this requirement except for permit applications which were due before the effective date of

EPA approval of Idaho's program but were not subject to a specific deadline established by the Department under IDAPA 16.01.01.313.01. *See* IDAPA 16.01.01.361.02.a.ii. The Department is required to make completeness determinations for these permit applications as promptly as practicable or within 90 days of EPA approval of Idaho's title V program, whichever is earlier, but Idaho's regulations do not specify a date by which such applications will be deemed complete. In order to obtain full approval, EPA proposes that Idaho be required to revise its regulations to ensure that applications will be deemed complete within 60 days of receipt for all sources or establish to EPA's satisfaction that no sources will in fact fall within the exception of IDAPA 16.01.01.361.02.a.ii.

s. Administrative Amendments

In addition to the deficiency in Idaho's administrative amendment procedures discussed above, which EPA believes compels disapproval if not addressed before final action, there is one other deficiency in Idaho's administrative amendment procedures which EPA believes must be addressed for full approval. 40 CFR 70.7(d)(1)(vi) authorizes EPA to approve as appropriate for incorporation by administrative amendment other types of changes which are similar to those specifically enumerated in 40 CFR 70.7(d)(1). The Idaho program allows sources to incorporate into a title V permit by administrative amendment terms and conditions consistent with a compliance schedule developed in accordance with IDAPA 16.01.01.322.13.d.[6] and the terms and conditions of an applicable consent order, judicial consent decree, judicial order, administrative order, settlement agreement or judgement. *See* IDAPA 16.01.01.384.01.a.vi and -vii. EPA does not believe that compliance orders, judicial consent decrees and administrative orders are similar to the other truly ''administrative'' types of changes specified in part 70 as appropriate for administrative amendment, such as a change in name or correction of a typo. *See* 40 CFR 70.7(d)(1). In addition, compliance schedules, which are required to be at least as stringent as judicial consent decrees and administrative orders, become additional ''applicable requirements'' once incorporated into a title V permit. Like any other change to an applicable requirement, they must therefore be processed as a permit modification. Accordingly, EPA proposes to require Idaho to delete these items from the list of changes in IDAPA 16.01.01.384.01.a that may be accomplished by administrative amendment in order to receive full approval.

t. Minor Permit Modifications

Part 70 requires States to establish procedures for minor permit modifications which are substantially equivalent to those set forth in 40 CFR 70.7(e). The Idaho program contains such procedures, but fails to meet the requirements of part 70 in one respect. 70.7(e)(2)(iv) prohibits a permitting authority from issuing a final minor permit modification until after the earlier of expiration of EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification, although the permitting authority can approve the minor permit modification prior to that time. IDAPA 16.01.01.385.04.c, however, requires Idaho to issue minor permit modifications prior to the end of EPA's 45-day review period if more than 60 days have elapsed since receipt of a complete permit application. As a condition for full approval, EPA proposes that Idaho must revise its rules to prohibit the issuance of any permit until after the earlier of expiration of EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification.

u. Group Processing of Minor Permit Modifications

Part 70 allows a permitting authority to process as a group certain categories of applications for minor permit modifications at a single source. *See* 40 CFR 70.7(e)(3). 70.7(e)(3)(i) establishes standard thresholds for determining whether requests for permit modifications can be grouped, but allows EPA to approve alternative thresholds, if the permitting authority can justify the alternative thresholds based on two specified criteria. In addition to establishing emissions thresholds for group processing of minor permit modification that are consistent with the Federal program, IDAPA 16.01.01.385.7.b.iv gives the Director of the Department the discretion to establish any limit, on a case-by-case basis, for which minor permit modifications may be processed as a group. The State has provided no information, however, showing that it considered the factors identified in section 70.7(e)(3)(i)(B) in setting this standard. EPA does not believe that a provision which gives the permitting authority complete discretion to establish any threshold for group processing on a case-by-case basis could ever be approvable under 40 CFR 70.7(e)(3)(i)(B). At a minimum, however, such a provision must be supported by a showing consistent with 40 CFR 70.7(e)(3)(i)(B) for alternative thresholds. In order to receive full approval, EPA proposes that Idaho be required to delete the ''director's discretion'' provision of IDAPA 16.01.01.385.07.b.iv or make a showing consistent with 40 CFR 70.7(e)(3)(i)(B) for alternative thresholds.

In addition, as with Idaho's procedures for minor modifications, Idaho's regulations regarding group processing of minor modifications fail to contain the prohibition on issuance of any such permit modification until after the earlier of expiration of EPA's 45-day review period or until EPA has notified the permitting authority that EPA will not object to issuance of the permit modification. EPA therefore proposes that Idaho be required to address this requirement as a condition of full approval.

v. Reopenings

Part 70 establishes minimum requirements a State must meet where EPA determines that cause exists to terminate, modify or revoke and reissue a permit. *See* 40 CFR 70.7(g). The Idaho program meets these requirements, with one exception. IDAPA 16.01.01.387.02.b requires that EPA initiate permit reopenings[7] for cause by providing written notification to the Department and the permittee that cause exists to reopen the permit, as required by 40 CFR 70.7(g)(1). That regulation goes on, however, to require that EPA include certain information in the notice that is not required by part 70, such as a brief summary of all the alterations recommended by EPA. Under the Supremacy Clause of the United States Constitution, a State regulation is invalid if it regulates the United States directly, *North Dakota* v. *United States*, 495 U.S. 423, 435 (1990), as the Idaho regulation does here by directing the EPA notice to contain certain information. EPA does not consider itself bound to issue a notice in the form and containing the information specified by IDAPA 16.01.01.387.01.b and therefore proposes to require, as a condition of full approval, that Idaho

[6] The reference in IDAPA 16.01.01.384.01.a.vi to IDAPA 16.01.01.322.13.d appears to be in error. The reference should instead be to IDAPA 16.01.01.322.*12*.d.

[7] IDAPA 16.01.01.387.01.a defines ''reopening'' to include permit termination, revocation, revision or revocation and reissuance.

revise its regulations to require that the notice contain no more information than that specified by 40 CFR 70.7(g)(1).

w. Public Participation

Part 70 requires that the permitting authority make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to section 503(e) of the Clean Air Act, except for information entitled to confidential treatment pursuant to section 114(c) of the Act, and expressly provides that the contents of a title V permit are not be entitled to confidential treatment. *See* 40 CFR 70.4(b)(3)(viii). EPA has carefully reviewed Idaho's statutory and regulatory provisions and the opinion of the Idaho Attorney General regarding confidentiality. *See* Idaho Code 9–301 to –350; Idaho Code 39–111; IDAPA 16.01.01.126; IDAPA 16.01.01.365.02; Letter from Curt A. Fransen, Deputy Attorney General, to Jon Sandoval, Acting Administrator, Division of Environmental Quality, dated January 17, 1995. Based on this review, EPA believes that Idaho's confidentiality provisions allow far more information to be kept confidential from the public than is authorized under part 70 and section 114 of the Act. First, there is no assurance under Idaho law that the terms and conditions of a title V permit will not be entitled to confidential treatment. Second, there is no assurance under Idaho law that ''emission data,'' which is defined very broadly under 40 CFR 2.301(a)(2), will not be entitled to confidential treatment. To the contrary, any such information appears to be entitled to confidential treatment under Idaho law if it relates ''to production or sales figures or to processes or production unique to the owner or operator or which tend[s] to affect adversely the competitive position of such owner or operator'' and the owner or operator follows the procedures for having such information held by the State as confidential. Finally, the Idaho standard also appears to be broader than the standard under the Clean Air Act for what information, other than emission data and permit terms, may be entitled to confidential treatment. Section 114(c) of the Clean Air Act allows a source to claim as confidential only that information which, if made public, would divulge methods or processes entitled to protection as trade secrets.

EPA is very concerned that the Idaho confidentiality provisions could substantially interfere with the public's right to participate in the issuance of title V permits to Idaho sources. EPA believes that the Idaho program can nonetheless qualify for interim approval at this time, notwithstanding its potentially restrictive confidentiality provisions. Part 70 provides that EPA will grant interim approval to any program that, among other requirements, provides for adequate public notice of and an opportunity for public comment and a hearing on draft permits and revisions, except for permits qualifying for minor permit modification. *See* 40 CFR 70.4(d)(3)(iv). EPA believes that the Idaho program meets all of the public participation requirements of part 70 except with respect to the treatment of confidential information.

In addition, there are three checks on the possibility that Idaho's confidentiality provisions will unduly interfere with the public participation requirements of part 70. First, 40 CFR 70.8(c)(1) authorizes EPA to object to the issuance of any proposed permit determined by EPA not to be in compliance with applicable requirements or the requirements of part 70. EPA intends to exercise its authority to object to issuance of a proposed permit if a source's confidentiality claims under Idaho law interfere with the public's access to information required to be available to the public under 40 CFR 70.4(b)(3)(viii). Second, pursuant to 40 CFR 70.5(a)(3), Idaho law requires sources to submit directly to EPA any information claimed as confidential under State law in connection with a title V operating permit or application. *See* IDAPA 16.01.01.126. Once in the hands of EPA, such information will be kept confidential only if it is entitled to confidential treatment under the Clean Air Act. This safety valve will provide additional assurance that the public will have access during the interim approval period to all information that the public would be able to obtain from the State of Idaho if its confidentiality provisions were consistent with the Clean Air Act. Finally, 40 CFR 70.10(c)(1)(ii) allows EPA to withdraw approval of an approved title V operating permit program if the operation of the State program fails to comply with the requirements of part 70, including failure to comply with the public participation requirements. If, during the interim approval period, Idaho's confidentiality provisions are interfering with the public's right to review and comment on permits, EPA will consider whether to withdraw program approval on this basis. In any event, in order to obtain full approval, Idaho must demonstrate to EPA's satisfaction that its restrictions on the release to the public of permits, permit applications and other related information do not exceed those allowed by 40 CFR 70.4(b)(3)(viii) and 114(c) of the Clean Air Act.

x. Permits for Solid Waste Incineration Units

Part 70 requires an opinion from the Attorney General stating that no permit for a solid waste incineration unit may be issued by an agency, instrumentality or person that is also responsible, in whole or in part, for the design and construction or operation of the unit. *See* 40 CFR 70.4(b)(3)(iv). The opinion of the Idaho Attorney General states, however, that the Idaho Department of Health and Welfare, the agency that issues title V permits in Idaho, is responsible for the design, construction and operation of a limited number of solid waste incineration units, namely, units in mental hospitals and other institutions run by the Department. As stated previously, however, there are currently no solid waste incineration units in Idaho that are now subject to a standard under Section 129 of the Act, and therefore subject to the title V program in Idaho. EPA therefore does not see this issue as a bar to interim approval in Idaho, but proposes to require, as a condition of full approval, that Idaho ensure that no permit for a solid waste incineration unit may be issued by an agency, instrumentality or person that is also responsible, in whole or in part, for the design and construction or operation of the unit.

y. Maximum Criminal Penalties

Part 70 requires a State to have authority to recover criminal penalties for violation of any applicable requirement; any permit condition; any fee or filing requirement; any duty to allow or carry out inspections, entry or monitoring activities; or any regulation or orders issued by the permitting authority in the maximum amount of not less than $10,000 per day per violation. *See* 40 CFR 70.11(a)(3)(ii). Idaho law authorizes criminal penalties for such violations but states that such violations are punishable by ''a fine of not more than ten thousand dollars ($10,000) for each separate violation or for each day of continuing violation.'' *See* Idaho Code 39–117(2). This appears to limit penalties to a maximum of $10,000 per day even when there is more than one violation on each day. As a condition of full approval, EPA proposes that Idaho be required to demonstrate that it has sufficient authority to recover criminal penalties in the maximum amount of not less than

$10,000 per day per violation, as required by 40 CFR 70.11(a)(3)(ii).

z. False Statements and Tampering

Part 70 also requires that criminal fines be recoverable in a maximum amount of $10,000 per day per violation against any person who knowingly makes any false material statement, representation or certification in any form, in any notice or report required by a permit, or who knowingly renders inaccurate any required monitoring device or method. *See* 40 CFR 70.11(a)(3)(iii). Idaho law does not appear to contain such authority. The Idaho Attorney General has stated that the Department has the authority to include such a prohibition in each permit and intends to do so. This authority, coupled with the general criminal provisions of Idaho Code 39–117(2), could provide sufficient authority for making knowing violations of such requirements subject to criminal liability, but only if the Department is specifically required to include such prohibitions in each title V permit. As a condition of full approval, the State must demonstrate to EPA's satisfaction that it has the criminal enforcement authorities required by 40 CFR 70.11(a)(3)(iii).

aa. Environmental Audit Statute

In 1995, the Idaho legislature enacted an environmental audit statute, which prohibits the State from compelling a source, with certain limited exceptions, to provide the State a report that meets the definition of an ''environmental audit report.'' *See* Idaho Code 9–804. The statute also grants a source immunity from civil or criminal liability for any violations voluntarily disclosed by the source to the State in an environmental audit report. *See* Idaho Code 9–809.

Although EPA is concerned that the audit privilege of Idaho Code 9–804 could be misused to shield bad actors and frustrate access to crucial factual information, EPA does not believe that the statute poses a bar to full approval of Idaho's operating permit program. As EPA has recently stated, however, EPA intends to scrutinize enforcement more closely in States, such as Idaho, with broad audit privileges to ensure such statutes do not prevent States from pursuing appropriate enforcement action and obtaining appropriate penalties. *See* 60 CFR 16875 (April 3, 1995) (Voluntary Environmental Self-Policing and Self-disclosure Interim Policy Statement). If, during program implementation, EPA determines that Idaho Code 9–804 unduly interferes with Idaho's enforcement responsibilities under part 70, EPA will consider this grounds for withdrawing program approval in accordance with 40 CFR 70.10(c).

EPA believes, however, that Idaho Code 9–809, which grants a source immunity from civil or criminal prosecution for violations discovered during an environmental audit which are voluntarily disclosed, does impermissibly interfere with the Idaho's enforcement requirements under 40 CFR 70.11 and thus poses a bar to full approval. Part 70 requires a State to have authority to recover penalties for each day of violation. By granting a source absolute immunity for certain voluntarily disclosed violations, the State has restricted its authority to collect penalties for each day of violation. EPA therefore proposes to require, as a condition of full approval, that Idaho eliminate the immunity currently granted under Idaho Code 9–809 for voluntarily disclosed violations discovered through an environmental audit report or to demonstrate to EPA's satisfaction that Idaho Code 9–809 does not impermissibly interfere with the enforcement requirements of part 70.

bb. Correction of Typographical Errors and Cross-references

The operating permit regulations submitted by the State of Idaho contain several typographical errors and erroneous cross references that could interfere with application and implementation of the Idaho operating permits program. In reviewing the Idaho program, EPA has made the following assumptions in interpreting the Idaho regulations and proposes to require, as a condition of full approval, that Idaho be required to correct these errors in order to obtain full approval.

i. IDAPA 16.01.01.006.31: The reference in the definition of ''emissions unit'' should be to 42 U.S.C. sections 7561 through 7561*o* rather than to 42 U.S.C. sections 7561 through 7561.

ii. IDAPA 16.01.01.008.05.f: The reference in subsection (f) of the definition of ''applicable requirement'' should be to 42 U.S.C. section 7661*c*(b), rather than to section 7661a(b) (i.e. to section 504(b) of the Clean Air Act rather than to section 502(b)).

iii. IDAPA 16.01.01.008.12: The reference to the general permit regulation in the definition of ''general permit'' should be to section 335 (i.e., IDAPA 16.01.01.335), rather than to 322.

iv. IDAPA 16.01.01.008.14: The reference in the definition of ''major facility'' to the definition of ''facility'' should be to section 006.35 (i.e., IDAPA 16.01.01.006.35), rather than to 006.34.

v. IDAPA 16.01.01.322.10.1.i: The reference in the requirements for the initial compliance plan should be to ''a *verifiable* sequence of actions'' rather than to ''a variable sequence of actions.''

vi. IDAPA 16.01.01.384.01.a.vi: The reference to compliance schedule in this subsection should be to section 322.12.d (i.e., IDAPA 16.01.01.322.12.d), rather than to section 322.13.d.

vii. IDAPA 16.01.01.385.01.a.iv: The words ''of Title I of the Clean Air Act'' or some other description of the type of provisions being referred to appears to have been deleted after the phrase ''as a modification under any provision.''

viii. IDAPA 16.01.01.387.02.a.iii: The word ''least'' appears to have been deleted from the phrase ''shall be sent at one (1) day.''

3. Effect of Proposed Action

a. Effect of Disapproval

If EPA were to take final action disapproving the State of Idaho's title V submittal, EPA would be required to apply one of the sanctions in section 179(b) of the Clean Air Act on the date 18 months after the effective date of the disapproval, unless prior to that date the State had submitted a revised program and EPA had determined that the revised program corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In all cases, if, six months after EPA applied the first sanction, the State had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after EPA has disapproved a State program. Moreover, if EPA were to disapprove the State program and had not granted full approval to a corrective submittal by November 15, 1995, EPA must promulgate, administer and enforce a Federal permits program for Idaho.

b. Effect of Interim Approval

Final interim approval may be granted for up to 2 years following the effective date of final interim approval, and can not be renewed. During the interim approval period, Idaho would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a Federal permits program for the State of Idaho.

Permits issued under a program with interim approval have full standing with respect to part 70. In addition, the 1-year time period for submittal of permit applications by subject sources and the 3-year time period for processing the initial permit applications begins upon the effective date of interim approval.

If, following the grant of interim approval, Idaho were to fail to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If Idaho then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the section 179(b) sanctions, which would remain in effect until EPA determined that Idaho had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator finds a lack of good faith on the part of the State, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that the State had come into compliance. In any case, if, six months after application of the first sanction, Idaho still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove Idaho's complete corrective program, the consequences would be the same as if EPA were to disapprove, rather than to grant interim approval to, Idaho's submittal.

4. Scope of Proposed Interim Approval

If EPA grants final interim approval to the Idaho program, EPA proposes that the program would apply to all title V sources (as defined in the approved program) within Idaho, except for any sources within the exterior boundaries of Indian Reservations in Idaho. *See, e.g.*, 59 FR 55813, 55815–18 (Nov. 9, 1994).

5. Proposed Action on Section 112(l) Submittal

Requirements for title V approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to title V sources. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, if EPA grants interim approval to Idaho's operating permits program, EPA also proposes to grant approval under section 112(l)(5) of the Act and 40 CFR 63.91 of the State of Idaho's program for receiving delegation of section 112 standards that are unchanged from Federal standards as promulgated. This program for delegations would apply only to sources covered by Idaho's title V operating permits program.

III. Administrative Requirements

A. Request for Public Comments

EPA is requesting comments on all aspects of this proposed action. Copies of the State's submittal and other information relied upon for the proposed action are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed action. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the process, and

(2) To serve as the record in case of judicial review.

EPA will consider any comments received by November 27, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 17, 1995.

Chuck Clarke,

Regional Administrator.

[FR Doc. 95–26658 Filed 10–26–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 244 and Appendix C to Chapter 2

Defense Federal Acquisition Regulation Supplement; Contractor Purchasing System Reviews

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to provide guidance on the need to conduct limited Contractor Purchasing System Reviews (CPSRs) based on risk assessments, and to delete DFARS Appendix C, which contains detailed procedures for the conduct and review of CPSRs.

DATES: Comment Date: Comments on the proposed rule should be submitted in writing to the address below on or before December 26, 1995, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, Attn: Mr. Rick Layser, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DFARS Case 95–D026 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Layser, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

These proposed DFARS revisions are based on the recommendation of a Contractor Purchasing System Review Process Action Team established by the Defense Contract Management Command. The team recommended changes to CPSR procedures to permit the agency conducting the CPSR to have the latitude to determine the scope of the CPSR, based on risk assessment.

B. Regulatory Flexibility Act

The proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because CPSRs are generally only conducted for contractors whose sales to the Government exceed $10 million during a twelve month period. Therefore, an Initial Regulatory Flexibility Analysis has not been prepared. Comments from small entities concerning the affected DFARS subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DFARS Case 95–D026 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any additional information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 244 and Appendix C

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 244 and Appendix C is proposed to be amended as follows:

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

1. The authority citation for 48 CFR Part 244 and Appendix C continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 244.303 is revised to read as follows:

244.303 Extent of review.

An initial risk assessment will be conducted on each request for a contractor purchasing system review (CPSR) to determine if a CPSR is needed. The assessment will be conducted jointly by the cognizant contract administration office CPSR personnel and the contracting officer requesting the CPSR.

Appendix C to Chapter 2—Contractor Purchasing System Reviews

Appendix C [Removed]

3. Appendix C to 48 CFR Chapter 2, Contractor Purchasing Systems Reviews, is removed.

[FR Doc. 95–26684 Filed 10–26–95; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register
Vol. 60, No. 208
Friday, October 27, 1995

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 95–081–1]

Availability of Environmental Assessment and Finding 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 an environmental assessment and finding of no significant impact for the issuance of a U.S. Veterinary Biological Product License. A risk analysis, which forms the basis for the environmental assessment, has led us to conclude that issuance of this license will not have a significant impact on the quality of the human environment. Based on our finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding 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 assessment and finding of no significant impact (as well as the risk analysis 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, Technical Writer-Editor, Veterinary Biologics, BBEP, APHIS, 4700 River Road Unit 148, Riverdale, MD 20737–1237; telephone (301) 734–8400; fax (301) 734–8910.

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 U.S. Veterinary Biological Product License may be issued.

In determining whether to issue a license for the veterinary biological product referenced in this notice, the Animal and Plant Health Inspection Service (APHIS) conducted a risk analysis to assess the product's potential effect on the safety of animals, public health, and the environment. Based on that risk analysis, APHIS has prepared an environmental assessment. APHIS has concluded that issuance of a U.S. Veterinary Biological Product License for the veterinary biological product referenced in this notice will not significantly affect the quality of the human environment. Based on the finding of no significant impact, we have determined that there is no need to prepare an environmental impact statement.

An environmental assessment and finding of no significant impact have been prepared for issuance of a U.S. Veterinary Biological Product License for the following veterinary biological product: Newcastle Disease-Fowl Pox Vaccine, Live Fowl Pox Vector; Code 17C1.R0; to be issued to Select Laboratories, Inc., Establishment License No. 279.

The environmental assessment and finding 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' NEPA Implementing Procedures (7 CFR part 372; 60 FR 6000–6005, February 1, 1995).

Done in Washington, DC, this 23rd day of October 1995.

Terry I. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 95–26727 Filed 10–26–95; 8:45 am]

BILLING CODE 3410–34–P

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

AR–170
Cattlemen's Livestock Auction, Inc., Harrison, Arkansas

GA–216
Nails Creek Auction Barn, Carnesville, Georgia

MI–150
Stockbridge Horse Auction, Stockbridge, Michigan

MO–279
Joplin Regional Stockyards, Inc., Carthage, Missouri

SC–153
J & J Auction, Timmonsville, South Carolina

TX–344
Sonora Livestock Auction, Inc., South Sonora, Texas

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Grain Inspection, Packers and Stockyards Administration, Room 3408–South Building, U. S.Department of Agriculture, Washington, D.C. 20250 by November 6, 1995. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, D.C. this 20th day of October 1995.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division.

[FR Doc. 95–26651 Filed 10–26–95; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA).

ACTION: To Give Firms an Opportunity to Comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 09/16/95–10/15/95

Firm name	Address	Date petition accepted	Product
Avionics Specialties, Inc	Box 6400, Charlottesville, VA 22906.	10/06/95	Aircraft flight instrumentation.
Bagmaster MFG., Inc	2731 Sutton Avenue, St. Louis, MO 63143.	10/03/95	Cloth containers for storing firearms and other related sporting goods bags.
Bettie Dawn Uniforms	115 W. Dallas Street, Mt. Vernon, MO 65712.	10/04/95	Uniforms for nurses.
Bio-Energy Systems, Inc	48 Canal Street, Ellenville, NY 12428.	10/10/95	Solar water heaters.
Cellusuede Products, Inc	500 N. Madison Street, Rockford, IL 61105.	10/03/95	Flock.
Glasscrafters Northwest, Inc	12414 Highway 99 S. #40, Everett, WA 98204.	10/10/95	Glass mirrors.
Hexacon Electric Company	161 West Clay Avenue, Roselle Park, NJ 07204.	09/28/95	Electric soldering irons and guns, soldering stations, holders and accessories.
Modern Building Systems, Inc	P.O. Box 110, Aumsville, OR 97325.	10/10/95	Prefab modular wooden building materials.
P. I., Inc	1712 Congress Parkway, Athens, TN 37303.	10/05/95	Furniture parts of plastic.
Pamlyn Enterprises	P.O. Box 8183, 240 S. Union Ave., Springfield, MO 65801.	10/04/95	Sport shirts, laboratory coats, smocks, coveralls and cloth medical pouches.
Pekin Hardwood Lumber Co., Inc.	P.O. Box 341, New Franklin, MO 65274.	10/05/95	Walnut, Oak and other hardwoods.
Process Gear Company, Inc	3860 North River Road, Schiller Park, IL 60176.	10/03/95	Gears of metal and plastic.
Thordarson Meissner, Inc	628 Belmont Street, Mt. Carmel, IL 62863.	10/11/95	Electronic transformers of copper and steel.
West Virginia Plastics, Inc	P.O. Box 219, Pike Street, Grafton, WV 26354.	10/05/95	Infant rattles, teethers, pacifiers and other plastic items.
Western Buckle Company	1757 N. Paulina Street, Chicago, IL 60622.	10/03/95	Decorative metal belt buckles and bolo ties.
Xenotronix, Inc	1031 Miller Drive, Altamonte Springs, FL 32701.	10/12/95	Battery chargers.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, Room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: October 19, 1995.

Lewis R. Podolske,

Director, Trade Adjustment Assistance Division.

[FR Doc. 95–26735 Filed 10–26–95; 8:45 am]

BILLING CODE 3510–24–M

International Trade Administration

[A–844–802]

Agreement Suspending the Antidumping Investigation on Uranium From Uzbekistan

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

ACTION: Notice of Amendment to the Agreement Between the United States Department of Commerce and the Republic of Uzbekistan Suspending the Antidumping Investigation on Uranium from Uzbekistan.

SUMMARY: The Department of Commerce (the Department) and the Republic of Uzbekistan (Uzbekistan) have signed an

Amendment (the Amendment) to the Agreement Suspending the Antidumping Investigation on Uranium from Uzbekistan (the Agreement).

EFFECTIVE DATE: October 13, 1995.

FOR FURTHER INFORMATION CONTACT: James Doyle or Alex Braier, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–0172 or (202) 482–1324, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 1992, the Department and Uzbekistan signed the Agreement Suspending the Antidumping Investigation on Uranium from Uzbekistan. On October 30, 1992, the Agreement was published in the Federal Register (57 FR 49,220, 49,255). On September 30, 1994, the Department and Uzbekistan initialed an Amendment to modify the Appendix A price-tied quota contained in the original Agreement. The Amendment was then released to interested parties for comment. The Department considered these comments and held further consultations with Uzbekistan. On July 21, 1995, the Department and Uzbekistan initialed an amendment similar to the previous amendment except that this amendment contained clauses which redefined Uzbek-origin uranium to include uranium mined in Uzbekistan and enriched in a third country. This amendment was also released to interested parties for comment, which were again considered by the Department.

Subsequently, the Department and Uzbekistan negotiated an Amendment based upon a different concept than the two amendments previously initialed. This Amendment replaces the reference price calculation, and authorizes,during the first and second years of the Amendment direct or indirect deliveries of up to 940,000 pounds U_3O_8 equivalent per year of Uzbek-origin natural uranium from Uzbekistan to the United States, provided that the latest price calculated pursuant to Section IV.C.1 is at or above $12.00 per pound equivalent. Commencing with the third year (October 13, 1997), this Amendment authorizes Uzbekistan to make annual deliveries of uranium up to, but not exceeding, the levels in accordance with the production-tied quota table set forth in Appendix A. The Amendment retains the provision redefining Uzbek-origin uranium to include uranium mined in Uzbekistan and enriched in a third country. On October 13, 1995, the Department and Uzbekistan signed a final Amendment which took effect immediately. The text of the final Amendment follows this notice.

Dated: October 20, 1995.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

Amendment to the Agreement Suspending the Antidumping Investigation on Uranium From Uzbekistan

The parties recognize that the Agreement Suspending the Antidumping Investigation on Uranium from Uzbekistan (''the Agreement'') has not generated the anticipated increase in the price of U.S.-origin natural uranium that would have permitted renewed sales of Uzbek uranium under the price-tied quota mechanism; nor has the Agreement increased sales of U.S.-origin natural uranium or employment in the U.S. uranium industry. Because an objective of this Agreement is to restore the competitive position of the U.S. industry, the parties agree as follows:

The Agreement is hereby extended until October 12, 2004. Consistent with the requirement of Section 734(1) of the U.S. Tariff Act of 1930, as amended (the Act), to prevent the suppression or undercutting of price levels of domestic products by imports of Uzbek-origin uranium, Sections II, III, IV, VII, VIII and XIV are amended as set forth below. All other provisions of the Agreement, particularly Section VII, remain in force and apply to this Amendment.

1. The following definitions are added to Section II:

(e) For purposes of this Agreement, *United States* shall comprise the customs territory of the United States of America (the 50 States, the District of Columbia and Puerto Rico) and foreign trade zones located in the territory of the United States of America.

(f) *For consumption* means for further processing (as necessary) and use as nuclear fuel. Consumption may include such uses as swaps or exchanges of material, only where such swaps or exchanges are documented to be conducted solely for the purpose of facilitating the further processing and use as nuclear fuel by the end-user. The material shall not be loaned. The material shall not be resold by or on behalf of the end-user except as a result of force majeure.

(g) *End-user* means an entity, such as an electric utility, hospital, or scientific institution, which consumes uranium.

(h) The natural feed component for 1 KgU of enriched uranium product (''EUP'') shall be determined using the feed to product factor calculated with the following formulae:

$[(P_A - T_A)/(F_A - T_A)]=X_A$

Where:

P_A=Actual Product Assay of the imported low enriched uranium (''LEU'') as found in the import documents

T_A=For enrichment contracts, the actual tails assay selected by the customer pursuant to the contract; for other contracts calling for the delivery of LEU, 0.3 weight percent U^{235}. During the anniversary month of this Amendment, the tails assay for other contracts calling for the delivery of LEU will be amended as appropriate, based on the optimum tails assay.

F_A=0.711 weight percent U^{235} (feed assay)

X_A=Feed-to-Product Factor.

The feed-to-product factor shall then be multiplied by 2.61283 to reach the lbs. U_3O_8 equivalent of the imported LEU.

(i) *U.S. production level* means the level of U.S. production during the most recent four quarters for which data is available from appropriate industry sources.

(j) *Relevant Period* means the twelve month period beginning October 13 through October 12 of the following year.

2. Section III, ''Product Coverage,'' is amended as follows:

The following language replaces the second paragraph, beginning, ''Uranium ore * * *.''

Further, uranium ore from Uzbekistan that is milled into U_3O_8 and/or converted into UF_6 and/or enriched in U^{235} in another country prior to direct and/or indirect importation into the United States is considered uranium from Uzbekistan and is subject to the terms of this Agreement. When imported as enriched uranium, the full amount of the natural uranium equivalent required to produce the enriched product will be counted against the existing quota under this Agreement. For the purposes of calculating this amount of natural uranium, the terms of definition II(h) shall apply unless otherwise reported.

The third paragraph of Section III, beginning, ''For purposes of this Agreement, uranium enriched * * *.'' is replaced by:

If applicable, for purposes of this agreement, uranium enriched in U_{235} or compounds of uranium enriched in U_{235} in Uzbekistan are covered by this agreement, regardless of their subsequent modification or blending.

3. Effective October 13, 1995, Sections IV.B and IV.C.2 and 3 are deleted. Appendix A is replaced with Appendix A hereto, and Sections IV.A is replaced with the following:

A. The Government of Uzbekistan will restrict the volume of direct or indirect exports on or after the effective date of this Agreement to the United States and the transfer or withdrawal from inventory (consistent with the provisions of paragraph E) of the merchandise subject to this Agreement in accordance with the delivery limits and schedule set forth below.

During the first and second Relevant Periods, this Amendment authorizes direct or indirect deliveries of up to 940,000 pounds U^{308} equivalent per relevant period of Uzbek-origin natural uranium from Uzbekistan to the United States, provided that the latest price calculated pursuant to Section IV.C.1 is at or above $12.00 per pound U^{308} equivalent.

Commencing with the third Relevant Period (October 13, 1997), this Amendment authorizes Uzbekistan to make annual deliveries of uranium up to, but not exceeding, the levels in accordance with the production-tied quota table set forth in Appendix A.

For purposes of counting against the uranium delivery quota limitations, the date of delivery shall determine when the Uzbek uranium shall come within the annual limit.

Deliveries pursuant to multiyear contracts shall be strictly subject to the quota available at the time of delivery, with the following two exceptions:

(1) For multiyear contracts entered into during the first two Relevant Periods which do not specify a price per pound U^{308} equal to or greater than $12.00, deliveries shall be strictly subject to the annual quotas in effect at the time of delivery; however, if the annual quota in effect at the time of such delivery is less than 750,000 lbs., up to 750,000 lbs. may be delivered.

(2) Deliveries pursuant to multiyear contracts which provide for annual deliveries no greater than the quota in effect at the time the contract is entered into, and which specify a price per pound U^{308} at or above $12.00 during the first two Relevant Periods, or at or above the latest DOC price calculation in subsequent Relevant Periods, may be made in the full amount for the full term of the contract, even if they exceed the annual quotas in effect at the time of delivery. Such deliveries will be applied against the annual quotas in effect at the time of delivery. Where the amount of such deliveries exceeds the annual quota in effect at the time of delivery, such quota overage will be deducted from the annual quota available in the subsequent relevant period(s). No additional quota will become available unless and until any quota deficit created by such delivery overage(s) is eliminated.

The total annual delivery volume specified in multiyear contracts entered into under paragraphs 1 and 2 of this subsection may not exceed 940,000 lbs. per year for each of the first two Relevant Periods.

For purposes of determining the applicable quota level under Appendix A, the Department will supply the U.S. production level, as defined in Section II(j), to the parties to the proceeding thirty days before the beginning of every Relevant Period.

B.1 *Department Confirmation of Quota Imports.* In recognition of the requirements of section 734 (d)(2) and (l)(1), the Department and the Government of Uzbekistan agree that any sales contract with an end-user to be used in a sale under this Agreement must be submitted to the Office of Agreements Compliance, U.S. Department of Commerce, and confirmed by the Department in accordance with this Section. The party submitting a contract to the Department for confirmation shall provide the following information, which shall be releasable under APO at the time the Department approves such contract:

- The date and terms, including price, of the contract with the end-user pursuant to which the sale(s) will be made;
- A description of the physical material being imported;
- Identification of the Uzbek supplier of the sale(s);
- The estimated place and date on which the imports to fill the sale(s) will enter the customs territory of the United States;
- The export license number under which the sale(s) will be exported;
- A copy of the contract with the end-user pursuant to which the sale(s) are to be made;
- An estimated delivery schedule;
- Certification from the end-user that it will consume the imported product in the United States in accordance with Section II(f) of this Amendment;
- Certification that the Department will be provided with proof of payment for each shipment received; and any other information that the Department, after consultation with the Government of Uzbekistan, determines necessary to confirm that the requirements of this Amendment have been met.

As soon as possible, but within 15 days of a complete confirmation request being filed with the Office of Agreements Compliance, the Department will confirm that the sales contract qualifies as a sale under this Amendment or will state specifically why it does not qualify. In making such a determination, the Department will limit its review to determining (i) whether the contract under review comes within the amount of quota remaining for the Relevant Period in which the contract was signed, and (ii) whether the sales price for the contract is at or above $12.00 during the first two Relevant Periods, or at or above the latest DOC price calculation in subsequent Relevant Periods, on the date that the contract was signed. If the Department fails to respond to a confirmation request within 15 days, the request shall be deemed to be approved notwithstanding any other provisions of the Agreement.

Upon confirmation, the Department will subtract the amount to be delivered of contracted Uzbek-origin uranium from the quota remaining for each Relevant Period. The Office of Agreements Compliance shall make available under APO the amount of annual quota that remains available for each Relevant Period.

Uzbek uranium may be imported into the United States only pursuant to a confirmed sales contract. Further, if such Uzbek uranium is not immediately delivered into the end-user's account, the following conditions must be met:

(1) the material shall be placed in a dedicated account for approved contracts;

(2) the importer (if the owner of material, or the person for whom or on whose behalf the material is imported) or his consignee, shall certify to the Department that such material will not be sold, loaned, swapped, or utilized other than for delivery to the U.S. end-user for consumption in accordance with Section II(f) of this Amendment;

(3) the material enters the U.S. but shall not be liquidated until such time as it is delivered to the end-user; and

(4) the importer shall commit in writing to make available to the Department, quarterly, a full accounting of all deliveries from its account at the converter/fabricator (including each delivery from the account, to whom delivery was made, pursuant to which contract, in what quantity, and confirmation of the status of any transaction that occurred from the account).

Prior to U.S. Customs clearance of the Uzbek-origin uranium, the importer (if the owner of material, or the person for whom or on whose behalf the uranium is imported) will notify the Department of the date of import, the quantity and

declared value of the shipment, the vessel name, the port of entry, and the pre-confirmed individual contract pursuant to which the shipment is entering. If such information is consistent with a pre-confirmed contract and the notice of request for delivery from the end-user, the Department will notify the U.S. Customs Service within five business days. The importer will provide certification to U.S. Customs at time of import that the material will be used only for a sale subject to the conditions of this Agreement and will be consumed in accordance with Section II(f) of this Agreement. The Department will instruct Customs to promptly release the shipment once the Department has confirmed that Customs has received the foregoing notification and certification.

4. The following language replaces Paragraph D of Section VII, ''Anticircumvention,'':

D. In addition to the above requirements, the Department shall direct the U.S. Customs Service to require all importers of uranium into the United States, regardless of stated country of origin, to submit at the time of entry written statements certifying the following:

(A) The country(ies) in which the ore was mined and, if applicable, converted, enriched, and/or fabricated, for all imports; and

(B) That the uranium being imported was not obtained under any arrangement, swap, or other exchange designed to circumvent the export limits for uranium of Uzbek origin established by this agreement.

Where there is reason to believe that such a certification has been made falsely, the Department will refer the matter to Customs or the Department of Justice for further action.

5. The following paragraph constitutes an addendum to Section VIII of the Agreement:

Uzbekistan agrees to adhere to all reporting requirements specified in Section VIII.A. of the Agreement. Appendix B data will be submitted to the Department according to the reporting requirements specified in Section VIII.A. of the Agreement, and will be treated and subject to verification by the Department in accordance with the terms of the agreement.

6. Section XIV of the Agreement is amended by adding the following:

C. The parties agree to consult on a regular basis during the term of this Agreement on Uzbekistan being treated as a market economy, or the Uzbek uranium industry being treated as a market-oriented industry, under U.S. antidumping laws. During such consultations the Department will identify the criteria that Uzbekistan or the Uzbek uranium industry would need to satisfy to be accorded such treatment by the Department.

The parties further agree that their intention is, consistent with Section IV.J of the Agreement, that Uzbekistan be accorded treatment no less favorable than any other Republic of the former Soviet Union that also has a suspension agreement with the United States with respect to trade in uranium. Accordingly, if U.S. law, regulation, administrative practice, or policy should change in any manner that would result in relatively less favorable treatment for Uzbekistan, or if the United States should enter into any agreement or understanding or take any action that would cause that result, the parties will promptly enter into consultations with a view to amending this Agreement so as to eliminate such less favorable treatment.

7. The parties agree that this Amendment constitutes an integral part of the Agreement.

8. The English language version of this Amendment shall be controlling.

9. This Amendment is effective as of October 13, 1995.

Signed on this 13th day of October, 1995.

For the Government of Uzbekistan.

Nikolay I. Kuchersky.

For the United States Department of Commerce.

Paul L. Joffe,

Deputy Assistant Secretary for Import Administration.

UZBEKISTAN APPENDIX A

U.S. production levels (annual lbs. U_3O_8 e)	Quota (annual lbs. U_3O_8 e)
3,000,001–3,500,000	600,000
3,500,001–4,000,000	750,000
4,000,001–4,500,000	775,000
4,500,001–5,000,000	800,000
5,000,001–5,500,000	825,000
5,500,001–6,000,000	850,000
6,000,001–6,500,000	875,000
6,500,001–7,000,000	900,000
7,000,001–7,500,000	925,000
7,500,001–8,000,000	950,000
8,000,001–8,500,000	975,000
8,500,001–9,000,000	1,000,000
9,000,001+	Unlimited

[FR Doc. 95–26736 Filed 10–26–95; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on May 5, 1994, an arbitration panel rendered a decision in the matter of *Maryland State Department of Education, Division of Vocational Rehabilitation Services* v. *United States Department of Veterans Affairs (Docket No. R-S/92–11).* This panel was convened by the Secretary of the U.S. Department of Education pursuant to the Randolph Sheppard Act (the Act), 20 U.S.C. 107d-1(b), upon receipt of a complaint filed by the Maryland State Department of Education, Division of Vocational Rehabilitation Services (DORS). The Act creates a priority for blind individuals to operate vending facilities on Federal property. Under section 107d-1(b) of the Act, the State licensing agency (SLA) may file a complaint with the Secretary if the SLA determines that an agency managing or controlling Federal property fails to comply with the Act or regulations implementing the Act. The Secretary then is required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3230, Switzer Building, Washington, D.C. 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act, 20 U.S.C. 107d–2(c), the Secretary publishes a synopsis of arbitration panel decisions affecting the administration of vending facilities on Federal and other property.

Background

In August of 1987, the Department of Veterans Affairs (DVA) began construction of a new Veterans Affairs Medical Center (VAMC) at 10 N. Greene Street in Baltimore, Maryland. Space allocation in the building was completed in 1985, and a final design was completed in 1989. The building's construction was completed in July 1992, and the DVA began occupying the building in January 1993.

Prior to 1993, the DVA operated a DVA Medical Center at 3900 Loch Raven Boulevard in Baltimore. The new facility has substantially more square footage than the older medical center. The new facility also includes a retail store, a cafeteria, and vending machines that are operated by the Veterans Canteen Service (VCS).

By letter dated December 2, 1991, DORS applied to the DVA for a permit to operate a Randolph-Sheppard vending facility at the new VAMC in Baltimore. DORS followed up with two additional inquiries regarding the new medical center. Subsequently, DVA responded by letter dated April 6, 1992, denying the request for a permit. DVA's stated reason for denying the DORS' request for a permit was that its authorizing statute, 38 U.S.C. 8110(c), gave DVA the exclusive right to determine whether an activity, including vending facilities, at any of its medical centers would be performed by Federal or non-Federal personnel.

On June 24, 1992, DORS filed a complaint with the Secretary of the Department of Education requesting that an arbitration panel be convened. A hearing on this matter was held on July 19 and 20, 1993.

Arbitration Panel Decision

The arbitration panel in a majority opinion found that the Randolph-Sheppard Act applies to any and all Federal departments, agencies, and instrumentalities in control of any Federal property, citing 20 U.S.C. 107 *et seq.* and *Minnesota* v. *Riley*, 18 F.3d 606, 609 (8th Cir. 1994).

The panel ruled that the Randolph-Sheppard Act and its implementing regulations established a system under which the Secretary of Education promulgates and administers uniform procedures for the establishment of Randolph-Sheppard vending facilities. (20 U.S.C. 107(b)) The Act contains an ''escape clause'' allowing limitations on the placement of vending facilities, but only if the Secretary of Education specifically finds that the absence of such a limitation would adversely affect the interests of the United States. (20 U.S.C. 107(b)) The panel noted that the DVA has not applied for an exemption from any of the requirements of the Randolph-Sheppard Act.

DVA's argument was that it was not required to apply for such a limitation, citing its own statute, 38 U.S.C. 8110(c). However, the panel rejected this argument, citing *Minnesota* v. *Riley*, which ruled that the Congressional intent to apply the Randolph-Sheppard Act to the VCS is clear from the language of the Act. The panel further stated that section 8110(c) was intended to limit contracting out of services directly related to patient care, not to preclude the issuance of permits for Randolph-Sheppard vending facilities.

Therefore, the panel ruled that the Randolph-Sheppard Act applies to Department of Veterans Affairs medical centers and that section 8110(c) does not exempt VAMC Baltimore from the Randolph-Sheppard Act's requirements.

Accordingly, in an unanimous award the arbitration panel ruled on May 5, 1994, that the parties should enter into negotiations whereby a permit would be issued to allow DORS and its licensed blind vendor or vendors to operate the retail store at VAMC. The parties were to agree upon a permit on or before June 1, 1994, which the panel would adopt as its final award. However, if a permit could not be agreed upon by June 1, 1994, then each party was instructed to submit a proposed permit to the panel on or before June 15, 1994. The proposed permit that received the majority approval of the panel would be adopted as the final award of the panel.

Following the May 5 panel award, DVA submitted a Motion for Reconsideration, which was subsequently denied by the panel. DORS then submitted to the panel its proposed permit in accordance with the May 5 award. In an order dated October 15, 1994, a majority of the panel adopted this proposed permit. The panel instructed DVA that, on or before October 20, 1994, it should turn over the operation of the retail store at VAMC Baltimore to DORS, effective January 1, 1995.

One panel member dissented regarding the denial of the Motion for Reconsideration and from the final award.

On January 3, 1995, the Maryland State Department of Education, Division of Vocational Rehabilitation sought relief in the United States District Court of Maryland against the Department of Veterans Affairs requesting enforcement of the final arbitration award directing DVA to permit a blind vendor to operate a retail store at the VAMC.

On August 17, 1995, the court found that the arbitration panel had no authority under the Act to order DVA to turn over the retail store to DORS. *Maryland State Department of Education, Division of Rehabilitation Services* v. *U.S. Department of Veterans Affairs*, C.A. No. K–95–8 (D.MD. order entered 8–17–95). The court ruled that the panel's authority under the Act is limited to determining whether the agency's actions violated the Act. According to the court, the Act leaves the responsibility for remedying violations to the Federal entity itself.

The views and opinions expressed by the arbitration panel do not necessarily represent the views and opinions of the U. S. Department of Education.

Dated: October 23, 1995.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 95–26700 Filed 10–26–95; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed ''subsequent arrangement'' under the Agreement for Cooperation between the Government of the United States of America and Government of Sweden concerning Peaceful Uses of Nuclear Energy, and the Additional Agreement for Cooperation between the Government of the United States of America and the Government of the Republic of Korea concerning Civil uses of Nuclear Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/KO(SW)-1, for the transfer of 18.905 kilograms of uranium containing 0.718 kilograms of the isotope uranium-235 (3.8 percent enrichment) from Sweden to Korea for fuel production.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, D.C. on October 23, 1996.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 95–26719 Filed 10–26–95; 8:45 am]

BILLING CODE 6450–01–P

Chicago Operations Office Determination for Non-Competitive Financial Assistance Waste Policy Institute

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The Department of Energy (DOE), Chicago Operations Office, announces its intent to award a cooperative agreement on a non-competitive basis to the Waste Policy Institute (WPI). The objective of the work to be supported by this financial assistance award is to conduct independent research and analysis, model development, and prototype application and testing for advancing the state of knowledge and practice external involvement in decision making related to technology development and deployment. This is not a notice for solicitation of proposals or financial assistance applications.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Chicago Operations Office, 9800 S. Cass Ave., Argonne, IL 60439: Ms. Patricia J. Schuneman, Contracting Officer.

SUPPLEMENTARY INFORMATION: WPI intends to advance the state of knowledge and practice of external involvement in decision making related to technology development. WPI will (1) research and develop proactive strategies and models tailored to the issue of external involvement in technology development; (2) test prototype models; (3) develop and test strategies to more effectively communicate with stakeholders; and (4) conduct studies of external review process and develop and test models of external technical review. The project will benefit public and private agencies engaged in technology research and development, as well as affected stakeholders.

The criterion set forth at 10 CFR 600.7(b)(i)(A), is being relied upon to justify a noncompetitive award to WPI based on the subject application. This criterion authorizes noncompetitive awards when the activity to be funded is necessary to the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity. WPI has been funded by the U.S. Department of Energy (under other cooperative agreements) and the U.S. Environmetnal Protection Agency to perform projects focusing on enhancing stakeholder involvement in environmental decision-making over the last five years. During that period of time, WPI has developed an extensive network of ties and solid working relationships with major stakeholder organizations.

The project period for this financial assistance award is five years, and is expected to begin on or about November 15, 1995. The estimated cost for the project period is $22,880,827.00, of which DOE plans to provide $22,770,441.00.

Issued in Chicago, Illinois on October 18, 1995.

Charles G. Frazier,

Branch Chief, Acquisition and Assistance Group.

[FR Doc. 95–26720 Filed 10–26–95; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Project No. 2232–303 North Carolina/South Carolina]

Duke Power Company; Notice of Availability of Draft Environmental Assessment

October 23, 1995.

In accordance with the National Environmental Policy Act 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) reviewed the application for the approval of a Shoreline Management Plan for the Catawba-Wateree Project. The project consists of 13 hydropower developments with 11 reservoirs having about 1500 miles of shoreline spread over a 200-mile reach of the Catawba-Wateree River system in North Carolina and South Carolina.

The staff of OHL's Division of Project Compliance and Administration prepared a Draft Environmental Assessment (DEA) for the proposed Shoreline Management Plan. In the DEA, the staff concludes that approving the licensee's plan would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Reference and Information Center, Room 2A, of the Commission's Offices at 888 First Street, NE, Washington, D.C. 20426.

Please file any comments on the DEA by November 9, 1995. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Please affix the project number to all comments. For further information, contact Brian Romanek at (202) 219–0076.

Lois D. Cashell,

Secretary.

[FR Doc. 95–26672 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2645–029, New York]

Niagara Mohawk Power Corporation; Notice of Availability of Draft Environmental Assessment

October 23, 1995.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Beaver River Project located in Herkimer and Lewis Counties, New York, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please affix ''Beaver River Project'' to all comments. For further information, please contact Tom Camp at (202) 219–2832.

Lois D. Cashell,

Secretary.

[FR Doc. 95–26660 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2105–033 California]

Pacific Gas & Electric Company; Notice of Availability of Draft Environmental Assessment

October 23, 1995.

A draft environmental assessment (DEA) is available for public review. The DEA is for an application to amend the Upper North Fork Feather River

Hydroelectric Project. The application is to extend the project boundary to include about 8 acres of land in the vicinity of the Belden Siphon to allow for stabilization of the siphon. The DEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment. The Upper North Fork Feather River Hydroelectric Project is located on the North Fork Feather River in Plumas County, California.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Reference and Information Center, Room 3308, 941 North Capitol Street, N.E., Washington, D.C. 20426.

Please submit any comments within 40 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Please affix Project No. 2105–033 to all comments. For further information, please contact the project manager, Ms. Rebecca Martin, at (202) 219–2650.

Lois D. Cashell,

Secretary.

[FR Doc. 95–26661 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1045–006, et al.]

Kansas City Power & Light Co., et al.; Electric Rate and Corporate Regulation Filings

October 20, 1995.

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

1. Kansas City Power & Light Company

[Docket No. ER94–1045–006]

Take notice that on October 12, 1995, Kansas City Power & Light Company tendered for filing its compliance filing in the above-referenced docket.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

2. Potomac Edison Company

[Docket No. ER95–39–002]

Take notice that on October 2, 1995, Potomac Edison Company tendered for filing its refund report in the above-referenced docket.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

3. Central Vermont Public Service Corporation

[Docket No. ER95–679–002]

Take notice that on September 13, 1995, Central Vermont Public Service Corporation tendered for filing its compliance filing in the above-referenced docket.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

4. NewCorp Resources, Inc.

[Docket No. ER95–973–000]

Take notice that NewCorp Resources, Inc. (NCR) on October 6, 1995, tendered for filing limited amendments to the Tariff for Electric Service (Tariff) previously filed in this docket.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket No. ER95–1533–000]

Take notice that on October 10, 1995, Arizona Public Service Company (APS) tendered for filing additional information in the above mentioned docket.

The Imperial Irrigation District (IID) and APS respectfully to request an effective date of October 15, 1995.

Copies of this filing have been served upon IID and the Arizona Corporation Commission.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

6. Pennsylvania Electric Company

[Docket No. ER95–1622–000]

Take notice that on September 29, 1995, Pennsylvania Electric Company tendered for filing an amendment in the above-referenced docket.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER95–1836–000]

Take notice that on October 6, 1995, PacifiCorp tenders for filing an amendment in the above-referenced docket.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

8. Wicor Energy Services, Inc.

[Docket No. ER96–34–000]

Take notice that on October 5, 1995, Wicor Energy Services, Inc. (Wicor) tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective no later than sixty (60) days from the date of its filing.

Wicor intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Wicor sells electric energy it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. Neither Wicor nor any of its affiliates are in the business of generating, transmitting, or distributing electric power.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

9. San Diego Gas and Electric Company

[Docket No. ER96–43–000]

Take notice that on October 11, 1995, San Diego Gas and Electric Company (SDG&E), tendered for filing a Network Integration Service Transmission tariff and a Point-to-Point Transmission Service tariff.

SDG&E proposes that these tariffs, as may be subject to refund or otherwise, become effective immediately. SDG&E is requesting any necessary waivers.

Copies of this filing have been served upon the California Public Utilities Commission, and other interested parties.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Power, Inc.

[Docket No. ER96–45–000]

Take notice that on October 10, 1995, Entergy Power, Inc. (EPI), tendered for filing a Purchase and Sale Agreement with The City of Columbia, Missouri Water & Light Department.

EPI requests an effective date for the Interchange Agreement that is one (1) day after the date of filing, and respectfully requests waiver of the notice requirements specified in § 35.11 of the Commission's Regulations.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

11. Alabama Power Company

[Docket No. ER96–46–000]

Take notice that on October 10, 1995, Alabama Power Company, tendered for

filing an amended Delivery Point Specification Sheet dated as of June 1, 1995, reflecting the charge contracted voltage levels for a delivery point for electricity delivery to the City of Piedmont, Alabama. The delivery point will continue to be served under the terms and conditions of the Agreement for Partial Requirements Service and Complementary Services between Alabama Power Company and the Alabama Municipal Electric Authority dated February 24, 1986, being designated as FERC Rate Schedule No. 165. The parties request an effective date of June 1, 1995.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Company

[Docket No. ER96–47–000]

Take notice that on October 6, 1995, Duke Power Company (Duke) tendered for filing a letter agreement dated September 28, 1995 between Duke and Southeastern Power Administration extending the transmission agreement between them.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

13. Wisconsin Power and Light Company

[Docket No. ER96–48–000]

Take notice that on October 10, 1995, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and Tennessee Power Company. WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of September 10, 1995.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER96–49–000]

Take notice that on October 10, 1995, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement between NMPC and Long Sault, Inc. (Long Sault). This Service Agreement specifies that Long Sault has signed on to and has agreed to the terms and conditions of NMPC's Power Sales Tariff designated as NMPC's FERC Electric Tariff, Original Volume No. 2. This Tariff, approved by FERC on April 15, 1994, and which has an effective date of March 13, 1993, will allow NMPC and Long Sault to enter into separately scheduled transactions under which NMPC will sell to Long Sault capacity and/or energy as the parties may mutually agree.

In its filing letter, NMPC also included a Certificate of Concurrence executed by the Purchaser.

NMPC requests an effective date of September 29, 1995. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Long Sault.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

15. Portland General Electric Company

[Docket No. ER96–50–000]

Take notice that on October 10, 1995, Portland General Electric Company (PGE), tendered for filing under FERC Electric Tariff, Original Volume No. 3, an executed Service Agreement between PGE and the Eugene Water & Electric Board.

Pursuant to 18 CFR 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR 35.3 to allow the executed service agreement to become effective October 1, 1995.

Copies of this filing were served upon the Eugene Water & Electric Board.

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

16. Jon F. Hanson

[Docket No. ID–2917–000]

Take notice that on October 4, 1995, Jon F. Hanson (Applicant) tendered for filing application under section 305(b) of the Federal Power Act to hold the following positions:

Director—Orange and Rockland Utilities, Inc.
Director—The Prudential Insurance Company of America

Comment date: November 3, 1995 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–26676 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–P

[Project Nos. 11556–000, et al.]

Hydroelectric Applications [Lake Dorothy Hydro, Inc., et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: Preliminary Permit.

b. Project No.: 11556–000.

c. Date filed: August 24, 1995.

d. Applicant: Lake Dorothy Hydro, Inc.

e. Name of Project: Lake Dorothy.

f. Location: In Tongass National Forest, at Lake Dorothy on Dorothy Creek, near Juneau, Alaska. Township 42 S, Range 70 E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Corry V. Hildenbrand, Lake Dorothy Hydro, Inc., 889 South Franklin, Juneau, AK 99801, (907) 463–6315.

i. FERC Contact: Michael Spencer at (202) 219–2846.

j. Comment Date: December 13, 1995.

k. Description of Project: The project would consist of: (1) Lake Dorothy, which has a 130,000-acre surface area; (2) a lake tap; (3) a 7-foot-diameter, 4,180-foot-long tunnel; (4) a powerhouse containing two generating units with a capacity of 26 MW and an average annual generation of 127 MWh; and (5) a 4.3-mile-long transmission line.

No new access road will be needed to conduct the studies.

The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $900,000.

l. Purpose of Project: Project power would be sold.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

2a. Type of Application: Subsequent License.

b. Project No.: 2523–007.

c. Date filed: August 12, 1993.

d. Applicant: N.E.W. Hydro, Inc.

e. Name of Project: Oconto Falls Hydro Project.

f. Location: On the Oconto River in Oconto County, near Oconto Falls, Wisconsin.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Charles A. Alsberg, N.E.W. Hydro, Inc., P.O. Box 167, 116 State Street, Neshkoro, WI 54960, (414) 293–4628.

i. FERC Contact: Angela Oliver (202) 219–2998.

j. Deadline Date: See standard paragraph D10.

k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis.

l. Description of Project: The Oconto Falls Project consists of: (1) A reservoir with a surface area of 166.5 acres and a total storage volume of 1,700 acre-feet at the normal maximum surface elevation of 729.7 feet (msl); (2) a 1,350-foot-long earth embankment with a crest width ranging from 15 feet to 60 feet, constructed of sand and gravel fill with reinforced concrete corewalls to bedrock; (3) a 110-foot-long by 28-foot-high non-overflow concrete gravity dam; (4) a 65-foot-long by 17-foot-high spillway, constructed of reinforced concrete keyed into bedrock, with (a) three, 11-foot-high by 20-foot-wide, manually operated Taintor gates and (b) an 11-foot-high by 5-foot-wide non-operational gate; (5) a 175-foot-long earth embankment with a crest width ranging from 15 feet to 60 feet, constructed of sand and gravel fill with reinforced concrete corewalls to bedrock; (6) an 86-foot-long by 72-foot-wide powerhouse constructed of reinforced concrete and stone masonry containing (a) a horizontal shaft Francis turbine rated at 600 horsepower (hp) at 28.5 feet of head, with a maximum hydraulic capacity of 253 cubic feet per second (cfs); (b) a horizontal shaft Francis turbine rated at 600 hp at 28.5 feet of head, with a maximum hydraulic capacity of 256 cfs; (c) a horizontal shaft Francis turbine rated at 450 hp at 28.5 feet of head with a maximum hydraulic capacity of 250 cfs; (d) two horizontal shaft generators rated at 480 kilowatts (kW); and (e) a horizontal shaft generator rated at 360 kW; and (7) appurtenant facilities. The dam and existing project facilities are owned by Wisconsin Electric Power Company, 231 W. Michigan, P.O. Box 2046, Milwaukee, Wisconsin 53201.

N.E.W. Hydro, Inc. proposes to (1) operate the project in a run-of-river mode and (2) implement a variety of environmental enhancement measures for fish, wildlife, and recreation.

m. Purpose of Project: Project power would be utilized by the applicant for sale to the local electric utility—Wisconsin Electric Power Company.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at N.E.W.'s office at P.O. Box 167, 116 State Street, Neshkoro, Wisconsin 54960, (414) 293–4628.

3a. Type of Application: Subsequent License.

b. Project No.: 11496–000.

c. Date filed: August 29, 1994.

d. Applicant: City of Oconto Falls.

e. Name of Project: Oconto Falls Hydro Project.

f. Location: On the Oconto River in Oconto County, near Oconto Falls, Wisconsin.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Honorable Lynn V. Heim, Mayor, 104 South Franklin Street, Oconto Falls, WI 54154, (414) 846–4505.

i. FERC Contact: Angela Oliver (202) 219–2998.

j. Deadline Date: See standard paragraph D10.

k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis.

l. Description of Project: The Oconto Falls Project consists of: (1) a reservoir with a surface area of 166.5 acres and a total storage volume of 1,700 acre-feet at the normal maximum surface elevation of 729.7 feet (msl); (2) a 1,350-foot-long earth embankment with a crest width ranging from 15 feet to 60 feet, constructed of sand and gravel fill with reinforced concrete corewalls to bedrock; (3) a 110-foot-long by 28-foot-high non-overflow concrete gravity dam; (4) a 65-foot-long by 17-foot-high spillway, constructed of reinforced concrete keyed into bedrock, with (a) three, 11-foot-high by 20-foot-wide, manually operated Taintor gates and (b) an 11-foot-high by 5-foot-wide non-operational gate; (5) a 175-foot-long earth embankment with a crest width ranging from 15 feet to 60 feet, constructed of sand and gravel fill with reinforced concrete corewalls to bedrock; (6) an 86-foot-long by 72-foot-wide powerhouse constructed of reinforced concrete and stone masonry containing (a) a horizontal shaft Francis turbine rated at 600 horsepower (hp) at 28.5 feet of head, with a maximum hydraulic capacity of 253 cubic feet per second (cfs); (b) a horizontal shaft Francis turbine rated at 600 hp at 28.5 feet of head, with a maximum hydraulic capacity of 256 cfs; (c) a horizontal shaft Francis turbine rated at 450 hp at 28.5 feet of head with a maximum hydraulic capacity of 250 cfs; (d) two horizontal shaft generators rated at 480 kilowatts (kW); and (e) a horizontal shaft generator rated at 360 kW; and (7) appurtenant facilities. The dam and existing project facilities are owned by Wisconsin Electric Power Company, 231 W. Michigan, P.O. Box 2046, Milwaukee, Wisconsin 53201.

The City of Oconto Falls proposes to (1) operate the project in a run-of-river mode and (2) implement a variety of environmental enhancement measures for fish, wildlife, and recreation.

m. Purpose of Project: Project power would be utilized by the applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: A4 and D10.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the City of Oconto Falls' office at 104 South Franklin Street, Oconto Falls, Wisconsin 54154, (414) 846–4505.

4a. Type of Application: New Major License.

b. Project No.: 2663–004.

c. Date Filed: May 12, 1995.

d. Applicant: Minnesota Power & Light Company.

e. Name of Project: Pillager Hydro Project.

f. Location: On the Crow Wing River in Cass and Morrison Counties near Pillager, Minnesota.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Christopher D. Anderson, Attorney, Minnesota Power & Light Company, 30 West Superior Street, Duluth, MN 55802, (218) 722–2641.

i. FERC Contact: Ed Lee (202) 219–2809.

j. Comment Date: December 11, 1995.

k. Status of Environmental Analysis: This application has been accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. Description of Project: The project consists of the following: (1) an existing reservoir with a surface area of 768 acres (ac) at the normal maximum surface elevation of 1199.25 feet National Geodetic Vertical Datum (NGVD); (2) an existing earth dike, located in a swale north of the dam, about 1,332 feet long with a maximum height of about 2 feet and an existing earth embankment section (the ''North Embankment''), about 225 feet long with a maximum height of about 25 feet, which includes a two foot-wide concrete corewall; (3) an existing reinforced concrete powerhouse, supported on a pile foundation, 98 feet long, 38 feet wide, and 35 feet high, containing: (a) an intake structure, consisting of 4 intake bays with steel trashracks, controlled by 3 timber gates, (b) two vertical Francis turbines, each manufactured by S. Morgan Smith and rated at 1,300 hp (or 975 kW), and (c) two existing General Electric generators, each rated at 760 kW (providing at total plant capacity of 1,520 kW); (4) an existing concrete gravity roll-way type dam composed of: (a) a gated section, about 357 feet long, equipped with 16 timber stop log gates, (b) a sluice gate section about 13 feet long equipped with a 4 feet wide sluice gate and a 6 feet by 6 feet log sluice gate; (5) an existing earth embankment section, about 223 feet long with a maximum height of about 30 feet; and (6) existing appurtenant facilities. No changes are being proposed for this major license. The applicant estimates the average annual generation for this project is 8,826 MWh. The dam and existing project facilities are owned by the applicant.

m. Purpose of Project: Project power is utilized in the applicant's power generation system.

n. This notice also consists of the following standard paragraphs: B1 and E1.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Minnesota Power & Light Company, 30 West Superior Street, Duluth, MN 55802 or by calling (218) 722–2641.

5a. Type of Application: Amendment of License.

b. Project No.: 20–017.

c. Date Filed: August 31, 1995.

d. Applicant: PacifiCorp.

e. Name of Project: Soda.

f. Location: On the Bear River in Caribou County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact:

Stanley A. Desousa, Director, Hydro Resources, PacifiCorp, 920 SW Sixth Avenue, Room 610 PSB, Portland, OR 97204, (503) 464–5343

Thomas H. Nelson, Stoel Rives, 900 SW Fifth Avenue, Suite 2300, Portland, OR 97204–1268, (503) 294–9281.

i. FERC Contact: Regina Saizan, (202) 219–2673.

j. Comment Date: November 27, 1995.

k. Description of the Request: The licensee requests that the license expiration date be accelerated from July 4, 2003 to October 1, 2001.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

6a. Type of Application: Major License.

b. Project No.: 11475–000.

c. Date filed: April 25, 1994.

d. Applicant: Central Vermont Public Service Corporation.

e. Name of Project: Carver Falls.

f. Location: On the Poultney River in Washington County, New York and Rutland County, Vermont.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791 (a)–825(r).

h. Applicant Contact: Mr. Robert de R. Stein, 77 Grove Street, Rutland, VT 05701, (802) 747–5552.

i. FERC Contact: Charles T. Raabe, (202) 219–2811.

j. Deadline Date: December 6, 1995.

k. Status of Environmental Analysis: The application is not ready for environmental analysis at this time—see standard paragraph D7.

l. Description of Project: The existing, operating project consists of: (1) A 34-foot-high, 455-foot-long concrete gravity dam, with flashboards 1.5 and 5.5 foot high; (2) a reservoir extending ⅜ mile upstream with a 10 acre surface area; (3) a 300-foot-long, 7-foot-diameter steel penstock that bifurcates to two 150-foot-long steel penstocks, 3-foot and 4-foot in diameter with surge tanks; (4) a powerhouse containing two S. Morgan Smith horizontal turbines with generating capacities of 600 kilowatts (kW) and 1,200 kW, respectively; and (5) appurtenant facilities. The project produces an average annual generation of 7,249,000 kWh.

m. Purpose of Project: Power generated is sold to Central Vermont Public Service Corporation customers.

n. This notice also consists of the following standard paragraphs: A2, A9, B1, and D7.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at 77 Grove Street, Rutland, VT 05701.

7a. Type of Application: Major License.

b. Project No.: 11478–000.

c. Date filed: May 9, 1994, and amended on April 21, 1995.

d. Applicant: Central Vermont Public Service Corporation.

e. Name of Project: Silver Lake.

f. Location: On the Sucker Brook in Addison County, Vermont.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Robert de R. Stein, 77 Grove Street, Rutland, VT 05701, (802) 747–5552.

i. FERC Contact: Charles T. Raabe, (202) 219–2811.

j. Deadline Date: December 6, 1995.

k. Status of Environmental Analysis: The application is not ready for environmental analysis at this time—see attached paragraph D7.

l. Description of Project: The existing, operating project consists of three separate developments: (1) The Silver Lake generating facility; (2) the Sucker Brook diversion facility; and (3) the Sugar Hill (Goshen) storage facility.

The Silver Lake development consists of: (1) An impoundment with a surface area of 110 acres; (2) a 30-foot-high, 280-foot-long earthfill and concrete buttress dam; (3) an 8-foot-long spillway weir; (4) a one-mile long, 5-foot-diameter steel penstock; (5) a concrete and brick powerhouse, containing one horizontal turbine/generating unit rated at 2,200 kilowatts; and (6) appurtenant facilities.

The Sucker Brook development consists of: (1) An impoundment with a surface area of 3 acres; (2) a 36-foot-high, 660-foot-long rolled earth embankment; (3) a 40-foot-long weir and a 20-foot-long weir; (4) an outlet structure at the left dam abutment leading to a 7,920-foot-long, 4-foot-diameter penstock to Silver Lake reservoir.

The Sugar Hill development consists of: (1) An impoundment with a surface area of 74 acres; (2) a 61-foot-high, 855-foot-long compacted earth embankment; and (3) an outlet structure near the left dam abutment leading into Sucker Brook.

The project produces an average annual generation of 6,443,000 kWh.

m. Purpose of Project: Power generated is sold to Central Vermont Public Service Corporation customers.

n. This notice also consists of the following standard paragraphs: A2, A9, B1, and D7.

o. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at 77 Grove Street, Rutland, VT 05701.

8a. Type of Application: Amendment to Project Design.

b. Project No: 10813–011.

c. Date Filed: September 25, 1995.

d. Applicant: Town of Summersville.

e. Name of Project: Summersville.

f. Location: On the Gauley River in Nicholas County, West Virginia, and would use surplus water from the U.S. Army Corps of Engineers' Summersville Dam.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: James B. Price, President, Noah Corporation, 120 Calumet Court, Aiken, SC 29803, (803) 642–2749.

i. FERC Contact: Mohamad Fayyad, (202) 219–2665.

j. Comment Date: December 4, 1995.

k. Description of Amendment: Licensee's proposal consists of the following design changes: (1) Installing 2 generating units with a total installed capacity of 80 MW, instead of the licensed four units with a total capacity of 80 MW, and (2) extending the project's transmission line about 9.3 miles. The change in project design would result in connecting the turbines to only one existing outlet instead of all three outlets of the Corps' dam. The proposed transmission line alignment will be to the south to reach an Appalachian Power Company substation. This proposed alignment would require the clearing of about 75 acres of woods.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

9a. Type of filing: Notice of Intent to File Application for New License.

b. Project No.: 2661.

c. Date filed: September 18, 1995.

d. Submitted By: Pacific Gas and Electric Company, current licensee.

e. Name of Project: Hat Creek.

f. Location: On the Hat Creek, in Shasta County, California.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's Regulations.

h. Effective date of original license: May 1, 1995.

i. Expiration date of original license: September 30, 2000.

j. The project consists of the Hat Creek No. 1 and the Hat Creek No. 2 developments. The Hat Creek No. 1 consists of a dam and reservoir, a penstock, a powerhouse, and a transmission line. The Hat Creek No. 2 development consists of a dam, Baum Lake and Crystal Lake, Concrete flumes, a penstock, a powerhouse, and a transmission line. The project has a total installed capacity is 20,000 kW.

k. Pursuant to 18 CFR 16.7, information on the project is available at:

Through October 20 1995, 201 Mission Street, Room 1011, San Francisco, CA 94105

Beginning October 23, 1995, 245 Market Street, Room 1103, San Francisco, CA 94105.

Contact: John Gourlev at (415) 972–5772.

l. FERC contact: Hector M. Perez, (202) 219–2843.

m. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 30, 1998.

10a. Type of Application: Major License.

b. Project No.: 11077–001.

c. Date filed: May 31, 1994.

d. Applicant: Alaska Power and Telephone Company.

e. Name of Project: Goat Lake.

f. Location: At the existing Goat Lake, near Skagway, Alaska. Sections 10, 11, 14, 15, and 16, Township 27 South, Range 60 West, CRM.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Robert S. Grimm, President, Alaska Power & Telephone Co., P.O. Box 222, Port Townsend, WA 98368, (206) 385–1733.

i. FERC Contact: Hector M. Perez, (202) 219–2839.

j. Deadline for comments, recommendations, terms and conditions, and prescriptions: December 14, 1995.

k. Status of Environmental Analysis: This application is now ready for environmental analysis at this time—see attached paragraph D10.

l. Brief Description of Project: The proposed project would consist of: (1) Goat Lake, with a surface area of 204 acres and a storage capacity of 5,460 acre-feet at surface elevation of 2,915 feet; (2) a submerged wedge wire screen intake at elevation 2,875 feet; (3) a 600-foot-long and 30-inch-diameter steel or HDPE siphon with a vacuum pump assembly; (4) a 6,200-foot-long and 22-inch-diameter steel penstock; (5) a powerhouse containing a 4-MW unit; (6) a 24.9-kV and 3,400-feet-long transmission line; and (7) other appurtenances.

m. This notice also consists of the following standard paragraph: A4 and D10.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

11a. Type of Application: Preliminary Permit.

b. Project No.: 11559–000.

c. Date filed: October 2, 1995.

d. Applicant: City of Oglesby, Illinois.

e. Name of Project: Marseilles Project.

f. Location: On the Illinois River, near Marseilles, LaSalle County, Illinois.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Charles J. Tyburk, Power Consultants, Inc., 900 National Parkway, Suite 280, Schaumburg, IL 60173, (708) 605–1164.

i. FERC Contact: Mary Golato, (202) 219–2804.

j. Comment Date: December 20, 1995.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers' Marseilles Lock and Dam and would consist of: (1) An existing intake canal; (2) a new powerhouse housing two new turbine-generator units with a combined capacity of 6,840 kilowatts; (3) an existing transmission line 400 feet long; and (4) appurtenant facilities. The estimated average annual generation will be 48 gigawatthours. The project energy would be used by the applicant or sold to utilities or private industry. The cost of the studies is $150,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the

competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' or ''COMPETING APPLICATION;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review,

Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (December 5, 1995 for Project Nos. 2523–007 and 11496–000; December 14, 1995 for Project No. 11077–000). All reply comments must be filed with the Commission within 105 days from the date of this notice (January 19, 1996 for Project Nos. 2523–007 and 11496–000; January 29, 1996 for Project No. 11077–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: October 23, 1995, Washington, D. C.

Lois D. Cashell,

Secretary.

[FR Doc. 95–26677 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP95–408–000 and RP95–408–001]

Columbia Gas Transmission Corporation; Notice of Technical Conference

October 23, 1995.

Take notice that Commission Staff will convene an informal technical conference in this proceeding on October 27, 1995, 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 NE., Washington, DC.

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 have to intervene and receive intervenor status pursuant to the Commission's Regulations, 18 CFR 385.214.

For additional information, contact Thomas J. Burgess at (202) 208–2058 or David R. Cain at (202) 208–0917.

Lois D. Cashell,

Secretary.

[FR Doc. 95–26663 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1960 Wisconsin]

Dairyland Power Cooperative; Notice of Scoping Pursuant to the National Environmental Policy Act of 1969

October 23, 1995.

Pursuant to the Energy Policy Act of 1992, and as part of the license application, the Dairyland Power Cooperative (Dairyland) intends to prepare an Environmental Assessment (EA) to file with the Federal Energy Regulatory Commission for the Flambeau Hydroelectric Project. Two public Scoping meetings will be held, pursuant to the National Environmental Policy Act of 1969, to identify the scope of environmental issues that should be analyzed in the EA. At the scoping meetings, Dairyland will (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially qualified data, on the resources at issue; and (3) encourage statements from experts and the public on issues that should be analyzed in the EA.

All interested individuals, organizations, and agencies are invited and encouraged to attend and assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

To help focus the discussions, a scoping document was sent out on September 29, 1995, as part of the Initial Stage Consultation Document (ISCD). Copies of the Scoping Document and ISCD will also be available at the meetings.

Dairyland will conduct a site visit and two scoping meetings on November 14, 1995:

♦ The site visit will begin at 10:00 a.m. at the Flambeau Hydro Station in Ladysmith, Wisconsin.

♦ A scoping meeting for federal, state and local resource agencies will be held in the Board Room, County Court House, Ladysmith, Wisconsin at 2:00 p.m.

♦ The evening scoping meeting will be held at 7:00 p.m. in the Board Room, County Court House, Ladysmith, Wisconsin.

The site visit and scoping meetings are open to all interested parties.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because these meetings will be NEPA scoping meetings, the Commission will not conduct another NEPA scoping meeting when the application and EA are filed with the Commission prior to February 28, 1999. Instead, Commission staff will attend the meetings held on November 14, 1995.

The meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the proceedings on the Flambeau Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within the allotted time, may submit written statements for inclusion in the public record.

Written scoping comments may also be mailed to George L. Johnston, Dairyland Power Cooperative, P.O. Box 817, La Crosse, WI 54601. All correspondence should clearly show the following caption on the first page: Scoping Comments, Flambeau Project, FERC No. 1960, Wisconsin.

For further information, please contact:

♦ George Johnston at (608) 787–1322 (Dairyland Power Cooperative),

♦ David Carroll at (608) 787–1318 (Dairyland Power Cooperative), or

♦ Peter Leitzke at (202) 219–2803 (Federal Energy Regulatory Commission).

Lois D. Cashell,

Secretary.

[FR Doc. 95–26662 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–374–001]

Gas Research Institute; Notice of Refund Report

October 23, 1995.

Take notice that on October 18, 1995, the Gas Research Institute (GRI) filed a report summarizing its 1994 Tier 1 refunds made to its pipeline members. GRI states that the refunds, totaling $12,410,537 to thirty pipelines, were made in accordance with the Commission's October 13, 1995, directive contained in Opinion No. 402 (73 FERC ¶ 61,073).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before October 30, 1995. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 95–26664 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–28–000]

Greeley Gas Company; Notice of Application

October 23, 1995.

Take notice that on October 18, 1995, Greeley Gas Company (Greeley), Three Lincoln Centre, 5430 LBJ Freeway, Dallas, Texas 75265, filed in Docket No. CP96–28–000 an application pursuant to Section 7(f) of the Natural Gas Act for a service area determination, all as more fully set forth in the application on file with the Commission and open to public inspection.

Greeley requests a service area determination for its Eastern Kansas Division System (System) in Missouri and Kansas. It is stated that the System consists of Linn and Bourbon Counties, Kansas (with the exception of the City of Fort Dodge), and Bates County, Missouri. It is stated that the System is essentially one integrated local distribution system, even though its facilities, consisting primarily of 4-inch pipe or less, cross state lines. It is explained that the System serves 2,050 residential and commercial customers and no industrial customers. Greeley states that it makes no sales for resale. It is asserted that all of Greeley's sales are regulated by either the Missouri or Kansas Public Service Commissions.

Greeley also requests that the System be treated as a local distribution company for purposes of Section 311 of the Natural Gas Policy Act. Greeley requests a waiver of all reporting and accounting requirements and rules and regulations which are ordinarily applicable to natural gas companies. Finally, Greeley requests a waiver of the Commission's reporting and accounting requirements for its entire system, including the filing of a Form 2A in 1996.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 13, 1995, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Greeley to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 95–26666 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP95–194–001]

Northern Border Pipeline Company; Notice of Amendment

October 23, 1995.

Take notice that on October 13, 1995, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP95–194–001, an amendment to its pending application in Docket No. CP95–194–000 for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations. Northern Border seeks authorization to construct and operate certain pipeline and compression facilities for the expansion and extension of Northern Border's system to transport gas on a firm basis on behalf of 21 shippers and an advance determination that the project's costs may be rolled-in with existing facilities' costs, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Specifically, Northern Border requests authority to construct and operate facilities consisting of: (1) Approximately 34.6 miles of 42-inch pipeline loop, in two sections, on its existing 42-inch pipeline; (2) approximately 147.0 miles on 36-inch pipeline loop on its existing 30-inch pipeline; (3) approximately 223.7 miles of 36-inch pipeline extending from the terminus of Northern Border's existing pipeline at Harper, Iowa to Manhattan, Illinois; (4) 19.4 miles of 30-inch pipeline, in two sections, from the end of the proposed 36-inch pipeline to two points of interconnection with Peoples Gas Light and Coke Company near Manhattan, Illinois and Lemont, Illinois; (5) five new 35,000 horsepower (HP) compressor stations on the existing 42-inch pipeline in Montana, North Dakota, South Dakota, and Minnesota; (6) a second 20,000 HP unit added at four existing compressor stations on the existing 42-inch pipeline in North Dakota, South Dakota, and Minnesota; (7) a new 20,000 HP compression station on the existing 42-inch pipeline in North Dakota; (8) a new 6,000 HP compressor station on the existing 30-inch pipeline in Iowa; (9) a new compressor station on the proposed 36-inch pipeline extension in Iowa, consisting of two 6,000 HP units; (10) nine meter stations at nine new delivery points; and (11) other appurtenant facilities. In addition, Northern Border proposes to install interconnection facilities (tees and side valves) along the proposed extension near intersections with or in close proximity to other pipeline systems in order to accommodate requests for future delivery points.

Based on the facilities to be installed, the Port of Morgan, Montana to Ventura, Iowa segment will have a receipt capacity of 2,375,800 Mcf per day; the Ventura, Iowa to Harper, Iowa segment will have a receipt capacity of 1,301,300 Mcf per day; and the pipeline extension between Harper, Iowa and Manhattan, Illinois will have a receipt capacity of 648,100 Mcf per day. Northern Border states that the estimated cost of the proposed facilities is $796.8 million and will be financed through a combination of debt and equity. The proposed in-service date of the facilities is Spring 1998.

Northern Border proposes to maintain its cost of service ratemaking methodology and roll-in to Rate Schedule T–1 (Northern Border's Part 284 general firm transportation rate schedule) the cost of the new facilities with its existing system costs. Northern Border maintains that the aggregation of the proposed costs with existing facility costs will result in a unit cost under Rate Schedule T–1 rate that is less than the present unit cost including fuel. Northern Border also states that the rolling-in of costs is consistent with the Commission's Statement of Policy in Docket No. PL94–4–000.

Northern Border requests a one-time waiver, pursuant to 18 CFR 385.101(e), of Subsection 4.83 Rate Schedule T–1 in Northern Border's FERC Gas Tariff, First Revised Volume No. 1, which requires the calculation of an average monthly rate base. Instead of calculating the average monthly rate base using the beginning and end-of-month balances as is currently in the tariff, Northern Border seeks to use a daily weighted average balance for the in-service month of the proposed facilities.

Northern Border states that it held an open season between July 17, 1995 and August 11, 1995 for the proposed capacity expansion and system extension. Northern Border asserts that the open season resulted in 21 qualified shippers.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before November 13, 1995, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 95–26667 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1739–000]

Cogentrix Energy Power Marketing, Inc.; Notice of Issuance of Order

October 24, 1995.

On September 11, 1995, Cogentrix Energy Power Marketing, Inc. (CEPM) submitted for filing a rate schedule under which CEPM will engage in wholesale electric power and energy transactions as a marketer. CEPM also requested waiver of various Commission regulations. In particular, CEPM requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by CEPM.

On October 13, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CEPM should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, CEPM is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CEPM's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 13, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street NE., Washington, D.C. 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–26673 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1433–000]

Proler Power Marketing Inc., Notice of Issuance of Order

October 24, 1995.

On July 25, 1995, as amended September 12, 1995, Proler Power Marketing Inc. (Proler) submitted for filing a rate schedule under which Proler will engage in wholesale electric power and energy transactions as a marketer. Proler also requested waiver of various Commission regulations. In particular, Proler requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Proler.

On October 16, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Proler should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Proler is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Proler's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 15, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–26675 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR95–7–000]

Tekas Corporation; Notice of Rescheduling of Settlement Conference

October 23, 1995.

Take notice that an informal settlement conference in the above-captioned proceeding has been rescheduled from Friday, November 3, 1995 to Monday, November 6, 1995. The rescheduled meeting will be held at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Attendance will be limited to the parties and staff. For additional information, please contact Michael J. Ahern at (202) 208–0527.

Lois D. Cashell,

Secretary.

[FR Doc. 95–26665 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER95–1459–000]

Western States Power Providers, Inc.; Notice of Issuance of Order

October 24, 1995.

On July 31, 1995, Western States Power Providers, Inc. (WSPP) submitted for filing a rate schedule under which WSPP will engage in wholesale electric power and energy transactions as a marketer. WSPP also requested waiver of various Commission regulations. In particular, WSPP requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by WSPP.

On October 10, 1995, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by WSPP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, WSPP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of WSPP's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is November 9, 1995.

Copies of the full text of the order are available from the Commission's Public Reference Branch, 888 First Street, N.E. Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 95–26674 Filed 10–26–95; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5230–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 9, 1995 Through October 13, 1995 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1995 (60 FR 19047).

Draft EISs

ERP No. D–AFS–K65175–CA Rating EC2, Pilot Creek Watershed Land Management Plan, Implementation, Hayfork Adaptive Management Area,

Six Rivers National Forest, Mad River Ranger District, Humboldt and Trinty Counties, CA.

Summary: EPA expressed environmental concerns regarding the projects potential impacts to air and water quality, fish and wildlife and sensitive habitats. EPA recommended that these issues be fully assessed in the final EIS.

ERP No. D–FHW–D40279–DC Rating LO, Canal Road Entrance to the Georgetown University Improvements, Reconstruction between Whitehurst Freeway and Foxhall Road, Washington, DC.

Summary: EPA expressed a lack of objections to the project. Of the four build alternatives, EPA endorsed alternative 3B, a grade-separated interchange that would shift the westbound lanes of Canal Road to the north and elevate them.

ERP No. D–FHW–E40761–NC Rating EC2, US 64 Bypass Transportation Improvements Project, from I–440 to US 64 west of Wendell and Eastern Wake Expressway from existing US 64 to NC–1007 (Poole Road), Funding and COE Section 404 Permit, Wake County, NC.

Summary: EPA expressed environmental concerns regarding the environmental impacts of the loss of natural areas and the potential long-term degradation of aquatic areas related to the crossing of numerous streams.

ERP No. D–FHW–K40213–NV Rating EO2, Tier 1—DEIS—Northern and Western Las Vegas Beltway Corridor Location Study, Site Selection for Funding and Land Transfer or Right-of-Way Grants, Clark County, NV.

Summary: EPA expressed environmental objections to the potential environmental impacts to air quality and asked for additional information regarding traffic volume analyses, air quality conformity and NEPA–404 MOU integration, as well as environmental justice, floodplain management, pollution prevention and water quality.

ERP No. DS–BLM–K03006–CA Rating EC2, Cajon Crude Oil Pipeline Project, Construction, Operation and Transportation, New Information concerning the Construction of a Shorter Pipeline, Granting of Right-of-Way Permit, San Bernardino County, CA.

Summary: While reduced in scope EPA continued to have environmental concerns regarding impacts to water quality, riparian habitat and biodiversity. EPA recommended that these issues be fully assessed in the final EIS.

Final EISs

ERP No. F–AFS–L65230–ID Grays Ranger Timber Sales, Implementation, Caribou National Forest, Soda Springs Ranger District, Caribou County, ID.

Summary: EPA provided no formal written comments. EPA had no objection to the preferred alternative as described in the EIS.

ERP No. F–AFS–L65231–ID Charlie Tyson Ecosystem Management Project, Implementation, Idaho Panhandle National Forests, St. Maries Ranger District, Charlie Creek, Benewah County, ID.

Summary: EPA provided no formal written comments. EPA had no objection to the preferred alternative as described in the EIS.

ERP No. F–BIA–J65231–MT Yellowstone Pipe Line Easement, Construction and Operation, Renewal of Right-of-Way (ROW) Grant for Easement across the Flathead Indian Reservation, Approval of Trust and Allotted Lands and COE Section 404 Permit, Missoula, Lake and Sanders Counties, MT.

Summary: EPA agreed with the Bureau of Indian Affairs' (BIA) selection of the Modified Existing Route Alternative which would reduce the potential for spills of petroleum products to surface and ground water. EPA encouraged the BIA and the Confederated Salish and Kootenai Tribes to implement this alternative.

ERP No. F–DOA–K36112–AS Aua Watershed Plan, Flood Prevention and Watershed Protection, Funding, COE Section 404 Permit and Right-of-Way Grant, Tutuila Island, Ma'oputasi County, AS.

Summary: Review of the final EIS was not deemed necessary. No formal comment letter was sent to preparing agency.

ERP No. F–DOE–G06006–NM Dual Axis Radiographic Hydrodyamic Test (DARHT) Facility, Construction and Operation, Approval of Operating Permit, Los Alamos National Laboratory (LANL), Los Alamos and Santa Fe Counties, NM.

Summary: EPA had no objection to the action as proposed.

ERP No. F–DOE–L08050–WA Puget Power Northwest Washington Electric Transmission Project, Construction and Operation, Whatcom and Skagit Counties, WA.

Summary: EPA provided no formal written comments. EPA has no objection to the preferred alternative as described in the EIS.

ERP No. F–NCP–D61040–DC Washington, D.C. New Sports and Entertainment Arena, Construction and Operation, Modern Multi-Purpose Arena, Eight potential Sites, Washington, DC.

Summary: EPA had no objection to the action as proposed.

ERP No. FR–AFS–L65210–ID Revised Final—West Fork Papoosa Timber Sale, Implementation, Clearwater National Forest, Powell Ranger District, Idaho County, ID.

Summary: EPA provided no formal written comments. EPA had no objection to the preferred alternative as described in the EIS.

ERP No. FS–AFS–L65181–WA East Curlew Creek Analysis Area Harvesting Timber and Road Construction, Updated Information, Portion of Profanity Roadless Area, Colville National Forest, Republic Ranger District, Ferry County, WA.

Summary: EPA provided no formal written comments. EPA has no objection to the preferred alternative as decribed in the EIS.

Regulations

ERP No. R–NRC–A00170–00 10 CFR Parts 2, 50 and 51—Decommissioning of Nuclear Power Reactors.

Summary: EPA concurred with the proposed rule and supports the expanded public notification and participation procedures.

Dated: October 24, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–26743 Filed 10–26–95; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–5230–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed October 16, 1995 Through October 20, 1995 Pursuant to 40 CFR 1506.9.

EIS No. 950472, DRAFT EIS, AFS, CA, Trinity Alps Wilderness Plan, Implementation, Shasta-Trinity National Forest, Klamath National Forest and Six Rivers National Forest, Humboldt, Siskiyou and Trinity Counties, CA, Due: January 26, 1996, Contact: Karyn L. Wood (916) 246–5222.

EIS No. 950473, DRAFT EIS, FHW, PA, Marshalls Creek Traffic Relief Study, Construction, Connector between PA–209, Business 209 and PA–402, COE Section 404 and NPDES Permits, Monroe County, PA, Due: December

18, 1995, Contact: Manual Mark (717) 782–3461.

EIS No. 950474, DRAFT EIS, COE, KY, TN, Fort Campbell Rail Connector, Construction between the Government-Owned Line Railroad and CSX Line, Hopkinsville and Clarkville, Christian Co., KY and Montgomery and Stewart Counties, TN, Due: December 11, 1995, Contact: William Ray Haynes (502) 582–6475.

EIS No. 950475, FINAL EIS, DOE, WA, OR, Resource Contingency Program, Construction and Operation, Site Specific, Hermiston Power Project, Umattilla County, OR, Due: November 27, 1995, Contact: Rob Diffely (503) 230–4213.

EIS No. 950476, DRAFT EIS, FRC, OR, Leaburg-Walterville Hydroelectric (FERC. No. 2496) Project, Issuance of New License (Relicense), Funding and Land Trust Acquisition, McKenzie River, Lane County, OR, Due: December 26, 1995, Contact: Edward R. Meyer (202) 208–7998.

EIS No. 950477, DRAFT EIS, AFS, OR, Upper Deschutes Wild and Scenic River and State Scenic Waterway, Management Plan, Implementation, Deschutes National Forest, Deschutes County, OR, Due: December 15, 1995, Contact: Mollie Chaudet (503) 383–4769.

EIS No. 950478, FINAL EIS, AFS, MT, Two Joe Timber Sales, Implementation, Lolo National Forest, Superior Ranger District, St. Regis River, Mineral County, MT, Due: November 27, 1995, Contact: Terry Egenhoff (406) 822–4233.

EIS No. 950479, DRAFT EIS, FRC, GA, SC, North Georgia Hydroelectric Project, (FERC. No. 2354–018) Issuance of Relicensing, Savannah River Basin, Tallulah, Tugalo and Chattooga Rivers, GA and SC, Due: December 26, 1995, Contact: Joe Davis (202) 219–2865.

EIS No. 950480, DRAFT EIS, FHW, WI, WI–10 Highway Corridor, Construction between Village of Fremont and WI–45 near Appleton Urban Area, Funding and COE Section 404 Permit, Winnebago, Outagamic, Waupaca and Waushara Counties, WI, Due: December 11, 1995, Contact: Johnny M. Gerbitz (608) 829–7500.

EIS No. 950481, DRAFT EIS, AFS, CA, NV, North Shore Ecosystem Management Project, Implementation, Lake Tahoe Basin Management Unit, Washoe and Placer County, CA and NV, Due: December 19, 1995, Contact: Joe Oden (916) 573–2600.

EIS No. 950482, FINAL EIS, FHW, CA, CA–150/Rincon Creek Two Bridges Replacement, 1.0 mile east of CA–101 to 1.9 miles east of CA–101, Funding, Santa Barbara and Ventura Counties, CA, Due: November 27, 1995, Contact: John R. Schultz (916) 498–5867.

EIS No. 950483, FINAL EIS, NRC, UT, Muddy Creek Orderville Watershed Plan, Offsite Salt and Sediment Damage to Water Quality in the Virgin River and the Colorado River, Wildlife Habitat and Rangeland Productivity Enhancements, Approvals and Funding, Kane County, UT, Due: November 27, 1995, Contact: Philip L. Nelson (801) 524–5050.

EIS No. 950484, DRAFT EIS, BOP, HI, Honolulu, Hawaii Detention Facility, Construction and Operation, Site Selection, Fort Armstrong, Ualena Street, Lagoon Drive, Elliott Street, HI, Due: December 11, 1995, Contact: David J. Dorworth (202) 514–6470.

EIS No. 950485, DRAFT EIS, COE, LA, Programmatic EIS—Marsh Management Project, Hydrologic Manipulation, COE Section 10 and 404 Permit Issuance, Coastal Wetland of Louisiana a part of the Coastal Wetlands Planning, Protection and Restoration Act (CWPPRA) River Basins, LA, Due: December 26, 1995, Contact: Robert Bonsenberg (504) 862–2522.

EIS No. 950486, FINAL EIS, DOE, TX, ID, NV, SC, TN, Programmatic EIS—Tritium Supply and Recycling Facilities Siting, Construction and Operation, Implementation, Idaho National Engineering Laboratory, ID; Nevada Test Site, NV; Oak Ridge Reservation, TN; Pantex Plant, TX or Savannah River Site, SC, Due: November 27, 1995, Contact: Stephen M. Sohinki (202) 586–0838.

EIS No. 950487, DRAFT EIS, DOE, TN, SC, VA, Disposition of Surplus Weapons-Usable Highly Enriched Uranium (HEU) to Low Enriched Uranium (LEU), Site Selection, Y–12 Plant Oak Ridge, TN; Savannah River Site, Aiken, SC; Babcock & Wilcox Naval Nuclear Fuel Division, Lynchburg, VA and Nuclear Fuel Services Plant, Erwin, TN, Due: December 11, 1995, Contact: J. David Nulton (202) 586–4513.

EIS No. 950488, DRAFT EIS, SFW, TX, Balcones Canyonlands Conservation Plan, Issuance of a Permit to Allow Incidental Take of Gold-Cheeked Warbler, Black-capped Vireo and Six Karst Invertebrates, Travis County, TX, Due: December 11, 1995, Contact: Joseph E. Johnston (512) 490–0063.

EIS No. 950489, DRAFT EIS, COE, IN, Indiana Harbor and Canal Dredging and Confined Disposal Facility, Construction and Operation, Comprehensive Management Plan, East Chicago, Lake County, ID, Due: February 01, 1996, Contact: Keith Ryder (312) 353–7795.

Dated: October 24, 1995.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 95–26742 Filed 10–26–95; 8:45 am]

BILLING CODE 6560–50–U

[FRL–5320–9]

Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to grant a case-by-case extension.

SUMMARY: EPA is proposing to grant the request from Abbott Laboratories, Wichita, Kansas for a case-by-case extension of the RCRA land disposal restriction (LDR) treatment standards applicable to waste displaying the ignitable characteristic high total organic carbon (TOC) (EPA Hazard Code D001). The extension would be granted for a one year period beginning September 19, 1995, and allow the continued injection of the formerly ignitable, high TOC wastestream into Abbott's Underground Injection Control (UIC) Class I Nonhazardous Waste injection well.

This case-by-case extension is only for the waste code impacted by the September 19, 1994 Land Disposal Restrictions, Phase II. This action responds to a petition submitted under 40 CFR 148.4 according to procedures set out in 40 CFR 268.5, which allow any person to request that the Administrator grant an extension. To be granted such a request, the applicant must demonstrate that the petitioner has entered into a binding contractual commitment to construct or otherwise provide adequate alternative treatment, recovery, or disposal capacity for the petitioner's waste. If this proposed action is finalized, Abbott Laboratories would be allowed to continue to land dispose of its ignitable characteristic high total organic carbon (TOC) (EPA Hazard Code D001) until September 19, 1996, without being subject to the land disposal restrictions applicable to such wastes.

DATES: Comments on this notice must be received on or before November 27, 1995.

ADDRESSES: The public must send an original and two copies of their comments to Environmental Protection Agency, Region 7, Water and Pesticide Division, Drinking Water Supply

Branch, 726 Minnesota Ave., Kansas City, Kansas 66101. The docket is available for review during normal business hours, 8:00 a.m. through 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For information contact Robert L. Morby, Chief Drinking Water/Groundwater Management Branch, EPA-Region 7 or telephone (913) 551–7682.

SUPPLEMENTARY INFORMATION:

I. Background

A. Congressional Mandate

Congress enacted the Hazardous and Solid Waste Amendments (HSWA) of 1984 to amend the Resource Conservation and Recovery Act (RCRA), to impose additional responsibilities on persons managing hazardous wastes. Among other things, HSWA required EPA to develop regulations that would impose restrictions on the land disposal of hazardous wastes. In particular, Sections 3004 (d) through (g) prohibit the land disposal of certain hazardous wastes by specified dates in order to protect human health and the environment; except that wastes that meet treatment standards established by EPA are not prohibited and may be land disposed. Section 3004(m) requires EPA to set ''levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized.''

In developing such a broad program, Congress recognized that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment, may not be available by the applicable statutory effective dates. Section 3004(h)(1) authorizes EPA to grant a variance (based on the earliest dates that such capacity will be available, but not to exceed two years) from the effective date, which would otherwise apply to specific hazardous wastes. In addition, under Section 3004(h)(2), EPA is authorized to grant an additional capacity extension of the applicable deadline on a case-by-case basis for up to one year. Such an extension is renewable once for up to one additional year. On November 7, 1986, EPA published a final rule (51 FR 40572) establishing the regulatory framework to implement the land disposal restrictions program, including the procedures for submitting case-by-case extension applications. On July 28, 1988, EPA published a final rule (53 FR 28118) establishing restrictions and requirements for Class I hazardous waste injection wells, including framework for the no-migration petition process and allowing case-by-case extensions under § 148.4 following § 268.5 procedures. On September 19, 1994, EPA finalized changes to the land disposal restrictions program that alter how some materials, including toxic characteristic wastes are disposed in Class I nonhazardous waste injection wells. The rule provided more consistency to the land disposal restriction program by setting a single set of requirements—universal treatment standards. Among other things, this final rule required that hazardous constituents in two types of characteristic wastes, high total organic carbon (TOC) ignitable liquids (D001), and halogenated pesticide wastes that exhibit the toxicity characteristic (D012–D017), be fully treated before those wastes are disposed, unless the wastes are disposed in an injection well that has a no-migration variance.

The Agency believes that treatment of these particular wastestreams is warranted. The D001 wastes are ignitable with potentially high concentrations of hazardous constituents, and the pesticide wastes contain particularly toxic constituents.

B. Demonstrations Requirements Under 40 CFR 268.5 for Case-by-Case Extension

1. Summary of Requirements

Case-by-case extension applications must satisfy the requirements outlined in 40 CFR 268.5. These requirements include those specified in RCRA section 3004(h)(3): The applicant must have entered into a binding contractual commitment to construct or otherwise provide alternative capacity [40 CFR 268.5 (a)(2)], but due to circumstance beyond applicants control, this alternative capacity cannot reasonably be made available by the applicable effective date. [40 CFR 268.5 (a)(3)].

In addition, EPA has established by regulation the following requirements: In § 268.5(a)(1), the applicant must make a good-faith effort to locate and contract with treatment, recovery, or disposal facilities nationwide to manage its waste in accordance with the effective date of the applicable restriction. In § 268.5(a)(3), due to circumstances beyond the applicant's control, such alternative capacity cannot reasonably be made available by the applicable effective date. This demonstration may include a showing that the technical and practical difficulties associated with providing the alternative capacity will result in the capacity not being available by the applicable effective date.

The applicant must also show that the capacity being constructed or otherwise provided by the applicant will be sufficient to manage the entire quantity of waste that is the subject of the application [§ 268.5(a)(4)]. In section 268.5(a)(5), the applicant must provide a detailed schedule for obtaining operating and construction permits or an outline of how and when alternative capacity will be available. Further, the applicant has arranged for adequate capacity to manage its waste during an extension, and has documented the location of all sites at which the waste will be managed [§ 268.5(a)(6)].

If the waste would be disposed of in a surface impoundment or landfill during the period of the extension, § 268.5(a)(7) states, any waste managed in a surface impoundment or landfill during the extension period will meet the requirements. After an applicant has been granted a case-by-case extension, he is required to keep EPA informed of the progress being made towards obtaining adequate alternative treatment, recovery, or disposal capacity.

Any change in the demonstration made in the petition must be immediately reported to the Agency [40 CFR 268.5(f)]. Also, at specified intervals, he must submit progress reports which describe the progress being made towards obtaining alternative capacity, identify any delay or possible delay in developing capacity, and describe the mitigating actions being taken [40 CFR 268.5(g)].

2. Commitment to Provide Protective Disposal Capacity

EPA believes that the applicant has shown the necessary commitment to provide protective disposal capacity within the meaning of RCRA section 3004 (h)(3) and 40 CFR 268.5 (a)(1). These provisions require an applicant to make two showings: (1) That the proposed ''disposal capacity'' is ''protective of human health and the environment'', and (2) that the applicant has made ''a binding contractual commitment to construct or otherwise provide such capacity.'' The Agency construes the first phrase to mean a no migration unit. No migration findings in 40 CFR parts 148 and 268 provide for a variance to the land disposal prohibition accordingly, are functionally equivalent to compliance with treatment standards under part 268.

With respect to showing a ''binding contractual commitment'', where applicants have already constructed

(and, indeed, are operating) the disposal unit at issue, EPA interprets the regulatory language to require objective indicia of applicant's commitment to provide this capacity. EPA approach is in line with similar practical interpretations of regulatory language. For example, the Agency has construed the term ''commenced construction'' to include facilities which have completed construction, but did not commence operations. See 40 FR 2344, 2346 (January 8, 1981).

EPA does not believe that the simple filing of a no migration petition provides sufficient indication that the applicant will provide protective disposal capacity. Where an applicant seeks to provide treatment capacity, EPA can rely on design criteria as a basis to predict that the treatment capacity will provide for treatment in compliance with 40 CFR part 260. Because the Agency was less certain that the no migration finding would be forthcoming in a given circumstance, EPA had previously stated that a no migration petition and the Agency's failure to process such petition before an effective date cannot itself provide a basis for case-by-case extensions. See 53 FR 28124 (July 20, 1988). EPA has reevaluated this interpretation and believes that where the Agency has concluded that a no migration petition is sufficient to propose a no migration finding, this proposed finding is legitimate indicia that the applicant is, in good faith, committed to providing protective disposal capacity for purposes of 40 CFR 268.5. See 55 FR 22520.

If EPA were to require an actual no migration finding as a condition for a case-by-case extension, such a reading would effectively read the phrase ''protective disposal capacity'' out of RCRA 3004(b)(3) in violation of all standard tenets of statutory construction, which require that all terms be given effect when possible. The term would be read out of the statute, because once the no migration petition was granted, there is no need to seek a case-by-case extension as wastes could be disposed directly in the unit. In addition, case-by-case extensions necessarily involve predictions about future capacity. For example, such predictive findings specifically include the need for permits that may not yet be issued. See 40 CFR 286.5(a)(5).

The proposed case-by-case extensions is based on objective indicia of the applicants' commitment to provide disposal capacity. First, the petitioner's application is based on an already constructed well. Thus, the petitioner's commitment is more definitive than petitions based solely on contracts to construct such capacity. [See RCRA section 3004(b)(3)] Secondly, the injection well has been permitted under both RCRA and SDWA standards, thus further demonstrating a commitment to provide this capacity. Thirdly, the applicant has made substantial contractual commitments in preparing the no migration petition.

3. Requirement To Seek Other Alternative Capacity

The applicant's commitment to provide protective disposal capacity is not the sole basis for EPA granting a case-by-case extension. Under 40 CFR 268.5 (a)(1), applicants must also make a good faith effort to seek other protective treatment, recovery or disposal, where feasible during the period that the proposed alternative capacity is not available. Such good faith efforts under 268.5(a)(1) can be evaluated considering both the expected time period that the alternative capacity will take to become available and technical difficulties that the operator will face in bringing the waste to alternative capacity in consideration of factors in 268.5(a)(3).

There is limited other capacity under (a)(1) to eventually handle the waste from the well operator in this proposal. However, due to logistic problems of retooling, repiping, and transportation of the large volume of waste at issue, this other capacity is not reasonably available during the short period of time EPA anticipates is necessary to process final no migration approvals or denials for this well.

4. Reasons Alternative Capacity Cannot Reasonably Be Made Available by the Applicable Effective Date

The applicant has, in good faith, pursued the no migration process with reasonable belief that the Agency would provide a no migration finding by September 19, 1995, effective date. The operator submitted their no migration petition in a timely manner, and have responded appropriately to Agency requests for additional information in order to make a determination on the petition. The timing of the actual finding is beyond the applicant's control. The order in which decisions are made is primarily a function of the Agency resources and priorities. This no migration review process is the reason that the applicant's well may not be available as a no migration unit by the effective prohibition date. The applicant has documented several logistic problems that make short-term capacity not reasonably available. The facility in question involves production operations directly connected by piping, or otherwise rely on immediate disposal in an on-site injection well. In order to make the necessary adjustments, the facility would need to temporarily shutdown, perform necessary retooling and repiping, and construct a transportation system to move the large volumes of waste at issue. The receiving facility would also need to make substantial adjustments to receive these large waste volumes. Also, there is not sufficient offsite capacity. These factors indicate that the other capacity is not reasonably available for short-term waste management. EPA has relied on similar criteria in providing nationwide variances under RCRA 3004 (h)(2). See 55 FR 22520.

II. Petitioner

A. Facility Summary

Abbott Laboratories has petitioned EPA for a six month extension of the September 19, 1995, effective date of the RCRA land disposal restrictions (LDR) treatment standards applicable to waste displaying the ignitable characteristic high (TOC) total organic carbon (EPA Hazard Code D001).

EPA is proposing to grant an extension of the effective date of the applicable restrictions for six months from the hazardous waste injection restrictions effective date of September 19, 1995, for the above, referenced waste from this facility. Abbott Laboratories request and supporting documentation is available in the public docket for this rulemaking. Interested persons are invited to submit comments or written data on this petition. All comments will be considered by EPA and addressed in a Federal Register notice stating the Agency's final decision to grant or deny the petition.

B. Description of Petitioning Facility

Abbott Laboratories which is a chemical manufacturing company operates a restricted nonhazardous waste injection well in Wichita, Kansas.

C. Case-By-Case Extension Petition Demonstrations

Abbott Laboratories application for an extension of the effective date includes the following demonstrations:

40 CFR 268.5(a)(1) Abbott Laboratories has made a good-faith effort on a nationwide basis to locate and contract for adequate alternative treatment, recovery, or disposal capacity, or establish such capacity by the effective date of the applicable restrictions.

40 CFR 268.5(a)(2) Abbott Laboratories has entered into a binding

contractual commitment to provide alternative treatment, recovery, or disposal capacity.

40 CFR 268.5(a)(3) Abbott Laboratories has shown the lack of alternative capacity is beyond its control.

40 CFR 268.5(a)(4) Abbott Laboratories has shown that there will be adequate alternative treatment, recovery, or disposal capacity for all waste after the effective date established by the extension.

40 CFR 268.5(a)(5) Abbott Laboratories has provided a detailed schedule for obtaining alternative capacity including dates.

40 CFR 268.5(a)(6) Abbott Laboratories has arranged for adequate capacity to manage waste during the extension period.

40 CFR 268.5(a)(7) No surface impoundments or landfills will be used by Abbott Laboratories to manage the waste during the extension period.

III. EPA's Proposed Action

For the reasons discussed above, the Agency believes that Abbott Laboratories demonstrations have satisfied all the requirements for a case-by-case extension of the September 19, 1995, effective date of the hazardous waste injection well restriction.

Therefore, EPA is proposing to grant an extension of the September 19, 1995, effective date on the waste for Abbott Laboratories. If the extension is granted for this waste, which would not be prohibited from land disposal, it could be injected over a 12 month period, starting from the effective date of September 19, 1995, but not later than September 19, 1996. If during the time frame of this case-by-case extension, a final decision of the applicant's no migration petition is made, then the case-by-case extension will expire.

If Abbott Laboratories obtains a case-by-case extension, they would have to submit a report two months after the date the extension is granted, addressing the status or any progress being made to obtain alternative disposal capacity. The Agency must be notified of any change in the conditions specified in the petition. The extension would remain in effect unless Abbott Laboratories fails to make a good faith effort to meet the schedule for completion, the Agency denies or revokes any required permit conditions certified in the application change, or if Abbott Laboratories violate any law or regulations implemented by EPA. Sections 1006, 2002(a), 3001, and 3004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6924)].

Dated: October 6, 1995.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 95–26657 Filed 10–26–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5320–8]

Notice of Proposed Administrative ''De Minimis Contributor'' Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), notice is hereby given of a proposed administrative *de minimis* contributor, settlement concerning the Pab Oil Chemical Services, Inc. Superfund Site in Abbeville, Louisiana with the following settling parties:

Patrick Petroleum Company
Anadarko Petroleum Corporation
Borden, Incorporated
Francis Drilling Fluids, Ltd.
Jones-O'Brien Incorporated
Kerr-McGee Corporation
N.R. Broussard Landing, Incorporated
Soloco
Oxy USA, Incorporated
Sonat Exploration Company
Enron Oil and Gas Company
Hilliard Oil and Gas, Incorporated
Koch Gateway Pipeline Company (F/K/A United Gas Pipe Line Company)
W.W.F. Oil Corporation
Stone Petroleum Corporation
Wolverine Exploration
Armco, Inc.
Weatherford International Incorporated
Southland Rentals
Pennzoil Company

The settlement requires the settling parties to pay $694,671.00 to the Hazardous Substances Superfund. The settlement includes an EPA covenant not to sue the settling parties pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and Section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. Commenters may request an opportunity for a public meeting in the affected area in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

DATES: Comments must be submitted on or before November 27, 1995.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–6713. Comments should reference the Pab Oil and Chemical Services, Inc. Superfund Site in Abbeville, Louisiana and EPA Docket No. 6–17–94 and should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: Keith Smith, 1445 Ross Avenue, Dallas, Texas, 75202–2733 at (214) 665–2157.

Dated: October 13, 1995.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 95–26654 Filed 10–26–95; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5320–7]

Notice of Proposed Administrative ''De Minimis'' Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), notice is hereby given of a proposed administrative ''*de minimis*'' (*de micromis*) contributor, settlement pursuant to Section 122 (g) of CERCLA, concerning the Poly-Cycle Industries, Inc. Superfund Site in Tecula, Cherokee County, Texas with the following settling parties:

A & A Auto Machine Shop
N.A. Morphis
J.E. Scott
Television Cable Service, Inc., FKA United Artist Cable

Tyler Golf Carts, Inc.
Fred E. Webb

The settlement requires each of the settling parties to pay *$45.00* to the Hazardous Substances Superfund. The settlement includes an EPA covenant not to sue the settling parties pursuant to Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733.

DATES: Comments must be submitted on or before November 27, 1995.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas, 75202–2733. A copy of the proposed settlement may be obtained from Carl Bolden, 1445 Ross Avenue, Dallas, Texas, 75202–2733, (214) 665–6713. Comments should reference the Polycycle Industries Inc., Superfund site in Tecula, Cherokee County, Texas and EPA Docket No. 06–19–94 and should be addressed to Carl Bolden at the address listed above.

FOR FURTHER INFORMATION CONTACT: Carl Bolden, (214) 665–6713.

Dated: October 13, 1995.

A. Stanley Meiburg,

Acting Regional Administrator.

[FR Doc. 95–26653 Filed 10–26–95; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following data collection instrument for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

FOR FURTHER INFORMATION CONTACT: To request more information on, or a copy of, the proposed data collection instrument call the FEMA Information Collections Officer at (202) 646–2625.

COMMENTS: Comments are invited on (a) whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the data collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Send comments to Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Submit comments on this data collection instrument within 60 days of this notice.

Type: Revision of a currently approved collection - 3067–0009.

Title: Disaster Assistance Registration.

Abstract: The Disaster Assistance Registration form, FEMA Forms 90–69 (English) and 90–69A (Spanish), is only used in Presidentially declared major disasters or emergencies to register individuals for and refer them to such Federal disaster assistance programs a temporary housing, individual and family grants, Small Business Administration disaster loans for individuals and businesses. Eligibility for these disaster assistance programs can not be determined without this information. The information is obtained by telephone calls to the National Teleregistration Center or from face-to-face interviews with applicants.

In addition, individuals seeking FEMA Disaster Housing Assistance beyond 90 days must certify that they are lawfully within the United States.

Type of Respondents: Individuals and households; Farms, Businesses and other for-profit; and Not-for-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden:

FEMA Form 90–69 Short Version—60,000 hours.
FEMA Form 90–69 Long Version—33,750 hours.
Declaration of Applicant (Lawfully Within the United States)—1,667 hours.

Number of Respondents:

Short Version—450,000.
Long Version—135,000.
Declaration—10,000.

Estimated Average Burden Time per Response: Short Version—8 minutes; Long Version—15 minutes; Declaration—10 minutes.

Frequency of Response: On occasion.

Dated: September 26, 1995.

Linda S. Borror,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 95–26704 Filed 10–26–95; 8:45 am]

BILLING CODE 6718–01–P

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following data collection instruments for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

FOR FURTHER INFORMATION CONTACT: To request more information on, or a copy of, the proposed data collection instruments call the FEMA Information Collections Officer at (202) 646–2625.

COMMENTS: Comments are invited on (a) whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the data collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Send comments to Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Submit comments on these data collection instruments within 60 days of this notice.

Type: Extension of 3067–0020.

Title: Application for Participation in the National Flood Insurance Program.

Abstract: The National Flood Insurance Program is a self-sustaining, nontaxpayer funded Federal flood insurance program that provides flood insurance to communities which apply for participation and make the commitment to adopt and enforce land use control measures that will guide land development away from flood-prone areas to avoid or reduce future flood damages and losses. The application form enables FEMA/FIA to continue to process new community applications and to more quickly provide flood insurance protection to the residents of the community.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 400 hours.

Number of Respondents: 100.

Estimated Average Burden Time per Response: 4 hours.

Frequency of Response: On occasion.

Dated: September 26, 1995.

Linda S. Borror,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 95–26705 Filed 10–26–95; 8:45 am]

BILLING CODE 6718–01–P

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following data collection instruments for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

FOR FURTHER INFORMATION CONTACT: To request more information on, or a copy of, the proposed data collection instruments call the FEMA Information Collections Officer at (202) 646–2625.

COMMENTS: Comments are invited on (a) whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the data collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Send comments to Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Submit comments on these data collection instruments within 60 days of this notice.

Type: Extension of 3067–0022.

Title: National Flood Insurance Program Policy Forms.

Abstract: In order to provide for the continued widespread availability of policies for flood insurance, policies will continue to be marketed through the facilities of licensed insurance agents or brokers in the various States. Applications for Federal flood insurance coverage are forwarded to a National Flood Insurance Program (NFIP) servicing company designated as fiscal agent by the Federal Insurance Administration. The servicing company examines the applications and premiums and issues flood insurance policies. The following forms are used for continued sales and servicing of policies under the NFIP: FEMA Forms 81–16 and 81–16A, Application for Flood Insurance (Parts 1 and 2); FEMA Form 81–17, Cancellation/Nullification Request; FEMA Form 81–18, General Change Endorsement; Request for Policy Processing and Renewal Information (RPPRI) Letter for Applications and Endorsements and RPPRI Letter for Renewals; FEMA Form 81–25, V-Zone Risk Factor Rating; FEMA Form 81–67, Preferred Risk Application; and the National Flood Insurance Renewal Expiration Notice.

Type of Respondents: Individuals and households; State and local governments; Farms; Businesses or other for-profit; and Not-for-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden: 47,185 hours.

Number of Respondents: 475,035.

Estimated Average Burden Time per Response: 10 minutes.

Frequency of Response: On occasion.

Dated: September 26, 1995.

Linda S. Borror,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 95–26706 Filed 10–26–95; 8:45 am]

BILLING CODE 6718–01–P

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following data collection instruments for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

FOR FURTHER INFORMATION CONTACT: To request more information on, or a copy of, the proposed data collection instruments call the FEMA Information Collections Officer at (202) 646–2625.

COMMENTS: Comments are invited on (a) whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the data collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Send comments to Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Submit comments on these data collection instruments within 60 days of this notice.

Type: Extension of 3067–0074.

Title: Certificate of Labor Standards Compliance.

Abstract: FEMA regulation 44 CFR 308.7 requires that contractors and subcontractors comply with the Federal labor standards required in 29 CFR part 5 when Federal funding is provided under FEMA project grant contributions for construction of emergency operating centers and emergency communications facilities, and construction costs are in excess of $2,000. The information will be used by FEMA and State contracting agents to verify compliance. Where noncompliance is found, the information will be used as the basis for nonpayment of Federal funds.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 150 hours.

Number of Respondents: 150.

Estimated Average Burden Time per Response: 1 hour.

Frequency of Response: On occasion.

Dated: September 26, 1995.

Linda S. Borror,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 95–26707 Filed 10–26–95; 8:45 am]

BILLING CODE 6718–01–P

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following data collection instrument for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

FOR FURTHER INFORMATION CONTACT: To request more information on, or a copy of, the proposed data collection instrument call the FEMA Information Collections Officer at (202) 646–2625.

COMMENTS: Comments are invited on (a) whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility;

(b) the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the data collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Send comments to Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Submit comments on this data collection instrument within 60 days of this notice.

Type: Extension of 3067–0127.

Title: Exemption of State-Owned Properties under Self-Insurance Plan.

Abstract: Information is obtained from State and local governments to enable the Federal Insurance Administrator to determine whether a State's application meets the requirements for an exemption pursuant to section 102(c) of the Flood Disaster Protection Act of 1973. Under the Act, the FIA may grant a State having an adequate policy of self-insurance for its state-owned structures an exemption from the insurance purchase requirements of the Act. FEMA implements the provisions of the Act through its regulation published at 44 CFR section 75.11–12.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 100 hours.

Number of Respondents: 20.

Estimated Average Burden Time per Response: 5 hours.

Frequency of Response: Other—upon application and when periodically reviewed.

Dated: September 26, 1995.

Linda S. Borror,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 95–26708 Filed 10–26–95; 8:45 am]

BILLING CODE 6718–01–P

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following data collection instruments for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

FOR FURTHER INFORMATION CONTACT: To request more information on, or a copy of, the proposed data collection instruments call the FEMA Information Collections Officer at (202) 646–2625.

COMMENTS: Comments are invited on (a) whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the data collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Send comments to Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Submit comments on these data collection instruments within 60 days of this notice.

Type: Extension of 3067–0141.

Title: Reimbursement for Cost of Firefighting on Federal Property.

Abstract: If a local fire department provides fire protection for a Federally owned building, installation, forest, or other Federal real property holding, it may obtain reimbursement for costs sustained that are above normal operating expense. This is not a grant.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 60 hours.

Number of Respondents: 10.

Estimated Average Burden Time per Response: 1.5 hours.

Frequency of Response: Claims are submitted within 90 days of occurrence of fire and quarterly reports are provided thereafter.

Dated: September 26, 1995.

Linda S. Borror,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 95–26709 Filed 10–26–95; 8:45 am]

BILLING CODE 6718–01–P

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following data collection plan for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

FOR FURTHER INFORMATION CONTACT: To request more information on, or a copy of, the proposed data collection plan call the FEMA Information Collections Officer at (202) 646–2625.

COMMENTS: Comments are invited on (a) whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the data collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Send comments to Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Submit comments on this data collection plan within 60 days of this notice.

Type: Extension of 3067–0167.

Title: Claims of Federal Personnel for Personal Property Damage or Loss.

Abstract: The information is provided by FEMA personnel to make a claim against FEMA for personal property damage incident to service. The information is used by FEMA to determine the appropriate disposition and payment of claims.

Type of Respondents: Federal Government.

Estimate of Total Annual Reporting and Recordkeeping Burden: 10 hours.

Number of Respondents: 5.

Estimated Average Burden Time per Response: 1 hour.

Frequency of Response: On occasion.

Dated: September 26, 1995.

Linda S. Borror,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 95–26710 Filed 10–26–95; 8:45 am]

BILLING CODE 6718–01–P

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following data collection instrument for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

FOR FURTHER INFORMATION CONTACT: To request more information on, or a copy of, the proposed data collection instrument call the FEMA Information Collections Officer at (202) 646–2625.

COMMENTS: Comments are invited on (a) whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the data collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Send comments to Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Submit comments on this data collection instrument within 60 days of this notice.

Type: Reinstatement without change of 3067–0198.

Title: Effectiveness of a Community's Implementation of the NFIP: Community Assistance Contact Report and Community Assistance Visit Report.

Abstract: FEMA's National Flood Insurance Program (NFIP) Community Assistance Program (CAP) is designed to assure that communities participating in the NFIP are achieving the flood loss reduction objectives of the program. The CAP also provides needed floodplain management assistance services to NFIP communities to identify, prevent, and resolve floodplain management issues before they develop into problems requirement enforcement actions.

Two methods are used to obtain information from local participating communities to determine community assistance needs: Community Assistance Contacts and Community Assistance Visits. The Community Assistance Contact (FEMA Form 81–69) is a telephone contact or brief visit with a NFIP community to determine if program-related problems exist and to offer assistance.

The Community Assistance Visit (FEMA Form 81–68) is a scheduled visit to a NFIP community for the purpose of conducting a comprehensive assessment of the community's floodplain management program and to assist the community in understanding the NFIP and its requirements and implementing effective flood loss reduction measures.

The forms are used to document contacts, visits, and discussions with community officials.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 12,000 hours.

Number of Respondents: CAC's 3,000; CAV's 2,000.

Estimated Average Burden Time per Response: CAC's 2 hours; CAV's 3 hours.

Frequency of Response: One-time.

Dated: September 26, 1995.

Linda S. Borror,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 95–26711 Filed 10–26–95; 8:45 am]

BILLING CODE 6718–01–P

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following data collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

FOR FURTHER INFORMATION CONTACT: To request more information on, or a copy of, the proposed data collection requirements call the FEMA Information Collections Officer at (202) 646–2625.

COMMENTS: Comments are invited on (a) whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the data collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Send comments to Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Submit comments on this data collection requirement within 60 days of this notice.

Type: Extension of 3067–0207.

Title: Hazard Mitigation Grant Program Application.

Abstract: States may apply for Federal funding of hazard mitigation measures following a Federal declaration of a major disaster or emergency. States, local governments, and private non-profit organizations that are the recipients of the grant funds must meet the application requirements of FEMA regulation 44 CFR Part 206, Subpart N.

Type of Respondents: State and local governments and not-for-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden: 4,000 hours.

Number of Respondents: Average of 20 States with an estimated 10 project applications each.

Estimated Average Burden Time per Response: 20 hours.

Frequency of Response: Other. The program is only activated after a declaration of a major disaster or emergency. Quarterly reports are also provided.

Dated: September 26, 1995.

Linda S. Borror,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 95–26712 Filed 10–26–95; 8:45 am]

BILLING CODE 6718–01–P

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following data collection plan for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

FOR FURTHER INFORMATION CONTACT: To request more information on, or a copy of, the proposed data collection plan call the FEMA Information Collections Officer at (202) 646–2625.

COMMENTS: Comments are invited on (a) whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the data collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Send comments to Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Submit comments on this data collection plan within 60 days of this notice.

Type: Extension of 3067–0208.

Title: State Administrative Plan for the Hazard Mitigation Grant Program.

Abstract: As grantees, States receiving Federal funds following a major disaster or emergency must prepare an administrative plan or plan update for approval by the FEMA Regional Director

which outlines States' procedures for grants management. The administrative plan or plan update must be prepared after each disaster declaration.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 148 hours.

Number of Respondents: Average of 37.

Estimated Average Burden Time per Response: 4 hours.

Frequency of Response: Other. Upon declaration of a major disaster or emergency.

Dated: September 26, 1995.

Linda S. Borror,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 95–26713 Filed 10–26–95; 8:45 am]

BILLING CODE 6718–01–P

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following data collection plan for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

FOR FURTHER INFORMATION CONTACT: To request more information on, or a copy of, the proposed data collection plan call the FEMA Information Collections Officer at (202) 646–2625.

COMMENTS: Comments are invited on (a) whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the data collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Send comments to Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Submit comments on this data collection plan within 60 days of this notice.

Type: Extension of 3067–0212.

Title: Hazard Mitigation Planning.

Abstract: States and local governments are required to evaluate the natural hazards in the areas in which the proceeds of Federal grants or loans for disaster assistance are to be used and to take steps to mitigate such hazards. States and local governments must prepare and submit hazard mitigation plans that outline how they will mitigate losses to future naturals disasters. The Hazard Mitigation Planning and information requirements are contained in 44 CFR Part 206, Subpart M.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 9,600 hours.

Number of Respondents: Average of 20.

Estimated Average Burden Time per Response: 480 hours.

Frequency of Response: Annually.

Dated: September 26, 1995.

Linda S. Borror,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 95–26714 Filed 10–26–95; 8:45 am]

BILLING CODE 6718–01–P

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following data collection instruments for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

FOR FURTHER INFORMATION CONTACT: To request more information on, or a copy of, the proposed data collection instruments call the FEMA Information Collections Officer at (202) 646–2625.

COMMENTS: Comments are invited on (a) whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the data collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Send comments to Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Submit comments on these data collection instruments within 60 days of this notice.

Type: Extension of 3067–0236.

Title: Emergency Management Institute Field Evaluation System—Course Evaluation Forms.

Abstract: Students attending the Emergency Management Institute nonresident program courses conducted by State emergency management agencies are given course evaluation forms at the beginning of the course to evaluate course content and delivery as the material is presented. The data is used by States, FEMA Regions, and the Emergency Management Institute to determine the strengths and weaknesses of EMI courses delivered in the field and to improve course design, content, instruction methods, recruitment, and administration.

Course managers at the State level must also evaluate each nonresident program course and submit to the appropriate FEMA Regional Office end-of-course evaluation packages which include the Participant Course Evaluation Forms, a Course Manager Evaluation Form, and a Course Evaluation Transmittal Form.

Type of Respondents: Individuals and State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 5,584 hours.

Number of Respondents: 20,000 students, 1,000 course managers.

Estimated Average Burden Time per Response: 16 minutes for students, 35 minutes for course managers.

Frequency of Response: At the completion of each course.

Dated: September 26, 1995.

Linda S. Borror,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 95–26715 Filed 10–26–95; 8:45 am]

BILLING CODE 6718–01–P

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following data collection instrument for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

FOR FURTHER INFORMATION CONTACT: To request more information on, or a copy of, the proposed data collection instrument call the FEMA Information Collections Officer at (202) 646–2625.

COMMENTS: Comments are invited on (a) whether the proposed data collection is necessary for the proper performance of

the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the data collection on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Send comments to Muriel B. Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 311, Washington, DC 20472. Submit comments on this data collection instrument within 60 days of this notice.

Type: Extension of 3067–0237.

Title: Emergency Management Institute Resident Course Evaluation Form.

Abstract: Students attending the Emergency Management Institute resident program courses at FEMA's National Emergency Training Center will be asked to complete a course evaluation form. The information will be used by EMI staff and management to identify problems with course materials, evaluate the quality of the course delivery, facilities, and instructors, The data received will enable them to recommend changes in course materials, student selection criteria, training experience, and classroom environment.

Type of Respondents: Individuals.

Estimate of Total Annual Reporting and Recordkeeping Burden: 667 hours.

Number of Respondents: 4,000.

Estimated Average Burden Time per Response: 10 minutes.

Frequency of Response: At the completion of each course.

Dated: September 26, 1995.

Linda S. Borror,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 95–26716 Filed 10–26–95; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL RESERVE SYSTEM

The Trust Department of Tompkins County Trust Company, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 13, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. The Trust Department of Tompkins County Trust Company), Ithaca, New York; to acquire a total of 32.04 percent of the voting shares of Tompkins County Trustco, Inc., Ithaca, New York, and thereby indirectly acquire Tompkins County Trust Company, Ithaca, New York.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Financial Institution Partners, L.P. and Hovde Capital, Inc., both of Buffalo Grove, Illinois; to acquire an additional 15.09 percent, for a total of 24.99 percent, of the voting shares of North County Bancorp, Escondido, California, and thereby indirectly acquire shares of North County Bank, Escondido, California.

Board of Governors of the Federal Reserve System, October 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-26732 Filed 10-26-95; 8:45 am]

BILLING CODE 6210-01-F

Tompkins County Trustco, 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 24, 1995.

A. Federal Reserve Bank of New York (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. Tompkins County Trustco, Inc., Ithaca, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Tompkins County Trust Company, Ithaca, New York.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Citizens Community Bancorp, Inc., Marco Island, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Community Bank of Florida (in organization), Marco Island, Florida.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Heritage Financial Services, Inc., Tinley Park, Illinois; to acquire 100 percent of the voting shares of First National Bank of Lockport, Lockport, Illinois.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Lonoke Bancshares, Inc., Lonoke, Arkansas; to acquire 100 percent of the voting shares of First State Bank of Gurdon, Gurdon, Arkansas.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Southeast Bankshares, Inc., Lamar, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of ColoEast Bankshares, Inc., Lamar, Colorado, and thereby indirectly acquire Colorado East Bank & Trust, Lamar, Colorado, and at least 50.1 percent of the voting shares of Baca State Bank, Springfield, Colorado.

Board of Governors of the Federal Reserve System, October 23, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95-26733 Filed 10-26-95; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 942–3172]

BBDO Worldwide, Inc.; Consent Agreement with Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, prohibit a New York City-based advertising firm from misrepresenting the amount of fat, calories, or cholesterol in any frozen yogurt, any frozen sorbet, and most ice cream products. The alleged violations stem from the firm's role in developing certain advertisements for Häagen-Dazs frozen yogurt products.

DATES: Comments must be received before December 26, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Anne V. Maher, Bureau of Consumer Protection, Federal Trade Commission, S–4002, 6th Street & Pennsylvania Ave., NW., Washington, DC 205680. (202) 326–2987).

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments of views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6) (ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission, having initiated an investigation of certain acts and practices of BBDO Worldwide, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appears that proposed respondent is willing to enter into an agreement containing an Order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between BBDO Worldwide, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent BBDO Worldwide, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its office and principal place of business located at 1285 Avenue of the Americas, New York, NY 10019.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft compliant attached hereto.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its compliant (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

6. The agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to cease and desist in disposition of the proceeding; and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other Orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any rights it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in the agreement may be used to vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed complaint and Order contemplated hereby. Proposed respondent understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that respondent BBDO Worldwide, Inc., a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any frozen yogurt, frozen sorbet or ice cream product (excluding all other food or confection products in which ice cream is an ingredient comprising less than fifty percent of the total weight of the involved product) in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, through numerical or descriptive terms or any other means, the existence or amount of fat, saturated fat, cholesterol or calories in any such product. If any

representation covered by this Part either directly or by implication conveys any nutrient content claim defined (for purposes of labeling) by any regulation promulgated by the Food and Drug Administration, compliance with this Part shall be governed by the qualifying amount for such defined claim as set forth in that regulation.

II

Nothing in this Order shall prohibit respondent from making any representation that is specifically permitted in labeling for any frozen yogurt, frozen sorbet or ice cream by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

III

It is further ordered that for three (3) years after the last date of dissemination of any representation covered by this Order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon in disseminating such representation; and

2. All tests, reports, studies, surveys, demonstrations, or other evidence in its possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IV

It is further ordered that respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the respondent which may affect compliance obligations arising out of this Order.

V

It is further ordered that respondent shall, within thirty (30) days after service of this Order, distribute a copy of this Order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation or placement of advertisements or other materials covered by this Order.

VI

This Order will terminate twenty (20) years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such a complaint will not effect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VII

It is further ordered that respondent shall, within sixty (60) days after service of this Order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order form BBDO Worldwide, Inc. (''BBDO'').

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising claims made by BBDO, an advertising agency, for Häagen-Dazs frozen yogurts. A separate consent agreement with Häagen-Dazs relating to the same advertisements was given final approval by the Commission on June 2, 1995.

The Commission's complaint in this matter charges BBDO with engaging in unfair or deceptive practices in connection with the advertising of Häagen-Dazs frozen yogurt products, which are sold in both carton and bar forms.

According to the complaint, BBDO falsely represented that the frozen yogurt is 98 percent fat free and low fat. The complaint also alleges that BBDO falsely represented that the frozen yogurt bars contain one gram of fat per serving and are low fat.

The complaint further alleges that BBDO falsely represented that the frozen yogurt bars contain 100 calories per serving. Finally, the complaint alleges that BBDO knew or should have know that these claims were false and misleading.

The consent order contains provisions designed to remedy the violations charged and to prevent BBDO from engaging in similar deceptive and unfair acts and practices in the future.

Part I of the order prohibits BBDO from misrepresenting the existence or amount of fat, saturated fat, cholesterol or calories in any frozen yogurt, frozen sorbet or ice cream product (excluding all other food or confection products in which ice cream is an ingredient comprising less than fifty percent of the total weight of the involved product). Part I also requires that any representation covered by the Part that conveys a nutrient content claim defined for labeling by any regulation of the Food and Drug Administration (''FDA'') must comply with the qualifying amount set forth in that regulation.

Part II of the order provides that representations that would be specifically permitted in food labeling, under regulations issued by the FDA pursuant to the Nutrition Labeling and Education Act of 1990, are not prohibited by the order.

Part III of the order requires BBDO to maintain copies of all materials relied upon in making any representation covered by the order.

Part IV of the order requires BBDO to notify the Commission of any changes in corporate structure that might affect compliance with the order.

Part V of the order requires BBDO to distribute copies of the order to its operating divisions and to various officers, agents and representatives of BBDO.

Part VI of the order is a ''sunset'' provision, dictating that the order will terminate twenty years from the date it is issued or twenty years after a complaint is filed in federal court, by either the United States or the FTC, alleging any violation of the order.

Part VII of the order requires BBDO to file with the Commission one or more

reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify any of their terms.

Donald S. Clark,

Secretary.

[FR Doc. 95–26680 Filed 10–26–95; 8:45 am]

BILLING CODE 6750–01–M

[File No. 943–3277]

Johnson & Johnson Consumer Products Inc.; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would, among other things, prohibit a New Jersey-based consumer products company and its parents corporation (1) from representing, in any manner, directly or by implication, the efficacy of any over-the-counter product—as a contraceptive or as a method of protection against the transmission of any sexually-transmitted disease—unless, at the time of making any such representation, the companies possess and rely upon competent and reliable scientific evidence that substantiates such representation; and (2) from misrepresenting in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study relating to any over-the-counter product with a use relating to human reproduction, reproductive organs or sexually-transmitted diseases.

DATES: Comments must be received on or before December 26, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue, NW, Washington, DC. 20580.

FOR FURTHER INFORMATION CONTACT: Linda K. Badger, San Francisco Regional Office, 901 Market Street, Suite 570, San Francisco, California 94103. (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

The Federal Trade Commission having initiated an investigation of certain acts and practices of Johnson & Johnson Consumer Products, Inc., a corporation, and it now appearing that the proposed respondent and its parent corporation, Johnson & Johnson, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Johnson & Johnson Consumer Products, Inc., a corporation, by its duly authorized officer, and its attorney, and its parent corporation, Johnson & Johnson, and its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Johnson & Johnson Consumer Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 1999 Grandview Road, Skillman, New Jersey 08588.

Johnson & Johnson is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933.

2. Proposed respondent and its parent corporation admit all the jurisdictional facts set forth in the draft of complaint.

3. Proposed respondent and its parent corporation waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent and its parent corporation, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by the proposed respondent or its parent corporation of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of complaint.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent or its parent corporation, (a) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following order to cease and desist in disposition of the proceeding and (b) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to the proposed respondent's address and to its parent corporation's address as stated in this agreement shall constitute service. The proposed respondent and its parent corporation waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. The proposed respondent and its parent corporation have read the proposed complaint and order contemplated hereby. The proposed respondent and its parent corporation understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. The proposed respondent and its parent corporation further understand

that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

I

It is ordered that respondent, Johnson & Johnson Consumer Products, Inc., a corporation, its parent corporation, Johnson & Johnson, and all the other subsidiaries of Johnson & Johnson, their successors and assigns (hereinafter collectively ''the companies''), and the companies' officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of K-Y Plus Nonoxynol-9 Spermicidal Lubricant, or any other personal lubricant and/or spermicide, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from making any representation, directly or by implication, relating to:

A. The failure rate of any method of contraception due to defects, misuse, or any other cause;

B. Any such product's ability to provide protection against the development of tiny holes in condoms during use;

C. Any such product's ability to provide protection against HIV and other viruses; or

D. The health-related benefits of any such product; unless, at the time of making any such representation, the companies possess and rely upon competent and reliable scientific evidence that substantiates such representation. For the purposes of this Order, ''competent and reliable scientific evidence'' shall mean those tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II

It is further ordered that the companies and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of any ''food,'' ''drug'' or ''device,'' as those terms are defined in Section 15 of the Federal Trade Commission Act, in or affecting commerce, as ''commerce'' is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, the efficacy of any over-the-counter product as a contraceptive or as a method of protection against the transmission of any sexually-transmitted disease, unless, at the time of making any such representation, the companies possess and rely upon competent and reliable scientific evidence that substantiates such representation.

III

It is further ordered that the companies and their officers, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labelling, advertising, promotion, offering for sale, sale or distribution of any over-the-counter product with a use relating to human reproduction, reproductive organs or sexually-transmitted diseases, in or affecting commerce, as '''commerce'' is defined in the Federal Trade Commission, Act, do forthwith cease and desist from misrepresenting in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

IV

It is further ordered that for five (5) years after the last date of dissemination of any representation covered by this Order, the companies shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered that the companies notify the Commission at least thirty (30) days prior to any proposed change in the companies such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the Order.

VI

It is further ordered (1) that respondent Johnson & Johnson Consumer Products, Inc., shall, within ten (10) days from the date of service of this Order upon it, distribute a copy of this Order to each of its operating divisions, to each of its managerial employees, and to each of its officers, agents, representatives or employees engaged in the preparation, review or placement of advertising or other materials covered by this Order, and (2) that the parent corporation, Johnson & Johnson, shall, within ten (10) days from the date of service of this Order upon it, distribute a copy of this Order to each of its and of its subsidiaries' officers, agents, representatives or employees engaged in the preparation, review of placement of advertising of any over-the-counter product with a use relating to human reproduction, reproductive organs or sexually-transmitted diseases.

VII

It is further ordered that this Order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the Order, whichever comes later; provided, however, that the filing of such complaint will not affect the duration of:

A. Any paragraph in this Order that terminates in less than twenty years;

B. This Order's application to any respondent that is not named as a defendant in such complaint; and

C. This Order if such complaint is filed after the Order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the Order, and the dismissal or ruling is either not appealed or upheld on appeal, then the Order will terminate according to this paragraph as though the complaint was never filed, except that the Order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

VIII

It is further ordered that the companies shall, within sixty (60) days from the date of service of this Order upon them, and at such other times as the Commission may require, file with

the Commission a report, in writing, setting forth in detail in the manner and form in which they have complied with this Order.

IX

It is further ordered that nothing in this Order shall prohibit the companies from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondent Johnson & Johnson Consumer Products, Inc. Its parent corporation, Johnson and Johnson, although not a respondent, also agreed to be bound by the terms of the consent order. Both parent and subsidiary are New Jersey corporations.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

Johnson & Johnson Consumer Products, Inc., manufacturers and sells baby care products, personal care products for adults, and bandages. This matter concerns this company's ''Condom Insurance'' advertisements for its ''K–Y Plus Brand Spermicidal Lubricant with NonOxynol-9'' (''K–Y Plus''). In these advertisements, Johnson & Johnson CPI promote the use of K–Y Plus with condoms as ''insurance'' to protect against unwanted pregnancies, and HIV and other sexually transmitted diseases (''STDs'') in case of condom failure. The ads warn consumers to use K–Y Plus because one in six condoms allegedly fails.

The Commission's complaint charges that respondent's advertising contained false and/or unsubstantiated representations regarding the failure rate of condoms and the effectiveness of K–Y Plus. Specifically, the complaint alleges that the respondent falsely represented that scientific tests or studies show that up to eighteen and one half percent of condoms will fail, leaving users vulnerable to pregnancy and sexually transmitted diseases. The complaint also alleges that the respondent made unsubstantiated claims that: (1) One out of six condoms develops tiny holes during use which are big enough for sperm, HIV and other viruses to pass through; (2) one out of six condoms fails due to mistake in using condoms or through the development of tiny holes during use; (3) K–Y Plus provides protection against the development of tiny holes in condoms during use; and (4) K–Y Plus provides protection against HIV and other viruses.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondent or its parent corporation from engaging in similar acts and practices in the future. Part I of the proposed order would prohibit the companies from making any of the unsubstantiated claims delineated above, or any other claims of a health-related benefit, for K–Y Plus or any other spermicide and/or lubricant, unless at the time of making them, they possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence.

Part II of the proposed order includes fencing-in relief, prohibiting the companies from representing, in any manner, directly or by implication, the efficacy of any over-the-counter product as a contraceptive or as a method of protection against the transmission of any sexually-transmitted disease, unless, at the time of making any such representation, the companies possess and rely upon competent and reliable scientific evidence that substantiates such representation.

Part III of the proposed order prohibits the companies from misrepresenting in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study relating to any over-the-counter product with a use relating to human reproduction, reproductive organs or sexually-transmitted diseases.

The proposed order also requires the companies to maintain materials relied upon to substantiate claims covered by the order; to provide a copy of the consent agreement to all employees or representatives involved in the preparation and placement of the company's advertisements, as well as to all company executives and marketing and sales managers; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in Johnson & Johnson Consumer Protects Inc. File No. 943 3277

In concur in the acceptance of the proposed consent agreement for public comment except to the extent that the proposed order imposes obligations on Johnson & Johnson (the parent company of the respondent Johnson & Johnson Consumer Products Inc.), which is not named in the accompanying complaint.

[FR Doc. 95–26679 Filed 10–26–95; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0344]

Drug Export; AVONEX™, Recombinant Interferon Beta-1a

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Biogen, Inc., has filed an application requesting approval for the export of the human biological product AVONEX™, Recombinant Interferon Beta-1a to the United Kingdom.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Cathy E. Conn, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–2006.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the

export of human biological products that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the Federal Register within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Biogen, Inc., Fourteen Cambridge Center, Cambridge, MA 02142, has filed an application requesting approval for the export of the human biological product AVONEX™, Recombinant Interferon Beta-1a to the United Kingdom. AVONEX™, Recombinant Interferon Beta-1a is indicated for the treatment of relapsing forms of multiple sclerosis. The application was received and filed in the Center for Biologics Evaluation and Research on October 2, 1995, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by November 6, 1995, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Biologics Evaluation and Research (21 CFR 5.44).

Dated: October 13, 1995.

James C. Simmons,

Director, Office of Compliance, Center for Biologics Evaluation and Research.

[FR Doc. 95–26632 Filed 10–26–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0046]

Westmar Oceanside, Inc.; Revocation of U.S. License No. 828

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 828) and the product license issued to Westmar Oceanside, Inc., for the manufacture of Source Plasma. A notice of opportunity for a hearing on a proposal to revoke the licenses was published in the Federal Register of May 6, 1993. In a letter to FDA dated June 1, 1993, a representative of Westmar Oceanside, Inc., indicated that the firm was no longer in business and requested voluntary revocation of the establishment license and product license and thereby waived an opportunity for a hearing.

DATES: The revocation of the establishment license (U.S. License No. 1082) and product license became effective August 3, 1993.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA has revoked the establishment license (U.S. License No. 828) and the product license issued to Westmar Oceanside, Inc., 1024 South Hill St., Oceanside, CA 92504, for the manufacture of Source Plasma.

By letter dated December 11, 1991, FDA advised Westmar Oceanside, Inc., that FDA intended to initiate proceedings to revoke the establishment and product licenses. In the Federal Register of May 6, 1993 (58 FR 26982), FDA published a notice of opportunity for a hearing on the proposed revocation of the licenses pursuant to 21 CFR 12.21(b), as provided in 21 CFR 601.5(b). As described in the notice of opportunity for a hearing, the grounds for the proposed license revocation included the following: (1) The results of the FDA inspection of Westmar Oceanside, Inc., conducted in August through September 1991; (2) the results of an FDA investigation of Westmar Oceanside, Inc., conducted concurrently with the August/September 1991 inspection; (3) a determination by FDA that the deviations documented during the August/September 1991 inspection and investigation showed serious noncompliance with the applicable biologics regulations and standards of the firm's license; and (4) a determination by FDA that the violations at the firm were significant and willful. Documentation in support of the proposed revocation had been placed on file for public examination with the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

The notice of opportunity for a hearing provided 30 days for Westmar Oceanside, Inc., to submit a written request for a hearing, as specified in 21 CFR 12.21(b), and 60 days to submit any data or information justifying a hearing. The notice of opportunity for a hearing provided 60 days for other interested persons to submit written comments on the proposed revocation action. A representative for Westmar Oceanside, Inc., responded to the notice of opportunity for a hearing by letter dated June 1, 1993. The letter stated that the firm was no longer in business and requested voluntary revocation of the firm's establishment license and product license and thereby waived an opportunity for a hearing. In a letter dated August 3, 1993, to the firm, FDA revoked the establishment license (U.S. License No. 828) and the product license issued to Westmar Oceanside, Inc.

No other written comments on the proposed revocation were received within the prescribed 60 days specified in the notice of opportunity for a hearing.

FDA has placed a copy of FDA's August 3, 1993, letter on file with the Dockets Management Branch (address above) under the docket number found in brackets in the heading of this notice. This document is available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under 21 CFR 601.5, section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 828) and the product license issued to Westmar Oceanside, Inc., for the manufacture of Source Plasma were revoked, effective August 3, 1993.

This notice issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: October 17, 1995.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 95–26631 Filed 10–26–95; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 95N–0194]

The Dr. Oscar E. Carter, Jr., Memorial Rehabilitation Center, Inc.; Proposal to Revoke Approval of a Narcotic Addiction Treatment Program; Opportunity for a Hearing; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the Federal Register of August 11, 1995 (60 FR 41079). The document proposed to revoke approval of an ''Application for Approval of Use of Methadone in a Treatment Program'' (Form FDA–2632) (renamed ''Application for Approval for Use of Narcotic Drugs in a Treatment Program'') held by The Dr. Oscar E. Carter, Jr., Memorial Rehabilitation Center, Inc. (Carter). The document was published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Gerald R. Hajarian, Center for Drug Evaluation and Research (HFD–342), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1029.

In FR Doc. 95–19885, appearing on page 41079 in the Federal Register of Friday, August 11, 1995, the following corrections are made:

1. On page 41079, in the 2d column, in the 1st line of the document, and in the 3d column, in the ''**ADDRESSES**'' section, in the 4th line, the docket number ''95N–0193'' is corrected to read ''95N–0194''.

Dated: October 23, 1995.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 95–26737 Filed 10–26–95; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. FR–3778–N–60]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: October 20, 1995.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 95–26550 Filed 10–26–95; 8:45 am]

BILLING CODE 4210–29–M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. FR–3907–N–02]

Housing Counseling Program: Announcement of Funding Awards for FY 1995

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

ACTION: Announcement of Housing Counseling Funding Awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding award decisions made by the Department under its Housing Counseling Program for Fiscal Year 1995. The announcement contains the names and addresses of the award winners and the amount of the awards.

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Program Advisor, Office of Housing, Department of Housing and Urban Development, Room 9282, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0614, extension 2315 (voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: HUD's housing counseling program is authorized under section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x). The purpose of the program is to promote and protect the interests of housing consumers participating in HUD and other housing programs, as well as to help protect the interests of HUD and mortgage lenders. Under the housing counseling program, HUD contracts with pre-qualified public or private nonprofit organizations to provide the services authorized by the statute. These organizations are referred to as ''HUD approved housing counseling agencies''. When Congress makes funds available for this purpose, HUD announces the availability of such funds, and invites applications from eligible agencies, through a notice of funding availability (NOFA) published in the Federal Register.

In a Notice of Funding Availability (NOFA) published on May 24, 1995 (60 FR 27538), HUD announced the availability of $9.5 million to provide Housing Counseling Grants in accordance with Section 106: (1) $3.5 million to help fund national, regional and multi-State HUD approved housing counseling intermediary organizations, and, (2) $6 million to help fund local HUD approved counseling agencies.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, the Department is publishing (by State) the names and addresses of the HUD-approved agencies awarded funds under the FY 1995 Housing Counseling NOFA, and the amount of funds awarded to each agency. This information is provided in Appendix A to this document.

Dated: October 19, 1995.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A

Intermediary Organizations

NATIONAL ASSOCIATION OF HOUSING PARTNERSHIPS, INC., 569 Columbus Avenue, Boston, MA 02118.
Amount Awarded: $789,250.

NATIONAL FOUNDATION FOR CONSUMER CREDIT, 8611 Second Avenue, Suite 100, Silver Spring, MD 20910.
Amount Awarded: $224,000.

ACORN HOUSING CORPORATION, 846 N. Broad St., Philadelphia, PA 19130.
Amount Awarded: $850,500.

CATHOLIC CHARITIES USA, 1731 King Street, Suite 200, Alexandria, VA 22314.
Amount Awarded: $761,250.

NEIGHBORHOOD REINVESTMENT CORPORATION, 1325 G. Street, N.W., Washington, DC 20005–3100.
Amount Awarded: $875,000.

Local Organizations

COMMUNITY ACTION AGENCY OF N. CENTRAL AL., INC., P.O. BOX 1788., 107 Second Avenue, NE, Decatur, AL 35602.
Amount Awarded: $26,000.

HOUSING AUTHORITY OF THE B'HAM. DISTRICT, 1826 3rd Avenue South, Birmingham, AL 35233.
Amount Awarded: $13,000.

ALABAMA COUNCIL ON HUMAN RELATIONS, INC., P.O. BOX 409, Auburn, AL 36831–0409.
Amount Awarded: $11,125.

THE HOUSING AUTHORITY OF THE CITY OF MONTGOMERY, ALABAMA, 1020 Bell Street, Montgomery, AL 36104–3056.
Amount Awarded: $26,000.

BIRMINGHAM URBAN LEAGUE, INC., 1717 4th Avenue North, P.O. Box 11269, Birmingham, AL 35202–1269.
Amount Awarded: $52,000.

WIL-LOW NONPROFIT HOUSING CORP., INC., P.O. Box 383, 200A Commerce Street, Hayneville, AL 36040.
Amount Awarded: $6,000.

ORGANIZED COMMUNITY ACTION PROGRAM, INC., P.O. Box 908, Troy, AL 36081.
Amount Awarded: $13,813.

COMMUNITY ACTION AGCY. CALHOUN, CLEBURNE & CHEROKEE CTYS. INC., 1702 Noble Street, Suite 110, P.O. Box 2223, Anniston, AL 36202.
Amount Awarded: $13,000.

THE HOUSING AUTHORITY OF THE CITY OF AUBURN, AL, 931 Booker Street, Auburn, AL 36830.
Amount Awarded: $7,000.

COMMUNITY SERVICE PROGRAMS OF WEST AL, INC., 601 17th Street, Tuscaloosa, AL 35401.
Amount Awarded: $8,000.

MOBILE HOUSING BOARD, 151 S. Claiborne Street, P.O. Box 1345, Mobile, AL 36633–1345,
Amount Awarded: $31,000.

COMMUNITY ACTION AGCY HUNTSVILLE/MADISON & LIMESTONE CTY. INC., 3516 Stringfield Road, Huntsville, AL 35810.
Amount Awarded: $9,000.

CRAWFORD-SEBASTIAN COMM. DEV. COUNCIL, INC., 4831 Armour, P. O. Box 4069, Fort Smith, AR 72914.
Amount Awarded: $15,000.

IN AFFORDABLE HOUSING, INC., 801 John Barrow Road, Suite 18, Little Rock, AR 72205.
Amount Awarded: $50,000.

EAST ARKANSAS LEGAL SERVICES, P.O. Box 1149, 500 E. Broadway, West Memphs, AR 72303.
Amount Awarded: $30,000.

UNIVERSAL HOUSING DEVELOPMENT CORP., 301 East Third Street, P.O. Box 846, Russellville, AR 72801.
Amount Awarded: $7,000.

DNA—PEOPLE'S LEGAL SERVICES, INC., P.O. Box 306, Fort Defiance, Navaho Nation, AZ 86515.
Amount Awarded: $10,000.

CCCS SOUTHWEST, 2535 West Camelback Rd., Phoenix, AZ 85004.
Amount Awarded: $100,000.

CITY OF PHOENIX, NEIGHBORHOOD SERVICES, 200 W. Washington, 4th Floor, Phoenix, AZ 85003.
Amount Awarded: $35,000.

CATHOLIC SOCIAL SERVICES, 155 W. Helen Street, Tucson, AZ 85705.
Amount Awarded: $34,000.

CONSUMER CREDIT COUNSELING SERVICES SW, 2535 W. Camelback Road, Phoenix, AZ 85079–6969.
Amount Awarded: $27,000.

CHICANOS POR LA CAUSA, 1525 N. Oracle Road, Ste. 105, Tucson, AZ 85705.
Amount Awarded: $53,000.

PROJECT SENTINEL, 430 Sherman Ave, Palo Alto, CA 94306.
Amount Awarded: $36,000.

EDEN COUNCIL FOR HOPE & OPPORTUNITY, 770 A Street, Hayward, CA 94541.
Amount Awarded: $25,858.

HUMAN INVESTMENT PROJECT, INC., 364 South Railroad Avenue, San Mateo, CA 94401.
Amount Awarded: $9,288.

CCCS OF EAST BAY, 333 Hegenberger Road, Suite 610, Oakland, CA 94621.
Amount Awarded: $20,000.

CCCS OF SAN FRANCISCO, 77 Maiden Lane, San Francisco, CA 94108.
Amount Awarded: $20,000.

HOUSING AUTHORITY/COUNTY OF SANTA BARBARA, 815 West Ocean Avenue, Lompoc, CA 93436.
Amount Awarded: $9,000.

COMMUNITY DEVELOPMENT COMMISSION, County of Los Angeles, 2 Coral Circle, Monterey Park, CA 91755.
Amount Awarded: $100,000.

CONSUMER CREDIT COUNSELING SERVICES OF LOS ANGELES, 600 Citadel Drive, Suite 490, Los Angeles, CA 90040.
Amount Awarded: $100,000.

CONSUMER CREDIT COUNSELORS OF SACRAMENTO, 11130 Sun Center Drive, Suite E, Rancho Cordova, CA 95670.
Amount Awarded: $75,000.

CONSUMER CREDIT COUNSELING SERVICE, 1776 W. March Lane, Suite 420, Stockton, CA 95207.
Amount Awarded: $46,000.

CONSUMER CREDIT COUNSELORS OF SAN DIEGO & IMPERIAL COUNTIES, 1550 Hotel Circle North, Suite 110, San Diego, CA 92108.
Amount Awarded: $5,000.

NEIGHBORHOOD HOUSE ASSOCIATION, 3043 Fourth Avenue, San Diego, CA 92103.
Amount Awarded: $66,000.

SAN DIEGO HOME LOAN COUNSELING SERVICE, 2859 El Cajon Blvd, Suite 1A, San Diego, CA 92104.
Amount Awarded: $7,000.

FAIR HOUSING COUNCIL OF ORANGE COUNTY, 1222 North Broadway, Santa Ana, CA 92701.
Amount Awarded: $47,000.

INLAND MEDIATION BOARD, 1005 Begonia Ave., Ontario, CA 91762.
Amount Awarded: $12,000.

SOUTHWEST COMMUNITY RESOURCES, 295 Girard St., Durango, CO 81301.
Amount Awarded: $9,286.

BOULDER COUNTY HOUSING AUTHORITY, PO Box 471, Boulder, CO 80306–0471.
Amount Awarded: $20,752.

CITY OF AURORA HOMEOWNERSHIP ASSISTANCE, 9801 E. Colfax Ave., Aurora, CO 80010.
Amount Awarded: $15,120.

NEIGHBOR TO NEIGHBOR, INC., 424 Pine Street, Suite 203, Fort Collins, CO 80524.
Amount Awarded: $15,175.

ADAMS COUNTY HOUSING AUTHORITY, 7190 Colorado Blvd., Commerce City, CO 80022.
Amount Awarded: $40,175.

CONSUMER CREDIT COUNSELING SERVICE, 151 New Park Avenue, Hartford, CT 06106.
Amount Awarded: $20,000.

NEIGHBORHOOD HOUSE, INC., 1218 B Street, Wilmington, DE 19801.
Amount Awarded: $20,000.

FIRST STATE COMMUNITY ACTION AGENCY, 308 N. Railroad Avenue, Georgetown, DE 19947.
Amount Awarded: $20,453.

NCALL RESEARCH, 20 E. Division Street, Dover, DE 19903.
Amount Awarded: $15,000.

CCCS OF PALM BEACH & TREASURE COAST/FL INC., 2330 Congress Avenue South 1A, West Palm Beach, FL 33406.
Amount Awarded: $26,000.

BROWARD COUNTY HOUSING AUTHORITY, 1773 North State Road 7, Lauderhill, FL 33313.
Amount Awarded: $18,280.

URBAN LEAGUE OF PALM BEACH COUNTY, INC., 1700 North Australian Avenue, West Palm Beach, FL 33407.
Amount Awarded: $13,000.

CITY OF GAINESVILLE, PO Box 490; Station 10–B, Gainesville, FL 32602–0490.

Amount Awarded: $39,000.

FAMILY COUNSELING SERVICES, INC., 1639 Atlantic Blvd., Jacksonville, FL 32207.
Amount Awarded: $21,000.

METROPOLITAN ORLANDO URBAN LEAGUE, INC., 2512 West Colonial Drive, Orlando, FL 32804.
Amount Awarded: $18,000.

FAMILY COUNSELING CENTER OF BREVARD, 220 Coral Sands Drive, Rockledge, FL 32955.
Amount Awarded: $13,000.

CONSUMER CREDIT COUNSELING SERVICE OF CENTRAL FLORIDA, INC., 455 South Orange Avenue, Suite 400, Orlando, FL 32801.
Amount Awarded: $90,000.

HOUSING AND NEIGHBORHOOD DEVELOPMENT SVS. OF CENTRAL FL, INC., 2211 East Hillcrest Street, Orlando, FL 32803.
Amount Awarded: $10,000.

DEKALB HOUSING COUNSELING CENTER, INC., 4151 Memorial Drive, Suite 107E, Decatur, GA 30032.
Amount Awarded: $100,000.

METRO FAIR HOUSING SERVICES, INC., PO Box 5467, 1083 Austin Avenue, NE., Atlanta, GA 30307.
Amount Awarded: $6,000.

UNIFIED GOVERNMENT OF ATHENS-CLARKE CO., PO Box 1868, 155 E. Washington St., Athens, GA 30603.
Amount Awarded: $38,000.

ECONOMIC OPPORTUNITY AUTHORITY FOR SAVANNAH-CHATHAM COUNTY AREA, INC., 618 West Anderson Street, Savannah, GA 31401.
Amount Awarded: $58,000.

HAWAII CREDIT COUNSELING SERVICE, 2153 N. King Street, Suite 306, Honolulu, HI 96819.
Amount Awarded: $63,956.

HALE MAHAOLU, 200 Hina Avenue, Kahului, HI 96732.
Amount Awarded: $7,068.

NEIGHBORHOOD PLACE, INC., 1128 W. 6th St., Davenport, IA 52802.
Amount Awarded: $8,000.

HAWKEYE AREA COMMUNITY ACTION PROGRAM, INC., PO Box 789, Cedar Rapids, IA 52406–0789.
Amount Awarded: $10,611.

SERVICES FOR HOMEOWNERS PROGRAM, CITY OF DES MOINES, 602 East 1st Street, Des Moines, IA 50309–1881.
Amount Awarded: $15,000.

COMMUNITY ACTION AGENCY, 124 New Sixth Street, Lewiston, ID 83501.
Amount Awarded: $16,000.

CHICAGO URBAN LEAGUE DEVELOPMENT CORP., 4510 S. Michigan, Chicago, IL 60653.
Amount Awarded: $22,000.

COMMUNITY & ECONOMIC DEVELOPMENT ASSOC., 224 North Des Plaines Street, Chicago, IL 60661.
Amount Awarded: $67,000.

COMMUNITY SERVICE COUNCIL OF NORTHERN WILL COUNTY, 719 Parkwood Avenue, Romeoville, IL 60441.
Amount Awarded: $23,000.

DUPAGE HOMEOWNERSHIP CENTER, INC., 1333 North Main Street, Wheaton, IL 60187.
Amount Awarded: $13,000.

SPANISH COALITION FOR HOUSING, 3439 W. North Avenue, Chicago, IL 60647.
Amount Awarded: $100,000.

URBAN LEAGUE OF NORTHWEST INDIANA, INC., 3101 Broadway, Gary, IN 46409–0000.
Amount Awarded: $9,000.

ANDERSON HOUSING AUTHORITY, 528 West 11th Street, Anderson, IN 46016–0000.
Amount Awarded: $24,000.

COMMUNITY ACTION OF GREATER INDIANAPOLIS, 2445 North Meridian Street, Indianapolis, IN 46208–5731.
Amount Awarded: $36,000.

HOPE OF EVANSVILLE, INC., 100 Washington Avenue, Evansville, IN 47713.
Amount Awarded: $17,000.

LAKE COUNTY, 2293 North Main Street, Crown Point, IN 46307.
Amount Awarded: $19,000.

ECONOMIC OPPORTUNITY FOUNDATION, INC., 1542 Minnesota Avenue, Kansas City, KS 66102.
Amount Awarded: $6,000.

HOUSING AND CREDIT COUNSELING, INC., 1195 SW Buchanan, Suite 203, Topeka, KS 66604–1183.
Amount Awarded: $14,000.

URBAN LEAGUE OF WICHITA, 1405 N. Minneapolis, Wichita, KS 67214.
Amount Awarded: $7,000.

NEK-CAP NORTHEAST KANSAS COMM ACTION PROG, Pleasant View, RR–4, PO Box 380, Hiawatha, KS 66434.
Amount Awarded: $8,000.

PURCHASE AREA HOUSING CORPORATION, PO Box 588, U.S. Highway 45N, Mayfield, KY 42066.
Amount Awarded: $5,000.

NORTHERN KENTUCKY COMMUNITY CENTER, 824 Greenup Street, PO Box 2030, Covington, KY 41011.
Amount Awarded: $14,000.

WESTERN KENTUCKY LEGAL SERVICES, 333 Union Street, Madisonville, KY 42431.
Amount Awarded: $7,000.

AMERICAN RED CROSS (ACCEPT), PO Box 1675, 510 East Chestnut Street, Louisville, KY 40201–1675.
Amount Awarded: $30,946.

THE HOUSING PARTNERSHIP, INC., 801 Vine Street, Louisville, KY 40205.
Amount Awarded: $19,000.

LOUISVILLE URBAN LEAGUE, 1535 W. Broadway, Louisville, KY 40203.
Amount Awarded: $14,000.

TENANT SERVICES & HOUSING COUNSELING, Inc., 200 East Main Street, Lexington, KY 40507.
Amount Awarded: $24,000.

BRIGHTON CENTER, INC., 7th and Park Street, Newport, KY 41072.
Amount Awarded: $19,939.

CENLA COMMUNITY ACTION COMMITTEE, INC., 230 Bolton Ave., Alexandria, LA 71301.
Amount Awarded: $7,000.

CADDO COMMUNITY ACTION AGENCY, INC., 4055 St. Vincent Ave., Shreveport, LA 71108.
Amount Awarded: $5,000.

CENTRAL CITY HOUSING DEVELOPMENT, 2020 Jackson Avenue, New Orleans, LA 70113.
Amount Awarded: $10,000.

DESIRE COMMUNITY HOUSING CORPORATION, 3251 St. Ferdinand Street, New Orleans, LA 70126.
Amount Awarded: $50,000.

CITY OF LAFAYETTE, PO Box 4017–C, Lafayette, LA 70502–4017.
Amount Awarded: $16,000.

ST. MARTIN, IBERIA, LAFAYETTE, COMM., ACT, 501 St. John Street, PO Box 3343, Lafayette, LA 70502.
Amount Awarded: $15,000.

GREATER BOSTON LEGAL SERVICES, 197 Friend Street, Boston, MA 02114.
Amount Awarded: $89,000.

DORCHESTER COMMUNITY DEVELOPMENT CORP., PO Box 549, Cambridge, MD 21613.
Amount Awarded: $14,000.

COUNTY COMMISSIONERS OF CARROLL COUNTY, 10 Distillery Drive, 1st Floor, Suite 101, Westminster, MD 21157–5194.
Amount Awarded: $5,700.

COMMUNITIES ORGANIZED TO IMPROVE LIFE, 11 S. Carrollton Avenue, Baltimore, MD 21223.
Amount Awarded: $12,000.

ST. PIUS V HOUSING COMMITTEE, INC., 1017 Edmondson Avenue, Baltimore, MD 21223.
Amount Awarded: $30,000.

INNER CITY COMMUNITY DEVELOPMENT CORP, INC., 3030 West North Avenue, Baltimore, MD 21216.
Amount Awarded: $36,001.

HARFORD COUNTY, PHA, 15 South Main Street, Suite 100, Bel Air, MD 21014.
Amount Awarded: $28,000.

COMMUNITY ASSISTANCE NETWORK, 7701 Dunmanway, Baltimore, MD 21222.
Amount Awarded: $31,000.

ST. AMBROSE HOUSING AID CENTER, INC., 321 East 25th Street, Baltimore, MD 21218.
Amount Awarded: $39,000.

PINE TREE LEGAL ASSISTANCE, INC., 88 Federal St., Portland, ME 04112.
Amount Awarded: $19,213.

DETROIT NON-PROFIT HOUSING CORPORATION, 1200 Sixth Street, Suite 404, Detroit, MI 48226.
Amount Awarded: $63,000.

OAKLAND COUNTY MICHIGAN, 1200 N. Telegraph Road, Pontiac, MI 48341.
Amount Awarded: $37,000.

MICHIGAN HOUSING COUNSELORS, INC., 237 S.B. Gratiot, Mt. Clemens, MI 48043.
Amount Awarded: $21,000.

URBAN LEAGUE OF FLINT, 5005 Cloverlawn Drive, Flint, MI 48504.
Amount Awarded: $22,000.

SAGINAW COUNTY COMMUNITY ACTION COMMITTEE, 2824 Perkins Street, Saginaw, MI 48601.

Amount Awarded: $6,000.

HUMAN DEVELOPMENT COMMISSION, 429 Montague Avenue, Caro, MI 48723.
Amount Awarded: $8,000.

BURTON NEIGHBORHOOD HOUSING SERVICES, INC., 2086 East Bergin Street, Burton, MI 48529.
Amount Awarded: $25,000.

GARFIELD DEVELOPMENT CORPORATION, 1922 Division Avenue S, Suite 102, Grand Rapids MI 49507.
Amount Awarded: $6,000.

NORTHWEST MI HUMAN SERVICE AGENCY, INC., 3963 Three Mile Rd., Traverse City, MI 49686. Amount Awarded: $6,000.

EIGHTCAP, INC., 904 Oak Dr—Turk Lake, P.O. Box 368, Greenville, MI 48838.
Amount Awarded: $19,299.

LEGAL SERVICES OF NORTHERN MICHIGAN, INC., 446 E. Mitchell Street, Petoskey, MI 49770.
Amount Awarded: $8,000.

SOUTHERN MINNESOTA REGIONAL LEGAL SERVICES, 700 Minnesota Building, 46 E. Fourth St., St. Paul, MN 55101.
Amount Awarded: $16,192.

SAINT PAUL HOUSING INFORMATION OFFICE, 21 West 4th Street, Saint Paul, MN 55102.
Amount Awarded: $22,000.

PILOT CITY REGIONAL CENTER, 1315 Penn Ave. No., Minneapolis, MN 55411.
Amount Awarded: $6,000.

CARVER COUNTY HOUSING & REDEVELOPMENT AUTHORITY, 500 Pine Street, Suite 300, Chaska, MN 55318.
Amount Awarded: $12,000.

COMMUNITY ACTION FOR SUBURBAN HENNEPIN, 33 Tenth Ave. So., Suite 150, Hopkins, MN 55343.
Amount Awarded: $37,000.

NORTH AREA COMMUNITY FORUM, 1005 Dunn Road, Florissant, MO 63031.
Amount Awarded: $22,000.

URBAN LEAGUE OF METRO. ST. LOUIS, INC., 3701 Grandel Square, St. Louis, MO 63108,
Amount Awarded: $40,000.

HSG. OPTIONS PROVIDED FOR THE ELDERLY, 4265 Shaw, St. Louis, MO 63110.
Amount Awarded: $6,000.

GREATER KANSAS CITY HOUSING INFORMATION, Center, 3810 Paseo, Kansas City, MO 64109–2721.
Amount Awarded: $17,000.

WEST CENTRAL MISSOURI COMMUNITY ACTION AGENCY, 106 W. 4th, P.O. Box 125, Appleton City, MO 64724.
Amount Awarded: $5,000.

GULF COAST COMMUNITY ACTION AGENCY, INC., Post Office Box 519, Gulfport, MS 39502.
Amount Awarded: $5,000.

DISTRICT 7 HUMAN RESOURCES DEV. COUNCIL, P.O. Box 2016, Billings MT 59103–0000,
Amount Awarded: $9,000.

WOMAN'S OPPORTUNITY & RESOURCE DEV., INC, Family Housing Intervention Network, 127 N Higgins, Missoula, MT 59802–0000.
Amount Awarded: $24,000.

JOHNSTON-LEE COMMUNITY ACTION, INC., P.O. Drawer 711, Smithfield, NC 27577.
Amount Awarded: $11,000.

FAMILY HOUSING SERVICES, INC., 910 North Alexander Street, Charlotte, NC 28206.
Amount Awarded: $52,307.

GUILFORD COUNTY COMMUNITY ACTION PROGRAM, P.O. Box 21961, 201 South Elm Street, Suite 208, Greensboro, NC 27420.
Amount Awarded: $9,000.

SANDHILLS COMMUNITY ACTION PROGRAM, INC., P.O. Box 937, 103 Saunders Street, Carthage, NC 28327.
Amount Awarded: $25,000.

MID-EAST COMMISSION, P.O. Box 1787, 1 Harding Square, Washington, NC 27889.
Amount Awarded: $7,000.

CUMBERLAND COMMUNITY ACTION PROGRAM, INC., PO. Box 2009, Fayetteville, NC 28302.
Amount Awarded: $60,000.

DURHAM AFFORDABLE HOUSING COALITION, 331 West Main Street Suite 408, Durham, NC 27701.
Amount Awarded: $15,000.

ALBEMARLE COMMISSION, P.O. Box 646, 512 South Church Street, Hertford, NC 27944.
Amount Awarded: $6,000.

JOINT ORANGE-CHATHAM COMMUNITY ACTION, P.O. Box 27, 35 West Chatham Street, Pittsboro, NC 27312.
Amount Awarded: $13,000.

COMMUNITY ACTION PROGRAM, REGION VII, INC., 2105 Lee Ave., Bismarck, ND 50504.
Amount Awarded: $18,175.

COMMUNITY ACTION & DEVELOPMENT PROGRAM, 202 East Villard, Dickinson, ND 58601.
Amount Awarded: $5,668.

SE NORTH DAKOTA COMMUNITY ACTION AGENCY, 3233 South University Drive, Fargo, ND 58104.
Amount Awarded: $7,375.

COMMUNITY ACTION OPPORTUNITIES, INC., 420 3rd St. SW, P.O. Box 1057, Minot, ND 58702–1057.
Amount Awarded: $12,175.

FAMILY HOUSING ADVISORY SERVICES, INC., 2416 Lake Street, Omaha, NE 68111,
Amount Awarded: $28,000.

LINCOLN ACTION PROGRAM, INC., 2202 South 11th Street, Lincoln, NE 68502.
Amount Awarded: $6,000.

SENIOR CITIZENS UNITED COMMUNITY SERVICES, 146 Black Horse Pike, Mt. Ephraim, NJ 08059–2035.
Amount Awarded: $7,000.

JERSEY COUNSELLING & HOUSING DEVELOPMENT, INC., 1840 S. Broadway, Camden, NJ 08104.
Amount Awarded: $47,000.

NEW JERSEY CITIZEN ACTION, 400 Main St., Hackensack, NJ 07601.
Amount Awarded: $95,000.

CATHOLIC CHARITIES, DIOCESE OF METUCHEN, 540–550 Rt. 22 East, Bridgewater, NJ 08807.
Amount Awarded: $9,000.

CONSUMER CREDIT COUNSELING SERVICES, SW, 2727 San Pedro, NE, #1117, Albuquerque, NM 87110.
Amount Awarded: $27,740.

POOR PEOPLE PULLING TOGETHER, 1801 n. ''J'' Street, Las Vegas, NV 89106.
Amount Awarded: $50,000.

WASHOE LEGAL SERVICES, 650 Tahoe Street, Reno, NV 89509–1721.
Amount Awarded: $10,000.

OPEN HOUSING CENTER, INC., 594 Broadway, Suite 608, New York, NY 10012.
Amount Awarded: $98,369.

PUTMAN COUNTY HOUSING CORPORATION, 7 Seminary Hill Road, Carmel, NY 10512.
Amount Awarded: $18,000.

ASIAN AMERICANS FOR EQUALITY, INC., 111 Division Street, New York, NY 10002.
Amount Awarded: $62,950.

OPPORTUNITIES FOR CHENANGO, INC., P.O. Box 470, 44 West Main Street, Norwich, NY 13815.
Amount Awarded: $5,000.

UNITED TENANTS OF ALBANY, INC., 33 Clinton Avenue, Albany, NY 12207,
Amount Awarded: $9,350.

THE HOUSING COUNCIL IN MONROE COUNTY AREA, 111 East Avenue, Suite 200, Rochester, NY 14604.
Amount Awarded: $50,000.

BETTER NEIGHBORHOODS, INC., 986 Albany Street, Schenectady, NY 12307.
Amount Awarded: $17,000.

CHAUTAUQUA OPPORTUNITIES, INC., 188 South Erie Street, P.O. Box B, Mayville, NY 14757.
Amount Awarded: $14,000.

MONTGOMERY COUNTY COMMUNITY ACTION AGY., 318 South Main Street, Dayton, OH 45401–4008.
Amount Awarded: $14,000.

BETTER HOUSING LEAGUE OF GREATER CINN., 2400 Reading Road, Room 404, Cincinnati, OH 45202.
Amount Awarded: $59,000.

YOUNGSTOWN AREA URBAN LEAGUE, 123 East Rayen Avenue, Youngstown, OH 44503.
Amount Awarded: $6,000.

HOUSING DIRECTIONS OF GREATER TOLEDO, 1326 Collingwood Boulevard at Dorr, Toledo, OH 43602.
Amount Awarded: $7,000.

NEAR WEST SIDE MULTI-SERVICE CORP., DBA MAY DUGAN CENTER, 4115 Bridge Avenue, Cleveland, OH 44113.
Amount Awarded: $18,000.

LUTHERAN HOUSING CORPORATION, 13944 Euclid Avenue, Suite 208, East Cleveland, OH 44112.
Amount Awarded: $100,000.

BUCKEYE COMMUNITY HOPE FOUNDATION, 947 E. Johnstown Road, Suite 221, Gahanna, OH 43230.
Amount Awarded: $9,000.

MARION-CRAWFORD COMMUNITY ACTION COMM., 240 E. Church St., P O Box 779, Marion, OH 43302–0779.
Amount Awarded: $7,000.

CONSUMER CREDIT COUNSELING SER. CEN. OHIO, 697 East Broad Street, Columbus, OH 43215.
Amount Awarded: $23,000.

CONSOC HOUSING COUNSELING, INC., 1889 East Livingston Ave., Columbus, OH 43209.
Amount Awarded: $44,000.

PROJECT GET TOGETHER, 2020 South Maplewood, Tulsa, OK 74112.
Amount Awarded: $35,000.

CHICKASAW HOUSING AUTHORITY, P O Box 668, Ada, OK 74820.
Amount Awarded: $30,000.

DEEP FORK COMMUNITY ACTION FOUNDATION, 313 W. 8th Street, PO Box 670, Okmulgee, OK 74447–0670.
Amount Awarded: $6,000.

PORTLAND HOUSING CENTER, 1605 NE 45th Avenue, Portland, OR 97213.
Amount Awarded: $8,000.

UMPQUA COMMUNITY ACTION NETWORK, 2448 West Harvard, Roseburg, OR 97470.
Amount Awarded: $20,000.

HOUSING COUNCIL OF YORK, 116 North George Street, York, PA 17401.
Amount Awarded: $32,000.

UNEMPLOYMENT INFORMATION CENTER, 116 South Seventh Street, Suite 610, Philadelphia, PA 19106.
Amount Awarded: $14,000.

TABOR COMMUNITY SERVICES, 439 East King Street, Lancaster, PA 17602.
Amount Awarded: $25,000.

NORTHWEST COUNSELING SERVICE, 5001 North Broad Street, Philadelphia, PA 19141.
Amount Awarded: $40,000.

PHILA. COUNCIL FOR COMMUNITY ADVANCEMENT, 100 North 17th Street, Suite 600, Philadelphia, PA 19103.
Amount Awarded: $25,000.

BERKS COMMUNITY ACTION AGENCY, 227–229 North Fourth Street, Reading, PA 19601.
Amount Awarded: $25,000.

GARFIELD JUBILEE ASSOCIATION, INC, 5138 Penn Avenue, Pittsburgh, PA 15224.
Amount Awarded: $9,000.

SHENANGO VALLEY URBAN LEAGUE, INC, 601 Indiana Avenue, Farrell, PA 16121.
Amount Awarded: $20,000.

CONSUMER CREDIT COUNSELING SVC OF W PA, 309 Smithfield Street, Suite 2000, Pittsburgh, PA 15222.
Amount Awarded: $45,000.

LAWRENCE COUNTY SOCIAL SERVICES, INC, 33–39 S Jefferson Street, PO BOX 189, New Castle, PA 16103.
Amount Awarded: $5,500.

BOOKER T WASHINGTON CENTER INC, 1720 Holland Street, Erie, PA 16503.
Amount Awarded: $9,000.

URBAN LEAGUE OF PITTSBURGH, One Smithfield Street, Pittsburgh, PA 15222.
Amount Awarded: $44,000.

COMMUNITY ACTION SOUTHWEST, 315 East Hallam Avenue, Washington, PA 15301–3407.
Amount Awarded: $11,000.

HOUSING OPPORTUNITIES, INC, 133 Seventh Avenue, PO BOX 9, McKeesport, PA 15132.
Amount Awarded: $54,000.

WARREN FOREST CO. ECONOMIC OPPOR. COUNCIL, PO Box 547, Warren, PA 16365.
Amount Awarded: $6,000.

CEIBA HOUSING & ECONOMIC DEVELOPMENT CORP, Lauro Pinero Ave. #252, PO Box 203, Ceiba, PR 00735.
Amount Awarded: $11,000.

CONSUMER CREDIT COUNSELING SERVICE OR P.R. INC., 1606 Ponce de Leon Ave., Off. 702, Santurce, PR 00909.
Amount Awarded: $27,000.

URBAN LEAGUE OF RHODE ISLAND, INC., 246 Prairie Avenue, Providence, RI 02905.
Amount Awarded: $20,000.

PALMETTO LEGAL SERVICES, 2109 Bull Street, PO Box 2267, Columbia, SC 29202.
Amount Awarded: $16,000.

CAROLINA REGIONAL LEGAL SERVICES, PO Box 479, 279 West Evans Street, Florence, SC 29503–0479.
Amount Awarded: $28,000.

PEE DEE COMMUNITY ACTION AGENCY, PO Drawer 12670, 2685 South Irby Street, Florence, SC 29505.
Amount Awarded: $7,000.

TRIDENT UNITED WAY, 32 Ann Street, PO Box 20696, Charleston, SC 29413–0696.
Amount Awarded: $23,000.

SPECTRUM INSTITUTE, 3200 Colonial Drive, PO Box 25283, Columbia, SC 29224.
Amount Awarded: $12,000.

PIEDMONT LEGAL SERVICES, INC., 148 East Main Street, Spartanburg, SC 29306.
Amount Awarded: $18,000.

GREENVILLE URBAN LEAGUE, INC., 15 Regency Hill Drive, Greenville, SC 29607.
Amount Awarded: $18,000.

SUNBELT HUMAN ADVANCEMENT RESOURCES, INC., PO Box 10204, Greenville, SC 29603.
Amount Awarded: $14,000.

BLACK HILLS LEGAL SERVICES, INC., 1301 Mt. Rushmore Road, PO Box 1500, Rapid City, SD 57709.
Amount Awarded: $12,513.

KNOXVILLE LEGAL AID SOCIETY, 502 S. Gay Street, Suite 404, Knoxville, TN 37902.
Amount Awarded: $10,000.

KNOXVILLE AREA URBAN LEAGUE, INC., 2416 Magnolia Avenue, PO Box 1911, Knoxville, TN 37901.
Amount Awarded: $49,000.

DOUGLAS-CHEROKEE ECONOMIC AUTHORITY, 534 East 1st North Street, PO Box 1218, Morristown, TN 37816–1218.
Amount Awarded: $5,000.

UPPER EAST TN HUMAN DEVELOPMENT AGENCY, 301 Louis Street, PO Box 46, Kingsport, TN 37662.
Amount Awarded: $5,000.

HOPE, INCORPORATED, 1501 Herman Street, Suite S, Nashville, TN 37208.
Amount Awarded: $11,500.

CITIZENS FOR AFFORDABLE HOUSING, INC., 1719 West End Avenue, Suite 607, Nashville, TN 37203.
Amount Awarded: $54,000.

TARGET COMMUNITY ASSOCIATION, 117 South Second Street, PO Box 52, Pulaski, TN 38478.
Amount Awarded: $12,500.

METROPOLITAN DEVELOPMENT AND HOUSING AGENCY, 701 South Sixth Street, Nashville, TN 37206–3893.
Amount Awarded: $10,000.

CONSUMER CREDIT COUNSELING SERVICE OF DALLAS, 8737 King George Drive, Suite 200, Dallas, TX 75235.
Amount Awarded: $98,000.

HOUSING OPPORTUNITIES INC. FORT WORTH, 1305 West Magnolia, Fort Worth, TX 76104.
Amount Awarded: $24,000.

DALLAS URBAN LEAGUE, 3625 North Hall St., Suite 700, Dallas, TX 75219.
Amount Awarded: $36,000.

DALLAS COUNTY COMMUNITY ACTION COMMITTEE, INC., 2121 Main Street, Suite 100, LB–19, Dallas, TX 75201.
Amount Awarded: $14,000.

CONSUMER CREDIT COUNSELING SERVICE OF GREATER FORT WORTH, 807 Texas Street, Suite 100, Fort Worth, TX 76102–4533.
Amount Awarded: $10,000.

CONSUMER CREDIT COUNSELING SERVICE OF THE GULF COAST AREA, 4600 Gulf Freeeway Suite 500, Houston, TX 77023.
Amount Awarded: $100,000.

HOUSTON AREA URBAN LEAGUE, INC., 3215 Fannin, Houston, TX 77004.
Amount Awarded: $50,000.

GREATER EL PASO S.E.R., 4838 Montana Avenue, El Paso, TX 79903.
Amount Awarded: $50,000.

COMMUNITY DEVELOPMENT CORPORATION OF BROWNSVILLE, 1150 E. Adams, Second Floor, Brownsville, TX 78520.
Amount Awarded: $10,000.

CHILD AND FAMILY SERVICE INC., 1221 W. Ben White Blvd., Suite 108-A, Austin, TX 78704.
Amount Awarded: $13,000.

CONSUMER CREDIT COUNSELING SERVICE OF GREATER SAN ANTONIO, 6851 Citizens Parkway, Ste. #100, San Antonio, TX 78229–3601.
Amount Awarded: $31,000.

MARSHALL HOUSING AUTHORITY, 406 Poplar, PO Box 609, Marshall, TX 75671.
Amount Awarded: $24,974.

COMMUNITY ACTION SERVICES, 257 East Center Street, Suite 201A, Provo, UT 84601.
Amount Awarded: $5,000.

FAMILY LIFE CENTER, 493 North 700 East, Logan, UT 84321.
Amount Awarded: $10,000.

SALT LAKE COMMUNITY ACTION PROGRAM, 764 South 200 West, Salt Lake City, U'T 84101.
Amount Awarded: $30,000.

YOUR COMMUNITY CONNECTION OF OGDEN/NORTHERN UTAH, 2261 Adams Avenue, Ogden, UT 84401.
Amount Awarded: $15,000.

PEOPLE INCORPORATED OF SOUTHWEST VA, 988 West Main Street, Abington, VA 24210.
Amount Awarded: $6,500.

HOUSING OPPORTUNITIES MADE EQUAL, INC., 1218 West Cary Street, Richmond, VA 23220.
Amount Awarded: $24,000.

ROANOKE REDEVELOPMENT & HOUSING AUTHORITY, 2624 Salem Turnpike, N.W., PO Box 6359, Roanoke, VA 24017.
Amount Awarded: $8,000.

OFFICE OF HUMAN AFFAIRS, 6060 Jefferson Avenue, Post Office Box 37, Newport News, VA 23607.
Amount Awarded: $5,000.

TOTAL ACTION AGAINST POVERTY RKE. VALLEY, 145 Campbell Avenue, S.W., Post Office Box 2868, Roanoke, VA 24001–2868.
Amount Awarded: $5,000.

SOUTHEASTERN TIDEWATER OPPORTUNITY PROJECT, 2551 Almeda Avenue, Norfolk, VA 23513.
Amount Awarded: $7,000.

MONTICELLO AREA COMMUNITY ACTION AGENCY, 1025 Park Street, Charlottesville, VA 22901.
Amount Awarded: $7,000.

COMMUNITY HEALTH CENTER LA CLINICA, 1517 North 5th Avenue, PO Box 1332, Pasco, WA 99301.
Amount Awarded: $22,140.

PIERCE COUNTY COMMUNITY SERVICES, 8811 South Tacoma Way, Pierce County, Tacoma, WA 98499.
Amount Awarded: $29,520.

FREMONT PUBLIC ASSOCIATION, PO Box 31151, Seattle, WA 98103.
Amount Awarded: $23,780.

SPOKANE NEIGHBORHOOD ACTION PROGRAMS, 2116 E. First Avenue, Spokane, WA 99202.
Amount Awarded: $60,714.

WALKER'S POINT DEVELOPMENT CORPORATION, 914 South 5 Street, Milwaukee, WI 53204.
Amount Awarded: $32,000.

ESHAC, INC., 531 East Burleigh Street, Milwaukee, WI 53212.
Amount Awarded: $15,000.

COMMUNITY ACTION, INC. OF ROCK AND WALWORTH COUNTIES, 2300 Kellogg Avenue, Janesville, WI 53546.
Amount Awarded: $8,000.

LEGAL SERVICES OF NORTHEASTERN WISCONSIN, INC., 417 Pine Street, Green Bay, WI 54301.
Amount Awarded: $30,000.

WESTSIDE CONSERVATION CORPORATION, 3306 West Highland Boulevard, Milwaukee, WI 53208.
Amount Awarded: $35,000.

[FR Doc. 95–26650 Filed 10–26–95; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; F–14871–A]

Alaska Native Claims Selection; Notice for Publication

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Kuskokwim Corporation (successor in interest to Upper Kalskag Incorporated) for lands within Secs. 22 and 27, T. 17 N., R. 61 W., Seward Meridian, containing approximately 160 acres. The lands involved are in the vicinity of Upper Kalskag, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Tundra Drums. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 27, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Terry R. Hassett,

Chief, Branch of Gulf Rim Adjudication.

[FR Doc. 95–26722 Filed 10–26–95; 8:45 am]

BILLING CODE 4310–JA–P

[(AK–962–1410–00–P; AA–6707–D]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision approving lands for conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to The Tyonek Native Corporation for approximately 1,280 acres. The lands involved are located within T. 12 N., R. 11 W., Seward Meridian, Alaska, in the vicinity of Tyonek, Alaska.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Anchorage Daily News. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until November 27, 1995, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Gary L. Cunningham,

Land Law Examiner, Branch of Gulf Rim Adjudication.

[FR Doc. 95–26647 Filed 10–26–95; 8:45 am]

BILLING CODE 4310–JA–P

[UT–080–06–104–00]

Notice of Availability

SUMMARY: Notice is hereby given that a Proposed Plan Amendment/Environmental Assessment for the Book Cliffs Resource Management Plan has been completed. Pursuant to this Proposed Amendment/Environmental Assessment, new decisions regarding forage reallocation and alternatives to access management have been proposed for portions of the Book Cliffs Resource Area.

DATES: The proposed plan amendment may be protested. The protest period will commence with the date of publication of this notice. Protests must be submitted on or before November 27, 1995.

ADDRESSES: Protests to the proposed plan amendment should be addressed to the Director (480), Bureau of Land Management, Resource Planning Team, Box 10, 1620 L Street, N.W., Washington, DC 20036, within 30 days after the date of publication of this Notice for the proposed planning amendment.

FOR FURTHER INFORMATION CONTACT: Paul M. Andrews, Area Manager, Book Cliffs Resource Area at 170 South 500 East,

Vernal, Utah 84078; Phone: (801) 781–4400.

SUPPLEMENTARY INFORMATION: In support of the Book Cliffs Initiative, a cooperative management effort, which resulted in the acquisition of 5192 acres by the Bureau of Land Management, and acquisition of Federal Grazing permits by involved parties, additional opportunities for planning have resulted that were not envisioned at the time the Book Cliffs RMP was originally completed (1985). Specifically there is a need to: (1) Determine the kind of public access that will be provided for the lands acquired by the BLM and; (2) determine the appropriate allocation of forage, particularly between livestock and wildlife, for the grazing allotments affected by the purchases.

This Proposed Plan Amendment/ Environmental Assessment may be protested. Protests should be sent to the Director of the Bureau of Land Management using the following protest procedures: (1) The protest must contain the name, mailing address, telephone number and interest of the person filing the protest; (2) a statement of the issue or issues being protested; a statement of the part or parts of the plan amendment being protested; (3) a copy of all documents addressing the issues that were submitted during the planning process by the protesting party; and (4) a concise statement explaining why the State Director decision is believed to be wrong.

Dated: October 18, 1995.

Roger D. Zortman,

Acting State Director.

[FR Doc. 95–26649 Filed 10–26–95; 8:45 am]

BILLING CODE 4310–DQ–P

[NM–930–1310–01; NMNM 13277]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provision of Public Law 97–451; a petition for reinstatement of Oil and Gas Lease NMNM 13277, Lea County, New Mexico, was timely filed and was accompanied by all required rentals and royalties accruing from March 1, 1995, the date of termination. No valid lease has been issued affecting the land. The lessees have agreed to new lease terms for rentals and royalties at rates of $15.00 per acre, or fraction thereof, and 20⅔ percent, respectively. Payment of a $500.00 administration fee has been made. Having met all the requirements for reinstatement of the lease as set in Section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188(d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective March 1, 1995, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this Notice.

FOR FURTHER INFORMATION CONTACT: Becky C. Olivas, BLM, New Mexico State Office, (505) 438–7609.

Dated: October 18, 1995.

Becky C. Olivas,

Land Law Examiner, Fluids Adjudication Team 1.

[FR Doc. 95–26642 Filed 10–26–95; 8:45 am]

BILLING CODE 4310–FB–M

[NV–930–1430–01; N–58520]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-Competitive Sale of Public Lands in Clark County, Nevada.

SUMMARY: The following described public land in Henderson, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Public Law 522 (70 Stat.156) and Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 21 S., R. 63 E.,
Sec. 33: N½SE¼NE¼, E½NW¼NE¼, NE¼NE¼.

containing 83.730 acres, more or less.

This parcel of land, situated in Henderson, Nevada is being offered as a direct sale to the City of Henderson.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals. and will be subject to an easement for roads, public utilities and flood control purposes in accordance with the transportation plan for the City of Henderson.

1. Those rights for slope easement purposes which have been granted to the City of Henderson by Permit No. N–54101 under the Act of October 21, 1976(43 U.S.C.1761).

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada 89108. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Dated: October 17, 1995.

Michael F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–26643 Filed 10–26–95; 8:45 am]

BILLING CODE 4310–HC–P

[NV–930–1430–01; N–59396]

Notice of Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-competitive sale of public lands in Clark County, Nevada.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (FLPMA).

Mount Diablo Meridian, Nevada

T. 22 S., R. 60 E.,
Sec. 25: SW¼NE¼SW¼NE¼,
E½NE¼SW¼NE,
NE¼NW¼SW¼NE¼.

containing 10.00 acres, more or less.

This parcel of land, situated in Las Vegas, is being offered as a direct sale to Nevada Power Company.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to an easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County.

1. Those rights for powerline purposes which have been granted to Nevada Power Company by Permit No. N–2557 under the Act of October 21, 1976 (43USC1761).

2. Those rights for electrical substation site purposes which have been granted to Nevada Power Company by Permit No. N–34767 under the Act of October 21, 1976 (43USC1761).

3. Those rights for electrical substation site purposes which have been granted to Nevada Power Company by Permit No. N–58927 under the Act of October 21, 1976 (43USC1761).

Upon publication of this notice in the Federal Register, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, P. O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the Federal Register.

Dated: October 17, 1995.

Micheal F. Dwyer,

District Manager, Las Vegas, NV.

[FR Doc. 95–26644 Filed 10–26–95; 8:45 am]

BILLING CODE 4310–HC–P

[WY–989–1050–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

T. 14 N., R. 68 W., accepted October 18, 1995.

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s). These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest prior to thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: October 20, 1995.

John P. Lee,

Chief, Cadastral Survey Group.

[FR Doc. 95–26645 Filed 10–26–95; 8:45 am]

BILLING CODE 4310–22–M

[CO–930–1430–01; COC–55779]

Amendment to Proposed Withdrawal: Opportunity for Public Meeting; Colorado

October 20, 1995.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has amended their withdrawal application for the Bakerville-Loveland Bicycle Trail to include an additional 360 acres. This amendment will segregate the lands described below from location and entry under the mining laws for up to two years, it will not affect the segregation of the lands in the original application.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before January 25, 1996.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On October 2, 1995, the Department of Agriculture, Forest Service, filed an application to amend their original application to include the following described National Forest System lands. See 58 FR 51647–8 Oct. 4, 1993. This

application will close the following described lands to location and entry under the United States mining laws (30 U.S.C. Ch 2) for up to 2 years:

Arapaho National Forest

Sixth Principal Meridian

T. 4 S., R. 75 W.,
Sec. 19, E½NE¼;
Sec. 20, W½NE¼ excluding Mining Claims, and SW¼NW¼;

Strips of land 100 ft. in width, 50 ft. either side of a centerline, running through the following described lands:

Sec. 18, W½SW¼ and SE¼SW¼;
Sec. 19, NW¼NE¼ and NE¼NW¼;
Sec. 20, SE¼NW¼.

T. 4 S., R. 76 W.,
Sec. 13, NW¼SW¼;
Sec. 14, NE¼SE¼;
Sec. 22, NW¼SE¼;

Strips of land 100 ft. in width, 50 ft. either side of a centerline, running through the following described lands.

Sec. 13, NE¼SW¼ and SE¼;
Sec. 14, S½NW¼, W½SE¼, and SE¼NE¼SW¼;
Sec. 22, E½NE¼ and NE¼SE¼;
Sec. 23, NE¼NW¼ and NE¼NW¼.

The areas described aggregate approximately 360 acres of National Forest System lands in Clear Creek County.

The purpose of this withdrawal is to protect recreational values associated with the Bakerville-Loveland Bicycle Trail and improvements associated with this trail.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the Federal Register, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 95–26646 Filed 10–26–95; 8:45 am]

BILLING CODE 4310–JB–P

Fish and Wildlife Service

Notice of Receipt of Applications for Approval

The following applicants have applied for approval to conduct certain activities with birds that are protected in accordance with the Wild Bird Conservation Act of 1992. This notice is provided pursuant to Section 112(4) of the Wild Bird Conservation Act of 1992, 50 CFR 15.26(c).

Applicant: Joseph Krathwohl, World Center for Exotic Birds, Las Vegas Nevada. The applicant wishes to establish a cooperative breeding program for the Bateleur eagle (*Terathopius ecaudatus*), Martial eagle (*Polemaetus bellicosus*), Tawny eagle (*Aquila rapax*), Verreaux's eagle (*Aquila verrauxi*), Eurasian eagle owl (*Bubo bubo*), and the Egyptian vulture (*Neophron percnopterus*). Mr. Krathwohl wishes to be an active participant in this program with four other private individuals. The World Center for Exotic Birds has assumed the responsibilty for the oversight of the program.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 420C, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: October 23, 1995.

Dr. Susan Lieberman,

Chief, Branch of Operations, Office of Management Authority.

[FR Doc. 95–26721 Filed 10–26–95; 8:45 am]

BILLING CODE 4310–55–P

Notice of Receipt of Application for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT–807672

Applicant: Dr. J.H. Carter III & Associates, Southern Pines, North Carolina.

The applicant requests a permit to take (capture for banding, translocate selected individuals, radio-tag, or install artificial cavities and cavity restrictors) red-cockaded woodpeckers, Picoides borealis, in North Carolina, South Carolina, Georgia, Mississippi, and Florida for the purpose of enhancement of survival of the species.

PRT–807671

Applicant: Dr. Richard Brown, Supply, North Carolina.

The applicant requests a permit to take (capture for banding) peregrine falcons, Falco peregrinus, in North Carolina and South Carolina for the purpose of enhancement of survival of the species.

PRT–807674

Applicant: Dr. Charles Lydeard, Tuscaloosa, Alabama.

The applicant requests a permit to take (collect and sacrifice for genetic research) twelve (12) tulotoma snails, Tulotoma magnifica, and six (6) inflated heelsplitters, Potamilus inflatus, in Alabama for the purpose of enhancement of survival of the species.

PRT–792102 (Amendment)

Applicant: Mr. Rex Roberg, Cabot, Arkansas.

The applicant requests a permit to take (conduct population surveys) Ozark big-eared bats, Plecotus townsendii ingens, gray bat, Myotis grisescens, Indiana bat, Myotis sodalis, cave crayfish, Cambarus zophonastes, cave crayfish, Cambarus aculabrum, and Ozark cavefish, Amblyopsis rosea, in Arkansas, Oklahoma, and Missouri; to take (conduct habitat use surveys) red-cockaded woodpeckers, Picoides borealis, in Arkansas, Texas, and Oklahoma; to take (conduct population surveys) American burying beetles, Nicrophorus americanus, in Arkansas and Oklahoma; and take (conduct population and nesting surveys) interior least terns, Sterna antillarum, on sections of the Arkansas, Red, Missouri, and Mississippi rivers in the states of Arkansas, Texas, Missouri, Mississippi, and Oklahoma. Proposed actions are for the purpose of enhancement of survival of these species.

Written data or comments on this application should be submitted to: Regional Permit Coordinator, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345. All data and comments must be

received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Fax: 404/679–7081.

Dated: October 19, 1995.

Noreen K. Clough,

Regional Director.

[FR Doc. 95–26724 Filed 10–26–95; 8:45 am]

BILLING CODE 4310–55–P

National Park Service

Notice of Intent to Repatriate Cultural Items within the Rainbow House Collection, Bandelier National Monument, Los Alamos County, NM

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005(a)(2), of the intent to repatriate cultural items from Bandelier National Monument, Los Alamos County, NM, which meet the definition of ''sacred object'' as defined in section 2 of the Act.

The detailed inventory and assessment of these objects has been made by National Park Service professional staff, in consultation with representatives of the Pueblo of Santa Clara; Pueblo of San Ildefonso; Pueblo of Cochiti; Pueblo of Zia; Pueblo of San Felipe; Pueblo of Isleta; Pueblo of Tesuque; Pueblo of Jemez; Pueblo of Laguna; Pueblo of Acoma; Pueblo of Santa Ana; Pueblo of Sandia; Pueblo of Santo Domingo; Pueblo of Zuni; Ysleta del Sur Pueblo; and Tewa representatives of the Hopi Tribe.

Between 1948 and 1955, Fredrick Worman of Adams State College, CO and Louis Caywood of the National Park Service, carried out legally authorized archeological excavations on Federal public lands, including the Rainbow House archeological site [LA 217] within Bandelier National Monument. At Rainbow House one hundred rooms were excavated, as well as a kiva and an associated plaza. The occupation date assigned to Rainbow House was between AD 1412–1453.

The thirty-two objects include: eight pipes, three figurines, one bowl, four pendants, two cylinders, one shell tinkler, one axe, one groundstone, two kiva bells, one hoe, one stone artifact, two stone balls, three bone whistles, one bone rasp, one flute. All of these items were recovered from the kiva and plaza area. Pueblo traditional religious leaders and other official tribal representatives have stated that these specific objects are, and were at the time they were separated from the Pueblo, needed for the practice of traditional Pueblo religion by present-day adherents.

Based on provenience data from the original field notes prepared during excavation, the anthropological literature pertinent to Rainbow House and other Ancestral Puebloan sites in the surrounding area, and in consultation with Pueblo representatives and traditional religious leaders, officials of the National Park Service have determined that these thirty-two objects are specific ceremonial objects which are needed by Pueblo religious leaders for the practice of traditional Pueblo religion by their present-day adherents.

Artifactual evidence does not allow specific identification of a single culturally affiliated Indian tribe. However, examination of the objects specified above and oral history regarding traditional and religious practices indicate probable cultural affiliation between the objects and various Pueblo Indian groups. Based on the above-mentioned information, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identify which can be reasonably traced between these sacred objects and the Pueblo of Santa Clara; Pueblo of San Ildefonso; Pueblo of Cochiti; Pueblo of Zia; Pueblo of San Felipe; Pueblo of Isleta; Pueblo of Tesuque; Pueblo of Jemez; Pueblo of Laguna; Pueblo of Zuni and Tewa of the Hopi Tribe. Other Pueblo peoples may also be culturally affiliated with these cultural items. The Pueblo of Taos; Pueblo of Picuris; Pueblo of San Juan; Pueblo of Nambe; and Pueblo of Pojoaque have declined to participate in consultation efforts to date.

This notice has been sent to consultation representatives of the following Indian tribes: Pueblo of Santa Clara; Pueblo of San Ildefonso; Pueblo of Cochiti; Pueblo of Zia; Pueblo of San Felipe; Pueblo of Isleta; Pueblo of Tesuque; Pueblo of Jemez; Pueblo of Laguna; Pueblo of Acoma, Pueblo of Santa Ana; Pueblo of Sandia; Pueblo of Santo Domingo; Pueblo of Zuni; Ysleta del Sur Pueblo; and the Hopi Tribe.

Representatives of any other Indian tribe which believes itself to be culturally affiliated with these objects should contact Superintendent Roy W. Weaver, Bandelier National Monument, HCR 1 Box 1 Suite 15, Los Alamos, NM, 87544, telephone: (505) 672–3861 fax (505) 672–9607, before November 27, 1995. Repatriation of these objects may begin after that date if no additional claimants come forward.

Dated: October 23, 1995

Veletta Canouts

Acting Departmental Consulting Archeologist,

Archeology and Ethnography Program

[FR Doc. 95–26703 Filed 10–26–95; 8:45 am]

BILLING CODE 4310–70–F

INTERSTATE COMMERCE COMMISSION

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation and Address of Principal Office

Pine Bluff Sand and Gravel Company, Post Office Box 7008, 1501 Port Road, Pine Bluff, Arkansas 71611

2. Wholly Owned Subsidiaries Which Will Participate in the Operations, and State of Incorporation

(a) Mobley Construction Company, Inc., Arkansas Corporation

(b) Mobley Transport Company, Inc., Arkansas Corporation.

Vernon A. Williams,

Secretary.

[FR Doc. 95–26689 Filed 10–26–95; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32768]

CSX Transportation, Inc.; Lease and Operation Exemption; Norfolk and Western Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, pursuant to 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343–45 the lease and operation by CSX Transportation, Inc. (CSXT), of 13.5 miles of railroad owned by Norfolk and

Western Railway Company, subject to standard labor protective conditions. The line runs from milepost WG–12.0 near Helen, WV, to milepost WG–25.5 at McVey, WV, including access to the CSXT connection at milepost WG–23.6 at Pemberton, WV.

DATES: This exemption will be effective on November 26, 1995. Petitions to stay must be filed by November 13, 1995. Petitions to reopen must be filed by November 21, 1995.

ADDRESSES: Send pleadings referring to Finance Docket No. 32768 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, 1201 Constitution Avenue NW., Washington, DC 20423; and (2) Petitioner's representative: John W. Humes, Jr., 500 Water Street, J–150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 927–5660. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Interstate Commerce Commission Building, 1201 Constitution Ave., N.W., Room 2229, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services: (202) 927–5721.]

Decided: October 17, 1995.

By the Commission, Chairman Morgan, Vice Chairman Owen, and CommissionersSimmons and McDonald.

Vernon A. Williams,

Secretary.

[FR Doc. 95–26688 Filed 10–26–95; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 94–63]

Robert L. Dougherty, Jr., M.D.; Revocation of Registration

On July 29, 1993, the Deputy Assistant Administrator (formerly Director), Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Robert L. Dougherty, Jr., M.D. (Respondent), of Poway, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration, AD1048861, and deny any pending applications for renewal of such registration as a practitioner, under 21 U.S.C. 823(f) and 824(a)(4), as being inconsistent with the public interest. Specifically, the Order to Show Cause alleged that: (1) Between January 1990 and March 1992, the Respondent prescribed the following controlled substances, Demerol, Percocet, Percodan, Preludin, Nembutal, Fastin, Tenuate, Valium, and Xanax, to an individual for no legitimate medical purpose and outside the scope of his professional practice; (2) between December 1990 and December 1991, the Respondent prescribed the following controlled substances, Lortab, Vicodin, Darvocet, and other dextropropoxyphene combination products, to an individual for no legitimate medical purpose and outside the scope of his professional practice; (3) between January 1991 and April 1992, the Respondent prescribed the following controlled substances, Lortab, Vicodin, and Oxazepam, to an individual for no legitimate medical purpose and outside the scope of his professional practice; (4) between April 1990 and July 1990, the Respondent ordered the following controlled substances, Demerol, morphine, Lortab, Vicodin, Xanax, and Halcion, without maintaining receipt or dispensing records of such orders; (5) in April 1992, various controlled substances were located at the Respondent's residence although the residence was not a registered location at that time.

On August 18, 1993, the Respondent filed a timely request for a hearing, and following prehearing procedures, a hearing was held in San Diego, California, on July 26, 27, and 28, 1994, before Administrative Law Judge Paul A. Tenney. At the hearing the Respondent was represented by counsel, both parties called witnesses to testify and introduced documentary evidence, and after the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On January 12, 1995, Judge Tenney issued his Findings of Fact, Conclusions of Law, and Recommended Ruling, recommending that the Respondent's DEA Certificate of Registration be suspended for a period of one year. On January 23, 1995, the Government filed Exceptions to the Opinion and Recommended Decision of the Administrative Law Judge, and on March 20, 1995, the Respondent filed a Response to the Government's Exceptions.

On March 22, 1995, Judge Tenney transmitted the record of these proceeds to the Deputy Administrator.

The Deputy Administrator has considered the record and the submissions of the parties in their entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the findings of fact and conclusions of law of Judge Tenney, except as noted below, and his adoption is in no manner diminished by any recitation of facts issues and legal conclusions herein, or of any failure to mention a matter of fact or law. However, for reasons explained below, the Deputy Administrator rejects Judge Tenney's recommendation as to the appropriate disposition of this case.

The Deputy Administrator finds that in February 1992, as a result of a call from a local pharmacist, a DEA Diversion Investigator (Investigator) opened a case to investigate allegations that the Respondent was prescribing excessive amounts of controlled substances to a named individual, Patient #1. In March 1992, an employee of the Respondent also called the Investigator concerning the Respondent's prescription practices relevant to Patient #1. Next, an agent from the California Department of Justice, Bureau of Narcotic Enforcement (Agent) obtained a listing of triplicate prescriptions written for Schedule II controlled substances for a two year period under the Respondent's DEA Certificate of Registration number. She testified before Judge Tenney that the overall number was ''fairly modest,'' except for those pertaining to Patient #1, which appeared excessive. The Investigator sent this listing to a medical doctor, Dr. Denes, for review. Without benefit of Patient #1's treatment record, in a letter dated March 18, 1992, Dr. Denes wrote that the prescription pattern for Patient #1 was highly suspect. For example, Dr. Denes wrote that Percodan and Demerol, both Schedule II controlled substances, are typically used on a short term basis and prescribed at a maximum of four doses per day. However, the Respondent has prescribed enough of this substance for Patient #1 to take an average of 3.7 doses per day during all of 1990, and 11.4 doses per day in 1991. Dr. Denes also wrote that the Respondent's practice of prescribing large quantities of both nervous system depressants and nervous system stimulants ''is highly irregular in the medical profession and raises the very strong likelihood of drug abuse. I cannot conceive of any legitimate medical condition which would require the prescribing of these drugs, in these quantities, to any patient.'' Relying upon the information received from Dr. Denes, DEA obtained

a search warrant for the Respondent's office and residence, and executed this warrant on April 24, 1992.

Prior to executing the search warrant, the Investigator had obtained ten DEA Form 222's (official triplicate order forms used by physicians to order scheduled narcotics), showing shipment dates between April 16, 1990, and indicating that a local pharmacy had filled the Respondent's orders for Demerol and Morphine, and had shipped the orders to the Respondent at his office. At both the Respondent's office and home, investigators searched for the Respondent's copies of the previously obtained DEA Form 222's. The Respondent had told the Investigator the documents were on his desk in his office, but after two hours of searching through a disorganized stack of documents on and in the Respondent's desk, the Investigator was unable to locate the forms. She testified before Judge Tenney that after this two hour search she had concluded that the forms were not ''readily retrievable'' and she ended her search. The investigators were also unsuccessful in locating a ''biennial inventory'' at either the Respondent's home or office, and during the hearing before Judge Tenney, the Respondent conceded that he had not maintained a biennial inventory. Investigators were also unable to locate at either the Respondent's home or office receipts for controlled substances that the Respondent had purchased from drug distributors between 1990 and 1992, or receipts for controlled substances that were actually located at the Respondent's office at the time of the search. The Respondent conceded that he did not keep receipts for samples of controlled substances that he had been given from drug company representatives, substances such as Xanax, Valium, and Halcion. During his hearing testimony, the Respondent conceded that he had not directed anyone in his office to keep a record of the actual receipt of controlled substances, although he ''inconsistently, and not most of the time'' placed a note in a notebook. The parties dispute the existence of dispensing records, for the investigators were unable to locate such records at the time of the search, but the Respondent asserted that he maintained dispensing records, that those records were located in the pile of documents on the top of his desk, but that they disappeared in the search. The Respondent testified that the dispensing records were mostly for injectable substances (Demerol and morphine), but that there were ''probably a few, but nothing major'' with respect to ''all the others, the samples, [and] the Xanax.'' The Respondent also testified that he dispensed samples to patients other than Patient #1, that he had an annotation system for the patients' records noting such dispensing, but that he did not use this system in Patient #1's record.

Patient #1 became Respondent's patient in 1974, he is a Vietnam veteran who was injured, and he is a medically retired San Diego Police Officer. He was medically retired after experiencing three back injuries, consulting with at least two neurosurgeons and two orthopedic surgeons in San Diego, being diagnosed with extensive lumbar-spine disease and a herniated disk in the cervical spine, and requiring pain medication pending major surgery. The Respondent testified that he had ''received, to [his] satisfaction, incontrovertible proof that [Patient #1's] pain was real.'' In the early 1980's, Patient #1 received treatment at a pain clinic to try to decrease his reliance upon narcotic pain medication. Also his treatment record contained notations made in the early 1980's as part of an arthritic clinic's treatment, reflecting that Patient #1 believed that he was addicted to pain medicine, and that the planned treatment was ''to decrease the patient's pain-medication addiction.''

At the hearing before Judge Tenney, the Government called Dr. Ling as an expert witness. The parties dispute whether this witness should be regarded as an expert witness in pain management, but Judge Tenney reviewed the witness's Curriculum Vitae (made a part of the record) as well as the witness's testimony concerning his professional education and experience, and determined that Dr. Ling was also qualified as an expert in pain management. After reviewing Patient #1's treatment record, Dr. Ling concluded that generally he had no dispute with the manner or amount of controlled substances the Respondent prescribed to Patient #1 during the 1980's. However, after Patient #1 moved into the Respondent's home in early 1990, the notations in his chart became sporadic, ending on December 3, 1991. Dr. Ling testified that the Respondent's standard of care as to Patient #1, to include a lack of a medical record showing Patient #1's treatment, and the excessive amounts of prescribed medication between January 1990 and February 1992, ''fell below community standards for the average physician.'' He conditioned this opinion by stating that the evidence ''does not support that the doctor was prescribing for an illegitimate purpose,'' or that ''he was doing something dishonest,'' but rather that such prescribing was not ''appropriate treatment'' in this case. The Respondent rebutted Dr. Ling's opinion by testifying that he altered his patient record practices in the case of Patient #1 after he moved into his home because he now saw him regularly and was able to closely observe him on a daily basis. Further, the Respondent testified that between 1990 and 1992 he received samples of Xanax, and gave these to Patient #1, although such dispensing was not recorded in his chart. Further, the Respondent conceded that from April 1991 through March 1992, virtually no Schedule II drugs were recorded on Patient #1's chart, even though the prescription records obtained from the pharmacies recorded that such controlled substances were prescribed and the prescriptions filled.

However, the record also demonstrates that from mid-December 1991 to April 1992, Patient #1 ''rarely ever'' went into an examination room, pursuant to information provided by a member of the Respondent's staff. Patient #1 would visit the office to pick up prescriptions, and he would often call the Respondent's office and leave a message telling the Respondent what controlled substances to bring home. Dr. Ling testified that such patient and physician behavior concerned him, because the patient's demands seemed to replace the physician's judgment. He further testified that he was aware that some chronic pain patients receive less medication than they needed, but that he continued to maintain that it was still the physician's judgment that should control.

Further, the Investigator interviewed approximately 10 local pharmacists, and the names of Patient #2 and Patient #3 were given as patients of the Respondent who also may have been overprescribed. On October 24, 1990, the Respondent issued Patient #2 an original prescription for 30 dosage units of Vicodin, he saw this patient again on November 14, 1990, and although the Respondent did not see this patient again until May 1, 1991, he authorized more than twenty refills from the October 24, 1990, prescription for Vicodin, a medication containing hydrocodone, a Schedule III controlled substance. Following this same pattern, the Respondent also issued Patient #2 an original prescription for Darvocet–N 100 on October 24, 1990, and between that date and May 1, 1991, he authorized more than twenty refills of Darvocet, a medication containing propoxyphene napsylate, a Schedule IV controlled substance.

The parties stipulated that Patient #3 forged prescriptions. Of record is a list of forged prescriptions under the Respondent's name, indicating that on February 3, 1992, February 13, 1992, March 18, 1992, April 17, 1992, April 18, 1992, April 20, 1992, and April 21, 1992, a total of 396 dosages of Lortab were dispensed to Patient #3, a medication which contains a Schedule III controlled substance. The record contains evidence that acts were taken between January 1990 and April 1992, to notify the Respondent of Patient #3's forgeries: (1) In January 1990, a pharmacist contacted the Respondent's office about forged prescriptions from Patient #3, (2) a letter dated February 6, 1992, was written to the Respondent informing him of a suspicious prescription written to Patient #3 despite the Respondent's office's verification of the prescription which the pharmacist had filled, and (3) in April 1992, the Respondent received notification from another pharmacist about forged prescriptions for a controlled substance for Patient #3. However, the Respondent authorized the refills and continued to prescribe Lortab for Patient #3.

Also, Patient #3 was interviewed by the Investigator and the Agent, and a transcript of that interview was made a part of the record. Patient #3 stated that he had been a patient of the Respondent's from July 1990 to about June 1992, that he had told the Respondent of his past drug addiction problems, but that the Respondent continued to prescribe Lortab, a Schedule III controlled substance. He also stated that the Respondent talked to him about forged prescriptions, that he had denied forging the prescriptions, but that the Respondent had told him that he did not believe his denial. However, the Respondent continued prescribing Lortab even after this conversation. Patient #3 stated that in June 1992 he stopped receiving treatment from the Respondent and that he went into a rehabilitation treatment center for 90 days to overcome his addiction to Lortab.

Finally, the Respondent testified that he believed Patient #3 had valid complaints of pain stemming from history of back pain, that he never received a copy of a forged prescription regarding Patient #3, that he did not see such a copy until June 1992, when he then realized Patient #3 had been deceiving him. Further, he stated that on June 1, he told Patient #3 he should see another doctor, but that he gave his a small supply of Lortab to take until he could get into a clinic on June 24th. He testified that Patient #3 returned to his office a week later, but that he merely gave him a non-narcotic pain medication. After reviewing Patient #3's chart, Dr. Ling concluded that the Respondent's prescribing practices were excessive with poor documentation of the need for those narcotics, demonstrating a lack of usual care and precaution in dealing with these kinds of prescriptions.

Pursuant to 21 U.S.C. Sections 824(a)(4) and 823(f), the Deputy Administrator may revoke or suspend a DEA Certificate of Registration if he determines that the continued registration would be inconsistent with the public interest. Pursuant to 823(f), the following factors are to be considered ''in determining the public interest:''

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989).

In this case, factors two, four, and five are relevant in determining whether the Respondent's retention of his Certificate of Registration would be inconsistent with the public interest. As to factor two, the Respondent's ''experience in dispensing controlled substances,'' the Deputy Administrator finds that both Dr. Denes and Dr. Ling agreed that the Respondent's dispensing of controlled substances to Patient #1 between January 1990 and February 1992, was ''highly irregular in the medical profession,'' and was excessive. To be effective, a prescription for a controlled substance ''must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.'' 21 CFR 1306.04(a); see also Harlan J. Borcherding, D.O., 60 FR 28,796, 28,798 (1995). Here, Dr. Ling observed that the Respondent's management of Patient #1's medical treatment demonstrated behavior such that the patient's demands seemed to replace the physician's judgment. Such actions on the part of the Respondent certainly bring into serious question the legitimacy of his dispensing of controlled substances to Patient #1. The Deputy Administrator has previously found that prescriptions issued under such circumstances were not for a legitimate medical purpose, when an undercover officer dictated the controlled substance to be given, ''rather than Respondent, as a practitioner, determining the medication appropriate for the medical condition presented by the officer.'' Ibid. Here, Judge Tenney concluded, and the Deputy Administrator agrees, that the Respondent's experience included dispensing controlled substances to Patient #1 ''on demand,'' ''virtually upon request,'' with ''virtually no scrutiny,'' and with ''virtually no records or monitoring in the early 1990[']s,'' and such dispensing practices demonstrated the Respondent's ''gross lack of judgment.'' See Borcherding, supra. Further, the Respondent's practice of giving Patient #1 Xanax samples without documenting his record, also leads to the conclusion, as Judge Tenney noted, that the Respondent's prescribing and dispensing to Patient #1 was ''outside the context of the Respondent's usual professional practice.''

Also, the dispensing of a controlled substance in the quantities prescribed to Patient #3, a patient known to the Respondent as an admitted drug abuser, even after receiving warnings of forged prescriptions, demonstrates at least a lack of precaution, and more probably a disregard of the requirements for detailed attention to individual patient behavior necessary for the dispensing of controlled substances. See, e.g., Jay Wheeler Cranston, M.D., Docket No. 92–70, 59 FR 36,786 (1994). Also, the excessive number of refills provided Patient #2 over a six-month period of time without requiring a clinical examination or visit, demonstrates a reckless disregard for medical standards in dispensing controlled substances. Thus, the Deputy Administrator agrees with Judge Tenney that the Government has established a prima facie case under factor two.

As to factor four, ''compliance with applicable State, Federal, or local laws,'' Federal regulations as well as State law established requirements and refill restrictions. The Government's brief provided excerpts of California law dealing with prescription refills and requirements, and the Respondent did

not object to this statement of the State law.

Therefore, as to refills, Federal regulation, 21 CFR 1306.22(a), provides in relevant part that ''[n]o prescription for a controlled substance listed in Schedule III or IV shall be filled or refilled more than six months after the date on which such prescription was issued and no such prescription authorized to be refilled may be refilled more than five times * * *. (4) The prescribing practitioner must execute a new and separate prescription for any additional quantities beyond the five refill, six-month limitation.'' Further, California Health and Safety Code 11200 states in relevant part that ''[n]o person shall dispense or refill a controlled substance prescription more than six months after the date thereof or cause a prescription for a Schedule III or IV substance to be refilled in an amount in excess of a 120 day supply, unless renewed by the prescriber.'' In this case, the Respondent authorized an original prescription to Patient #2 for Vicodin, containing a Schedule III controlled substance, and Darvocet–N 100, containing a Schedule IV controlled substance, on October 24, 1990, and between that date and May 1, 1991, a time exceeding six months, authorized more than twenty refills each for Vicodin and Darvocet, in violation of both Federal regulation and State law.

As for recordkeeping requirements, 21 U.S.C. 827(a)(3) provides in relevant part: ''* * * on and after May 1, 1971, every registrant under this subchapter dispensing a controlled substance or substances shall maintain, on a current basis, a complete and accurate record of each substance * * * received, sold, delivered, or otherwise disposed of by him,'' and 827(b) provides that ''Every inventory or other record required under this section (1) shall be in accordance with, and contain such relevant information as may be required by, regulations of the Attorney General, (2) Shall (A) be maintained separately from all other records of the registrant, or (B) alternatively, in the case of non-narcotic controlled substances, be in such form that information required by the Attorney General is readily retrievable from the ordinary business records of the registrant, and (3) shall be kept and be available, for at least two years, for inspection and copying by officers or employees of the United States authorized by the Attorney General.'' Also, 21 U.S.C. 842(a)(5) provides: ''It shall be unlawful for any person— (5) to refuse or fail to make, keep, or furnish any record, report * * * order or order form, * * * required under this subchapter or subchapter II of this chapter.''

Federal recordkeeping regulations also exist, and 21 CFR 1304.04(a) provides in relevant part: ''Every inventory and other records required to be kept under this part shall be kept by the registrant and be available, for at least 2 years from the date of such inventory or records, for inspection and copying by authorized employees of the Administration.'' Further, 21 CFR 1304.24 requires dispensers to maintain records for each controlled substance reflecting, among other things, the number of commercial containers received, the number of units dispensed, with detailed information concerning the person to whom it was dispensed, and information concerning any other method of disposal of the substance. Finally, 21 CFR 1305.03 dictates that a DEA Form 222 be used for each distribution of a controlled substance listed in Schedule I or II, and 21 CFR 1305.13 requires that these order forms be maintained separately from all other records and ''are required to be kept available for inspection for a period of 2 years.''

Applicable State statues, specifically California Health and Safety Code 11190, require practitioners such as the Respondent, who issue a prescription, dispense, or administer Schedule II controlled substances, to create and maintain a record which identifies the patient, pathology, and purpose for each such transaction. Per Section 11191, the record is to be maintained for three years, and violations may result in criminal prosecution. Further, Section 11192 states that ''proof that a defendant received or has had in his possession at any time a greater amount of controlled substances than is accounted for by any record required by law * * * is prima facie evidence of a violation of [section 11190].''

Here, the Investigator obtained ten DEA 222 order forms showing that a local pharmacy had filled the Respondent's orders for Demerol and morphine, Schedule II substances, and shipped the order between April 16, 1990, and July 23, 1990. Yet on April 24, 1992, the Respondent was unable or unwilling to produce, or make ''readily retrievable,'' the documentation required to be maintained by both Federal and State law as to the DEA Form 222. Also, on the day of the execution of the search warrant, the Respondent had controlled substances at his office and home, and yet the investigators could not find the required biennial inventory documentation, receipts for the controlled substances, either bought by the Respondent or distributed to the Respondent gratis as samples, or his dispensing documentation. In fact, the Respondent conceded that he did not keep receipts for samples of controlled substances that he had been given, substances such as Xanax, Valium, and Halcion, despite the statutory and regulatory requirements to maintain such records. The Respondent argued in his post-hearing brief that the failure to find the required records does not establish by a preponderance of the evidence that he had violated the recordkeeping statutes. However, the Respondent conceded the lack of biennial inventory records, receipts for samples of controlled substances, and a lack of dispensing records meeting the statutory requirements. Further, the evidence established that the Respondent was unable to produce at least seven DEA Form 222's upon request. In total, the preponderance of the evidence established that the Respondent has failed to comply with applicable Federal and State laws relating to controlled substances. Such a blatant disregard for statutory provisions implemented to maintain a record of the flow of controlled substances and to prevent the diversion of controlled substances to unauthorized individuals, would justify revocation of the Respondent's registration. *See, e.g., George D. Osafo, M.D.*, Docket No. 92–75, 58 FR 37,508, 37,509 (1993) (noting ''that Respondent failed to comply with numerous recordkeeping requirements and noted that it is a registrant's responsibility to be familiar with the Federal regulations applicable to controlled substances''). Again, the Deputy Administrator agrees with Judge Tenney that the Government has established a *prima facie* case under factor four.

As to factor five, ''such other conduct which may threaten the public health or safety,'' the Deputy Administrator finds relevant Dr. Ling's testimony that the Respondent's failure to maintain accurate, current, and complete patient treatment records for Patient #1, a fact conceded by the Respondent, Patient #2, and Patient #3, demonstrated a lack of usual care and precaution required of a physician, especially one issuing controlled substance prescriptions supposedly in response to documented patient need. A threat to public health and safety is created by such inaccurate documentation, for, as noted by Judge Tenney, ''[i]n the event that another physician were required to treat either [Patient I or Patient II], i.e., if the Respondent suddenly fell ill, such treatment could be seriously impeded

by the Respondent's shoddy documentation.''

Further, the Respondent's lack of attention to warnings received by him or his staff concerning Patient #3's conduct in forgoing controlled substance prescriptions, coupled with his knowledge of that patient's drug abuse history, creates grave doubt as to the Respondent's prescription practices to known drug abusers. Also, the record lacks any evidence to show that despite such warnings, the Respondent ceased prescribing controlled substances to this patient until he obtained and documented accurate information about the amounts of such substances actually received by Patient #3 through the use of these forged prescriptions. Such conduct shows a carelessness inappropriate for continued registration. The Deputy Administrator finds unconvincing the Respondent's arguments that he should not be accountable for the acts of Patient #3, for it is the inaction of the Respondent which forms the gravamen of the problem warranting revocation of the Respondent's registration: specifically, his failure to insure staff members pass on warnings from local pharmacists, and his failure to heed and respond to written communication received from local pharmacists, especially concerning a patient known to the Respondent as having a history of drug addiction.

The Government filed exceptions, the Respondent filed a Response to the Government's Exceptions, and the Deputy Administrator has reviewed these filings, concluding that only limited comment is required. First, as to the Respondent's exception about the Government's evidence and argument regarding the clinical decisions to be made concerning Patient #3 and referral to a pain clinic, the Deputy Administrator agrees with the Respondent, and such evidence and argument as to the timing of physician treatment decisions pertaining to Patient #3's referral have not been a factor in resolving this case. However, this response does not mitigate the fact that the Respondent was provided notice of Patient's #3 forged prescriptions as early as January 1990, and yet he did not act to investigate or otherwise curtail prescribing controlled substances to this patient, or act to obtain information verifying the exact amount of controlled substances in this patient's possession. Next, the Respondent takes exception to the Government's inferring that the Respondent should be responsible for the acts of Patient #1 in informing the Respondent of a potential undercover investigation. The Deputy Administrator agrees and has not relied upon this fact in analyzing or reaching his decision. The Respondent goes on to note that he has not been charged with illegally prescribing medication to undercover agents and that there was no evidence introduced at the hearing that he participated in such activity. Such a statement is true, but the Deputy Administrator notes that such evidence is not required to justify a revocation. See Richard A. Cole, M.D., Docket No. 90–53. 57 FR 8677, 8680 (1992) (noting that conviction is not the only ground or factor justifying a revocation, but rather finding that the ''Respondent's experience in dispensing controlling (sic) substances, his compliance with laws relating to these drugs[,] and other conduct which may threaten the public health and safety may likewise support the revocation of a registration''). The remainder of the Government's exceptions and the Respondent's response are of record and require no further discussion here.

In conclusion, Judge Tenney wrote that he found ''overwhelming evidence that the Respondent is both a respected physician and member of his community, and that he has served it faithfully for many years. In light of this evidence, I am confident that the Respondent will remedy the deficiencies in his practice.'' Although acknowledging the Respondent's evidence of his lengthy contribution to the community and his status as an admired physician, the Deputy Administrator respectfully declines to adopt Judge Tenney's finding as to the Respondent's future correction of the deficiencies in his practice, or Judge Tenney's resulting recommendation that the Respondent's DEA Certificate of Registration be suspended for one year. Rather, reviewed in total, the Deputy Administrator finds that the Respondent's (1) failure to acknowledge the need for adequate recordkeeping to insure controlled substances are not diverted into the public forum for illegitimate purposes, (2) lack of remorse concerning his own unlawful recordkeeping and refill practices, (3) failure to act in a timely manner upon, and to take responsibility for, receipt of information given to him or to his staff concerning the forged prescriptions of Patient #3 and (4) lack of acknowledgment that the inadequate treatment record of Patient #1 could have ultimately jeopardized that patient's welfare, lead to the conclusion that the revocation of the Respondent's DEA Certificate of Registration is in the public interest. See Leo R. Miller, M.D., Docket No. 86–93, 53 FR 21,932, 21,933 (1988) (noting that the revocation of a DEA Certificate of Registration ''is a remedial measure, based upon the public interest and the necessity to protect the public from those individuals who have misused * * * their DEA Certificate of Registration, and who have not presented sufficient mitigating evidence to assure the Administrator that they can be trusted with the responsibility carried by such a registration''). The Deputy Administrator is aware of the substantial impact of the revocation of a physician's controlled substance registration, and it is not a remedy which he orders without due consideration of alternatives. However, the Deputy Administrator is also charged with protecting the public from the harm resulting from the improper handling of legitimately produced controlled substances.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 21 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AD1048861, previously issued to Robert L. Dougherty, Jr., M.D., be, and it hereby is, revoked. It is further ordered that any pending applications for renewal of said registration be, and hereby are, denied.

This order is effective November 27, 1995.

Stephen H. Greene,

Deputy Administrator.

[FR Doc. 95–26725 Filed 10–26–95; 8:45 am]

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Office of Justice Programs

Office for Victims of Crime

[OJP NO. 1045]

RIN 1121–AA30

Victims of Crime Act Victim Assistance Grant Program

AGENCY: U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime.

ACTION: Final Program Guidelines.

SUMMARY: The Office for Victims of Crime (OVC), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ), is publishing Final Program Guidelines to implement the victim assistance grant program as authorized by the Victims of Crime Act of 1984, as amended, 42 U.S.C. 10601, et seq. (hereafter referred to as VOCA).

DATES: Federal Fiscal Year 1996 VOCA grant program.

FOR FURTHER INFORMATION CONTACT: Jackie McCann Cleland, Director, State

Compensation and Assistance Division, at (202) 307–5983.

SUPPLEMENTARY INFORMATION: VOCA authorizes Federal financial assistance to States for the purpose of compensating and assisting victims of crime, providing funds for training and technical assistance, and assisting victims of Federal crimes. These Program Guidelines provide information on the administration and implementation of the VOCA victim assistance grant program as authorized in Section 1404 of VOCA, Public Law 98–473, as amended, codified at 42 U.S.C. 10603, and contain information on the following: Summary of the Comments to the Interim Final Program Guidelines; Background; Allocation of VOCA Victim Assistance Funds; VOCA Victim Assistance Application Process; Program Requirements; Financial Requirements; Monitoring; and Suspension and Termination of Funding. The Guidelines are based on the experience gained during the first ten years of the grant program and are in accordance with VOCA. These Program Guidelines supersede any Guidelines issued previously by OVC.

The Office of Justice Programs, Office for Victims of Crime, has determined that this rule is not a ''significant regulatory action'' for purposes of Executive Order 12866 and, accordingly, these Program Guidelines were not reviewed by the Office of Management and Budget (OMB).

In addition, these Program Guidelines will not have a significant economic impact on a substantial number of small entities; therefore, an analysis of the impact of these rules on such entities is not required by the Regulatory Flexibility Act, codified at 5 U.S.C. 601, et seq.

The collection of information requirements contained in the *Program Requirements* section was submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act, codified at 44 U.S.C. 3504(h). Approval to use the specified reports to gather information on the use and impact of VOCA victim assistance grant funds has been granted by OMB.

Summary of the Comments to the Interim Final Program Guidelines

On May 10, 1995, the Office for Victims of Crime (OVC) published Interim Final Victims of Crime Act (VOCA) victim assistance Program Guidelines in the Federal Register, Vol.60, No.90, pages 24888 through 24896. These Interim Final Program Guidelines were published for the purpose of implementing the victim assistance grant program for Fiscal Year 1995 VOCA victim assistance grants. State Victim Assistance administrators were mailed copies of the Interim Final Program Guidelines and asked to comment on the revised rules of the VOCA victim assistance grant program. OVC received 11 individual letters from interested individuals and organizations, met with VOCA administrators and VOCA subrecipients at national and regional victims conferences, and had conversations with almost all State VOCA administrators. In total, about 25 different comments, questions, and recommendations were received, reflecting the views of VOCA administrators familiar with the implementation of VOCA victim assistance grants in their own States.

OVC appreciates the time and effort each respondent invested in reading and responding to the Interim Final Program Guidelines. All comments were carefully considered in developing these Final Program Guidelines. As a result, OVC rewrote, deleted, and incorporated additional information to clarify various sections of the Program Guidelines. Explanation of our resolutions and final determinations is provided in the following paragraphs.

A. VOCA Victim Assistance Application Process

1. Administrative Cost Provision.

Although most respondents praised the guidance set forth in the Interim Final Program Guidelines implementing the administrative cost provision of VOCA, some respondents questioned OVC's prohibiting the use of these funds for indirect cost and noted that this was inconsistent with rules governing the use of administrative funds in other OJP formula grant programs. Thus, this restriction has been eliminated from the Program Guidelines.

2. Administrative Cost Provision for Training

One administrator suggested that the use of administrative funds to pay for training should not be limited to OVC-sponsored technical assistance meetings, but should also apply to training on victim issues sponsored by organizations other than OVC. The Program Guidelines have been modified to reflect this allowance.

B. Program Requirements

1. Program Income

Many respondents again expressed concern about OVC's stipulation that services be provided to crime victims at no charge and that any deviation from this provision would require prior approval of the Office for Justice Programs, Office of the Comptroller (OC) and OVC. Other respondents requested that OVC clarify the intent of this provision.

OVC is mindful that some subrecipient organizations use program income, in part to offer additional services to crime victims, thus expanding available services beyond the VOCA funded position. Therefore, these Program Guidelines will allow State grantees to authorize subrecipients to generate income from VOCA-funded staff time under the following conditions: (1) with prior approval of financial and monitoring procedures by the State VOCA administrators; and (2) with the stipulation that no crime victim is ever denied services solely for lack of insurance or personal resources to cover the cost of the services.

Prior to authorizing subrecipients to generate income, OVC strongly encourages state administrators to carefully weigh the following considerations:

First, the purpose of the VOCA victim assistance grant program is to provide services to all crime victims regardless of their ability to pay for services rendered or availability of insurance or other third-party payment resources. Crime victims suffer tremendous emotional, physical, and financial losses. It was never the intent of VOCA to exacerbate the impact of the crime by asking the victim to pay-again.

Second, State grantees must ensure that they and their subrecipients have the capability to track program income, no matter how large or small, in accordance with Federal financial accounting requirements. All VOCA-funded program and match income is restricted to the same uses as the VOCA grant.

Third, program income can be problematic because very few subrecipients have the financial mechanisms in place to track VOCA-funded income and ensure that it is used only to make additional services available to crime victims. For example, VOCA often funds only a portion of a counselor's time. Accounting for VOCA program income generated by a counselor in this case is complicated, involving careful record keeping by the counselor, the subrecipient program, and the State.

2. Services, Activities, and Costs at the Subrecipient Level

Several respondents noted that within their communities there is a tremendous need for outreach to identify victims of crime. The Program Guidelines have been modified to specify that

subrecipients may use VOCA funds for presentations in schools, community centers, or other public forums when a primary purpose is to identify crime victims and provide or refer them to needed services. Related costs such as presentation materials, brochures, and newspaper notices can also be supported with VOCA funds.

C. Financial Requirements

Several subrecipients complained that audit costs for subgrantees receiving more than $25,000, but less than $100,000, are often excessive, ranging from $5,000 to $18,000 annually. As a result, limited VOCA funds are supporting audit costs rather than delivering direct services to crime victims. Pursuant to OMB Circular-A–128, the Office of the Comptroller of the Office of Justice Programs, the Office of Management and Budget, and other federal agencies, are exploring the possibility of raising substantially the threshold that triggers the audit requirement for organizations and institutions receiving federal grants.

Until a change is made, the Program Guidelines have been modified to remind grantees and subgrantees that agencies receiving at least $25,000, but less than $100,000, in a fiscal year have the option of performing a single audit or the less cumbersome Federal program audit. Rather than conducting an audit every year, grantees also have the option of allowing non profits to have an audit every other year for the previous two year period. State or local subrecipients' audits shall be made annually, unless the state or local government has a constitutional or statutory requirement for less frequent audits.

Background

In 1984, VOCA established the Crime Victims Fund (Fund) in the U.S. Treasury and authorized the Fund to receive deposits of fines and penalties levied against criminals convicted of Federal crimes. This Fund provides the source of funding for carrying out all of the activities authorized by VOCA.

OVC serves as the Federal government's chief advocate for all crime victim issues, which includes ensuring that the criminal justice system addresses the legitimate rights and interests of crime victims. OVC's program activities support this role. These Program Guidelines address the specific program and financial requirements of the VOCA crime victim assistance grant program.

OVC makes annual VOCA crime victim assistance grants from the Fund to States. The primary purpose of these grants is to support the provision of direct services to victims of violent crime throughout the Nation. For the purpose of these Program Guidelines, direct services are defined as those efforts that (1) respond to the emotional and physical needs of crime victims; (2) assist primary and secondary victims of crime to stabilize their lives after a victimization; (3) assist victims to understand and participate in the criminal justice system; and (4) provide victims of crime with a measure of safety such as boarding-up broken windows and replacing or repairing locks.

For the purpose of the VOCA crime victim assistance grant program, a crime victim is a person who has suffered physical, sexual, or emotional harm as a result of the commission of a crime.

VOCA gives latitude to State grantees to determine how VOCA victim assistance grant funds will best be used within each State. However, each State grantee must abide by the minimal statutory requirements outlined in VOCA and these Program Guidelines.

Allocation of VOCA Victim Assistance Funds

A. Distribution of the Crime Victims Fund

OVC administers monies deposited into the Fund for activities, as authorized in VOCA. The amount of funds available for distribution each year is dependent upon the total deposits into the Fund during the previous Federal Fiscal Year (October 1 through September 30).

The Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103–322, Title XXIII, Subtitle B) amended VOCA and made three major changes that affect the VOCA victim assistance grant program. First, the Director of OVC has the authority to retain up to $20,000,000 to be held in reserve and used in a year in which the Fund falls below the amount available in the previous year [Section 1402(d)(4)]. Second, the legislation changed the formula for allocating Fund deposits [Section 1402(d)]. Third, State administrators of VOCA victim assistance grant funds may retain up to 5% of each year's grant for administrative purposes [Section 1404(b)(3).] Please refer to the section entitled VOCA Victim Assistance Application Process, *B. Administrative Cost Provision for State Grantees* for information on this provision.

B. Formula for Distributing Crime Victims Fund Deposits

Pursuant to Section 1402(d), deposits into the Fund will be distributed as follows:

1. The first $6,200,000 deposited in the Fund in each of the fiscal years 1992 through 1995 and the first $3,000,000 in each fiscal year thereafter shall be available to the Federal judicial branch for administrative costs to carry out the functions of the judicial branch under 18 U.S.C. Section 3611. See Section 1402(d)(1) of VOCA, codified at 42 U.S.C. 10601(d)(1).

2. Of the next $10,000,000 deposited in the Fund in a particular fiscal year,

a. 85% shall be available to the Secretary of Health and Human Services for grants under Section 4(d) of the Child Abuse Prevention and Treatment Act codified at 42 U.S.C. 5101, for improving the investigation and prosecution of child abuse cases;

b. 15% shall be available to the Director of the Office for Victims of Crime for grants under Section 4(d) of the Child Abuse Prevention and Treatment Act for assisting Native American Indian tribes in developing, establishing, and operating programs to improve the investigation and prosecution of child abuse cases.

3. Of the remaining amount deposited in the Fund in a particular fiscal year,

a. 48.5% shall be available for victim compensation grants,

b. 48.5% shall be available for victim assistance grants; and

c. 3% shall be available for demonstration projects and training and technical assistance services to eligible crime victim assistance programs and for the financial support of services to victims of Federal crime by eligible crime victim assistance programs.

C. Availability of Funds

All States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Northern Mariana Islands, and Palau (hereinafter referred to as ''States'') are eligible to apply for, and receive, VOCA victim assistance grants. See Section 1404(d)(1) of VOCA, codified at 42 U.S.C. 10603(d)(1).

Funds are available for expenditure during the FFY of award and in the next FFY (the grant period). The FFY begins on October 1 and ends on September 30 of the following year. State grantees may incur expenses retroactively to the beginning of each year's grant, October 1, even though the VOCA grant may not be awarded until later in the grant period. Under VOCA, funds that are not obligated by the end of the grant period

must be returned to the General Fund of the U.S. Treasury. Therefore, State grantees are encouraged to monitor closely the expenditure of VOCA funds at the subrecipient level and to reallocate unexpended funds prior to the end of the grant period.

D. Allocation of Funds to States

From the Fund deposits available for victim assistance grants, each State grantee receives a base amount of $200,000, except Palau. The remaining Fund deposits are distributed to each State, based upon the State's population in relation to all other States, as determined by current census data.

E. Allocation of Funds Within the States

The Governor of each State designates the State agency that will administer the VOCA victim assistance grant program. That designated State agency establishes policies and procedures, which must meet the minimum requirements of VOCA and the Program Guidelines. The State grantee can choose to be more restrictive.

VOCA funds granted to the States are to be used by eligible public and private nonprofit organizations to provide direct services to crime victims. States have sole discretion for determining which organizations will receive funds, and in what amounts, as long as the recipients meet the requirements of VOCA and the Program Guidelines.

State grantees are encouraged to develop a VOCA program funding strategy, which should consider the following: the range of victim services throughout the State and within communities; the unmet needs of crime victims; the demographic profile of crime victims; the coordinated, cooperative response of community organizations in organizing services for crime victims; the availability of services to crime victims throughout the criminal justice process; and the extent to which other sources of funding are available for services.

State grantees are encouraged to expand into new service areas as needs and demographics of crime change within the State. Many State grantees use VOCA funds to stabilize victim services by continuously funding selected organizations. Some State grantees end funding to organizations after several years in order to fund new organizations. Other State grantees limit the number of years an organization may receive VOCA funds. These practices are within the State grantee's discretion and are supported by OVC, when they serve the best interests of crime victims within the State.

State grantees may award VOCA funds to organizations that are physically located in an adjacent State, when it is an efficient and cost-effective mechanism available for providing services to victims who reside in the awarding State. When adjacent State awards are made, the amount of the award must be proportional to the number of victims to be served by the adjacent-State organization. OVC recommends that State grantees enter into an interstate agreement with the adjacent State to address monitoring of the VOCA subrecipient, auditing Federal funds, managing noncompliance issues, and reporting requirements. States must notify OVC of each VOCA award made to an organization in another State.

VOCA Victim Assistance Application Process

A. State Grantee Application Process

Each year, OVC issues a Program Instruction and Application Kit to each designated State agency. The Application Kit contains the necessary forms and information required to apply for VOCA grant funds, including the Application for Federal Assistance, Standard Form 424. The amount for which each State may apply is included in the Application Kit. At the time of application, State grantees are not required to provide specific information regarding the subrecipients that will receive VOCA victim assistance funds.

In addition to the Application for Federal Assistance, State grantees shall specify their arrangements for complying with the provisions of OMB Circular A–128 (Audits of State or Local Government) and shall submit Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements; Civil Rights Compliance; and/or any other certifications required by OJP and OVC.

B. Administrative Cost Provision for State Grantees

Each State grantee may retain up to, but not more than, 5% of each year's grant for administering the VOCA victim assistance grant at the State grantee level with the remaining portion being used exclusively for direct services to crime victims or to train direct service providers in accordance with these Program Guidelines, as authorized in Section 1402(d)(3), codified at 42 U.S.C. 10601(d)(3). This option is available to the State grantee and does not apply to VOCA subrecipients.

This administrative cost provision is to be used by the State grantee to expand, enhance, and/or improve the State's previous level of effort in administering the VOCA victim assistance grant program at the State level and to support activities and costs that impact the delivery and quality of services to crime victims throughout the State. Thus, State grantees will be required to certify that VOCA administrative funds will not be used to supplant State funds.

State grantees are not required to match the portion of the grant that is used for administrative purposes.

1. The following are examples of activities that are directly related to managing the VOCA grant and can be supported with administrative funds:

a. Pay salaries and benefits for staff and consultant fees to administer and manage the financial and programmatic aspects of VOCA;

b. Attend OVC-sponsored and other relevant technical assistance meetings that address issues and concerns to State administrators;

c. Monitor subrecipients, Victim Assistance in Indian Country subrecipients, and potential subrecipients, provide technical assistance, and/or evaluation and assessment of program activities;

d. Purchase equipment for the State grantee such as computers, software, fax machines, copying machines;

e. Train VOCA direct service providers; and

f. Purchase memberships in crime victims organizations and victim-related materials such as curricula, literature, and protocols.

2. The following activities impact the delivery and quality of services to crime victims throughout the State and, thus, can be supported by administrative funds:

a. Develop strategic plans on a State and/or regional basis, conduct surveys and needs assessments, promote innovative approaches to serving crime victims such as through the use of technology;

b. Improve coordination efforts on behalf of crime victims with other OJP Offices and Bureaus and with Federal, State, and local agencies and organizations;

c. Provide training on crime victim issues to State, public, and nonprofit organizations that serve or assist crime victims such as law enforcement officials, prosecutors, judges, corrections personnel, social service workers, child and youth service providers, and mental health and medical professionals;

d. Purchase, print, and/or develop publications such as training manuals for service providers, victim services directories, and brochures;

e. Coordinate and develop protocols, policies, and procedures that promote systemic change in the ways crime victims are treated and served; and

f. Train managers of victim service agencies.

State grantees are required to notify OVC of the decision to use administrative funds prior to charging or incurring any costs against this provision. State grantees may notify OVC when the decision is made to exercise this option or at the time the Application for Federal Assistance is submitted.

Each State grantee that chooses to use administrative funds is required to submit a statement to OVC describing:

1. What amount of the total grant will be used;

2. How the State grantee intends to use the funds and the types of activities that will be supported; and

3. How these activities will improve the administration of the VOCA program and/or improve services to crime victims.

State grantees may choose to award administrative funds to a ''conduit'' organization that assists in selecting qualified subrecipients and/or reduces the State grantee's administrative burden in implementing the grant program. However, the use of a ''conduit'' organization does not relieve the State grantee from ultimate programmatic and financial responsibilities.

C. Use of Funds for Training

State grantees have the option of retaining a portion of their VOCA victim assistance grant for conducting State-wide and/or regional State training(s) of victim services staff. The maximum amount permitted for this purpose is $5,000 or 1% of the State's grant, whichever is greater. State grantees that choose to sponsor State-wide or regional training(s) are not precluded from awarding VOCA funds to subrecipients for other types of staff development.

State grantees must submit a training proposal to OVC for each event to be sponsored under this option. OVC will review each proposal to identify other sources of assistance and support that may be available such as trainers or resources from the OVC Resource Center. Each training activity must occur within the grant period, and all training costs must be obligated prior to the end of the grant period. VOCA grant funds cannot be used to supplant the cost of existing State administrative staff or related State training efforts.

Specific criteria for applying for training funds will be given in each year's Application Kit. This criteria may include addressing the goals, the needs of the service providers, how funds will be used, and how any program income that is generated will be used.

The VOCA funds used for training by the State grantee must be matched at 20%, cash or in-kind, and the source of the match must be described.

Program Requirements

A. State Grantee Eligibility Requirements

When applying for the VOCA victim assistance grant, State grantees are required to give assurances that the following conditions or requirements will be met:

1. Only eligible organizations will receive VOCA funds and these funds will be used only for direct services to victims of crime, except those funds that the State grantee uses for training victim service providers and/or administrative purposes, as authorized by Section 1404(b) codified at 42 U.S.C. 10603(b). See section *E. Services, Activities, and Costs at the Subrecipient Level* for examples of direct services to crime victims.

2. VOCA crime victim assistance grant funds will enhance or expand services and will not be used to supplant State and local funds that would otherwise be available for crime victim services. See Section 1404(a)(2)(c), codified at 42 U.S.C. 10603(a)(2)(C). This supplantation clause applies to State and local public agencies only.

3. Priority shall be given to victims of sexual assault, spousal abuse, and child abuse. Thus a minimum of 10% of each FFY's grant (30% total) will be allocated to each of these categories of crime victims. This State grantee requirement does not apply to VOCA subrecipients.

Each State grantee must meet this requirement, unless it can demonstrate to OVC that: (1) a ''priority'' category is currently receiving significant amounts of financial assistance from the State or other funding sources; (2) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program; *and* (3) crime rates for a ''priority'' category have diminished.

4. An additional 10% of each VOCA grant will be allocated to victims of violent crime (other than ''priority'' category victims) who were ''previously under served.'' These under served victims of either adult or juvenile offenders may include, but are not limited to, survivors of homicide victims, or victims of assault, robbery, intoxicated drivers, bank robbery, and elder abuse. For the purpose of this program, elder abuse is defined as the abuse of vulnerable adults. Vulnerable adults are those individuals who do not have the mental and/or physical capacity to manage their daily needs, and who are subjected to either physical or emotional abuse by a guardian or caretaker.

To meet this under served requirement, State grantees must identify crime victims by type of crime. Each State grantee has latitude for determining the method for identifying ''previously under served'' crime victims, which may include public hearings, needs assessments, task forces, and meetings with State-wide victim services agencies.

Each State grantee must meet this requirement, unless it can justify to OVC that (1) services to these victims of violent crime are receiving significant amounts of financial assistance from the State or other funding sources; (2) a smaller amount of financial assistance, or no assistance, is needed from the VOCA victim assistance grant program; *and* (3) crime rates for these victims of violent crime have diminished.

State grantees may fund services to victims with specific demographic profiles and use those services to meet the ''previously under served'' requirement. However, State grantees must identify the type of violent crime to which these victims are subjected.

5. Appropriate accounting, auditing, and monitoring procedures will be used at the State grantee and subrecipient levels so that records are maintained to ensure fiscal control, proper management, and efficient disbursement of the VOCA victim assistance funds, in accordance with the *Financial and Administrative Guide for Grants* (M7100.1D), effective edition.

6. Compliance with all Federal laws and regulations applicable to Federal assistance programs and with the provisions of Title 28 of the Code of Federal Regulations (CFR) applicable to grants.

7. Compliance by the State grantee and subrecipients with the applicable provisions of VOCA and the Final Program Guidelines.

8. Programmatic and financial reports shall be submitted. (See Program Requirements and Financial Requirements for reporting requirements and timelines.)

9. No person shall, on the grounds of race, color, religion, national origin, handicap, or sex, be excluded from participation in, denied the benefits of,

subjected to discrimination under, or denied employment in connection with, any undertaking funded in whole or in part with VOCA victim assistance grant funds.

10. A copy of a finding will be forwarded to the Office of Civil Rights (OCR) for OJP in the event a Federal or State court or administrative agency makes a finding of discrimination on the grounds of race, religion, national origin, sex, or disability against a recipient of VOCA victim assistance funds.

11. Immediate notification will be given to OVC in the event of a finding of fraud, waste, and/or abuse of VOCA funds. Additionally, OVC will be apprised of the status of any on-going investigations.

OVC encourages State grantees to coordinate their VOCA assistance and compensation activities. Coordination may include activities such as: meetings; training activities for direct service providers on the general parameters of the State compensation agency's program (e.g., eligibility criteria, completion of claims, and time frames for receiving compensation); providing information on VOCA victim assistance services within the State; and developing joint guidance, where applicable, on third-party payments to VOCA assistance organizations.

OVC also encourages State grantees to coordinate their activities with the Victim/Witness Coordinator staff within U.S. Attorney Offices to ensure that the Coordinators are aware of available resources for victims of Federal crime. Such coordination may include providing Coordinators with a list of VOCA-funded organizations, co-sponsoring training activities, and inviting Coordinators to serve on review panels that select the organizations to receive VOCA funds.

B. Subrecipient Organization Eligibility Requirements

VOCA establishes eligibility criteria that must be met by all organizations that receive VOCA funds. These funds are to be awarded to subrecipients only for providing services to victims of crime through their staff. Each subrecipient organization shall:

1. Be operated by a public or nonprofit organization, or a combination of such organizations, and provide direct services to crime victims.

2. Demonstrate a record of providing effective direct services to crime victims. This includes having the support and approval of its services by the community, a history of providing direct services in a cost-effective manner, and financial support from non-Federal sources.

3. Meet program match requirements. Match is to be committed for each VOCA-funded project and derived from resources other than Federal funds and/or resources, except as provided in Chapter 2, paragraph 14, of the *Financial and Administrative Guide for Grants* (M7100.1D.)

All funds designated as match are restricted to the same uses as the VOCA victim assistance funds and must be expended within the grant period. Because of this requirement, VOCA subrecipients must maintain records which clearly show the source, the amount, and the period during which the match was expended. Therefore, organizations are encouraged not to commit excessive amounts of match.

Match requirements are a minimum of 20%, cash or in-kind, of the total VOCA project (VOCA grant plus match) except as follows:

a. The match for VOCA subrecipients that are Native American tribes/organizations located on reservations, whether new or existing, is 5%, cash or in-kind, of the total VOCA project (VOCA grant plus match.) A Native American tribe/organization is described as any tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans. A reservation is defined as a tract of land set aside for use of, and occupancy by, Native Americans.

b. Subrecipients located in the U.S. Virgin Islands, and *all other territories and possessions of* the United States except Puerto Rico are not required to match the VOCA funds. See 48 U.S.C. 1469a(d).

4. Use volunteers unless the State grantee determines there is a compelling reason to waive this requirement. A ''compelling reason'' may be a statutory or contractual provision concerning liability or confidentiality of counselor/victim information, which bars using volunteers for certain positions, or the inability to recruit and maintain volunteers after a sustained and aggressive effort.

5. Promote, within the community coordinated public and private efforts to aid crime victims. Coordination may include, but is not limited to, serving on State, Federal, local, or Native American task forces, commissions and/or working groups; and developing written agreements, which contribute to better and more comprehensive services to crime victims. Coordination efforts qualify an organization to receive VOCA victim assistance funds, but are not activities that can be supported with VOCA funds.

6. Assist crime victims in seeking crime victim compensation benefits. Such assistance may include identifying and notifying crime victims of the availability of compensation, assisting them with application forms and procedures, obtaining necessary documentation, and/or checking on claim status.

7. Comply with the applicable provisions of VOCA, the Program Guidelines, and the requirements of the M7100.1D, which includes maintaining appropriate programmatic and financial records that fully disclose the amount and disposition of VOCA funds received. This includes: financial documentation for disbursements; daily time and attendance records specifying time devoted to VOCA allowable victim services; client files; the portion of the project supplied by other sources of revenue; job descriptions; contracts for services; and other records which facilitate an effective audit.

8. Maintain statutorily required civil rights statistics on victims served by race or national origin, sex, age, and disability, within the timetable established by the State grantee; and permit reasonable access to its books, documents, papers, and records to determine whether the recipient is complying with applicable civil rights laws. This requirement is waived when providing a service, such as telephone counseling, where soliciting the information may be inappropriate or offensive to the crime victim.

9. Abide by any additional eligibility or service criteria as established by the State grantee including submitting statistical and programmatic information on the use and impact of VOCA funds, as requested by the State grantee.

10. Provide services to victims of Federal crimes on the same basis as victims of State crimes.

11. Provide services to crime victims, at no charge, through the VOCA-funded project. Any deviation from this provision requires prior approval by the State grantee. Prior to authorizing subrecipients to generate income, OVC strongly encourages state administrators to carefully weigh the following considerations regarding federal funds generating income for subrecipient organizations.

First, the purpose of the VOCA victim assistance grant program is to provide services to all crime victims regardless of their ability to pay for services rendered or availability of insurance or

other third-party payment resources. Crime victims suffer tremendous emotional, physical, and financial losses. It was never the intent of VOCA to exacerbate the impact of the crime by asking the victim to pay for services.

Second, State grantees must ensure that they and their subrecipients have the capability to track program income in accordance with Federal financial accounting requirements. All VOCA-funded program and match income, no matter how large or small, is restricted to the same uses as the VOCA grant.

Program income can be problematic because of the required tracking systems needed to monitor VOCA-funded income and ensure that it is used only to make additional services available to crime victims. For example: VOCA often funds only a portion of a counselor's time. Accounting for VOCA program income generated by this counselor is complicated, involving careful record keeping by the counselor, the subrecipient program, and by the State.

12. Maintain confidentiality of client-counselor information, as required by State and Federal law.

C. Eligible Subrecipient Organizations

Nonprofit and public organizations that provide direct services to crime victims are eligible to receive VOCA funds. These include, but are not limited to, sexual assault and treatment centers, domestic violence programs, child abuse treatment facilities, centers for missing children, prosecutor offices, courts, correctional departments, probation and paroling authorities, hospitals, public housing authorities, and other community-based organizations including those who serve survivors of homicide victims.

Although nonprofit and public organizations may be eligible to receive VOCA funding, there are limitations on the use of VOCA victim assistance grant funds by these organizations. For example, VOCA funds should not be used for an activity mandated by State legislation. However, VOCA funds can extend or enhance the legislatively mandated activities. In situations where a service is mandated by law but funds have not been appropriated, State grantees are cautioned to closely review and justify to OVC the use of VOCA funds to support such activities. With approval from OVC, State grantees may use VOCA funds to support an unfunded legislative mandate for a limited time, if the State grantee believes that such support is essential to meeting the needs of crime victims.

In addition to victim services organizations, whose sole mission is to serve crime victims, many other public and nonprofit organizations that offer services to crime victims may be eligible to receive VOCA victim assistance funds. These organizations include, but are not limited to, the following:

1. Criminal justice agencies such as law enforcement organizations, prosecutor offices, courts, corrections departments, probation and paroling authorities. For example, a police department cannot use VOCA victim assistance funds to hire law enforcement personnel for activities that a sworn law enforcement officer would be expected to provide in the normal course of his/her duties, such as crime scene intervention, questioning of victims and witnesses, investigation of the crime, and follow-up activities. However, these organizations may use VOCA funds for victims services that exceed the boundaries of their mandate.

2. State and local public agencies charged with, for example, providing child and adult protective services or mental health services.

3. Religiously-affiliated organizations. Religious organizations that receive VOCA funds must ensure that (1) services are offered to all crime victims without regard to religious affiliation; (2) the receipt of services is not contingent upon participation in a religious activity or event; and (3) receipt of the funds does not create an ''excessive entanglement'' of church and State.

4. Other public and nonprofit organizations whose primary mission or purpose is *not* providing direct services to crime victims if there is a component of the organization that provides services to crime victims. Such organizations include State grantees, mental health centers, hospitals, legal services agencies, and coalitions.

5. State crime victim compensation agencies. Compensation programs may receive VOCA assistance funds if direct services such as individual, family, and group counseling; court accompaniment; and shelter are provided. These services extend far beyond information/referral and providing information regarding compensation and other sources of public and private assistance. Because State compensation programs do not generally provide the type of direct services envisioned by VOCA and the Program Guidelines, State grantees are encouraged to discuss with OVC, prior to making a final funding decision, any proposed award of VOCA victim assistance funds to a compensation program.

6. Hospitals and emergency medical facilities. Such organizations must offer counseling, support groups, and/or other types of victim services. In addition, State grantees may only award VOCA funds to a medical facility for the purpose of performing forensic examinations on sexual assault victims if (1) the examination meets the standards established by the State, local prosecutor's office, or State-wide sexual assault coalition; *and* (2) appropriate crisis counseling and/or other types of victim services are offered to the victim in conjunction with the examination.

D. Ineligible Recipients of VOCA Funds

Some public and nonprofit organizations that offer services to crime victims are not eligible to receive VOCA victim assistance funding. These organizations include, but are not limited to, the following:

1. Federal agencies, including U.S. Attorneys Offices. Receipt of VOCA funds would constitute an augmentation of the Federal budget with money intended for State agencies. However, private nonprofit organizations that operate on Federal land may be eligible subrecipients of VOCA victim assistance grant funds.

2. In-patient treatment facilities such as those designed to provide treatment to individuals with drug, alcohol, and/or mental health-related conditions.

E. Services, Activities, and Costs at the Subrecipient Level

The following is a listing of services, activities, and costs that are eligible for support with VOCA victim assistance grant funds within a subrecipient's organization:

1. Those services which immediately respond to the emotional and physical needs (excluding medical care) of crime victims such as crisis intervention; accompaniment to hospitals for medical examinations; hotline counseling; emergency food, clothing, transportation, and shelter; emergency legal assistance such as filing restraining orders; and other emergency services that are intended to restore the victim's sense of dignity, and self esteem.

2. Those services and activities that assist the primary and secondary victims of crime in understanding the dynamics of victimization and in stabilizing their lives after a victimization such as counseling, group treatment, and therapy. ''Therapy'' refers to intensive professional psychological/psychiatric treatment for individuals, couples, and family members related to counseling to provide emotional support in crises arising from the occurrence of crime. This includes the evaluation of mental health needs, as well as the actual delivery of psychotherapy.

3. Services that are directed to the needs of the victims who participate in the criminal justice system. These services may include advocacy on behalf of crime victims; accompaniment to criminal justice offices and court; transportation to court; child care to enable victims to attend court; notification of victims regarding trial dates, case disposition information, and parole consideration procedures; and restitution advocacy and assistance with victim impact statements.

4. Services which offer an immediate measure of safety to crime victims such as boarding-up broken windows and replacing or repairing locks.

5. Forensic examinations for sexual assault victims only to the extent that other funding sources (such as State compensation or private insurance or public benefits) are unavailable or insufficient. State grantees should establish procedures to monitor the use of VOCA victim assistance funds to pay for forensic examinations in sexual assault cases.

6. Costs that are necessary and essential to providing direct services such as pro-rated costs of rent, telephone service, transportation costs for victims to receive services, emergency transportation costs that enable a victim to participate in the criminal justice system, and local travel expenses for direct service providers.

7. Services which assist crime victims with managing practical problems created by the victimization such as acting on behalf of the victim with other service providers, creditors, or employers; assisting the victim to recover property that is retained as evidence; assisting in filing for compensation benefits; and helping to apply for public assistance.

8. Costs that are directly related to providing direct services through staff. Such costs may consist of the following: advertising costs associated with recruiting VOCA-funded personnel; training costs for paid and volunteer staff; salaries and fringe benefits, including malpractice insurance.

9. Opportunities where crime victims have the option to meet with perpetrators, if such meetings are requested by the victim and have therapeutic value to crime victims.

State grantees that plan to fund this type of service should closely review the criteria for conducting these meetings. At a minimum, the following should be considered: (1) The benefit or therapeutic value to the victim, (2) the procedures for ensuring that participation of the victim and offender are voluntary and that everyone understands the nature of the meeting, (3) the provision of appropriate support and accompaniment for the victim, (4) appropriate ''debriefing'' opportunities for the victim after the meeting or panel, (5) the credentials of the facilitators, and (6) the opportunity for a crime victim to withdraw from the process at any time. State grantees are encouraged to discuss proposals with OVC prior to awarding VOCA funds for this type of activity. VOCA assistance funds cannot be used for victim-offender meetings which serve to replace criminal justice proceedings.

The services, activities, and costs listed below are not generally considered direct crime victim services. For example, staff training is often a necessary and essential activity to ensure that quality direct services are provided; however, it is not a direct service. Before these costs can be supported with VOCA funds, the State grantee and subrecipient must agree that direct services to crime victims cannot be offered without support for these expenses; that the subrecipient has no other source of support for them; and that only limited amounts of VOCA funds will be used for these purposes. The following list provides examples of such items:

1. Skills training for staff. VOCA funds designated for training are to be used exclusively for developing the skills of direct service providers including paid staff and volunteers, so that they are better able to offer quality services to crime victims. An example of skills development is training focused on how to respond to a victim in crisis.

VOCA funds can be used for training direct service providers who are not supported with VOCA funds within the subrecipient's organization.

VOCA funds can be used to purchase materials such as books, training manuals, and videos for direct service providers, within the VOCA-funded organization, and can support the costs of a trainer for in-service staff development. Although a subrecipient cannot use VOCA funds for training individuals in other organizations, staff from other organizations can attend in-service training activities that are held for the subrecipient's staff.

VOCA funds can support costs such as travel, meals, lodging, and registration fees to attend training within the State or a similar geographic area. This limitation encourages State grantees and subrecipients to first look for available training within their immediate geographical area, as travel costs will be minimal. However, when needed training is unavailable within the immediate geographical area, State grantees may authorize using VOCA funds to support training outside of the geographical area.

VOCA funds cannot be used for management and administrative training for executive directors, board members, and other individuals that do not provide direct services.

2. Equipment and furniture. VOCA funds may be used for furniture and equipment that provides or enhances direct services to crime victims, as demonstrated by the VOCA subrecipient.

VOCA funds cannot support the entire cost of an item that is not used exclusively for victim-related activities. However, VOCA funds can support a prorated share of such an item. In addition, subrecipients cannot use VOCA funds to purchase equipment for another organization or individual to perform a victim-related service.

State grantees that authorize equipment to be purchased with VOCA funds must establish policies and procedures on the acquisition and disbursement of the equipment, in the event the subrecipient no longer receives a VOCA grant. At a minimum, property records must be maintained with the following: A description of the property and a serial number or other identifying number; identification of title holder; the acquisition date; the cost and the percentage of VOCA funds supporting the purchase; the location, use, and condition of the property; and any disposition data, including the date of disposal and sale price. (See *Financial and Administrative Guide for Grants,* M7100.1D).

3. Contracts for professional services. VOCA funds should not generally be used to support contract services. However, at times, it may be necessary for VOCA subrecipients to use a portion of the VOCA grant to contract for specialized services. Examples of these services include assistance in filing emergency temporary restraining orders; forensic examinations on a sexual assault victim to the extent that other funding sources are unavailable or insufficient; and emergency psychological or psychiatric services.

Subrecipients are prohibited from using a majority of VOCA funds for contracted services, which contain administrative, overhead, and other indirect costs included in the hourly or daily rate.

VOCA funds cannot be used to pay for legal representation such as for divorces and child custody or visitation rights litigation.

4. Operating costs. Examples of allowable operating costs include supplies; equipment use fees, when supported by usage logs; printing,

photocopying, and postage; brochures which describe available services; and books and other victim-related materials. VOCA funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports, and statistics; administrative time to maintain crime victims' records; and the pro-rated share of audit costs.

5. Supervision of direct service providers. State grantees may provide VOCA funds for supervision of direct service providers when they determine that such supervision is necessary and essential to providing direct services to crime victims. For example, a State grantee may determine that using VOCA funds to support a coordinator of volunteers or interns is a cost-effective way of serving more crime victims.

6. Repair and/or replacement of essential items. VOCA funds may be used for repair or replacement of items that contribute to maintaining a healthy and/or safe environment for crime victims, such as a furnace in a shelter. State grantees are cautioned to scrutinize each request for expending VOCA funds for such purposes to ensure the following: (1) That the building is owned by the subrecipient organization and not rented or leased, (2) all other sources of funding have been exhausted, (3) there is no available option for providing the service in another location, (4) that the cost of the repair or replacement is reasonable considering the value of the building, and (5) the cost of the repair or replacement is pro-rated among all sources of income.

7. Presentations that are made in schools, community centers, or other public forums, and that are designed to identify crime victims and provide or refer them to needed services. Activities and costs related to such programs including presentation materials, brochures, and newspaper notices can be supported by VOCA funds.

The following services, activities, and costs, although not exhaustive, cannot be supported with VOCA victim assistance grant funds:

1. Lobbying and administrative advocacy. VOCA funds cannot support victim legislation or administrative reform, whether conducted directly or indirectly.

2. Perpetrator rehabilitation and counseling. Subrecipients cannot knowingly use VOCA funds to offer rehabilitative services to offenders. Likewise, VOCA funds cannot support services to incarcerated individuals, even when the service pertains to the victimization of that individual.

3. Needs assessments, surveys, evaluations, studies, and research efforts conducted by individuals, organizations, task forces, or special commissions, which study and/or research a particular crime victim issue.

4. Activities directed at prosecuting an offender and/or improving the criminal justice system's effectiveness and efficiency such as witness notification and management activities and expert testimony at a trial. Additionally, victim protection costs and victim/witness expenses such as travel to testify in court and subsequent lodging and meal expenses are considered part of the criminal justice agency's responsibility and cannot be supported with VOCA funds.

5. Fundraising activities.

6. Indirect organizational costs such as liability insurance on buildings and vehicles; capital improvements; security guards and body guards; property losses and expenses; real estate purchases; mortgage payments; and construction costs.

7. Reimbursing crime victims for expenses incurred as a result of a crime such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills.

8. Purchasing or leasing vehicles. Subrecipients may not use VOCA funds to purchase or lease vehicles unless they can demonstrate to the State VOCA administrator that such an expenditure is essential to delivering services to crime victims. The State VOCA administrator must give *prior* approval for all such purchases.

9. Nursing home care, home health-care costs, in-patient treatment costs, hospital care, and other types of emergency and non-emergency medical and/or dental treatment. VOCA victim assistance grant funds cannot support medical costs resulting from a victimization, except for forensic medical examinations for sexual assault victims.

10. Relocation expenses for crime victims such as moving expenses, security deposits on housing, ongoing rent, and mortgage payments. However, VOCA funds may be used to support staff time in locating resources to assist victims with these expenses.

11. Salaries, fees, and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless these expenses are incurred while providing direct services to crime victims.

12. Development of protocols, interagency agreements, and other working agreements that benefit crime victims. These activities are considered examples of the types of activities that subrecipients undertake as part of their role as a victim services organization, which in turn qualifies them as an eligible VOCA subrecipient.

13. Costs of sending individual crime victims to conferences.

14. Development of training manuals and/or extensive training materials.

15. Activities that are exclusively related to crime prevention.

Program Reporting Requirements

State grantees must adhere to all reporting requirements and timelines for submitting the required reports, as indicated below. Failure to do so may result in a hold being placed on the drawdown of the current year's funds, a hold being placed on processing the next year's grant award, or can result in the suspension or termination of a grant.

1. Subgrant Award Reports. State grantees are required to submit to OVC, within 90 days of making the subaward, Subgrant Award Report information for each subrecipient of VOCA victim assistance grant funds. Subgrant Award Report information is to be submitted to OVC via the automated subgrant dial-in system, whenever possible. When not possible, State grantees must complete and submit the Subgrant Award Report form, OJP 7390/2A, for each VOCA subrecipient.

If the Subgrant Award Report information changes by the end of the grant period, State grantees must inform OVC of the changes, either by revising the information via the automated subgrant subdial system, by completing and submitting to OVC a revised Subgrant Award Report form, or by making notations on the State-wide database report and submitting it to OVC. The total of all Subgrant Award Reports submitted by the State grantee must agree with the Final Financial Status Report (Standard Form 269A) that is submitted at the end of the grant period.

A Subgrant Award Report is required for each organization that receives VOCA funds and uses the funds for such allowable expenses including employee salaries, fringe benefits, supplies, and rent. This requirement applies to all State grantee awards including grants, contracts, or subgrants and to all subrecipient organizations.

Subgrant Award Reports are not to be completed for organizations that serve only as conduits for distributing VOCA funds or for organizations that provide limited, emergency services, on an hourly rate, to the VOCA subrecipient organizations. Services and activities that are purchased by a VOCA

subrecipient are to be included on the subrecipient's Subgrant Award Report.

2. Performance Report. Each State grantee is required to submit specific end-of-grant data on the OVC-provided Performance Report, form No. OJP 7390/4, no later than 90 days after each VOCA victim assistance grant ends.

For those State grantees who opt to use a portion of the VOCA victim assistance grant for administrative costs, the Performance Report will be used to describe how the funds were actually used and the impact of the 5% administrative funds on the State grantee's ability to expand, enhance, and improve services to crime victims.

A. Additional Program Requirements

1. Civil Rights—Prohibition of Discrimination for Recipients of Federal Funds. No person in any State shall, on the grounds of race, color, religion, national origin, sex, or disability be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity receiving Federal financial assistance, pursuant to the following statutes and regulations: Section 809(c), Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789d, and Department of Justice Nondiscrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.;* Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794; Subtitle A, Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.* and Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. 1681–1683; and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*

2. Confidentiality of Research Information. Except as otherwise provided by Federal law, no recipient of monies under VOCA shall use or reveal any research or statistical information furnished under this program by any person and identifiable to any specific private person for any purpose other than the purpose for which such information was obtained in accordance with VOCA. Such information, and any copy of such information, shall be immune from legal process and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceeding. See Section 1407(d) of VOCA codified at 42 U.S.C. 10604.

This provision is intended, among other things, to ensure the confidentiality of information provided by crime victims to counselors working for victim services programs receiving VOCA funds. Whatever the scope of application given this provision, it is clear that there is nothing in VOCA or its legislative history to indicate that Congress intended to override or repeal, in effect, a State's existing law governing the disclosure of information, which is supportive of VOCA's fundamental goal of helping crime victims. For example, this provision would not act to override or repeal, in effect, a State's existing law pertaining to the mandatory reporting of suspected child abuse. See *Pennhurst State School and Hospital* v. *Halderman, et al.,* 451 U.S. 1 (1981). Furthermore, this confidentiality provision should not be interpreted to thwart the legitimate informational needs of public agencies. For example, this provision does not prohibit a domestic violence shelter from acknowledging, in response to an inquiry by a law enforcement agency conducting a missing person investigation, that the person is safe in the shelter. Similarly, this provision does not prohibit access to a victim service project by a Federal or State agency seeking to determine whether Federal and State funds are being utilized in accordance with funding agreements.

Financial Requirements

State grantees and subrecipients of VOCA victim assistance funds shall adhere to the financial and administrative provisions set forth in the *OJP Financial and Administrative Guide for Grants,* M7100.1D (effective edition). The following describes the audit requirements for State grantees and subrecipients, the completion and submission of Financial Status Reports, and actions that result in termination of advanced funding.

A. Audit Responsibilities for State Grantees

Pursuant to OMB Circular A–128 (Audits of State or Local Governments), State grantees that receive $100,000 or more in Federal financial assistance in any fiscal year must have a single audit for that year. State grantees receiving at least $25,000, but less than $100,000, in a fiscal year have the option of performing a single audit or an audit of the Federal program, as required by the applicable Federal laws and regulations. State and local governments receiving less than $25,000 in any fiscal year are exempt from audit requirements.

B. Audit Responsibilities for Subrecipients

Pursuant to OMB Circular A–128 (Audits of State or Local Governments), local governments that receive $100,000 or more in Federal financial assistance in any fiscal year shall have a single audit for that year. Local agencies receiving at least $25,000, but less than $100,000, in a fiscal year have the option of performing an audit in accordance with OMB Circular A–128 or in accordance with the applicable Federal laws and regulations. State and local subgrantees shall have the audits performed annually unless they have a constitutional or statutory requirement for less frequent audits. Local governments receiving less than $25,000 in any fiscal year are exempt from audit requirements.

Institutions of higher education and other nonprofit organizations that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with OMB Circular A–133. Organizations and institutions that receive at least $25,000, but less than $100,000, in a fiscal year shall have an audit made in accordance with OMB Circular A–133 or an audit of the Federal program. Institutions and organizations receiving less than $25,000 in any fiscal year are exempt from audit requirements.

C. Financial Status Report for State Grantees

Financial Status Reports are required from all State grantees. A Financial Status Report shall be submitted to the Office of the Comptroller for each calendar quarter in which the grant is active. This Report is due even though no obligations or expenditures were incurred. Financial Status Reports shall be submitted to the Office of the Comptroller, by the State grantee, within 45 days after the end of each subsequent calendar quarter. Calendar quarters end March 31, June 30, September 30, and December 31. A Final Financial Status Report is due 90 days after the end of the VOCA grant period, no later than December 31.

D. Termination of Advance Funding to State Grantees

If the State grantee receiving cash advances by Letter of Credit or by direct Treasury check demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between cash advances and disbursement, OJP may terminate advance funding and require the State

grantee to finance its operations with its own working capital. Payments to the State grantee will then be made by the direct Treasury check method, which reimburses the State grantee for actual cash disbursements.

E. Administrative Cost Provision Documentation

State grantees who choose to use a portion of their VOCA victim assistance grant for administrative costs must maintain a clear audit trail of all costs supported by administrative funds and be able to document the value of the State grantee's previous commitment to administering VOCA.

Monitoring

A. Office of the Comptroller

The Office of the Comptroller conducts periodic reviews of the financial policies, procedures, and records of VOCA grantees and subrecipients. Therefore, upon request, State grantees and subrecipients must give authorized representatives the right to access and examine all records, books, papers, case files, or documents related to the grant, the use of administrative funds, and all subawards.

B. Office for Victims of Crime

Beginning with the FY 1991 grant period, OVC implemented an on-site monitoring plan in which each State grantee is visited a minimum of once every three years. While on site, OVC personnel will expect to review various documents and files such as (1) financial and program manuals and procedures governing the VOCA grant program; (2) financial records, reports, and audit reports for the State grantee and all VOCA subrecipients; (3) the State grantee's VOCA application kit, procedures, and guidelines for subawarding VOCA funds; and (4) all other State grantee and subrecipient records and files.

In addition, OVC will visit selected subrecipients and will review similar documents such as (1) financial records, reports, and audit reports; (2) policies and procedures governing the organization and the VOCA funds; (3) programmatic records of victims' services; and (4) timekeeping records and other supporting documentation for costs supported by VOCA funds.

Suspension and Termination of Funding

If, after notice and opportunity for a hearing, OVC finds that a State grantee has failed to comply substantially with VOCA, the M7100.1D, the Final Program Guidelines, or another implementing regulation or requirements, OVC may suspend or terminate funding to the State grantee and/or take other appropriate action. At such time, State grantees may request a hearing on the justification for the suspension and/or termination of VOCA funds. VOCA subrecipients, within the State, may not request a hearing at the Federal level. However, VOCA subrecipients who believe that the State grantee has violated a program and/or financial requirement are not precluded from bringing the alleged violation(s) to the attention of OVC.

Aileen Adams,

Director, Office for Victims of Crime, Office of Justice Programs.

[FR Doc. 95–26570 Filed 10–26–95; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Postponement of Commission Meetings

SUMMARY: Due to the scheduling difficulties of participants, the Glass Ceiling Commission meeting has been postponed. The meeting had been announced previously in the Federal Register of October 18, 1995, 60 FR 53934. The Commission Meeting Teleconference was to take place on Wednesday, November 1, 1995, 1:00 PM–2:00 PM at the U.S. Department of Labor, Room C2313. The Commission meeting teleconference has been rescheduled for Thursday, November 9, 1995 at 2:00 pm–3:00 pm (EST).

The purpose of this meeting is to conduct a full Commission vote on the Recommendations Report that will be submitted to the President and Select Committees of Congress.

Individuals with disabilities who wish to attend should contact Ms. Loretta Davis (202) 219–7342 if special accommodations are needed.

FOR FURTHER INFORMATION CONTACT: Ms. Réne A. Redwood, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW, Room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 23rd day of October, 1995.

René A. Redwood,

Executive Director, Glass Ceiling Commission.

[FR Doc. 95–26729 Filed 10–26–95; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any

modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and related Acts'' are listed by Volume and State:

Volume II

Pennsylvania
PA950067 (Oct. 27, 1995)
PA950068 (Oct. 27, 1995)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Massachusetts
MA950002 (Feb. 10, 1995)
Maine
ME950006 (Feb. 10, 1995)
ME950007 (Feb. 10, 1995)
ME950008 (Feb. 10, 1995)
ME950010 (Feb. 10, 1995)

Volume II

Maryland
MD950001 (Feb. 10, 1995)
MD950037 (Feb. 10, 1995)
MD950042 (Feb. 10, 1995)
Pennsylvania
PA950002 (Feb. 10, 1995)
PA950004 (Feb. 10, 1995)
PA950005 (Feb. 10, 1995)
PA950007 (Feb. 10, 1995)
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PA950016 (Feb. 10, 1995)
PA950019 (Feb. 10, 1995)
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PA950023 (Feb. 10, 1995)
PA950024 (Feb. 10, 1995)
PA950026 (Feb. 10, 1995)
PA950027 (Feb. 10, 1995)
PA950029 (Feb. 10, 1995)
PA950036 (Feb. 10, 1995)
PA950039 (Feb. 10, 1995)
PA950040 (Feb. 10, 1995)
PA950044 (Feb. 10, 1995)
PA950045 (Feb. 10, 1995)
PA950047 (Feb. 10, 1995)
PA950049 (Feb. 10, 1995)
PA950050 (Feb. 10, 1995)
PA950052 (Feb. 10, 1995)
PA950056 (Feb. 10, 1995)
PA950058 (Feb. 10, 1995)
PA950060 (Feb. 10, 1995)
PA950063 (Feb. 10, 1995)
PA950064 (Feb. 10, 1995)

Volume III

Alabama
AL950034 (Feb. 10, 1995)
West Virginia
WV950002 (Feb. 10, 1995)

Volume IV

Indiana
IN950001 (Feb. 10, 1995)
IN950002 (Feb. 10, 1995)
IN950003 (Feb. 10, 1995)
IN950004 (Feb. 10, 1995)
IN950005 (Feb. 10, 1995)

Volume V

None

Volume VI

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the county.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all the six separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. This 20th Day of October 1995.

Philip J. Gloss,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 95–26425 Filed 10–26–95; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Program Manager of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Program Manager, Office of Trade Adjustment Assistance, at the address show below, not later than November 6, 1995.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Program Manager, Office of Trade Adjustment Assistance, at the address shown below, not later than November 6, 1995.

The petitions filed in this case are available for inspection at the Office of the Program Manager, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 10th day of October, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 10/10/95

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
31,502	Atkinson Oil Company (Comp)	Oklahoma City, OK	08/31/95	Crude Oil, Natural Gas.
31,503	Charisma Chairs (USWA)	Sweetwater, TN	09/28/95	Accent Chairs.
31,504	Diamond Offshore Drilling (Comp)	Houston, TX	09/10/95	Oil & Gas Drilling.
31,505	General Electro (IAM)	Buffalo, NY	09/19/95	Automatic Riveting Machines.
31,506	Highland Pump (Wkrs)	Midland, TX	07/22/95	Rod Bottom Hole Pumps.
31,507	Howden Fan Co (Comp)	Buffalo, NY	09/26/95	Machine Tools—Fans.
31,508	Johnson Controls, Inc (IBEW)	Goshen, IN	09/19/95	Temperature & Pressure Controls.
31,509	Johnson Controls Inc. (UAW)	Vincennes, IN	09/27/95	Automative Metal Seat Frames.
31,510	Mobil Corporation (Wkrs)	Paulsboro, NJ	09/18/95	Refined Crude Oil Products.
31,511	Montana Power Co (Wkrs)	Colstrip, MT	09/18/95	Electricity.
31,512	TAP Enterprises (Comp)	Red Oak, IA	10/01/95	Specialty Batteries.
31,513	Phillips-Van Heusen Co (Comp)	Ozark, AL	09/27/95	Men's Dress Shirts.
31,514	Phillips-Van Heusen Co (Comp)	Clayton, AL	09/27/95	Men's Dress Shirts.
31,515	Phillips-Van Heusen Co (Comp)	Hartford, AL	09/27/95	Men's Dress Shirts.
31,516	Phillips-Van Heusen Co (Comp)	Opp, AL	09/27/95	Men's Dress Shirts.
31,517	Phillips-Van Heusen Co (Comp)	Geneva, AL	09/27/95	Men's Dress Shirts.
31,518	Samson International LTD (Wkrs)	Tulsa, OK	09/28/95	Exploration, Prod. of Oil, Gas.
31,519	National Fiber Technology (Wkrs)	Lawrence, MA	09/25/95	Wigs, Troupes & Fake Animal Fur.
31,520	Reynolds Metals (IAM)	Fulton, NY	09/28/95	Aluminum Beer Cans.
31,521	SAMAX II, Inc (Wkrs)	Eggleston, VA	09/21/95	Children's Clothing.
31,522	Transco Energy Company (Wkrs)	Houston, TX	09/10/95	Transport Gas.
31,523	Wallace & Tlernan (Wkrs)	Belleville, NJ	09/19/95	Waste Water Purification.
31,524	Woolfolk Manufacturing (Wkrs)	Louisa, VA	07/13/95	Ladies' Jeans.
31,525	Matsushita Electric Corp. (Wkrs)	Franklin Park, IL	08/11/95	T.V.
31,526	Larsdale Inc./Gilbert Div (Wkrs)	Long Island, NY	09/28/95	Christmas Lights.
31,527	M & M/Mars (Wkrs)	Burr Ridge, IL	09/29/95	Gourmet Ice Cream.
31,528	Meshoppen Manufacturing (UNITE)	Meshoppen, PA	02/28/95	Ladies' Dresses.
31,529	Great American Knitting (Co)	Scotland Neck, NC	10/10/95	Athletic Socks.

[FR Doc. 95–26731 Filed 10–26–95; 8:45 am]

BILLING CODE 4510–30–M

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of October, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

None

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–31,333; Total Petroleum Refinery, Arkansas City, KS

TA–W–31,374; Dupont Diagnostics, Inc., Manati, PR

TA–W–31,385; Johnson Controls, Battery Group, Inc., Louisville, KY

TA–W–31,377; Jefferson Smurfit Corp., New Brunswick, NJ

TA–W–31,380; Maynard H. Moore, Jr., Inc., Stoneham, MA

TA–W–31,302; Lockheed Martin Astro Space, East Windsor, NJ

TA–W–31,337; McGill Electrical Product Group, A Div. of Appleton Electric Co., Valparaiso, IN

TA–W–31,358 & TA–W–31,365; Conagra Flour Milling Co., Omaha, NE and Superior, WI

TA–W–31,437; HALCO, Belle Vernon, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–31,456; Rowley Lumber & Hardware Co., Inc., Hudson, MI

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–31,373; IBM Printing Systems Co., Endicott, NY

The investigation revealed that criteria (2) has not been met. Sales or

production did not decline during the relevant period as required for certification.

TA–W–31,325; Shaw Industries, Inc., Toccoa, GA

The investigations revealed that criterion (2) and (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

TA–W–31,486; Taylorsville Enterprises, Inc., Taylorsville, MS: September 22, 1994.

TA–W–31,317 & TA–W–31,318; Barrow Manufacturing Corp., Dahlonega, GA & Maysville, GA: July 27, 1994.

TA–W–31,468; Kelsey Sportswear, Wisconisco, PA: September 12, 1994.

TA–W–31,458; Supreme Slipper Manufacturing Co., Inc., Bangor, ME: September 1, 1994.

TA–W–31,399; AT&T Global Information Solutions, Springfield Repair Center, Springfield, MA: August 3, 1994.

TA–W–31,391; Oshkosh B'Gosh, Marrowbone, KY: August 23, 1994.

TA–W–31,466; Sierra Western International Apparel, Inc., El Paso, TX: September 15, 1994.

TA–W–31,453; New England Accessories Co., Old Saybrook, CT: September 11, 1994.

TA–W–31,451; Lavon Evans, Jr., Operating Co., Inc., Laurel, MS: October 13, 1995.

TA–W–31,303; St. Thomas Leather Goods, Gloversville, NY: March 4, 1995.

TA–W–31,529; Great American Knitting Mills, Halifax Hosiery Div., Scotland Neck, NC: October 10, 1994.

TA–W–31,339; Taylor Woodcraft, Inc., Malta, OH: August 2, 1994.

TA–W–31,341; J. Hertling & Co., Inc., Brooklyn, NY: August 1, 1994.

TA–W–31,445; Donora Sportswear Co., Inc., Donora, PA: September 11, 1994.

TA–W–31,427; Tri Con Industries Limited, Cape Girardeau, MO: September 1, 1994.

TA–W–31,454; Oxford Industries, Inc., Oxford Shirting Div., Alamo, GA: September 7, 1994.

TA–W–31,376; Howard Industries, Milford, IL: August 7, 1994.

TA–W–31,387; Cotter & Co., General Power Equipment Co., Inc., Harvard, IL: August 23, 1994.

TA–W–31,477 & A; International Jensen, Inc., Punxsutawney Mfg Facility, Punxsutawney, PA and Lumberton Mfg Facility, Lumberton, NC: September 21, 1994.

TA–W–31,327; BJ Services Co., U.S.A., Headquartered in Houston, TX & Operating in The Following States: A; AL, B; AK, C; CA, D; CO, E; FL, F; IL, G; KS, H; LA, I, MA, J; MS, K; MO, L; NC, M; NM, N; OK, O; TX, P; WV, O; WY: August 3, 1994.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a) Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of October, 1995.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–00575; AT&T, Global Information Solutions, Springfield Repair Center, Springfield, MA

NAFTA–TAA–00606; Pro Log, Inc., Lakeview, OR

NAFTA–TAA–00584; Great American Knitting Mills, Halifax Hosiery Div., Scotland Neck, NC

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

None

Affirmative Determinations NAFTA–TAA

The following certifications have been issued; the date following the company name & location for each determination references the impact date for all workers for such determination.

NAFTA–TAA–00577; Accuride Corp., Henderson, KY: August 23, 1994.

NAFTA–TAA–00600; Thomson Consumer Electronics, Inc., (Thomson Multi Media), Bloomington, IN: September 15, 1994.

NAFTA–TAA–00589; Howard Industries, Milford, IL: August 30, 1994.

NAFTA–TAA–00596; Oxford Industries, Inc., Oxford Shirtings Div., Alamo, GA: September 7, 1994.

I hereby certify that the aforementioned determinations were issued during the month of October, 1995. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: October 18, 1995.

Russell Kile,

Acting Program Manager, Policy & Reemployment Services, Office of Trade Adjustment Assistance.

[FR Doc. 95–26730 Filed 10–26–95; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL SCIENCE FOUNDATION

Conservation Act of 1978; Notice of Permit Modification

AGENCY: National Science Foundation.

SUMMARY: The Foundation modified two permits to conduct activities regulated under the Antarctic Conservation Act of 1978 (Pub. L. 95–541; Code of Federal Regulations Title 45, Part 670).

FOR FURTHER INFORMATION CONTACT:

Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

DESCRIPTION OF PERMIT AND MODIFICATION: 1. On November 2, 1993, the National Science Foundation issued a permit (ACA #93–00B) to Dr. Wesley M. Weathers after posting a notice in the September 27, 1993 Federal Register. Public comments were not received. A request to modify the permit was posted in the Federal Register on September 14, 1995. No public comments were received. The modification, issued by the Foundation on October 19, 1995, allows for the capture and release to two additional species of petrels, Antarctic petrels (*Thalassoica antarctica*) and Southern Fulmars (*Fulmarus glacialoides*). These species will be included in a project that focuses on the feeding ecology and energetics of common surface-nesting petrels. The research protocol for these two additional species will be identical to that used on the Cape Petrel and Snow Petrels, and the sample sizes will also be identical.

LOCATION: Prydz Bay, East Antarctica.

DATES: October 15, 1995–March 31, 1996.

2. On September 7, 1994, the National Science Foundation issued a permit (ACA #95–013) to Ron Naveen after posting a notice in the August 8, 1994 Federal Register. Public comments were not received. A request to modify the permit was posted in the Federal Register on September 14, 1995. No public comments were received. The modification, issued by the Foundation on October 19, 1995, allows for the collection of culmen measurements from penguin chicks on an opportunistic basis. These measurements will help to more precisely determine the age of chicks and assist in determining productivity at various sites. This activity is one aspect of the program to catalogue the physical and biological characteristics of more than 60 locations in the Antarctic Peninsula.

LOCATION: Various visitor sites in the Antarctic Peninsula Region, including a possible stop over at the research site at Admiralty Bay (SSSI #8).

DATES: October 15, 1995–March 1, 1996.

Nadene G. Kennedy,

Permit Office.

[FR Doc. 95–26690 Filed 10–26–95; 8:45 am]

BILLING CODE 7555–01–M

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by October 6, 1995. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1031.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant,* Thomas A. Day, Department of Botany, Box 871601, Arizona State University, Tempe, Arizona 85287–1601, Permit Application No. 96–017

Activity for Which Permit is Requested

Take; Enter Specially Protected Area; Enter Site of Special Scientific Interest, and Import into the United States. The applicant requests permission to enter Litchfield Island (SPA #17) and Biscoe Point (SSSI #20) to collect up to 100 seeds and/or reproductive structures from the following vascular plants: Antarctic hairgrass (*Deschampsia antarctica*) and Antarctic pearlwort (*Colobanthus quitensis*). The Litchfield Island site is one of very few sites containing both plant species. Collection of samples from Biscoe Point is desirable since it is a relatively isolated site from others containing plant species and the researchers wish to determine whether the Biscoe populations are genetically similar to other antarctic plant populations. The seeds will be imported into the United States, propagated in growth chambers at Arizona State University, and used to determine how these species are influenced by environmental factors such as UV radiation and temperature.

Location

SPA #17—Litchfield Island, and SSSI #20—Biscoe Point, Anvers Island

Dates

December 1, 1995—April 30, 1997

2. *Applicant,* William D. Fraser, Biology Department, Montana State University, Bozeman, Montana 59717, Permit Application No. 96–024

Activity for Which Permit is Requested

Import into the United States. The applicant proposes to salvage, for educational purposes, no more than 3 specimens of each species annually, if encountered. The species which may be salvaged are listed below:

Penguins: King (A. patagonicus), Adelie (Pygoscelis adeliae), Chinstrap (P. antarctica), Gentoo (P. papua), Macaroni (Eudyptes chrysolophus), and Rockhopper (E. chrysocome).

Albatrosses: Wandering (Diomedea exulans), Black-browed (D. melanophris), Gray-headed (D. chrysostoma), Sooty (Phoebetria fusca), and Light-mantled Sooty (P. palpebrata).

Fulmars, Prions and Petrels: Southern Giant Petrel (M. giganteus), Antarctic Fulmar (Fulmarus glacialoides), Antarctic Petrel (Thalassoica antarctical), Cape Petrel (Daption capense); Snow Petrel (Pagodroma nivea), Blue Petrel (Halobaena caerulea), White-chinned Petrel (Procellaria aequinoctialis), and Antarctic Prion (Pachyptila desolata).

Storm Petrels: Wilson's Storm Petrel (Oceanites oceanicus) and Black-bellied Storm Petrel (Fregetta tropica).
Cormorants: Blue-eyed Shag (Phalacrocorax atriceps).
Sheathbills: Greater Sheathbill (Chionis alba)
Skuas: South Polar Skua (Catharacta maccormicki), and Brown Skua (C. lonnbergi).
Gulls and Terns: Kelp Gull (Larus dominicanus), and Antarctic Tern (Sterna vittata).

Location

Palmer Station vicinity and nearby islands accessible by zodiac.

Dates

October 1, 1995-May 31, 1998

3. Applicant, Rennie S. Holt, U.S. AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, California 92038, Permit Application No. 96–025

Activity for Which Permit is Requested

Taking. The applicant proposes to continue collection of data on seabirds, in accordance with CCAMLR Protocols, that was begun at Seal Island in 1986. A census of up to 15,000 birds from each of the following species will be conducted: Chinstrap penguins, Macaaroni penguins and Cape Petrels. In addition, the applicant will capture and release up to 500 Chinstrap and Macaroni penguins each for purposes of measuring, weighing and examining to gather data on seabird abundance and growth to compare with data collected during previous years.

Location

South Shetland Islands and Antarctic Peninisula region.

Dates

January 1, 1996-April 1, 2001

4. Applicant, Rennie S. Holt, U.S. AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, California 92038, Permit Application No. 96–026

Activity for Which Permit is Requested

Taking and Enter Sites of Special Scientific Interest. The applicant proposes to enter Byers Peninsula (SSSI #6) and Cape Shirreff (SSSI #32) to study pinnipeds and seabirds. A comprehensive census of these populations has been conducted periodically and repeat censuses are needed. At both sites, care will be taken to minimize disturbance to terrestrial habitats and lifeforms. All activities to be conducted would comply with the approved SSSI management plans enforce for each area.

The pinniped research to be conducted consists of ship-supported and land-based studies in the region of the Antarctic Peninsula. The U.S. AMLR Program will conduct a census of seals at various sites in preparation of selecting a new study site. In following years, the AMLR land-based site at Seal Island will be relocated to a suitable site.

The Seal Island study site will be occupied on a limited basis. Up to 1,000 Fur seal pups will be weighed and released. These data will be compared with previous data to examine the population dynamics of Antarctic Fur seals. Obtaining information on the status of seals at the present time is particularly important in light of the potential development that is being considered for antarctic marine resources.

Location

SSSI #6-Byers Peninsula, Livingston Island, South Shetland Islands; and SSSI #32-Cape Shirreff, Livingston Island, South Shetland Islands.

Dates

January 1, 1996-April 1, 2001.

Nadene G. Kennedy,

Permit Office, Office of Polar Programs.

[FR Doc. 95–26691 Filed 10–26–95; 8:45 am]

BILLING CODE 7555–01–M

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of a small research camp on Seal Island, South Shetland Islands, Antarctica by Dr. Rennie S. Holt, a citizen of the United States. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application on or before November 27, 1995. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT:

Robert S. Cunningham or Nadene Kennedy at the above address or (703) 306–1033.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR Part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of an austral summer research camp by four to six scientists for up to 90 days per season over the next five field seasons from December 1995 to mid-March 2001. Use of the camp for the 1995–1996 field season is estimated to be 20 days. The camp consists of a main living quarters (a weatherport tent which will remain unused this season and removed from the camp site), a small lab/storage shed, a storage shed, and an outdoor toilet. Three small blinds, suitable for observing wildlife, are located on the island. The permit applicant is: Dr. Rennie S. Holt, Chief Scientist, U.S. AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shore Dr., La Jolla, CA 92038.

During the field season, the camp main buildings, which have existed for several years, are to be removed in one or more field seasons. It is estimated that approximately 950 liters (250 gallons) of kerosene and 215 liters (83 gallons) of gasoline would be burned in an average use season at the site of the camp. In addition, sanitary wastes, wastewater, and minor quantities of research equipment (approximately 250 tags, 2,300 seabird bands, 90 small radio transmitters, less than five time-depth recorders, and less than 2.2 kg (4.8 pounds) of paint and dye markers) are to be released to the environment incidental to scientific investigations during a field season. The permit would remain in effect until the conclusion of investigations or until mid-March 2001, whichever occurs first. The activity is categorically excluded from environmental review documentation per NSF environmental assessment procedures at 45 CFR 641.16(c).

Robert S. Cunningham,

Environmental Compliance Manager, National Science Foundation.

[FR Doc. 95–26692 Filed 10–26–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Astronomical Sciences; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Extragalactic Astronomy and Cosmology Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on November 16–17 (4). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:30 AM to 5:00 PM each day.

Contact Person: Dr. Vernon L. Pankonin, Program Director, Extragalactic Astronomy and Cosmology, Division of Astronomical Sciences, National Science Foundation, Room 1045, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1826.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–26640 Filed 10–26–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences.

Date and Time: Monday, Nov. 13–Friday, Nov. 17, 1995; 8:30 AM–5:00 PM.

Place: Rooms 310, 320, 330, 340, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Michael R. Reeve, Section Head, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1582.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Ocean Sciences Research Section (OSRS) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Commitee Management Officer.

[FR Doc. 95–26639 Filed 10–26–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Computer and Information Science and Engineering; Committee of Visitors; Notice of Meeting

In accordance with the Federal advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering; Committee of Visitors for the Cross-Directorate Activities (1115).

Date and Time: November 14, 1995; 8:30 a.m. to 5:00 p.m.

Place: Room 1120.

Type of Meeting: Closed.

Contact Person(s): Tes-yun Feng, Program Director CISE/CDA, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1980.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the CISE Institutional Infrastructure awards and declinations.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–26637 Filed 10–26–95; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis in Mathematical Sciences (#1204).

Date and Time: November 13–14, 1995, 8:30 AM until 5:00 PM.

Place: Room 430, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lloyd E. Douglas, Program Director, Division of Mathematical Sciences, Room #1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1874.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Infrastructure Program proposals submitted under Summer Experiences for Undergraduates as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–26638 Filed 10–26–95; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Social and Political Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following four meetings:

Name: Advisory Panel for Social and Political Sciences (#1761).

Date and Time: December 1–2, 1995; 9:00 am to 5:00 pm.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 370, Arlington, VA. 22230.

Contact Person: Neal Tate and Patricia White, Program Directors, Division of Social, Behavioral, and Economic Research, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1760.

Agenda: To review and evaluate Law and Social Science proposals as part of the selection process for awards.

Date and Time: November 9–10, 1995; 9:00 am to 5:00 pm.

Place: Irvine, California.

Contact Person: Dr. Frank Scioli and Dr. John McIver, Program Directors for Political Science, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1760.

Agenda: To review and evaluate the political science proposals as part of the selection process for awards.

Date and Time: November 27–28, 1995; 8:30 am to 5:00 pm.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 360, Arlington, VA 22230.

Contact Person: Dr. William S. Bainbridge and Dr. Mildred Schwartz.

Program Directors for Sociology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1760.

Agenda: To review and evaluate the political science proposals as part of the selection process for awards.

Date and Time: December 7–8, 1995; 8:30 am to 5:00 pm.

Place: National Science Foundation, Stafford Place, 4201 Wilson Boulevard, Room 320, Arlington, VA 22230.

Contact Person: Dr. Cheryl Eavey, Program Director for Methodology, Measurement and Statistic, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1729.

Agenda: To review and evaluate the Methodology, Measurement and Statistic proposals as part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed included information of a proprietary or confidential nature, including technical information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 24, 1995.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 95–26726 Filed 10–26–95; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No.: 40–00672]

Nuclear Metals, Inc.: Concord, Massachusetts Holding Basin

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice: Receipt of amendment request for decommissioning the Nuclear Metals, Inc., Holding Basin in Concord, Massachusetts and opportunity for a hearing.

SUMMARY: This notice informs the public that the U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Source Material License No. SMB–179, issued to Nuclear Metals, Inc. (NMI) to authorize decommissioning of the licensee's holding basin in Concord, Massachusetts. Successful implementation of the procedures described in the amendment request would lead to removal of the material in the holding basin and remediation of adjacent soils to meet the current NRC criteria for release for unrestricted use. Remediation of any groundwater contamination and other site areas is not included in this action, but will be addressed as a separate matter.

DATES: Written comments on the amendment request should be received by November 30, 1995. Written comments received after November 30, 1995, will be considered if it is practical to do so.

Requests for hearing must be filed by November 27, 1995.

ADDRESSES: Written comments on the amendment request should be sent to Chief, Rules Review and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC. 20555–0001. Hand deliver comments to 15455 Rockville Pike, Rockville, Maryland.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Nuclear Metals, Inc., 2229 Main Street, Concord, Massachusetts 01742, Attention: Frank Vumbaco; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Marie Miller, U.S. Nuclear Regulatory Commission, Region I, (610) 337–5205.

SUPPLEMENTARY INFORMATION: The licensee (NMI) requested an amendment, by letter dated August 15, 1995, to approve the Decommissioning Plan for the Holding Basin (DP) submitted with the letter. NMI manufactures products from depleted uranium and had until 1985, discharged liquid process materials containing copper and depleted uranium oxides and hydroxides into an unlined holding basin. The holding basin, situated in the south central section of the licensee's property and approximately 600 feet from the nearest residential property, contains approximately 350,000 pounds of depleted uranium and 700,000 pounds of copper.

The NRC staff reviewed, and by NRC letter dated March 24, 1994, concluded that the holding basin had been adequately characterized based on the Site Characterization Report for the Holding Basin Addendum I, dated January 6, 1994. Characterization of the groundwater and other onsite areas are ongoing and will be addressed after removal of the holding basin materials.

The request before the NRC at this time is to approve the Decommissioning Plan for the Holding Basin which, if properly implemented and completed, will lead to removal of the contents of the holding basin and unrestricted use of the area. The DP indicates that an enclosure will be constructed to minimize the potential for infiltration of sludge constituents into the ground water, and to contain any potential airborne sludge material. All low level radioactive waste will be transported by truck to a low level radioactive waste disposal facility. NMI indicates the remediation activities will begin by April 1, 1996, if they can obtain the necessary approval from NRC and the Commonwealth of Massachusetts Department of Environmental Protection, and will take about 16 months to complete.

The NRC hereby requests public comments and provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of this Federal Register notice. In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

In addition to offering the opportunity for a hearing, as required by regulation, NRC is inviting public comment on the amendment request early in the review process and prior to acting on the request. NRC considers public involvement and comment more meaningful prior to authorizing decommissioning activities at the site.

The application for amendment request is available for inspection at the

Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, at NRC's Region I offices located at 475 Allendale Road, King of Prussia, PA 19406 or at the Concord Free Public Library, 129 Main Street, Concord, MA 01742. Persons desiring to review documents at the Region I Office, should call Ms. Sheryl Villar at (610) 337–5239 several days in advance to assure that the documents will be readily available for review.

Dated at Rockville, Maryland, this 24th day of October, 1995.

For the Nuclear Regulatory Commission.

Michael F. Weber,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 95–26682 Filed 10–26–95; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–029]

Yankee Nuclear Power Station; Consideration of Issuance of an Order and Opportunity for a Hearing

A. Introduction.

Pursuant to 10 CFR 2.105(a)(9), the U.S. Nuclear Regulatory Commission (''the Commission'') hereby gives notice that it is considering issuance of an order under 10 CFR 50.82(e) to the Yankee Atomic Electric Company (''YAEC,'' the licensee), for the Yankee Nuclear Power Station (''Yankee NPS''), located in Franklin County, Massachusetts. The order would involve approval of the Yankee NPS decommissioning plan as it relates to the decommissioning of the remaining portions of the Yankee NPS. The Commission initially approved the plan, see (60 FR 11699; February 22, 1995), but that approval is no longer considered effective in view of the reinstatement of the pre-1993 interpretation of the Commission's decommissioning regulations as a result of a decision by the U.S. Court of Appeals for the First Circuit. *See Citizens Awareness Network* v. *NRC*, 39 F.3d 284 (1st Cir. 1995).

On October 12, 1995, the Commission issued a Memorandum and Order, CLI–95–14, in which it announced that it would issue a Notice of Opportunity for a Hearing on the licensee's decommissioning plan and the application of that plan to the completion of the decommissioning of the Yankee NPS. The Commission also announced in CLI–95–14 that it would ''direct an expedited hearing process in this case.''

The licensee is the holder of facility Possession Only License No. DPR–3 that was issued on August 5, 1992. All spent fuel has been removed from the reactor and placed in the plant's spent fuel pool. In addition, a large portion of the non-fuel radioactive inventory has also been removed from the reactor and either placed in the spent fuel pool or shipped to an off-site disposal facility. These activities have been taken in accordance with either the licensee's previously-approved decommissioning plan, which was filed with the Commission by a letter dated December 20, 1993, or with a component removal program undertaken by the licensee before the NRC's previous approval of the decommissioning plan.

By issuance of this order, the licensee would be authorized to complete the decommissioning of the Yankee NPS facility in accordance with the plan. Under that plan, YAEC intends (1) to dismantle the plant except for those systems that are required for safe maintenance of the Spent Fuel Pool; (2) to dismantle the spent fuel pool when other options for fuel and high level waste storage and/or removal become available; (3) to ship contaminated and radioactive materials, including the intact pressure vessel along with some insulation, to a low level waste facility; and (4) to decontaminate the site so that it can be released for unrestricted use.

B. Requests for Hearing and Petitions for Leave to Intervene

By November 27, 1995, the licensee may file a request for a hearing with respect to issuance of the order to the subject facility. During that same period, any other person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file both a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2, and the special instructions provided in this notice.

This notice provides a brief overview of the requirements in 10 CFR 2.714. However, the fact that a requirement is not addressed in this notice does not excuse compliance with that requirement. Each person seeking to participate in this proceeding is responsible for complying with all applicable requirements. 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 20555–0001, or the NRC Local Public Document Room, located at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

If a request for hearing or a petition for leave to intervene is filed by the above date, either the Commission or an Atomic Safety and Licensing Board, designated by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and either the Secretary of the Commission or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, both a request for hearing and 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 that 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 the petitioner wishes to intervene.

C. Filing of Contentions

The Commission has determined to take several steps to expedite this proceeding. The first step toward expediting this proceeding is to require that all contentions be filed at the same time as petitions for leave to intervene. Accordingly, any person who files a request for hearing and a petition for leave to intervene shall, at the same time, submit a supplement to the petition for leave to intervene which must include a list of contentions which are sought to be litigated in the proceeding. The Commission will issue additional directions to expedite this proceeding where appropriate in the future.

Potential petitioners should not be prejudiced by this requirement because the documents which would give rise to potential disputes are already in existence and in the public domain. For example, the licensee has prepared an Environmental Review of the decommissioning plan and the NRC Staff has prepared both an

Environmental Assessment of the plan and a Safety Evaluation Report reviewing the plan. These documents, in addition to the plan itself, are available at both Public Document Rooms. In addition, the Commission held a public meeting to obtain public comments on the decommissioning plan on August 16, 1994, in Greenfield, Massachusetts. The NRC Staff addressed those comments in the Safety Evaluation Report issued on the Decommissioning Plan.

Pursuant to 10 CFR 2.714(b)(2), each contention must consist of a specific statement of the issue of law or fact to be raised or controverted, including any alleged omission by the licensee or the Staff in any action taken or in any document issued relating to this matter. 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. The petitioner must also provide sufficient information to show that a genuine dispute exists with the licensee on a material issue of law or fact. Under the circumstances of this case, the Commission will consider a valid contention to satisfy the aspect requirement noted above.

If a hearing is held, the issue shall be whether an order approving the decommissioning plan should be issued. Thus, contentions shall be limited to matter relevant to the order under consideration. The contention must be one which, if proven, would entitle 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.

D. Filing Instructions

A request for hearing and/or petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555–0001; Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room at 2120 L Street, NW., by the above date. If a request for hearing or a petition for leave to intervene is filed within the last five (5) calendar days of this period, the filing party should not only file the documents by U.S. Mail, but should also fax them to the Secretary of the Commission. The fax number for the Office of the Secretary is (301) 415–1672.

A copy of all filings should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Attention: Assistant General Counsel for Hearings and Enforcement, and to Thomas G. Dignan, Ropes & Gray, One International Plaza, Boston, Massachusetts 02110–2624, attorney for the licensee.

Non-timely filings of (1) petitions for leave to intervene, (2) amended petitions, (3) supplemental petitions and/or (4) requests for hearing will not be entertained absent a determination by the Commission or the designated Atomic Safety and Licensing Board that the non-timely filing should be accepted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 10 CFR 2.714(d). Notwithstanding the provisions of 10 CFR 2.714(a)(3), the participants will not be allowed to amend their pleadings without leave of the Commission or of the designated Board. Under that provision, amendment of pleadings without leave is tied to the submission of contentions which has been expedited in this case. Answers to any request for hearing or petition for leave to intervene should be filed in accordance with 10 CFR 2.714(c).

For further details with respect to this action, see (1) the application for decommissioning, including the decommissioning plan, dated December 20, 1993, as supplemented on August 5, August 22, October 24, and October 26, 1994; (2) the NRC Staff's Environmental Assessment, dated February 14, 1995, and (3) the NRC Staff's Safety Evaluation Report, dated February 14, 1995. These documents are available for public inspection at both the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the NRC Local Public Document Room at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 23rd day of October, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 95–26681 Filed 10–26–95; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Notice of Intent To Request OMB Approval for Continuation of Form OPM–1386

AGENCY: Office of Personnel Management (OPM).

ACTION: Proposed Information Collection Submitted for Public Comment and Recommendations.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506–3507), the Office of Personnel Management plans to submit to the Office of Management and Budget a request to extend its approval of form OPM–1386, Applicant Race and National Origin Questionnaire, which gathers information concerning the race and national origin of applicants for employment under the Outstanding Scholar provision of the Luevano Consent Decree, 93 F.R.D. 68 (1981).

Under the terms of 44 U.S.C. 3507, the public is invited to comment on the need for this information, its practical utility, the accuracy of OPM's burden estimate, and on ways to minimize that reporting burden.

DATES: Comments are requested by December 26, 1995.

ADDRESSES: Address comments to: Leonard R. Klein, Associate Director for Employment, Room 6F08, U.S. Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: For copies of the form, and further information, contact Mike Carmichael or Christina Gonzales, (202) 606–0830, FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION:

Purpose of Form OPM–1386

A Federal court decree, issued in 1981 and still binding, requires recordkeeping on Federal employment selection procedures, including race and national origin (RNO) data, to determine the ''relative impact of the procedure upon blacks and upon Hispanics as compared with non-Hispanic whites.'' OPM and other agencies use form OPM–1386 to collect the RNO data from applicants being considered for selection under the Outstanding Scholar provision of the decree. Using the standardized form makes it easier to collect and consolidate the required data for use by the Federal Government and by the plaintiffs. OPM and agencies do not need to use form OPM–1386 to collect data on applicants being considered through traditional examining processes; court-required

data on those applicants is collected as part of an application process that is not required for Outstanding Scholars.

The form OPM–1386 is not considered in the selection process, but is used only to collect statistical data.

Annual Reporting Burden

Approximately 100,000 forms will be processed annually. The average estimated response time is 8 minutes for a total public burden of 13,300 hours.

U.S. Office of Personnel Management.

James B. King,

Director.

[FR Doc. 95–26434 Filed 10–26–95; 8:45 am]

BILLING CODE 6325–01–M

POSTAL SERVICE

Intent To Prepare an Environmental Impact Report/Environmental Impact Statement: Rincon Hill Sports and Entertainment Center, San Francisco, CA; Change in Date and Location of Scoping Meeting

AGENCY: Postal Service.

ACTION: Notice of rescheduled meeting.

FEDERAL REGISTER CITATION OF THE PREVIOUS ANNOUNCEMENT: 60 FR 52712 (October 10, 1995).

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: The public was invited to attend a scoping meeting scheduled for 7 p.m. on October 24, 1995, at the San Francisco Marriott, 55 Fourth Street, San Francisco, California.

CHANGES IN THE MEETING: The public is now invited to attend the rescheduled scoping meeting at 7 p.m. on November 14, 1995, at the Hyatt Regency Hotel, Five Embarcadero Center, San Francisco, California.

CONTACT PERSON FOR MORE INFORMATION: David Klement, (415) 794–6343.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 95–26752 Filed 10–24–95; 4:48 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–36404; File No. SR–NYSE–95–28]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to a One-Year Extension of the Pilot for Auxiliary Closing Procedures for Expiration Days

October 20, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 14, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, and on October 13, 1995, filed Amendment No. 1 to the proposed rule change,[3] as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. While the NYSE has not requested accelerated approval of the proposal, the Commission is issuing this order on an accelerated basis because the auxiliary closing procedures are scheduled to expire on October 1995.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the pilot for auxiliary closing procedures for market-at-the-close (''MOC'') orders[4] utilized on expiration Fridays[5] and quarterly expiration days[6] through October 31, 1996.

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Brian McNamara, Vice President, NYSE to Glen Barrentine, Team Leader, Division of Market Regulation, SEC, dated October 13, 1995.

[4] A MOC order is a market order to be executed in its entirety at the closing price on the Exchange. *See* NYSE Rule 13.

[5] The term ''expiration Friday'' refers to the trading day, usually the third Friday of the month, when various stock index futures, stock index options and options on stock index futures expire or settle concurrently.

[6] The term ''quarterly expiration day'' refers to the last trading day of each quarter on which end of calendar quarter index options expire.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Special procedures regarding the entry of MOC orders on expiration Fridays were originally adopted in 1986 for assisting in handling the order flow associated with the concurrent quarterly expiration of stock index futures, stock index options, and options on stock index futures on expiration Fridays.[7] Since November 1988, auxiliary closing procedures[8] for MOC orders have been used, on a pilot basis, for each monthly expiration and have been applied to the so-called ''pilot stocks.''[9] In April 1992, the Exchange modified the pilot procedures and included additional special procedures for handling MOC orders in *all* stocks on expiration Fridays.[10] In March 1993, the Exchange

[7] *See* Securities Exchange Act Release No. 24926 (September 17, 1987), 52 FR 24926 (approving File No. SR–NYSE–87–32 and noting that the MOC procedures described therein had been utilized on a quarterly basis since September 1986).

[8] The NYSE auxiliary closing procedures for expiration Fridays were initially approved by the Commission on a pilot basis for a one-year period beginning in November 1988 and extending through October 1989. The pilot has since been extended each year on a one-year pilot basis. *See* Securities Exchange Act Release Nos. 26293 (November 17, 1988), 53 FR 47599; 26408 (December 29, 1988), 54 FR 343 (approving File No. SR–NYSE–88–37); 27448 (November 16, 1989), 54 FR 48343 (approving File No. SR–NYSE–89–38); 28564 (October 22, 1990), 55 FR 43427 (approving File No. SR–NYSE–90–49); 29871 (October 28, 1991), 56 FR 30004 (approving File No. SR–NYSE–91–31); 31386 (October 30, 1992), 57 FR 52814 (approving File No. SR–NYSE–92–30); 32868 (September 10, 1993), 58 FR 48687 (approving File No. SR–NYSE–93–33); and 34916 (October 31, 1994), 59 FR 55507 (approving File No. SR–NYSE–94–32).

[9] The expiration Friday pilot stocks consist of the 50 most highly capitalized Standard & Poor's (''S&P'') 500 stocks and any component stocks of the Major Market Index (''MMI'') not included therein.

[10] In April 1992, the Commission approved the Exchange's modified pilot MOC procedures on an accelerated temporary basis for the April 1992

Continued

extended its application of the expiration Friday auxiliary closing procedures [11] to days on which Quarterly Index Expiration options expire.[12] In September 1993, the Exchange again modified the pilot procedures by changing the cut-off time for entry, cancellation, and reduction of MOC orders to 3:40 p.m.[13] In June 1995, the Exchange put into effect modified MOC procedures for expiration days by setting a 3:40 p.m. deadline for the entry of *all* MOC orders in *all* stocks, except to offset imbalances in pilot stocks that are published on the tape.[14]

The current procedures for expiration days require that MOC orders in any stock, except those used to offset a published imbalance, be entered for execution by 3:40 p.m. and that no cancellation or reduction of any MOC order in any stock take place after 3:40 p.m. (except in case of legitimate error). This applies to MOC orders in all stocks regardless of whether such orders relate to a strategy involving stock index futures, stock index options, or options on stock index futures. In addition, Floor brokers representing any MOC orders must indicate their MOC interest to the specialist by 3:40 p.m.

For the pilot stocks, a single publication of imbalances of 50,000 shares or more is made as soon as practicable after 3:40 p.m. After the imbalance publication, MOC orders in pilot stocks may be entered only to offset a published imbalance. The entry of MOC orders after 3:40 p.m. to establish or liquidate positions related to a strategy involving derivative instruments is not permitted even if such orders might offset published imbalances.

Pursuant to Amendment No. 1, the Exchange has proposed an amendment of the above pilot for auxiliary closing procedures for MOC orders to allow for imbalance publications of 50,000 shares or more to be made not only in the so-called pilot stocks, but also in stocks added to or dropped from an index, and in any other stock if requested by a specialist and approved by a Floor Official.

The auxiliary procedures utilized for expiration days have been approved as a pilot on a yearly basis and are due to expire on October 31, 1995. These procedures have been effective in minimizing excess volatility on the close on expiration days. The Exchange requests that the procedures described above be extended to October 31, 1996.

The Exchange continues to believe, however, that concerns about excess market volatility that may be associated with the expiration or settlement of derivative index products would be most appropriately addressed if the expiration or settlement value of all such products were based on the NYSE *opening* rather than the closing price on the last business day prior to the expiration or settlement of the product.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.[15] The auxiliary closing procedures protect investors and the public interest by alleviating excess volatility at the close on expiration days.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the NYSE's proposal to extend the pilot for closing procedures on expiration days and to allow for imbalance publications of 50,000 shares or more to be made not only in the so-called pilot stocks, but also in stocks added to or dropped from an index, and in any other stock if requested by a specialist and approved by a Floor Official, through October 1996, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[16] In particular, the Commission believes that the proposal, as amended, is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. For the reasons set forth below, the Commission believes that NYSE's proposal furthers the objectives of Section 6(b)(5) of the Act.

In recent years, the self-regulatory organizations have instituted certain safeguards to minimize excess market volatility that may arise from the liquidation of stock positions on expiration and non-expiration days. Special procedures regarding the entry of MOC orders on expiration Fridays were first used in 1986 for assisting in handling the order flow associated with the concurrent quarterly expiration of stock index futures, stock index options and options on stock index futures on expiration Fridays. Since November 1988, on a pilot basis, the NYSE has utilized auxiliary closing procedures for MOC orders for each monthly expiration Friday. In March 1993, the Exchange extended the expiration Friday closing procedures to days on which Quarterly Index Expiration options expire. The closing procedures for expiration Fridays and quarterly expiration days (cumulatively, ''expiration days'') require that all MOC orders be entered, reduced or cancelled no later than 3:40 p.m. As soon as practicable after 3:40 p.m., the specialist must disseminate any MOC order imbalance of 50,000 shares or more in pilot stocks. AFter 3:40 p.m. MOC orders may be entered in the pilot stocks, but only to offset the published imbalance. That is, once an imbalance in a pilot stock has been published, any MOC orders

expiration Friday. *See* Securities Exchange Act Release No. 30570 (April 10, 1992), 57 FR 13399 (notice of filing and order granting partial accelerated approval of File No. SR–NYSE–92–09). Thereafter, the Commission approved those modifications for all expiration Fridays during the pilot period. *See* Securities Exchange Act Release No. 30680 (May 8, 1992), 57 FR 20720 (order approving File No. SR–NYSE–92–09).

[11] *See* Securities Exchange Act Release No. 32066 (March 30, 1993), 58 FR 17630 (approving File No. SR–NYSE–93–16).

[12] On quarterly expiration days, the ''pilot stocks'' include the ten highest weighted stocks of the S&P Midcap 400 Index (in addition to the 50 highest weighted stocks underlying the S&P 500 Index and any component stocks of the Major Market Index not included in that group).

[13] *See* Securities Exchange Act Release No. 32868 (September 10, 1993), 58 FR 48687 (order approving File No. SR–NYSE–93–33).

[14] *See* Securities Exchange Act Release No. 35589 (April 10, 1995), 60 FR 19313 (April 17, 1995) (order approving File No. SR–NYSE–94–44). Although approved by the SEC in April, the Exchange did not put these procedures into effect until June 1995. Prior to April 1995, only MOC orders related to a strategy involving derivative index products were required to be entered for execution by 3:40 p.m. on expiration days. *See* Securities Exchange Act Release No. 34916 (October 31, 1994), 59 FR 55507 (November 7, 1994) (order approving File No. SR–NYSE–94–32).

[15] 15 U.S.C. § 78f(b)(5).

[16] U.S.C. § 78f(b).

subsequently entered in such pilot stock will be accepted only to trade on the opposite side of the market in relation to such published imbalance. These procedures allow NYSE specialists to obtain an indication of the buying and selling interest in MOC orders at expiration and, if there is a substantial imbalance on one side of the market, to provide the investing public with timely and reliable notice thereof and with an opportunity to make appropriate investment decisions in response thereto.

The Commission believes that these auxiliary closing procedures should enable market participants to gain a more accurate picture of the buying and selling interest in MOC orders at expiration. By requiring early submission of MOC orders and disseminating significant imbalances (50,000 shares or more) in all stocks, the NYSE should be able to attract contra-side interest to help alleviate imbalances caused by the liquidation of stock positions. Based on the NYSE's experience,[17] the Commission believes that the MOC order handling requirements work relatively well and may result in more orderly markets at the close on expiration days.

Moreover, the Commission believes that approval of Amendment No. 1 should contribute to the overall effectiveness of these auxiliary closing procedures. Currently, on expiration days, specialists may disseminate notices of MOC order imbalances only in the pilot stocks. That is, the expiration day MOC procedures do not allow for the dissemination of notices of MOC order imbalances in any stocks other than the pilot stocks. As a result, on expiration days, the MOC procedures completely prohibit the entry of MOC orders after 3:40 p.m. in all non-pilot stocks. In contrast, the procedures used on non-expiration days allow for the dissemination of notices of MOC order imbalances in all stocks and, therefore, allow for the entry of MOC orders after the 3:50 p.m. cut-off time in all stocks.[18] Approval of Amendment No. 1, which was submitted in response to the Commission's suggestion,[19] will conform more closely the auxiliary closing procedures used on expiration days with those already permanently approved for non-expiration days. Approval also will ensure that the potentially beneficial effect of the pilot's auxiliary closing procedures will be available to all stocks rather than just the pilot stocks.

The Commission is approving an extension of the pilot program, along with Amendment No. 1, through October 1996. During the pilot extension, the Commission expects the NYSE to continue to monitor closely the effectiveness of the procedures, and to submit a report with all of the same data previously requested for prior periods. The report should cover all expirations through June 1996 and must be submitted to the Commission no later than July 31, 1996[20] along with a proposed rule change that should either request an additional extension of the pilot program or permanent approval of the pilot procedures.

The Commission finds good cause for approving the proposed rule change and Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. This rule change will permit the procedures to continue on an uninterrupted basis. In addition, and as previously discussed, Amendment No. 1 will put into place auxiliary closing procedures for expiration days that closely mirror those used on non-expiration days. These non-expiration day procedures were approved on a permanent basis in October 1992 following a full notice period during which no comments were received.[21] Since that time, the Commission has not been made aware of any concerns regarding the non-expiration day procedures and, therefore, believes that it is appropriate to approve the procedures provided for by Amendment No. 1 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–95–28 and should be submitted by November 17, 1995.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change is hereby approved on a pilot basis through October 31, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–26701 Filed 10–26–95; 8:45 am]

BILLING CODE 8010–01–M

[17] The NYSE has submitted to the SEC several monitoring reports describing its experience with the closing procedures. The most recent report was submitted to the SEC by the NYSE on July 28, 1995.

[18] The closing procedures for non-expiration days require that all MOC orders be entered, reduced or cancelled no later than 3:50 p.m. As soon as practicable after 3:50, the specialist must disseminate any MOC order imbalance of 50,000 shares or more in pilot stocks, stocks being added to or dropped from an index and, upon the request of a specialist, any other stock with the approval of a Floor Official. After 3:50 p.m., MOC orders may be entered in any stock in which there is a published imbalance, but only to offset the imbalance. *See* Release No. 35589, *supra* note 14.

[19] *See* Release No. 35589, *supra* note 14, n.16.

[20] The Commission requires that the NYSE also include in the report any additional data and analysis that may be useful in assessing the effectiveness of the procedures currently being used to reduce excess market volatility on expiration Fridays.

[21] *See* Securities Exchange Act Release No. 31291 (October 6, 1992), 57 FR 47149 (File No. SR–NYSE–92–12).

[22] 15 U.S.C. § 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

[Release No. 34–36406; File No. SR–PHLX–95–75]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Price Weighting of the PHLX Forest and Paper Products Sector Index

October 23, 1995.

Purusant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1995, the Philadelphia Stock Exchange, Inc. (''PHLX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to change the method of calculating the PHLX Forest and Paper Products Sector Index (''Index'') from equal dollar weighting to price weighting. Options on the cash-settled, European-style [1] Index, which is comprised of the stocks of 14 domestic forest and paper product companies became eligible for Exchange trading on September 6, 1995.[2] However, the PHLX has not yet commenced trading.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purposes of, and Statutory Basis for, the Proposed Rule Change

The Purpose of the proposed rule change is to change the method of calculating the Index from equal dollar weighting to price weighting. Options on the cash-settled, European-style Index became eligible for Exchange trading on September 6, 1995.[3] However, the PHLX has not yet commenced trading. The Index is comprised of the stocks of 14 domestic forest and paper product companies which, the PHLX represents, effectively represent the available forest and paper products industry.[4] The PHLX originally submitted its proposal to list and trade options on the Index pursuant to and in accordance with the procedures set forth in Securities Exchange Act Release No. 34157.[5] The PHLX represents that the price-weighted Index will continue to meet the criteria provided in the Generic Index Approval Order, and codified in PHLX Rule 1009A, ''Designation of the Index,'' for listing options on narrow-based indexes.

According to the PHLX, the Exchange recently received comments from potential investors that the Index's equal dollar weighting would cause hardship to investors who hedge their portfolios with baskets of the underlying stocks. The PHLX states that such investors would have to adjust their positions in every one of the underlying 14 stocks every quarter when the Index is rebalanced. The PHLX received a suggestion that Index options would be a more liquid product if the Index were price weighted, and after speaking to other prospective users, the Exchange has determined to make the proposed change in order to address their concerns. The current proposal changes no other aspect of the original Index filing. Below is a review of the Index's specifications.

Ticker Symbol: FPP.

Underlying Index: The Index will be a price weighted index comprised of stocks from 14 domestic forest and paper products companies. All 14 stocks in the Index are traded on the New York Stock Exchange (''NYSE'') and are therefore ''reported securities'' as defined in Rule 11Aa–3–1 under the Act. The PHLX represents that all of the Index's component stocks presently meet the listing criteria for equity options contained in PHLX Rule 1009, ''Criteria for Underlying Stocks,'' and are currently the subject of standardized options trading in the U.S.

According to the PHLX, as of October 11, 1995, the market capitalization of all of the stocks in the Index exceeded $57 billion and the individual capitalizations of the Index's component stocks ranged from $1.7 billion to $9.6 billion. The PHLX states that all 14 of the Index's component stocks had monthly trading volumes in excess of one million shares over each of the past six months from April through September 1995.

Index Calculation: The Index will be computed using the following formula:

$$\frac{SP_1 + SP_2 + \cdots SP_{14}}{\text{divisor}} \times 100$$

where:

SP = current stock price
divisor = number of stocks in the Index

To maintain the continuity of the Index, the divisor will be adjusted to reflect non-market changes in the prices of the component securities as well as changes in the composition of the Index. Changes which may result in divisor adjustments include, but are not limited to, stock splits and dividends, spin-offs, certain rights issuances, and mergers and acquisitions. If the Index fails at any time to satisfy the maintenance criteria set forth in the Generic Index Approval Order, the Exchange will immediately notify the Commission of that fact and will not open for trading any additional series of options on the Index unless the Exchange determines that such failure is not significant and the Commission concurs in that determination or unless the continued listing of options on the Index has been approved by the Commission under Section 19(b)(2) of the Act.

Absent Commission approval, the PHLX will not increase to more than 19, or decrease to fewer than 9, the number of stocks in the Index, nor will the PHLX make any change in the composition of the Index that would cause fewer than 90% of the stocks, by weight, or fewer than 80% of the total number of stocks in the Index to qualify as stocks eligible for equity options trading under PHLX Rule 1009, ''Criteria for Underlying Stocks.''[6] The PHLX will take into account the capitalization, liquidity, volatility and name recognition of any proposed replacement stock and assure that the Index continues to meet the maintenance criteria provided in PHLX Rule 1009.

The Index will be disseminated every 15 seconds during the trading day. The PHLX has retained Bridge Data, Inc. to compute and perform all necessary maintenance of the Index. Pursuant to PHLX Rule 1100A, ''Dissemination of Information,'' updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options

[1] A European-style option can be exercised only during a specified period immediately prior to the expiration of the option.

[2] *See* Securities Exchange Act Release No. 36193 (September 6, 1995), 60 FR 47635 (September 13, 1995) (File No. SR–PHLX–95–56) (''Index Release'').

[3] *Id.*

[4] The components of the Index are: Boise Cascade; Bowater Inc.; Champion International Corporation; Federal Paper Board Company; Georgia Pacific Corporation; International Paper Company; James River Corporation; Louisiana Pacific Corporation; Mead Corporation; Stone Container Corporation; Temple Inland, Inc.; Union Camp Corporation; Westvaco Corporation; and Weyerhauser Company.

[5] *See* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994) (''Generic Index Approval Order'').

[6] In addition, the Generic Index Approval order requires that at all times, at least 90% of the stocks in the Index, by weight, and 80% of the total number of stocks comprising the Index, individually, must satisfy the Exchange's rules governing the listing and maintenance of listing of options thereon. *See* Generic Index Approval Order, *supra* note 5.

Price Reporting Authority (''OPRA'').[7] The Index value also will be available on broker/dealer interrogation devices to subscribers of the option information.

Unit of Trading: Each options contact will represent $100, the Index multiplier, times the Index value. For example, an Index value of 200 will result in an option contract value of $20,000 ($100×200).

Exercise Price: The exercise price will be set at 5 point intervals in terms of the current value of the Index. The PHLX will list additional exercise prices in accordance with PHLX Rule 1101A(a), ''Terms of Option Contracts.''

Aggregate Exercise Price: The aggregate exercise price is found by multiplying the Index multiplier ($100) by the exercise price.

Settlement Price Determination: The Index option settlement value will be determined by using the opening prices of the component stocks on the third Friday of each month.

Settlement Value: Based upon the opening prices of the component stocks on the last day prior to expiration.

Last Trading Day: The Thursday prior to the third Friday of the month for options which expire on the Saturday following the third Friday of that month.

Trading Hours: 9:30 a.m. to 4:10 p.m. EST.

Position and Exercise Limits: The Index is an industry index and the PHLX will apply position and exercise limits pursuant to PHLX Rules 1001A(b)(i), ''Position Limits,'' and 1002A, ''Exercise Limits,'' respectively. Therefore, the position and exercise limits will be 12,000 contracts.

Expiration Cycles: Three months from the March, June, September, December, cycle plus at least two additional near-term months. The PHLX also will trade long-term Index options having up to 36 months to expiration pursuant to PHLX Rule 1101A(b)(iii).

Issuer and Guarantor: The Options Clearing Corporation (''OCC'')

Premium Quotations: Premiums will be expressed in terms of dollars and fractions of dollars pursuant to PHLX Rule 1033A, ''Meaning of Premium Bids and Offers.'' For example a bid or offer of 1½ will represent a premium per options contract of $150 (1½×100). The minimum change in a premium under $3 will be 1/16 and ⅛ for a quote of $3 or greater.

[7] In the Index Release, the PHLX represented that the PHLX and OPRA have the necessary systems capacity to support the new series of options that will result from the introduction of options and long-term options on the Index. *See* Index Release, *supra* note 2.

The Index options will be traded pursuant to current PHLX rules governing the trading of index options.[8] In addition, the Exchange represents that surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in Index options. These procedures include having complete access to trading activity in the underlying securities, which are all traded on the NYSE. In addition, the Intermarket Surveillance Group Agreement (''ISG Agreement''), dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of Index options.

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) the Exchange provided the Commission with notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(e)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(e)(6)[10] does not become operative prior to 30 days after the date of filing or such shorter times as the Commission may designate unless such action is consistent with the protection of investors and the public interest. The PHLX has requested that the Commission accelerate the implementation of the proposed rule change so that it may take effect prior to the 30 days specified under Rule 19b–4(e)(6) because the PHLX plans to begin trading Index options on October 24, 1995. The Commission finds that the proposed rule change is consistent with the protection of investors and the public interest and therefore has determined to make the proposed rule change operative as of October 24, 1995.

In particular, the Commission finds that the proposal makes a non-controversial amendment to a proposed rule change that was published for the full notice and comment period in the Federal Register on September 13, 1995.[11] The Commission has received no comments on that proposal.[12] In addition, the Commission notes that the Index, as amended, continues to meet the requirements of the Generic Index Approval Order, which permits indexes filed under those procedures to use either price, capitalization, or equal dollar weighting methods.[13]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

[8] *See* PHLX Rules 1001A through 1102A, ''Limitation of Exchange Liability,'' and 1000, ''Applicability, Definitions, and References,'' through 1072, ''Reporting Requirements Applicable to Short Sales in NASD/NM Securities.''

[9] 17 CFR 240.19b–4(e)(6) (1994).

[10] *Id.*

[11] *See* Index Release, *supra* note 2.

[12] With equal dollar weighting, each component stock of the Index represented between 7.12% and 7.16% of the value of the Index. With price weighting, the most highly capitalized stock in the Index equals 13.98% of the Index weight and the top five stocks in capitalization represent 49.06% of the Index weight. Accordingly, when the Index is calculated through price weighting rather than equal dollar weighting, the Index continues to comply with the requirements of the Generic Index Approval Order.

[13] *See* Generic Index Approval Order, *supra* note 5.

Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submission should refer to the file number in the caption above and should be submitted by November 17, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–26702 Filed 10–26–95; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Application No. 99000174]

ABN AMRO Capital Inc.; Notice of Filing of an Application for a License To Operate as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to Section 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1995)) by ABN AMRO Capital Inc., at 135 South LaSalle Street Suite 725, Chicago, Illinois 60674–9135 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958, as amended, (15 U.S.C. §§ 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The applicant is a wholly owned second tier subsidiary of ABN AMRO Bank formed under Delaware law.

The applicant's officers will be Paul J. Widuch (President), Robert K. Quinn (Secretary), and Dennis J. O'Malley (Treasurer). All three of these individuals are officers of ABN AMRO Bank, N. V. and/or ABN AMRO North America, Inc., and each has extensive experience in banking, finance, and investment analysis.

ABN AMRO Capital Inc. will begin operations with committed capital of $2.5 million from ABN AMRO North America, Inc. with additional capital contributed over time, as necessary, to fund investment opportunites when they arise once applicant is granted a license to operate as a small business investment company. ABN AMRO Capital Inc.'s entire $2.5 million of initial private capital is being contributed by ABN AMRO North America, Inc. Accordingly, the following shareholder will own 10 percent or more of the proposed SBIC:

Name	Percentage of ownership
ABN AMRO North America, Inc., 135 South LaSalle Street, Chicago, IL. 60674–9135	100

The applicant intends to focus on subordinated debt and equity investments in small to medium size companies across a variety of industries. The applicant anticipates making portfolio investments in various industries including, consumer products and services, manufacturing, industrial equipment and technology, industrial chemicals and materials, business products and services, distribution companies, health care and project financings.

The applicant does not plan to seek financing from the SBA.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Chicago, Illinois.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: October 20, 1995.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 95–26668 Filed 10–26–95; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–95–267, (Order 95–10–33)]

Application of Custom Air Transport, Inc., for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Custom Air Transport, Inc., fit, willing, and able, and awarding it a certificate of public convenience and necessity to engage in interstate scheduled air transportation of property and mail.

DATES: Persons wishing to file objections should do so no later than November 7, 1995.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–95–267 and addressed to the Documentary Services Division (C–55, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Woods, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2340.

Dated: October 20, 1995.

Mark L. Gerchick,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 95–26634 Filed 10–26–95; 8:45 am]

BILLING CODE 4910–62–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301–101]

Denial of Benefits Under Trade Agreement by the European Union: Initiation of Investigation; Proposed Determination; Request for Public Comment; and Public Hearing

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of investigation, proposed determination,

[14] 17 CFR 200.30–3(a)(12) (1994).

request for public comment and a public hearing.

SUMMARY: Under Articles XXIV:6 and XXVIII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) attached to the Agreement Establishing the World Trade Organization (WTO Agreement), whenever two or more Members of the World Trade Organization (WTO) form a customs union and thereby withdraw or modify tariff concessions, they must provide full and permanent compensation to relevant affected trading partners; if such compensation is not provided, then those other trading partners may withdraw concessions and increase tariffs. The United States is continuing to negotiate with the European Union (EU) regarding the EU's provision of full and permanent compensation to the United States for withdrawing concessions and increasing tariffs on trade into the territories of Austria, Finland and Sweden upon their accession to the EU on January 1, 1995. However, in order to preserve U.S. rights under a trade agreement, the United States Trade Representative (USTR) initiated on October 24,1995, an investigation under section 302(b) of the Trade Act of 1974 (Trade Act) (19 U.S.C. 2412(b)). The USTR proposes, if necessary, to determine that U.S. benefits under a trade agreement are being denied and that the appropriate action in response is to suspend concessions on selected products for which the EU is the principal supplier and, if necessary thereafter, to impose tariffs of up to 100 percent ad valorem on those products. The increased duties, if imposed, will be applicable to imports from all countries that are subject to the rates of duty set forth in the Column 1 General rate of duty column of the Harmonized Tariff Schedule of the United States (HTSUS). The USTR seeks public comment and will hold a public hearing on November 20 and 21, 1995, concerning the proposed actions.

DATES: Written comments from interested persons are due on or before noon on Friday, November 24, 1995; requests to testify at the public hearing are due on or before noon on Wednesday, November 8, 1995; written testimony is due on or before noon on Wednesday, November 15, 1995; the public hearing will be held on November 20 and 21, 1995; and post-hearing submissions are due on or before noon on Friday, November 24, 1995.

FOR FURTHER INFORMATION CONTACT: Edward Kaska, Director, European Services and Agriculture (202) 395–4620; Elena Bryan, Director, Non-Tariff Measures (202) 395–5097, Amelia Porges, Associate General Counsel, (202) 395–7305, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: With the accession of Austria, Finland and Sweden to the EU, the EU withdrew the entire WTO tariff schedules of these three countries and of the EU of twelve members, and applied the common external tariff of the EU of twelve to imports into the territory of Austria, Finland and Sweden. The EU then began negotiations pursuant to Article XXIV:6 and Article XXVIII of the GATT 1994 on compensation to its trading partners for the concessions thereby withdrawn. As an interim and partial measure, the EU established a series of tariff-rate quotas for the first half of 1995 preserving limited import access for certain products at the pre-accession tariff rates, and these tariff-rate quotas have been extended through the end of 1995.

When a WTO Member withdraws a tariff concession in the expansion of a customs union, Articles XXIV:6 and XXVIII of the GATT entitle relevant affected Members to receive negotiated compensation or, in the absence of a successful negotiation, to invoke Article XXVIII:3 to modify or withdraw ''substantially equivalent concessions.'' Article XXVIII:3 rights are time-limited; the WTO General Council has extended these rights through December 31, 1995, but these rights could be construed to expire then unless exercised by the United States or extended by the Council. WTO Members invoking Article XXVIII:3 must also provide notice of their intent to modify or withdraw substantially equivalent concessions at least thirty days prior to the effective date of such action. Accordingly, the USTR intends to notify the WTO on or before December 1, 1995, that the Untied States will suspend tariff concessions for specified products in the HTSUS, by the close of December 31, 1995, unless by that time agreement has been reached between the EU and the United States on permanent and adequate compensation for tariff concessions modified or withdrawn as a result of the accession of Austria, Finland and Sweden to the EU. The suspension of concessions will be substantially equivalent to the withdrawal modification by the EU of concessions affecting U.S. exports.

Investigation and Proposed Determination and Action

In these circumstances and in order to exercise U.S. rights under a trade agreement, the USTR on October 24, 1995, following consultations with the appropriate private sector advisory committees, initiated an investigation pursuant to section 302(b)(1) of the Trade Act with respect to the EU's policies and practices in this matter. The USTR proposes that, unless the United States and EU are able to negotiate a mutually acceptable solution that compensates the United States in accordance with its rights under the WTO, the USTR will determine that the EU's policies and practices deny the United States trade agreement benefits and are actionable under section 301(a) and that the appropriate action in response is to suspend by the end of 1995 concessions on selected products for which the EU is the principal supplier. If necessary, the USTR may thereafter determine to increase the duties previously applied under the tariff lines with respect to which concessions have been suspended. The new applied tariff rates will not exceed 100 percent ad valorem. The duty increase will affect goods of the EU in an amount that is equivalent in value to the burden or restriction imposed upon United States commerce by the increase in duties consequent upon EU enlargement. The increased duties, if imposed, will be applicable to imports from all countries that are subject to the rates of duty set forth in the Column 1 General rate of duty column on the HTSUS.

The products to be affected by the possible suspension of concessions and duty increase will be drawn from the list of products set forth in the Annex to this notice. In selecting products the USTR will consider all comments and testimony by interested persons submitted to the Section 301 Committee in accordance with the procedures described below.

Public Comment on Proposed Determination; Hearing Participation

Section 304(b)(2) of the Trade Act provides that, unless expeditious action is required, the USTR shall allow an opportunity, following 30 days notice, for the presentation of views by interested persons prior to the issuance of a determination pursuant to section 301(a). The USTR has refrained from initiating this investigation and announcing proposed actions for the maximum time possible to allow the EU an adequate opportunity to negotiate full and permanent compensation. However, as adequate compensation has not yet been agreed upon, the USTR has determined that it is appropriate to initiate this investigation and to notify interested persons of the possibility that determinations may be made under

section 304 of the Trade Act, that tariff concessions may be suspended by the close of December 31, 1995, and that tariffs may be increased thereafter.

In accordance with section 304(b) of the Trade Act, the USTR invites all interested persons to provide written comments on the proposed determination. Comments may address: (1) The appropriateness of imposing increased duties upon the products listed in the Annex to this notice; (2) the levels at which U.S. customs duties should be set for particular items; and (3) the degree to which increased duties might have an adverse effect upon U.S. consumers of the products listed in the Annex. Written comments are due by noon, Friday, November 24, 1995.

The USTR also will consider the written, oral, and rebuttal comments submitted in the context of public hearings held pursuant to section 304(b) of the Trade Act and in accordance with 15 CFR 2006.7 through 2006.9. The hearings will begin at 1:00 p.m. on Monday, November 20, 1995, and continue on Tuesday, November 21, if necessary. The hearings will be held in Room 100 at the U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Request To Testify

Interested persons wishing to testify orally at the hearings must provide a written request to do so by noon, Wednesday, November 8, 1995, to Sybia Harrison, Staff Assistant to the Section 301 Committee, Office of the U.S. Trade Representative, 600 17th Street NW, Washington, DC 20508. Requests to testify must include the following information: (1) Name, address, telephone number, fax number, and firm or affiliation of the person wishing to testify; and (2) a brief summary of the comments to be presented. Requests to testify must conform to the requirements of 15 CFR 2006.8(a). After the Chairman of the Section 301 Committee considers the request to present oral testimony, Ms. Harrison will notify the applicant of the time of his or her testimony. Testimony, both written and oral, shall be limited to: (1) The Appropriateness of imposing increased duties upon the products listed in the Annex to this notice; (2) the levels at which U.S. customs duties should be set for particular items; and (3) the degree to which increased duties might have an adverse effect upon U.S. consumers of the products listed in the Annex. Remarks at the hearing will be limited to five minutes.

Written Testimony and Rebuttal Briefs

In addition, persons presenting oral testimony must submit their complete written testimony by noon, Wednesday, November 15, 1995. In order to assure each party an opportunity to contest the information provided by other parties, USTR will entertain rebuttal briefs filed by any party by noon, Friday, November 24, 1995. In accordance with 15 CFR 2006.8(c) rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in the briefs or hearing and should be as concise as possible.

Requirements for Submissions

Written comments on the proposed determination, written testimony, and rebuttal briefs must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b). Comments must state clearly the position taken, describe with particularity the supporting rationale, be in English, and be provided in twenty copies to: Chairman, Section 301 Committee, Attn.: EU Enlargement Investigation, Room 223, USTR, 600 17th St., NW., Washington, DC 20508.

Written comments, testimony, and briefs will be placed in a file (Docket 301–101) open to public inspection pursuant to 15 CFR 2006.13, except for confidential business information exempt from public inspection in accordance with 15 CFR 2006.15. Persons wishing to submit confidential business information must certify in writing that such information is confidential in accordance with 15 CFR 2006.15(b), and such information must be clearly marked ''Business Confidential'' in a contrasting color ink at the top of each page on each of the twenty copies and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the Docket open to public inspection. An appointment to review the docket may be made by calling Brenda Webb at (202) 395–6186. The USTR Reading Room is open to the public from 10:00 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508.

Irving A. Williamson,

Chairman, Section 301 Committee.

BILLING CODE 3190–01–M

Annex

List of Articles to be Considered

1995 HTS Subheading	Article Description
	[The bracketed language in this Annex has been included only to clarify the scope of the numbered 8-digit sub-headings covered by the action of this notice, and such language is not itself intended to describe articles on which action is being considered.]
	Cheese and curd:
	[Fresh (unripened or uncured) cheese, including whey cheese, and curd; grated and powdered cheese, of all kinds; processed (process) cheese, not grated or powdered; blue-veined cheese]
	Other cheese:
	[Bryndza cheese; Cheddar cheese; Edam and Gouda cheese; Gjetost cheeses; Goya cheese; Sbrinz cheese; Romano made from cow's milk, Reggiano, Parmesan, Provolone and Provoletti cheeses; Swiss or Emmentaler cheese with eye formation; Gammelost and Nokkelost cheeses; Colby cheese]
	Other cheeses, and substitutes for cheese, including mixtures of the above:
	[Cheeses made from sheep's milk; Other, described in general note 15 of the tariff schedule and entered pursuant to its provisions (including mixtures)]
	Other, including mixtures of the above (excluding goods containing mixtures of subheadings 0406.90.61 or 0406.90.63):
	[Containing Romano, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz or Goya, all the foregoing made from cow's milk; containing, or processed from, blue-veined cheese; containing, or processed from, Cheddar cheese; containing, or processed from, American-type cheese (including Colby, washed curd and granular cheese, but not including Cheddar); containing, or processed from, Edam or Gouda cheese; containing, or processed from, Swiss, Emmentaler or Gruyere-process cheese]
	Other:
	[Containing 0.5 percent or less by weight of butterfat]
	Other:
	[Containing cow's milk (except soft-ripened cow's milk cheeses)]
0406.90.99	Other
	Other nuts, fresh or dried, whether or not shelled or peeled:
0802.40.00	Chestnuts (*Castanea* spp.)
	Vegetable saps and extracts; pectic substances, pectinates and pectates; agar-agar and other mucilages and thickeners, whether or not modified, derived from vegetable products:
1302.20.00	Pectic substances, pectinates and pectates

1995 HTS Subheading	Article Description
	Chocolate and other food preparations containing cocoa:
	[Cocoa powder, containing added sugar or other sweetening matter; other preparations in blocks, slabs, or bars, weighing more than 2 kg or in liquid, paste, powder, granular or other bulk form in containers or immediate packings, of a content exceeding 2kg; other, in blocks, slabs, or bars]
	Other:
	[Described in general note 15 of the tariff schedule and entered pursuant to its provisions]
	Other:
	[Dairy products described in additional U.S. note 1 to chapter 4]
	Other:
	[Containing butterfat or other milk solids (excluding articles for consumption at retail as candy or confection)]
	Other:
	[Blended syrups described in additional U.S. note 4 to chapter 17; articles containing over 65% by dry weight of sugar described in additional U.S. note 2 to chapter 17; articles containing over 10 percent by dry weight of sugar described in additional U.S. note 3 to chapter 17]
1806.90.90	Other
	Bread, pastry, cakes, biscuits and other bakers' wares, whether or not containing cocoa; communion wafers, empty capsules of a kind suitable for pharmaceutical use, sealing wafers, rice paper and similar products:
	Sweet biscuits; waffles and wafers:
	[Frozen]
1905.30.00 pt.	Other
	Fruit, nuts and other edible parts of plants, otherwise prepared or preserved, whether or not containing added sugar or other sweetening matter or spirit,not elsewhere specified or included:
2008.70.00	Peaches
	Sauces and preparations therefor; mixed condiments and mixed seasonings; mustard flour and meal and prepared mustard:
	Mustard flour and meal and prepared mustard:
2103.30.20	Mustard flour and meal
	Preparations of a kind used in animal feeding:
	[Dog or cat food, put up for retail sale]
	Other:
	Mixed feeds or mixed feed ingredients
	[Bird seed]
2309.90.10 pt.	Other pet food, put up for retail sale
	Portland cement, aluminous cement, slag cement, supersulfate cement and similar hydraulic cements, whether or not colored or in the form of clinkers:
	Portland cement:
2523.21.00	White cement, whether or not artificially colored

1995 HTS Subheading	Article Description
	Perfumes and toilet waters:
	Not containing alcohol:
	[Floral or flower waters]
3303.00.20	Other
	Beauty or make-up preparations and preparations for the care of the skin (other than medicaments), including sunscreen or sun tan preparations; manicure or pedicure preparations:
3304.10.00	Lip make-up preparations
	Preparations for use on the hair:
3305.10.00	Shampoos
	Pre-shave, shaving or after-shave preparations, personal deodorants, bath preparations, depilatories and other perfumery, comestic or toilet preparations, not elsewhere specified or included; prepared room deodorizers, whether or not perfumed or having disinfectant properties:
	Pre-shave, shaving or after-shave preparations:
3307.10.10	Not containing alcohol
3307.10.20	Containing alcohol
	Plywood, veneered panels and similar laminated wood:
	[Plywood consisting solely of sheets of wood, each ply not exceeding 6 mm in thickness]
	[Other, with at least one outer ply of nonconiferous wood]
	Other:
	[Containing at least one layer of particle board]
	Other:
	[Plywood]
	Other:
	[With an outer ply of Douglas Fur (Psuedotsuga menziesii); With a face ply of Southern yellow pine (Loblolly pine (Pinus taeda), long leaf pine (Pinus palustris), pitch pine (Pinus rigida), short leaf pine (Pinus echinata), slash pine (Pinus elliottii) and Virginia pine (Pinus Virginiana)]
4412.99.90 pt.	Other
	Other uncoated paper and paperboard, in rolls or sheets:
	[Semichemical fluting paper (corrugating medium)]
	Multi-ply paper and paperboard:
	[Each layer bleached; with only one outer layer bleached; having three or more layers of which only the two outer layers are bleached]
	Other:
	[Folding carton board]
4805.29.00 pt.	Other
	[Sulfite wrapping paper]
4805.40.00	Filter paper and paperboard

1995 HTS Subheading	Article Description
	Other uncoated paper and paperboard, in rolls or sheets (con.):
4805.50.00	Felt paper and paperboard
	Other paper and paperboard, weighing 225 g/m^2 or more:
	[Pressboard]
	Other:
	[Wet machine board; construction paper; linerboard containing by weight less than 80 percent chemical sulfate wood pulp]
4805.80.40 pt.	Other
	Paper and paperboard, coated on one or both sides with koalin (China clay)or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-colored, surface-decorated or printed, in rolls or sheets:
	Paper and paperboard of a kind used for writing, printing or other graphic purposes, not containing fibers obtained by a mechanical process or of which not more than 10 percent by weight of the total fiber content consists of such fibers:
4810.12.00	Weighing more than 150g/m^2
	Paper and paperboard of a kind used for writing, printing or other graphic purposes, of which more than 10 percent by weight of the total fiber content consists of fibers obtained by a mechanical process:
	[Light-weight coated paper]
4810.29.00	Other
	Woven fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibers, weighing more than 200 g/m^2
	Of yarns of different colors:
	[Plain weave; blue denim; other fabrics of 3-thread or 4-thread twill, including cross twill]
	Other fabrics:
5211.49.00 pt.	Jacquard woven
	Carpets and other textile floor coverings, woven, not tufted or flocked, whether or not made up, including "Kelem", "Schumacks", "Karamanie" and similar hand-woven rugs:
	["Kelem", "Schumacks", "Karamanie" and similar hand-woven rugs; floor coverings of coconut fibers (coir)]
	Other, of pile construction, not made up:
	Of wool or fine animal hair:
	[Wilton (including brussels) and velvet (including tapestry) floor coverings and floor coverings of like character or description]
5702.31.20	Other
	Other, of pile construction, made up:
	Of wool or fine animal hair:
5702.41.10	Wilton (including brussels) and velvet (including tapestry) floor coverings of like character or description
5702.41.20	Other

1995 HTS Subheading	Article Description
	Worked monumental or building stone (except slate) and articles thereof, other than goods of heading 6801; mosaic cubes and the like, of natural stone (including slate), whether or not on a backing; artificially colored granules, chippings and powder, or natural stone (including slate):
	[Tiles, cubes and similar articles, whether or not rectangular (including square), the largest surface area of which is capable of being enclosed in a square the side of which is less than 7 cm; artificially colored granules, chippings and powder] other monumental or building stone and articles thereof, simply cut or sawn, with a flat or even surface]
	Other:
	[Marble, travertine and alabaster]
6802.92.00	Other calcareous stone
	Unglazed ceramic flags and paving, hearth or wall tiles; unglazed ceramic mosaic cubes and the like, whether or not on a backing:
	[Tiles, cubes and similar articles, whether or not rectangular, the largest surface area of which is capable of being enclosed in a square the side of which is less than 7 cm]
6907.90.00	Other
	Statuettes and other ornamental ceramic articles:
	[Of porcelain or china]
	Other:
6913.90.10	Statues, statuettes and hadmade flowers, valued over $2.50 each and produced by professional sculptors or directly from molds from original models produced by professional sculptors
	Glassware of a kind used for table, kitchen, toilet, office, indoor decoration or similar purposes (other than that of heading 7010 or 7018):
	[Of glass-ceramics; drinking glasses, other than glass-ceramics]
	Glassware of a kind used for table (other than drinking glasses) or kitchen purposes other than that of glass-ceramics:
	[Of lead crystal; of glass having a linear coefficient of expansion not exceeding 5 x 10^{-6} per Kelvin within a temperature range of 0°C to 300°C:]
	Other:
7013.39.10	Pressed and toughened (specially tempered)
	Other glassware:
	Of lead crystal:
7013.91.50	Valued over $5 each
	Articles of jewelry and parts thereof, of precious metal or of metal clad with precious metal:
	Of precious metal whether or not plated or clad with precious metal:
	[Of silver, whether or not plated or clad with other precious metal]
	Of other precious metal, whether or not plated or clad with precious metal:
	[Rope, curb, cable, chain and similar articles produced in continuous lengths, all the foregoing, whether or not cut to specific lengths and whether or not set with imitation pears or imitation gemstones, suitable for use in the manufacture of articles provided for in this heading]
	Other:
	Necklaces and neck chains, of gold:
7113.19.25	Mixed link

1995 HTS Subheading	Article Description
	Dishwashing machines; machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing, capsuling or labeling bottles, cans, boxes, bags or other containers; other packing or wrapping machinery; machinery for aerating beverages; parts thereof:
	Dishwashing machines:
8422.11.00	Of the household type
	Turntables, record players, cassette players and other sound reproducing apparatus, not incorporating a sound recording device:
8519.10.00	Coin- or token-operated record players
	Motor vehicles for the transport of ten or more persons, including the driver:
	With compression-ignition internal combustion piston engine (diesel or semi-diesel):
8702.10.30	Designed for the transport of 16 or more persons, including the driver
	Chassis fitted with engines, for the motor vehicles of headings 8701 to 8705:
	For the vehicles of subheading 8701.20 or heading 8702 or 8704:
	[For the vehicles of subheading 8704.21 or 8704.31]
	Other:
8706.00.05 pt.	For the vehicles of heading 8704

[FR Doc. 95–26734 Filed 10–24–95; 2:45 pm]
BILLING CODE 3190–01–C

Sunshine Act Meetings

Federal Register
Vol. 60, No. 208
Friday, October 27, 1995

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., Friday, November 3, 1995.
PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–26880 Filed 10–25–95; 2:50 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Thursday, November 9, 1995.
PLACE: 1155 21st St. N.W., Washington, D.C., 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–26881 Filed 10–25–95; 2:50 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 17, 1995.
PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–26882 Filed 10–25–95; 2:50 pm]
BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, November 24, 1995.
PLACE: 1155 21st St., N.W., Washington, D.C. 9th Fl. Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 95–26883 Filed 10–25–95; 2:50 pm]
BILLING CODE 6351–01–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: 60 Fed. Reg. 53674, Monday, October 16, 1995.
PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time), Thursday, October 26, 1995.
CHANGE IN THE MEETING: The Meeting has been changed to November 14, 1995.
CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

This Notice Issued October 25, 1995.
Frances M. Hart,
Executive Officer, Executive Secretariat.
[FR Doc. 95–26879 Filed 10–25–95; 2:49 pm]
BILLING CODE 6750–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, October 24, 1995, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Director Eugene A. Ludwig (Comptroller of the Currency), and Chairman Ricki Helfer, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: October 24, 1995.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 95–26756 Filed 10–24–95; 4:15 pm]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Monday, October 30, 1995, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.
Report of actions approved by an officer of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum re: Corporation's September 30, 1995 Financial Statements.
Memorandum re: Quarterly Budget Variance Summary Report.
Memorandum re: Corporation's Investment Policy.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice);

(202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Jerry L. Langley, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: October 24, 1995.

Federal Deposit Insurance Corporation.

Jerry L. Langley,

Executive Secretary.

[FR Doc. 95–26757 Filed 10–24–95; 4:15 pm]

BILLING CODE 6714–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, October 24, 1995.

PLACE: Room 600, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously announced item, the Commission also considered the following in closed session:

2. *U.S. Coal Coal Co.,* Docket No. SE 93–119 (Issues include whether the judge erred in his determination that the negligence of the operator's electrician was imputable for civil penalty purposes to the operator.)

No earlier announcement of this that this additional matter would be considered was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/for toll free TDD Relay 1–800–877–8339.

Dated: October 24, 1995.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 95–26888 Filed 10–25–95; 2:51 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 1, 1995.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda:

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that the items be moved to the discussion agenda.

1. Proposed 1996 Private Sector Adjustment Factor.

Discussion Agenda

2. Proposed 1996 fee schedules for priced services.

3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to:

Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 25, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–26853 Filed 10–25–95; 1:36 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 10:30 a.m., Wednesday, November 1, 1995, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 2lst Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of check imaging system within the Federal Reserve System.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. 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 25, 1995.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 95–26824 Filed 10–25–95; 1:36 pm]

BILLING CODE 6210–01–P

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: October 24, 1995, 60 FR 54572.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 25, 1995, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to the Agenda scheduled for the October 25, 1995 meeting.

Item No.—Docket No. and Company

CAG–21—RP89–183–000, Williams Natural Gas Company

CAG–37—RP93–151–007, Tennessee Gas Pipeline Company

Lois D. Cashell,

Secretary.

[FR Doc. 95–26901 Filed 10–25–95; 3:55 pm]

BILLING CODE 6717–01–M

Corrections

Federal Register
Vol. 60, No. 208
Friday, October 27, 1995

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 ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP95-426-001 and TM96-2-25-001]

Mississippi River Transmission Corporation; Notice of Compliance Filing

Correction

In notice document 95–25909 appearing on page 54072 in the issue of Thursday, October 19, 1995, in the third column, the Docket number should read as set forth above.

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice of the Annual List of Labor Surplus Areas

Correction

In notice document 95–25267 beginning on page 53208 in the issue of Thursday, October 12, 1995, make the following corrections:

On pages 53208, 53210, 53211, 53213, 53214, 53216, and 53217, the table is corrected as follows.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE

[October 1, 1995 Through September 30, 1996]

Eligible labor surplus areas	Civil jurisdictions included
ALABAMA	
* * *	* * *
Gadsden City	Gadsden City in Etowah County.
* * *	* * *
Marengo County	Marengo County.
* * *	* * *.
CALIFORNIA	
* * *	* * *
Napa City	Napa City in Napa County.
* * *	* * *
Oceanside City	Oceanside City in San Diego County.
Ontario City	Ontario City in San Bernardino County.

LABOR SURPLUS AREAS ELIGIBLE FOR FEDERAL PROCUREMENT PREFERENCE—Continued

[October 1, 1995 Through September 30, 1996]

Eligible labor surplus areas	Civil jurisdictions included
* * *	* * *
Plumas County	Plumas County.
* * *	* * *
San Bernardino City	San Bernardino City in San Bernardino County.
* * *	* * *
Trinity County	Trinity County.
* * *	* * *
MASSACHUSETTS	
* * *	* * *
Barnstable Town	Barnstable Town in Barnstable County.
* * *	* * *.
MICHIGAN	
* * *	* * *
Benzie County	Benzie County.
* * *	* * *
Pontiac City	Pontiac City.
* * *	* * * .
PENNSYLVANIA	
* * *	* * *
Wilkes-Barre City	Wilkes-Barre City in Luzerine County.
* * *	* * *
York City	York City in York County.
* * *	* * *

BILLING CODE 1505–01–D

Federal Register

Friday
October 27, 1995

Part II

Department of Agriculture

Forest Service

Fee Schedule for Communications Uses on National Forest System Lands; Notice

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AB51

Fee Schedule for Communications Uses on National Forest System Lands

AGENCY: Forest Service, USDA.

ACTION: Notice; adoption of final policy.

SUMMARY: The Forest Service is adopting a final policy and a revised fee schedule for determining annual rental fees for communications uses authorized on National Forest System Lands in the Western States, Forest Service Regions 1 through 6. The Forest Service and the Department of Interior, Bureau of Land Management, have jointly developed identical fee schedules; the agencies have the same definitions for use categories and similar administrative procedures. (The Bureau of Land Management is issuing its fee schedule and procedures in a separate final rule.) These revisions are necessary to establish annual agency rental fees that are consistent for the Western States; based on sound business management practices; and reflective of fair market value, as required by title V of the Federal Land Policy and Management Act of 1976, the Independent Offices Appropriations Act of 1952, and the Office of Management and Budget Circular A–25.

EFFECTIVE DATE: This policy is effective November 6, 1995 for new use authorizations and on January 1, 1996, for existing use authorizations.

FOR FURTHER INFORMATION CONTACT: Questions about this policy should be addressed to John Anderson, Lands Staff (2700), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, (202) 205–1256.

SUPPLEMENTARY INFORMATION:

Background

Use of National Forest System Lands for transmission of electronic signals, commonly called communications uses, is authorized by title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761–1771). Authorizations currently in effect number approximately 6,300. This use involves the construction of a building and tower with antennae or the placement of one or more antennae atop a building owned by another authorization holder. The Forest Service has sought for several years to establish fair market value fees for communications uses as required by statutory and regulatory authority.

From 1987 to 1992, through various notices in the Federal Register the Forest Service began publishing final and revised fee schedules on a regional basis for selected categories of communications uses on sites serving rural areas. The notices explained the need for further analysis to complete the fee schedules for the remaining use categories. In the interim, on-site appraisals would determine commercial mobile radio and cellular telephone fees for sites serving urban areas (Los Angeles, Albuquerque, and Boise, for example) and for television and FM radio broadcast.

To forestall the effect of significant fee increases on authorization holders, especially in rural areas, Congress adopted administrative provisions in the Appropriations Acts for Interior and Related Agencies for fiscal years 1990 through 1994 preventing the Forest Service from raising fees over the amount in effect on January 1, 1989. In the fiscal year 1992 appropriations, Congress extended the prohibition to include those authorizations issued by the Department of Interior, Bureau of Land Management (BLM). In addition, the conference report for the Appropriations Act directed the Secretaries of Agriculture and Interior to establish a broad-based Radio and Television Broadcast Use Fee Advisory Committee (Advisory Committee). The Advisory Committee's charge was to review the schedules, with particular emphasis on their impact on rural communities in the Western United States.

The Forest Service and BLM entered into a joint agency agreement in April 1991 to develop parallel procedures and standards for establishing fair market rental values for communications uses on lands they administer. The objective of the effort was to develop joint market-based fee schedules.

The Advisory Committee submitted its report to the Secretaries on December 11, 1992. The report made several recommendations: (1) Use of fee schedules instead of individual site appraisals to improve cost efficiency and administration, (2) acceptance of industry-recognized market ranking systems, (3) a phase-in period for rent increases greater than $1,000, (4) collection of 25 percent of the gross sublease income received from tenants by facility owners, (5) issuance of a ''footprint'' lease in which only facility owners would hold authorizations, and (6) annual fee increases based on the Consumer Price Index (Urban Consumer, U.S. City Average).

On July 13, 1993, the Forest Service published a Federal Register notice (58 FR 37840) requesting public comments on a proposed fee schedule for the four categories of commercial uses previously excluded from the regional schedules. The uses included television broadcast, FM radio broadcast, commercial mobile radio, and cellular telephone uses. The adoption of a final revised fee schedule would complete the regional schedules in place in Forest Service Regions 1 through 6 in the Western United States. Additionally, the agency stated its intention that its fee schedule be fully consistent with that of BLM and acknowledged that BLM planned to issue a separate Federal Register notice proposing the use of fee schedules for all communications uses applicable to lands under its jurisdiction.

The Forest Service and BLM jointly reviewed and considered the comments received by the Forest Service on its July 1993 proposed policy (58 FR 37840, July 13, 1993), incorporating and adopting the comments as appropriate in the development of the BLM proposed rule. On July 12, 1994, BLM published a proposed rule in the Federal Register (59 FR 35596), requesting comments on amendments to its right-of-way regulations. The proposed rule contained procedures for setting fair market rent for communications uses on public land and established rental schedules and procedures for eleven categories of communications service.

On July 12, 1994, the House of Representatives Committee on Natural Resources, Subcommittee on National Parks, Forests and Public Lands, and the Committee on Government Operations, Subcommittee on Environment, Energy, and Natural Resources held a joint hearing on communications site fees. The General Accounting Office released a report (GAO–RCED–94–248) at this hearing that concluded that current fees for communications sites on Federal lands were usually significantly below fair market value. The report acknowledged that the Forest Service fees are based on an outdated formula established forty years ago and the BLM rental rates are based on out-of-date appraisals. The report concluded that appropriations-related legislation impeded agency efforts to implement new fees. The report warned that if the limits continued, the Federal Government would not obtain fair market value for communications sites for many years. Because of the joint agency testimony and the General Accounting Office report, the committees strongly encouraged the agencies to complete the fee schedules as soon as possible.

The Forest Service and BLM developed the final fee schedules using

information gained from public responses to the proposed Forest Service policy (58 FR 37840, July 13, 1993) and the proposed BLM rule (59 FR 35596, July 12, 1994). The agencies also used the Advisory Committee report, the General Accounting Office report, discussions with hundreds of industry representatives and private lessors, commercial communications site managers, State and local government representatives, and appraisers, and nearly 2,000 confirmed private lease transactions. The final Forest Service policy is being issued as amendments to Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, chapter 30, Fee Determinations, and chapter 40, Special Uses Administration. The text of the policy is set out at the end of this notice.

Analysis and Response to Public Comments

The Forest Service received 84 comments on the July 13, 1993, notice of proposed policy (58 FR 37840). Analyses of public comments were accomplished using standard Forest Service procedures designed to ensure an objective and systematic analysis. The agency received comments from 13 Western States; 28 percent of the responses came from California. While the proposed fee schedule applies only to the Western States, responses were received from parent companies of authorization holders, national organizations, and other interested parties located throughout the United States.

Respondents were grouped under the following categories:

Respondent type	Number	Percentage
Commercial Mobile Radio/or Building Owner	34	40
Television Broadcaster	9	11
Organization	8	10
Other Communications User	8	10
Cellular Telephone	7	8
Other Federal, State, or County Agencies	6	7
FM Radio Broadcaster	5	6
General Public	4	5
Translator or Repeater	3	3

All responses consisted of individual letters. No form letters or petitions were received.

The BLM received a total of 61 comments on the proposed rule (59 FR 35596, July 12, 1994): 35 nonbroadcast users, 6 broadcast users, 6 industry groups, 4 private citizens, 2 state agencies, 1 county association, and 1 Federal agency. In several cases, the same users, industry groups, and state agencies had also commented on the Forest Service proposed policy (58 FR 37840, July 13, 1993).

General Comments on Communications Site Fees and Agency Response

Based upon early comments to BLM's 1994 proposed rule (59 FR 35596, July 12, 1994) both agencies recognized the need for additional information to evaluate the responses appropriately. The BLM held several meetings with respondents during the comment period to verify information was recommendations submitted by respondents and to clarify the intent of the proposed rule. Forest Service representatives attended these meetings. Also, additional information and gathered from other Federal agencies and industry contacts to determine comparable and appropriate groupings for the fee schedule.

The agency did not incorporate changes in the final policy and fee schedule when the comments would (1) require additional detailed studies or development of specific criteria and instructions for each category of use, (2) lead to subjective, potentially inconsistent application of the fee schedule, or (3) require procedures that unnecessarily encumber both the holder's business and the agency's management practices.

Method for Determining Fees

Comment. Some respondents expressed general support for the effort to develop a fee schedule. One respondent strongly favored the master appraisal approach and the development of fee schedules. This respondent also called for inclusion of an urban schedule for other use categories, such as common carrier microwave relay, industrial microwave relay, mobile radio, internal communications, natural resource/environmental monitoring, and passive reflector. One respondent from the commercial use sector (cellular telephone) favored the schedule and accompanying communications site procedures.

Thirty respondents disagreed with the method and criteria used to develop the schedule. They suggested that the fees should be based on: (1) A flat fee using the square footage of the building and the height of the tower, (2) bare land values, (3) wider population increments, (4) a percentage based on total households and market size, (5) appraisals at high-value sites using local market data, (6) the Advisory Committee schedule, (7) the next best use concept, and (8) a more graduated scale that would charge site users in proportion to their market size.

Others noted that the schedule was incomplete and needed additional categories to establish fees for: (1) Buildings operated by facility managers whose primary business is space rental, (2) cable and subscription television companies serving more than 1,500 households, (3) broadcast translators for more than 60,001 people, (4) AM radio broadcasters, and (5) urban microwave and common carrier uses.

Response. To develop a policy and schedule that are easy to understand and implement, the agency is adopting a final schedule that uses one population ranking method for all uses to calculate fees. The agency disagrees with respondents who said that there was no link between population and rent charged for a communications site. To the contrary, market information shows that land rents overall are generally higher on sites serving large metropolitan areas than those sites serving less populated areas. Therefore, the agency developed a final schedule that more directly correlates to the population of the market served and the authorized use of the facility. This type of rating system reflects the actual market area served better than population figures that do not correlate to market areas.

To provide consistent procedures and a fee schedule identical to that of the BLM, the Forest Service expanded the fee schedule to include all categories of communications uses on National Forest System lands. The categories are: (1) Television broadcast, (2) AM/FM radio broadcast, (3) cable television, (4) broadcast translators, low power television and low power FM radio, (5) commercial mobile radio service and facility manager, (6) cellular telephone, (7) private mobile radio service, (8) microwave, and (9) other communications uses. Two use categories, passive reflector and local exchange network, will remain as regional schedules. The final Forest Service policy establishes identical definitions as the BLM for use categories. The agency is making these changes to the policy in Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, chapter 40, Special Uses Administration, section 48, Communications. The final fee policy and schedule, including implementation, phase-in, and updating procedures, are included in FSH 2709.11, chapter 30, Fee Determinations, section 36.2, Communications Site Fee Schedule. The text of the policy and fee schedule in

FSH 2709.11 are set forth at the end of this notice.

Fee Values

Comment. Four respondents indicated the proposed fees were too low. One respondent felt the fees averaged approximately 15–25 percent below comparable private market values. In particular this respondent said that television and radio were at least 15–20 percent below and mobile and cellular were approximately 20–25 percent below private market values. Another respondent characterized the use of public lands by television and radio broadcast users at less than fair market value as a subsidy, giving them an unfair competitive advantage.

Six respondents commented that the fees were higher than fair market value and were artificially inflated. They objected to the conclusions in the appraisals used to support the fees. Primary reasons they noted were: (1) The Forest Service agreed that the Advisory Committee approach of setting a fee schedule is appropriate, but then changed the Area of Dominant Influence (ADI) groupings; (2) the impact of the proposal on small business is significant; (3) the survey erroneously calculated user site fees; and (4) the fees were based on the broadcast station operator's ability to pay. One respondent suggested additional population strata in the categories.

Response. The agency has revised the final policy and fee schedule in response to public comments received on the Forest Service's proposed policy (58 FR 37840, July 13, 1993) and public comments received by BLM in response to its proposed rule (59 FR 35596, July 12, 1994). In addition, the agency has considered market information provided by users, industry groups, and private and Government appraisers, and other management considerations associated with developing a cost-effective method for setting and collecting fair market value for communications use of National Forest System land.

The final policy incorporates many Advisory Committee recommendations, such as use of a schedule instead of individual appraisals, issuance of one authorization (lease) to facility owners, a phase-in provision, and use of an index to update annual fees.

The agency believes the final schedule reflects a reasonable fee based on fair market value for the type of use, location, and rights authorized. By adopting identical schedules and similar authorization documents and application procedures to those of BLM, the Forest Service can give holders consistent and improved services. The schedule will replace the outdated, inconsistent approaches to assessing and collecting rental fees in different Forest Service regions and between the Forest Service BLM.

Additional Criteria for Establishing Fees

Comment. Several respondents said that additional criteria should be considered when applying the fees, such as rate adjustments for roadless and powerless sites or similar value-added services provided by private landowners/lessors. Respondents said that waivers or exemptions for those users who provide public service should be considered. Respondents also said that administrative delays and red tape make Federal sites less attractive than private sites. Respondents were also concerned with the requirement of free use for other Federal agencies and provisions considering the number of radio units in a facility.

Some respondents had difficulty understanding the different fee schedules (Regional versus National) and were unsure of how to classify a use. They also believed the schedule did not acknowledge the significant financial discrepancy between two operators on the same site.

Reponse. The agency recognizes that the July 1993 proposed policy (58 FR 38740, July 13, 1993) did not offer a detailed explanation of the proposed policy or how the fee schedule was derived. Respondents could not clearly determine how their specific uses applied to the schedule. In addition, the fee schedule in the Forest Service's proposed policy (58 FR 37840, July 13, 1993) applied to only four uses: television broadcast, FM radio broadcast, commercial mobile radio, and cellular telephone. The methods of determining the fee strata varied from the application of Arbitron Company market rankings for television and radio broadcast, to the application of population and metropolitan statistical figures for commercial mobile radio and cellular telephone uses.

In response to the public comments, the final policy and fee schedule include the following changes:

1. The fee schedule is based on a ranking of Ranally Metro Areas (RMAs) as identified in the ''Rand McNally Commercial Atlas and Marketing Guide, 1995.'' An RMA represents Rand McNally's definition of metropolitan areas in the United States. There are 452 RMAs. Four hundred and seventeen have a population of 50,000 or more. Thirty-five listed RMAs have a population near 50,000 and are included as RMAs because they include a central city of an official Metropolitan Statistical Area.

2. The fee is based on the location of the communications site and whether or not it serves an RMA, serves a community(ies) not listed as an RMA, or is in a remote, sparsely populated area that does not serve any individual community.

3. If the communications site serves an RMA, the fee is determined by the category of use and the population range on the schedule that includes the RMA population.

4. If the communications site serves a community not listed as an RMA, the fee is determined by the category of use and the population range on the schedule that corresponds with the most recent population for the largest community served by the site, as indicated in the current ''Rand McNally Road Atlas.''

5. If the communications site does not serve a community the fee is based on the minimum scheduled fee for the type of facility and use.

Comments on Specific Communication Uses and Agency Response

Comments received on the Forest Service's and BLM's proposed schedules (published in 58 FR 37840, July 13, 1993, and 59 FR 35596, July 12, 1994, respectively) and responses to those comments are incorporated in each of the following categories.

Television Broadcast Fees. The Forest Service proposed fee schedule used the Arbitron Company's Area of Dominant Influence (ADI) market rankings to determine the fee strata. Five separate strata were proposed, presenting fees from $45,000 for the highest market areas (750,000 television households and more) to $3,000 for the market area containing 49,999 households and less and non-ADI areas.

Comment. Seven television broadcasters addressed their comments specifically to this category. In all cases, the comments showed disagreement with the proposed fees. Respondents expressed their concern that television revenues in small rural markets have been dropping and categories were not consistent with the actual market size. They stated that the proposed fees were not within the range charged by private landowners in the Western States. Respondents suggested that the fees should be based on the value per household or on the actual number of television households reached from a site listed in the ''Broadcast Factbook.'' One respondent suggested a lower category (below 49,999) for rural broadcasters.

The comments indicated a need to reconsider the use of Arbitron ADI rankings as a basis for determining fees, to expand the population strata to provide smaller intervals, and to establish additional strata below 49,999. In addition, in December 1993 (after publication of the proposed schedule) the Arbitron Company ceased publication of the ADI market rankings.

In response to the comments received by the Forest Service and the discontinuation of the ADI rankings, the BLM based its proposed schedule (59 FR 35596, July 12, 1994) for television broadcast on the latest U.S. census figures for populations of the principal community (city, cities, metropolitan area, county, or counties) served by the transmitter. The proposed BLM schedule expanded the fee strata to nine divisions that range from populations of 2,000,000 and above to below 14,999.

Most comments on the BLM proposal favored the expanded fee strata. However, several respondents opposed using the population of the principal communities served and asked that it be reconsidered. Generally, respondents said the concept was too vague and difficult to determine the population served using census information. In addition, they said differences in calculating total population of the principal communities served would create inequities. Several respondents suggested the schedule should be based on market ranking methods used by industry, such as the Nielsen Dominant Market Area ranking system.

Reponse. The agency found there are some advantages to basing the schedule on industry-recognized market ranking surveys, since (1) they are based on the relative size of markets in which stations compete, and broadcasters generally accept them; (2) the surveys are updated each year, allowing for rent adjustments that reflect changes in private market conditions; and (3) rents could be based on the market actually served instead of the location of the transmitter or city of license.

However, there are also disadvantages to using the surveys. The market does not measure the households or audience reached by the broadcast transmitter located on National Forest System lands alone. Instead, the market includes households reached using a combination of microwave and broadcast translators that serve other smaller markets. This feature inadvertently inflates rental payments for those stations that have extensive translator networks serving communities outside the area normally served by the transmitter. The surveys do not include affiliate stations serving smaller communities within the market areas. Affiliate stations included in a market area would be assessed the same fee though they serve a smaller population of the market area.

From the additional information and analysis of alternatives, the agency found that basing fees on the population of the principal communities served by the broadcast transmitter would be difficult to implement. Additionally, the disadvantages associated with use of Nielsen market rankings would unnecessarily complicate the fee schedule. Therefore, based on available market data, recent appraisals, and information received from respondents, the final fee schedule establishes nine separate fee strata based on the Rand McNally RMA population rankings. Because of the redistribution of strata, the final fees range from $45,000 (RMA of 5,000,000 and above) to $1,200 (RMA of less than 25,000). This action reduces fees for some television broadcast uses as shown in the proposed Forest Service fee schedule.

FM Radio Broadcast Fees. The proposed Forest Service schedule used population data from the Arbitron Company's Metro Survey Area (MSA) to determine the fee strata. The proposed schedule displayed five divisions in the fee strata from 1,000,000 persons and more to 74,999 and less and non-MSA areas.

Comment. Four respondents in the FM radio group and one agency commented on the proposed fees. Several of these respondents stated the increased fees would have a significant economic impact on many small entities and make it impossible for small businesses to say economically sound. Specific and recurring comments were: (1) The fees were prohibitive for stations with potential audiences of 25,000 or less, (2) there should be a lower minimum fee per FM broadcast site, (3) greater weight should have been given to the market size served by respective radio stations, and (4) the respective value of lands used for transmitter location would carry a higher value in the more densely populated areas than the small areas. One respondent asked that the agency calculate rentals to broadcasters with reference to comparable uses and consider the public service rendered by broadcasters, along with the enhancement in value of Forest Service properties. One respondent asked if a cause and effect study had been completed. Another respondent asked that the schedule include AM radio broadcast. The responses indicated a need to develop additional population strata and expansion of the market ranking system for radio broadcast to determine fee strata.

The BLM proposed the same method as television broadcast (using U.S. census population figures for the principal community or communities served) and expansion of the fee strata into the same nine divisions for FM radio broadcast as proposed for television broadcast.

Respondents to the BLM proposal objected to the use of the population of a community served to determined fee strata. These respondents pointed out that radio market rankings are not nationwide and there are significant gaps in coverage. Therefore, other methods should be developed to establish rent in those areas not covered by the market ranking service. Several respondents to the BLM proposal also suggested the schedule include AM radio broadcast.

Response. The Forest Service has recalculated the final nine FM radio broadcast strata to match the Rand McNally RMAs. The fees range from $34,000 (5,000,000 and above RMA) to $900 (less than 25,000 RMA). The agency has modified the schedule to include AM radio broadcast uses at 70 percent of the FM schedule. Co-located AM and FM stations pay the full FM radio broadcast fee. The final fee schedule reduces the impact of urban area rates on the rural radio broadcaster.

Commercial Mobile Radio Fees. The Forest Service fees proposed for this category were based on the number of persons within the area served, as determined by the latest U.S. census population estimates. The agency proposed five fee strata divisions ranging from 500,000 persons to 59,999 and fewer persons.

Comment. This category received more comments than any other. Thirty-six respondents commented. Nearly all (31) identified themselves as commercial mobile radio users. The overall intensity of the comments reflects the most concern, disagreement, and confusion.

Major issues involved (1) the validity, quantity, and quality of the private lease transactions used in the contract appraisal and the market studies, (2) the credibility of the market data, and (3) fees in rural areas which are higher than the private market. Many respondents argued that the appraisals and fee schedule did not represent fair market value and were not adequately justified with relevant data. Several called for lower population strata and gave examples of what the population/fees should be. Others respondents asked for more studies in rural areas and commented that higher fees were not in

the best interest of the public or local economies. They said that fee increases would harm small businesses because they would have to pass along the fee increases to their customers.

A few respondents simply stated their fees should be lower. Others said the fees were not what industry had agreed to. One respondent stated that recent legislation reclassified certain private carrier radio operators and required regulation by the Federal Communications Commission. One respondent asked that the respondent's fee be considered in a special category, or reduced, because of the respondent's public service.

Many respondents stated that the schedule needed further clarification and was confusing in certain areas. Many building tenants were uncertain how the agency would apply the fee schedule, believing they would be subject to the proposed fees as tenants. Facility owners who do not own or operate equipment and lease building and antenna space to other commercial radio service providers expressed confusion about how or if the fee schedule would apply to them in existing situation, such as leases, and multi-user permits.

The Forest Service recognizes that the lack of clear explanation on application of the schedule for this use category led to misinterpretation and confusion.

The BLM proposal included commercial mobile radio service (CMRS) in a nonbroadcast rental schedule and proposed several changes. These changes include: (1) Expanding the original five population divisions to nine to reflect market areas ranging from zero to more than 2,000,000, (2) basing fees on the population of the largest county predominantly served by the transmitter, (3) proposing a separate category for facility managers (building owners), and (4) adjusting fees in most strata to reflect the findings of additional analysis.

While respondents to the BLM proposal generally favored the expanded fee strata, most respondents objected to using county population as a basis for setting fees. Respondents to BLM's proposal strongly opposed the fees in each strata, stating they were unfair and too high, and would drive many small businesses out of the market. Several respondents provided additional information showing the proposed schedule fees were above the private market rates.

Several respondents to the BLM proposal questioned the similarity of the CMRS category and facility manager category. They suggested that BLM eliminate the facility manager category and incorporate it into the CMRS category. Other respondents said that CMRS is dependent on microwave communication equipment and pointed out that the difference in land rent between the two uses was less than 4 percent. In response to BLM's proposal, they asked that microwave communication equipment used to support a CMRS operation be charged one fee at the CMRS rate.

Response. In consideration of public comments to the agency's and BLM's proposed fee schedule, available market data, and additional industry information focusing primarily on rural areas, the final Forest Service policy and fee schedule for the CMRS category include the following changes:

1. The final fee schedule based on the standard RMAs establishes nine fee strata. Fees range from $12,000 in the highest RMA to $600 in the lowest RMA, reducing final fees in six of the nine strata.

2. The agency has adjusted the final fees to more closely coincide with fees for cellular telephone uses. The market analysis shows cellular telephone and CMRS providers often compete for sites in larger markets at similar private market rates. Comparable market information in less populated areas shows CMRS providers pay less than cellular telephone.

3. The definition for CMRS has been broadened to include facility managers and ancillary microwave link equipment.

Cellular Telephone Fees. The proposed Forest Service schedule defined three fee strata for cellular telephone based on populations within a Standard Metropolitan Statistical Area (SMSA). Fees within the strata ranged from $7,500 to $2,500.

Comment. Overall, respondents were supportive of the cellular fees. However, they suggested several modifications. They suggested that the agency abandon the term ''SMSA'' and determine the area a site covers based on contour maps filed with the Federal Communications Commission (FCC).

Two respondents to the BLM proposal suggested that they include specialized mobile radio, a similar wireless system, in the cellular category. They reasoned that Congress in recent legislation (Omnibus Budget Reconciliation Act of 1993) directed Federal agencies to regulate similar wireless telecommunications services consistently.

Other respondents were concerned about two emerging technologies: personal communication service (PCS) and microcells. PCS is smaller to cellular telephone service. The major difference between PCS and cellular telephone is that PCS operates at a low power and has smaller area coverage. However, the PCS network is more concentrated and requires more sites than a cellular service. The respondents warned that it would be inappropriate to require PCS users to pay the same fees as a cellular telephone users. While PCS service is not yet available, a similar service using mocrocells is provided now in rural, sparsely populated areas as an addition to wireline and cellular telephone service. The respondents suggested a separate fee of $2,500 per year.

Response. Because of the comments, other methods to determine the fee strata were explored and analyzed. The BLM proposal included cellular telephone in a nonbroadcast rental schedule and proposed expanding population divisions from three to nine. The BLM proposed basing fees on the population of the largest county predominantly served by the transmitter. The expanded strata, based on county populations, resulted in proposed fees ranging from $10,000 to $2,500.

Contrary to respondents' comments, additional analysis shows that in large metro markets, cellular telephone companies and commercial mobile radio service providers often pay similar rents in the private market. However, in small- to medium-size markets, commercial mobile service providers pay less than cellular telephone users. Therefore, the final Forest Service fee schedule reflects the differences in fees and maintains separate schedules for cellular telephone and commercial mobile radio service.

After considering the suggestions and gathering additional information from industry and the Federal Communications Commission (FCC), the Forest Service has deleted PCS from the definition for the cellular telephone category. Once site requirements are determined for PCS, the agency will consider amending the fee schedules. However, the agency has broadened the definition of cellular telephone to include other related technologies in the event PCS facilities are similar. It is the intent of the agency to apply the fee schedule to similar, emerging technologies when practical. Additionally, microcell service will not be included in the cellular telephone category at this time.

In consideration of the public comments and available market data, the final policy and fee schedule for the cellular category include the following changes:

1. The final fee schedule based on the standard RMAs establishes nine fee strata. Fees range from $12,000 in the highest RMA to $2,500 in the lowest RMA.

2. The agency has adjusted the final fees in the top population strata to coincide with fees paid by CMRS users. The market analysis shows cellular telephone providers and CMRS providers often compete for sites in larger markets at similar private market rates, while comparable market information in less populated areas shows CMRS providers pay less than cellular telephone providers.

3. The agency has deleted PCS from the definition for the category of cellular telephone.

4. The definition for cellular telephone has been broadened to include other related technologies.

Proposed Fee Indexing

Comment. Fourteen respondents commented on the proposal to use the U.S. Department of Labor, Bureau of Labor Statistics' Consumer Price Index for All Urban Consumers (CPI–U) as an annual index to ensure fees are kept current with fair market values. Calculating the amount of the annual adjustment involves increasing the previous year's fee by the change in the annual CPI–U on a July-to-July basis.

Some respondents acknowledged that a CPI–U clause or other method for annual adjustment that properly reflects changes in economic conditions is appropriate. These respondents stated that annual indexing is typical and recognized in private industry.

Most respondents providing commercial mobile radio service objected to the use of indexing without a cap (or other similar method) to keep fees from exceeding fair market value. Two respondents disagreed with the use of indexing in any form. Others maintained that the practice is not common in the private market, especially for commercial mobile radio leases, and said indexing does not fairly or accurately take into account the ability of various site owners to negotiate rents at other sites that do not automatically include such increases. Respondents pointed out that 95 percent of the communications leases of three large companies in California either have no cost-of-living clause or have a cap.

One respondent stated that annual indexing tied to a cost-of-living index will not ensure that the rent will stay current with fair market values. This respondent suggested that the only way to ensure fair market rent is for the agency annually to assess the fees to see if they are comparable to the rents paid for similar uses on private land.

In response to the comments and additional analysis, the BLM proposal provided for a 5 percent per year limit to the annual index change. Many respondents to the BLM proposal generally supported use of the CPI–U to index the fees. Several of these respondents, however, disagreed with the 5 percent year limitation, suggesting the increases should be less than 1 percent, but no more than 3 percent of the preceding year. One respondent said the limitation was too generous and should be limited to a specific period, and then full CPI–U adjustment should be applied to the fees.

Response. After further study, the agency found that recent transactions show increases in annual rent are linked to changes in the CPI–U instead of increases in land value. Moreover, the agency agrees with respondents that the increases, in time, would be higher than normal increases in land rents in the private market.

The agency believes that one inherent problem with a fee schedule is that over the long term it may not adequately reflect fair market rent. Individual market rents in specific areas may be more or less than rents set by using the schedule. The agency believes limiting the CPI–U increases to no more than 5 percent per year will minimize any potential inflation of fees. The agency has revised the final fee policy to include a 5 percent per year limitation on the CPI–U increases. The CPI–U increase, not exceeding 5 percent for the year, will be applied to annual fees beginning in 1997.

Use of Leases and Applicable Fees

The Forest Service proposed policy included the issuance of a ''footprint lease'' (lease) to facility owners (holders) authorizing the subleasing of space in the facility to other communications users (tenants). If such a lease provision in implemented, the agency would no longer require separate authorizations for tenants in a facility. In addition to the annual rental fee indicated in the proposed schedule, a percentage of the gross rental receipts paid to the holders by tenants in facilities would be assessed for certain use categories. The agency would require holders to submit to the agency a certified list of tenants, types of uses, and gross rental revenues received from tenants.

Comment. Generally, respondents did not object to the use of a lease as a means to authorize all users of a facility under one document. However, there was strong opposition to the gross rental receipts concept and, in particular, the 25 percent figure.

Respondents commented that the use of a lease treats similar businesses differently, giving an unfair competitive advantage when one is a holder versus a user as a tenant. Respondents said building owners would raise tenant's rents 30 to 40 percent to compensate for fee increases to the agency. They also said that the opportunity for holders to abuse the fee system could result in reduced revenues to the agency. One respondent was concerned that implementation of the lease could have adverse consequences for public radio broadcasters because building owners may not be aware that public broadcasters are entitled to an exemption from Forest Service fees. The respondent asked that the agency clarify the exemption and waiver policy. One respondent asked the agency to establish a minimum level for facilities or number of transmitters before imposing the highest rental rate. The respondent also suggested that the lease should include the total number of facilities an operator has at a site, even if it is more than one building. Another respondent suggested that a contract be developed on a case-by-case basis to compensate user groups that are the primary source of administration and technical support and suggested that the group receive compensation or reduced fees.

Twenty-one respondents disagreed with the proposal to use a percentage of gross rental receipts as a part of the holders rental fee. Specific and recurring reasons objecting to the concept included: (1) Collection of a percentage of gross receipts, or revenue sharing in addition to the annual rental fee, is inconsistent with private leases and does not represent fair market value; (2) administering a system that utilizes a percentage of rent as part of the fee system is cumbersome and inefficient, and creates unnecessary and unproductive expense for both the Government and users; and (3) the proposal would involve unnecessary Government intrusion into the holder's business affairs.

In contrast, one respondent stated the percentage of revenue sharing was too low, saying that 30–35 percent was probably more appropriate.

Several respondents commented favorably on the proposed lease concept. Specifically, these respondents stated it would encourage use of existing facilities; minimize the clutter of separate facilities; reduce the financial burden on tenants; and improve the agency's management

practices while ensuring high-quality site standards.

Many respondents asked for additional explanation of how and when the agency would issue leases and what use categories would pay the percentage of gross rental receipts. Some respondents understood it to apply specifically to broadcasters. Others understood it applied only in the largest markets, while some understood it applied to all markets.

The agency recognizes that the lease and percentage of gross rental receipts concept did not include enough specific information to allow respondents to clearly determine the intent of the proposed policy and implementing procedures.

In response to this issue, BLM incorporated some of the respondents' suggestions in its proposed rule. For example, additional information was added explaining how the lease would affect all users in a facility and that the percentage of gross rental receipts applies to all categories of use in all population strata. The BLM proposed rule would also reduce the percentage to 15 percent for five years and then would raise the percentage to 25 percent thereafter.

Most of the respondents commenting on the BLM proposal were CMRS users, who indicated a strong opposition to the proposed percentage of gross rental receipts. Respondents stated that it was unfair, not supported by market data, and exorbitant in view of the proposed base rents, and that it would be difficult and costly to implement. Most respondents pointed out that, with few exceptions, a landowner in the private market does not receive an additional amount for tenants in facilities. Several respondents submitted private market lease information to substantiate their views. Several likened the proposal to a tax and were dismayed at the prospect of the Government being a partner in their business.

Two respondents to the BLM proposal agreed with the concept and suggested that the percentage should not be reduced for the first five years, but applied immediately.

Another respondent to the BLM proposal observed that setting the rental payment on the authorized use, without adjusting for other users in the facility, would encourage lower rent users to obtain an authorization and then to rent to higher rent users, reducing the rent paid by the holder. The respondent suggested the rental payment should be based on the actual users in the facility.

Response. The Forest Service reviewed additional market information and found that it is not a widespread practice for landowners to charge a percentage of gross rent from tenants. This is especially true in rural areas. While there is some evidence that it does occur in newer leases for multiple use sites serving large population areas, it is not yet a common practice in the private market in all areas. The final fee schedule does not include a percentage of gross rental receipts.

However, the agency believes that multiple user facilities are more valuable than single user facilities, and the additional rights and privileges granted to tenants should be considered in the determination of fees for the use of public land. To ignore the increased demand for communications use would not reflect fair market value.

The agency considered and evaluated alternatives for assessing fees for tenant occupancy as suggested by respondents. Based on the comments and additional analysis, the agency concluded the fee should be based on the actual uses in the facility and reflect the revenue building owners collect from tenants.

Therefore, in response to the public comments, analysis of the alternatives, and additional information gathered in preparing this final notice, the Forest Service final fee policy includes the following changes:

1. One authorization granting the right to construct, operate, and sublease to tenants will be issued to the owner of each facility. The Forest Service and BLM will adopt a common format for communications use authorizations. The new authorization will authorize tenant occupancy, if desired by the holder, without prior written consent of the Forest Service or BLM.

a. In a facility with tenants, the holder's base fee is determined by the use that generates the highest fee on the schedule (highest valued use) of any of the uses in the facility, excluding those uses that would qualify for a fee exemption and/or waiver. If the schedule fee for another use in the facility is higher than the holder's, the holder's use is subordinated for purposes of calculating total fees for the facility. By October 15 each year, the holder will be required to provide the authorized officer with a certified statement listing the name and type of use for each tenant in the holder's facility on September 30 of that year.

b. Uses defined as ''customer'' (including private (other) and internal (PMRS) categories), renting space in a communication facility, and uses that would qualify for a fee exemption and/or waiver are not used to calculate total fees for the facility.

c. An additional fee for tenant occupancy applies to all other use categories in every population strata not identified in the preceding paragraph b. The additional fee is calculated on 25 percent of the scheduled fee.

d. The total fee for the facility is the base fee, plus the additional fee (the additional fee is based on 25 percent of the schedule fee for the holder's use and other tenant uses in the facility). (These requirements are in FSH 2709.11, sec. 36.21, included at the end of this notice.)

2. The fee for a facility with no tenants is the schedule fee for the holder's category of use.

3. A tenant in a facility may hold a separate authorization, without subtenancy rights, at the full schedule fee based on the tenant's category of use. A tenant is defined in the policy (sec. 48.1, para. 5) as a communications user who rents space in a communications facility and operates communication equipment for the purpose of re-selling communications services to others for profit.

Proposed Phase-In of Fee Schedule

The agency proposed to phase in fee increases to minimize the possible significant economic burden on users. As stated in the proposal, fee increases of $1,000 or more would be phased in over a 5-year period at $1,000 per year or 20 percent of the total increase per year, whichever is greater.

Comment. Two respondents expressed support for a phase-in provision. One suggested including the 25 percent of gross rental receipts received from tenants in the phase-in.

Several respondents objected to the 5-year phase-in provision. Specifically, these respondents stated that the magnitude of the fee increases was so great that the 5-year period was not long enough. They suggested that the agency extend the phase-in period to at least 10 years to allow current users the option of relocating their equipment or renegotiating tenant leases. One respondent suggested using a third party arbitrator to determine if the new fair market rents cause economic hardship to existing permittees. Another respondent proposed a 3-year phase-in period, but limiting increases to no more than 5 percent for certain FM radio broadcast categories.

Several respondents to the BLM proposal agreed that a phase-in provision for base fees was reasonable. In contrast, one respondent felt the provision was too generous, favored existing users over new users, and continued the subsidy of communications site fees.

Other respondents asked for additional relief from the percentage of

gross rental receipts, and several commented that the process was confusing and too complex.

Based on the respondents' comments and suggestions to the BLM proposed rule, BLM proposed the following revisions to simplify the process: (1) Increases in the base fee in excess of $1,000 or 20 percent of the current fee, whichever is greater; would be phased in; (2) increases after the first year would be based on an equal annual installment, plus the inflation-adjusted increase (CPI–U), rather than limiting the phase-in to $1,000 per year or 20 percent of the total increase per year, whichever is greater, (3) the additional fee for the percentage of gross rental receipts would also qualify for a phase-in to reduce the potential impact of large increases in rent.

Response. The Forest Service recognizes that its proposed phase-in provision was unnecessarily complex so that respondents could not easily determine how it would be applied.

After considering the comments, the agency believes the phase-in of initial fee increases is a necessary and reasonable component of the final fee policy. While phase-ins will result in reduced receipts to the Treasury in the first year of implementation, the provision will substantially reduce the initial economic impact of fee increases on holders. The phase-in will provide time for facility owners and tenants to decide if they want to consolidate uses and adjust financial business plans.

Therefore, the final fee policy retains the 5-year phase-in period for fee increases. However, in response to comments to simplify the phase-in procedure, the agency has included the following revisions in the final policy:

1. Any fee increases of more than $1,000 will be phased in over a 5-year period, eliminating the 20 percent or more calculation. Stated another way, during the first year of implementation, fees will not increase more than $1,000 over the current year fees.

As an example:

A current fee is $700
A new fee based on the schedule is $2,700
Total fee increase = $2,000 (greater than the $1,000 minimum)
First year's fee = $1,700 ($700+$1,000)

The remaining increase, $1,000, would be added in equal annual installments ($250) for years two through five, plus the CPI–U adjustment.

Assuming a 2 percent increase in the CPI–U during the phase-in period, the fee (rounded to the nearest dollar) would be calculated as follows:

Year 1 (1996)— $700+$1,000=$1,700
Year 2 (1997)—
$1,700+$250×1.02=$1,989
Year 3 (1998)—
$1,989+$250×1.02=$2,284
Year 4 (1999)—
$2,284+$250×1.02=$2,584
Year 5 (2000)—
$2,584+$250×1.02=$2,891
Year 6 (2001)—$2,891×1.02=$2,949

Reevaluation of Fee Schedule

The Forest Service proposed policy contained a ten-year, or less, period for reevaluation of the fee schedule to ensure fees remain at fair market value.

Comment. One respondent objected, stating that the reevaluation could occur in 1 or 2 years, and the fees were already too high. In contrast, another respondent felt the agency should insist on reevaluation of fair market fees every 5 years, since the technology and demand for facility space is increasing. In addition, this respondent said that private landowners use short-term leases so that they do not have to reevaluate the rents.

The BLM proposed rule did not specify a period for reevaluation of the fee schedule. Instead BLM proposed to revise the schedule periodically, if necessary, to ensure the fees are fair. One respondent to the BLM proposal asked what was meant by ''periodically'' and another suggested that the fee schedule should be reevaluated every 5 years. The respondent noted that private market use fees have surged over the last several years and that unless there is a mechanism to update market information, the schedule would fall below fair market value.

Response. The Forest Service prefers a more flexible option, similar to private business practices, to keep the fees comparable with changing technology and fluctuations in the private market rental rates. The agency will continually monitor the private market to ensure the schedule fees remain current with market conditions.

Therefore, the final policy provides for review and updating of the schedule no later than 10 years from the date of implementation, and at least every 10 years thereafter, to ensure the fees reflect fair market value.

Clarification of Other Provisions of Proposed Policy

Use of Appraisals To Set Fair Market Fees. The Forest Service proposed policy allowed exceptions to the fee schedule in certain situations. For example, a bid procedure was suggested where a communications use is the focus of competitive interest, or an appraisal might be appropriate for uses on sites with truly unique characteristics. All of the regional schedules provide that the authorized officer may use site-specific appraisals or other sound business management principles, when it is determined that the fee schedule does not reflect fair market value, and the schedules specifically do not apply to fees previously established through competitive bid or appraisal.

Comment. Respondents to the Forest Service proposed policy did not comment on this provision of the policy. The BLM included similar language in its proposed rule to reserve the right to use individual appraisals or other valuation procedures to calculate fees. Several respondents to the BLM proposal commented that the authorized officer could determine fees based on appraisals instead of using the fee schedule. They were concerned the fee schedule would not be uniformly used to determine fees. One respondent asked for specific criteria or guidance on when the agency would use appraisals. Another respondent suggested that it would be appropriate to establish standards identifying when the fee schedule would not yield fair market value.

Response. The final Forest Service fee policy (FSH 2709.11, sec. 36.21a) clarifies that the authorized officer may deviate from the schedule and use other methods, including appraisals, to determine fair market value fees for communications uses when one of the following criteria applies:

1. The fee or use is not covered by the fee schedule.

2. The fee has been or will be established through competitive bid or appraisal and will be updated in accordance with the terms and conditions of the authorization.

3. The Regional Forester concurs with the authorized officer's determination that the communications site serves a population of 1 million or more and the expected fee for the communications use is more than $10,000 above the established fee schedule.

4. The expected fee exceeds the schedule rate fee by 5 times or more.

General Provisions for Fee Exemptions and Waivers. The Forest Service fee exemption and waiver policy, addressing all land uses, is set forth in FSH 2709.11, chapter 30 and Forest Service Manual (FSM) chapter 2715. The authority to set criteria for and grant exemptions from fees is either reserved to Federal agencies or set by law. The authorized officer determines fee waivers on a case-by-case basis and may grant a fee waiver when equitable and in the public interest.

Fee Waiver

Comment. Several respondents to the Forest Service proposed policy suggested broadening the current fee waiver policy. Specific and recurring comments from respondents asked that the agency: (1) Grant exemptions, rather than waivers, to nonprofit organizations and public service organizations; (2) recognize that ''public'' and ''noncommercial, educational television'' are one and the same; and (3) change the classification of noncommercial, educational television and radio broadcasters to the exempt category, rather than the waiver category.

Response. The agency is not persuaded by respondents' statements that ''public'' and ''noncommercial, educational television'' are one and the same. While the current policy does not provide fee exemptions, as requested by respondents, it does provide a full waiver of fees, with specific qualifying criteria. The outcome is the same whether the fee is exempt or fully waived. The agency believes the policy should not include additional exemptions, criteria, or changes to terminology.

Fee Waiver for All Television and Radio Broadcasters

Comment. Some respondents to the Forest Service proposed policy asked that the agency reconsider its waiver policy and adopt the Advisory Committee proposal of a 30 percent discount for all radio and television broadcasters in recognition of the public service they provide. One respondent asked for an explanation of the waiver policy when an easement is issued.

Response. The Forest Service recognizes the need to clarify the current fee waiver policy as it applies to commercial and noncommercial television and radio broadcasters. However, the agency disagrees with respondents' statements that television and radio broadcast stations should receive a 30 percent discount on use fees, since they provide important news and emergency programming without direct cost to the public. The General Accounting Office report (GAO–RCED–94–248) agrees with the position of the Department of Agriculture's General Counsel that reducing fees for broadcasters is not appropriate unless there is some direct and tangible benefit to the public lands. The report (GAO RCED–94–248) states further that providing public service discounts to all broadcasters simply because they do not directly charge the public is not appropriate. The agency agrees with the report that a public service discount should not be provided to all commercial radio and television broadcasters, and the respondents' suggestion has not been adopted in the final policy.

Fee waivers and exemptions are dependent on the nature of the use authorized, and the business and intent of the authorization holder. The terms and conditions of easements and leases provide for assignability (transfer) of the rights and privileges authorized. Situations could arise in which easement or lease holders who qualify for exempted or waived fees could transfer their fee exempted or waived status to unqualified authorization holders. Therefore, if the use fees are waived, an easement or lease will not be granted.

The final fee waiver policy in FSH 2709.11, section 31.2 (available on request from the **FOR FURTHER INFORMATION CONTACT** listed earlier in this notice) includes the following changes:

1. Adds a requirement that noncommercial educational radio and television broadcast stations have nonprofit status as defined in section 501(c)(3) of the Internal Revenue Code.
2. Requires an annual verification of nonprofit designation from the Internal Revenue Service (IRS).
3. Moves States and local governments to the full waiver category without qualifying criteria.
4. Adds direction that the authorized officer shall not waive fees when the holder (except a Federal agency) derives revenue from tenants in the facility. Existing Forest Service policy exempts Federal agencies from only the land rental fee. When Federal agencies are tenants in a communications facility, they are expected to pay a fee to the holder for any use of the facilities.

Adjustment of Fees for Free Federal Government Use of Facilities

Comment. While not discussed in the Forest Service proposed policy, two respondents commented that the fee schedule and policy should recognize the requirement placed on some holders to provide for the free use of the facilities by Federal Government agencies. The respondents asked that if the practice is allowed to continue, an adjustment for free Federal Government use should be considered when determining the holder's annual fees.

Response. The agency acknowledges this practice has occurred in isolated cases. However, there is no formal or informal policy permitting such practices. Therefore, the final fee policy includes direction that such requirements in existing authorizations shall be considered in setting fair market rental fees by allowing a temporary fee adjustment. The final policy in FSH 2709.11, section 36.25 provides that when a holder has been required to set aside a percentage of the square footage of building space as free use to other Federal Government agencies, the total annual fee will be reduced by the same percentage. The fee adjustment will be valid during the time the holder is committed to the tenant enjoying free use. The agency has also included direction in FSH 2709.11, section 48.1, paragraph 3, prohibiting authorized officers from issuing authorizations that require holders to provide free rental space to Federal Governmental entities.

Administrative Complexity

Comment. Several respondents to the Forest Service proposed policy said that they needed additional explanation to properly interpret and apply the proposed policy and fee schedule. Major problem areas identified by respondents included determining use categories, identifying internal versus commercial use, applying a complex phase-in procedure, and maintaining consistent administrative and application procedures. Several respondents complained that it takes too long to process applications for a communication site use and called for a reduction in the amount of ''red-tape.''

Response. The revised policy and fee schedule provide for streamlining implementation of the fee schedule; improve application and administrative procedures and make them consistent in the different Regions; and provide important incentives to maximize the use of communications facilities. In addition, the changes encourage continued growth of communications markets and services, especially in rural areas; improve customer service and business practices; set rental fees that are predictable and can be easily updated; encourage improved communications site management; substantially reduce the agency's and holder's administrative burden; and implement procedures more consistent with private market practices.

Once implemented, the improved business practices will work better, cost less, and produce measurable benefits enhancing the working relationship between the Forest Service and the communications site users.

The agency has made the following major changes in the final policy in FSH 2709.11, chapters 30 and 40, to streamline implementation of the fee

schedule and provide consistent administration:

1. Defines use categories more broadly to include other related uses associated with the maintenance and monitoring of the use. As an example, internal mobile radio is often associated with other uses and, therefore, is included in the definition of each category of use (FSH 2709.11, sec. 48.11 and 48.12).

2. Redefines commercial mobile radio service to include internal and private communication uses not sold for a profit, that is, private mobile radio, internal microwave, and so forth. Holders operating commercial mobile radio service companies operate and maintain a wide range of mobile, wireless communication services for customers (FSH 2709.11, sec. 48.12a).

3. Revises definitions to provide that occupants owning and operating communication equipment in a commercial mobile radio service facility for internal use only, and not re-selling their service for a profit, are considered customers, not tenants. The base fee assessed does not include any adjustment for customers (FSH 2709.11, sec. 36.21).

4. Allows facility owners and tenants to decide if they want to consolidate their authorizations (FSH 2709.11, sec. 48.1, para. 7).

5. Eliminates the requirement that the holder obtain prior written consent of the authorized officer before allowing other parties to use the facility (FSH 2709.11, sec. 48.1, para. 7).

6. Phases in fee increases if the new scheduled fee exceeds the 1995 fee by $1,000 (FSH 2709.11, sec. 36.22).

7. Reduces the information burden placed on holders (FSH 2709.11, sec. 48.1, para. 7).

8. Encourages new applicants to co-locate in existing facilities, thus reducing surface disturbances and the proliferation of structures (FSH 2709.11, sec. 48.1, para. 1). Use Categories Not Included in Forest Service 1993 Proposed Policy. The Regional schedules recognize a total of 14 uses, generally corresponding to types of communications licenses issued by the FCC. Each Regional schedule, revised in 1992, uses separate market analyses to establish fees for specific use categories within a given Regional area and/or zone. The schedules appear as Regional supplements to chapter 30 FSH 2709.11, Special Uses Handbook. The following use categories included in the Regional supplements were not included in the Forest Service's proposed fee schedule: (1) Broadcast translator, (2) cable and subscription television, (3) common carrier microwave relay, (4) industrial microwave relay, (5) mobile radio: internal communications, (6) natural resource/environmental monitoring, (7) passive reflector, (8) amateur radio, (9) personal/private receive only, and (10) local exchange network. One use, low power television, was omitted from the Regional schedules.

Based on the comments received on the Forest Service proposed policy, additional research on private market practices, and comments received on the BLM proposed rule, the Forest Service is adopting a national fee schedule for all communications uses (except two categories of use) that is consistent with that of the BLM schedule. The agency is making the following changes to the use categories which appear in FSH 2709.11, section 48, and were described in the Regional schedules:

1. Adds low power television and radio uses to the broadcast translator category; remains the category as broadcast translator and low power television and low power FM radio (sec. 48.11d).

2. Renames the cable and subscription TV category as cable television (sec. 48.11c).

3. Renames the mobile radio: internal category as private mobile radio service (sec. 48.12c).

4. Combines the private microwave and common carrier microwave categories; renames the category as microwave (sec. 48.12d).

5. Combines the amateur radio, natural resource and environmental monitoring, and personal/private receive only categories; establishes fees and renames the category as other communications uses (sec. 48.13).

6. Changes the definitions for most categories (sec. 48.1, para. 5).

Following is a summary of the changes to each category. The changes reflect the information provided from respondents and additional joint analysis with BLM of the use categories and fee schedules in the six Regions.

Cable Television. (FSH 2709.11, sec. 48.11c). The current Regional schedules base the fees on the number of households served by a cable television franchise. Depending upon the Region, fees vary from $75 for less than 200 subscribers to $3,000 for more than 2,500 subscribers, with fees for uses serving more than 2,500 subscribers to be determined by appraisal or other means. A review of current market information revealed there is still limited comparable lease data for cable television use in larger markets.

Therefore, the final policy (sec. 48.11c) and fee schedule (sec. 36.21, ex. 01) make the following changes to the cable television category (formerly in the Regional schedules for cable television):

1. Fees are based on the standard RMA population ranges, establishing fees for four population ranges (less than 25,000 to 299,999). The final fees vary from $600 to $2,400.

2. Fees for uses in population ranges not covered by the schedule (300,000 and above) continue to be determined on a Regional basis by other reasonable methods, including appraisals.

3. If a nonscheduled fee is indicated, the current fee remains in effect until the new fee is determined.

4. Until a new fee is determined, a cable television use is not to be used to determine the highest value use for purposes of calculating building owner fees; but the building owner fee is based on the second highest value use in the facility covered by the schedule.

Broadcast Translator, Low Power Television, and Low Power FM Radio. (FSH 2709.11, sec. 48.11d). Based on the number of persons within the area served, the regional fee schedules vary from $75 for less than 15,000 persons to $1,000 for 60,000 persons, with populations over 60,000 to be determined by appraisal or other means. The National Translator Association supported these fees when published by the Forest Service Regions in 1992.

Comment. Several respondents to the Fores Service proposed fee schedule asked that the agency establish a separate category for low power television (LPTV). Low power television stations are essentially broadcast translators that originate programming. The devices cannot interfere with full-power stations and are limited to 10 watts VHF and 1000 watts UHF. Since the devices usually serve remote areas or specific unique markets, there is little information to suggest that there is a difference in land rent from broadcast translators.

Response. After considering the comments and reviewing the use categories, the agency found it would be appropriate to include LPTV and low power FM radio (LPFM) uses in the broadcast translator category. In addition, the agency found there is insufficient comparable lease data to establish fees for broadcast translator and LPTV use in the larger urban markets. Therefore, the final policy (sec. 48.11d) and fee schedule (sec. 36.21, ex. 01) make the following changes to the broadcast translator category (formerly in the Regional schedules for broadcast translator):

1. Fees are based on the standard RMA population ranges, establishing fees for four population ranges (less

than 25,000 to 299,999). The final fees vary from $100 to $2,400.

2. Fees for uses in population ranges not covered by the schedule (300,000 and above) continue to be determined on a Regional basis by other reasonable methods, including appraisals.

3. If a nonscheduled fee is indicated, the current fee remains in effect until the new fee is determined.

4. Until a new fee can be determined, a broadcast translator/LPTV/LPFM use is not to be used to determine the highest value use for purposes of calculating a building owner fee. In this situation, the building owner fee is based on the second highest value use in the facility covered by the schedule.

Private Mobile Radio Service. (FSH 2709.11, sec. 48.12c). The Regional schedules adopted an annual fee for private mobile radio use, rather than using population or areas served as a basis for fee determination. Fees for uses identified as mobile radio: internal in the Regional schedules, vary from $350 to $1,700.

Comment. A respondent to the BLM proposed rule pointed out that in some situations internal mobile radio and microwave systems must be used together. Commonly called ancillary uses, the systems give support or connect one another on the same communications facility. To eliminate confusion, the respondent suggested that when microwave and mobile radio uses are present in the same facility as ancillary uses, the fee should be based on the private mobile use if the microwave ends at the facility and is used for the control of the mobile facility.

Response. The agency agrees with the respondent. If the microwave and mobile radio uses are ancillary to each other, the holder should not pay two separate fees. To correct the problem, the definition has been broadened to include other equipment for the control of a facility. A separate fee is not to be charged for ancillary uses.

If microwave and private mobile radio uses are present in the same facility, but are independent of each other, they are considered as separate uses for purposes of fee calculation.

The final policy (sec. 48.12c) and fee schedule (sec. 36.21, ex. 01) make the following changes to the private mobile radio service category (formerly in the Regional schedules as mobile radio: internal):

1. Fees are based on the standard RMA population ranges, establishing fees for nine population ranges. The final fees vary from $350 to $10,000.

2. The definition has been broadened to include other communications equipment necessary for the control of a facility.

3. A separate fee is not assessed for ancillary microwave use.

Microwave. (FSH 2709.11, sec. 48.12d). Two separate categories, common carrier microwave and industrial microwave, were established in the Regional schedules. Based on the geographical location and the number of persons served, the fees vary from $1,000 in the rural areas to as much as $5,500 in urban areas.

Comment. Several respondents to the BLM proposed rule observed that there is little difference in the rent paid for private (industrial) or common carrier microwave facilities in the private market.

Response. The agency agrees with the respondents and has combined the two categories into one category for microwave.

The final policy is FSH 2709.11 (sec. 48.12d) and fee schedule (sec. 36.21, ex. 01) make the following changes to the microwave categories (formerly in the Regional schedules for common carrier and industrial microwave):

1. One category, microwave, combines the previous categories for common carrier microwave and industrial microwave uses.

2. Fees are based on the standard RMA population ranges, establishing fees for nine population ranges. The final fees vary from $1,500 to $10,000.

3. The definition has been broadened to include other communications equipment necessary for the control of a facility.

4. A separate fee is not assessed for ancillary private mobile radio use.

5. Fees for a microwave use with an ancillary private mobile radio use are based on the scheduled rate for microwave.

Other Categories. The Regional schedules adopted a $75 fee for separate categories of amateur radio, personal/private receivers, and environmental monitoring equipment uses for all geographic locations. The final policy (FSH 2709.11, sec. 48.13) combines these uses into one category, other uses, and the final fee schedule (sec. 36.21, ex. 01) maintains the $75 fee.

Two other categories, passive reflector and local exchange network, are in the Regional schedules but are not in the final agency policy or fee schedule. Passive reflector use fees vary from $475 to $1,000, depending upon the location and populations served. The system is used primarily in remote areas. Fees for local exchange network uses, a radio service providing basic exchange telephone radio service (BETRS) to remote areas, were established in the 1992 schedules using information gathered from a national fee analysis and rates for common carrier microwave. Fees vary from $75 to $4,000, depending on the persons served in a particular geographic area.

Passive reflectors and local exchange networks are unique systems with limited use. In many areas the systems are being replaced by new emerging technologies. Therefore, the final fee schedule excludes both uses and fees will continue to be determined on a Regional basis.

Definitions. The final policy includes a definition for each use category and other commonly used terms in FSH 2709.11, section 48.

Fee Schedule Implementation

The draft policy indicated the final fee schedule and associated policy changes would require Forest Service Regions 1 through 6 to modify their existing fee schedules and to give notice of those changes in the Federal Register. However, in consideration of the public comments that the fee schedules would still be incomplete, and because of the coordinated effort with the BLM to issue joint market-based fee schedules, the final fee schedule revises those procedures.

Instead, the final fee schedule replaces the Regional schedules, except for passive reflector and local exchange network uses. The fee schedule in FSH 2709.11, section 36.01, exhibit 01, will be updated annually to reflect:

1. The CPI–U adjustment factor to apply to annual billings for existing authorizations.

2. Revised schedule fees, reflecting the CPI–U adjustment, to be used for new authorizations.

3. Changes to the RMA population rankings.

The agency recognizes that the final fee schedule may result in a reduction of current fees for some holders, for several reasons, including:

1. Fees established by 1992 Regional schedules which have been increased by the CPI–U adjustment factor each year.

2. Definition of a ''customer'' to include internal and private uses renting space within a communication facility and not re-selling communication services to others.

3. The inherent leveling effect of a fee schedule applying a national market-based ranking system rather than specific geographic market conditions.

However, the agency believes implementation of a national fee schedule for most communications uses and the annual updating of fees with applicable CPI–U adjustments through national direction will end the inequity

between fees charged to users in different regions and at the same time return fair market value in rental income to the United States.

The final fee schedule does not apply to Region 8 and 9 (encompassing the 33 eastern States) or Region 10 (Alaska). The Forest Service is currently validating the fee schedule's applicability to communications uses in the 33 eastern States. The agency expects to implement the fee schedule for Regions 8 and 9 with any necessary adjustments in 1997. Region 10 (Alaska) will continue to use the Regional fee schedule adopted in 1992.

The Forest Service plans the following actions and methods for implementing the final policy:

1. The Forest Service and the BLM will develop and adopt a new document for communication use authorizations for use by both agencies. The new authorization will allow tenant occupancy, eliminating the requirement for prior written consent of the agency or issuance of separate authorizations to tenants.

2. All authorization holders will receive notice of the regulatory changes affecting communications site use fees, and they will be given the option to convert to the new authorization. The holders will have 60 days to respond to the authorized officer indicating their intention. Permits that expire will be replaced with the new authorization.

3. Tenants may retain an existing authorization or relinquish the authorization and be included in the facility owner's authorization. Tenants electing to maintain an existing authorization will be billed the full use fee according to the schedule and category of use.

4. Fees for uses not included in the schedule continue to be determined on a Regional basis by other reasonable methods, including appraisals.

5. If a nonscheduled fee is indicated, the current fee remains in effect until the new fee is determined.

6. Until new fees can be determined, nonscheduled use categories are not to be used to determine the highest value use for purposes of calculating building owner fees, but are based on the second highest value use in the facility covered by the schedule.

7. Separate fees are not assessed for ancillary uses.

8. Holders will be notified of the calendar year 1996 fee by written notice from the authorized officer. The notification will include instructions for appealing the new fees in accordance with existing regulations.

9. The fee schedule is effective November 6, 1995 for new use authorizations (new construction) and on January 1, 1996, for existing use authorizations.

Controlling Paperwork Burdens on the Public

This policy will not result in additional paperwork not already required by law or not already approved for use. The information collection being requested as a result of this action has been approved by OMB (Number 0596–0082, expiration date—June 30, 1996). Therefore, further review required under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 22, 1995)) and implementing regulations at 5 CFR 1320 do not apply.

Regulatory Impact

This final policy has been reviewed under Executive Order 12866 on Regulatory Planning and Review. The agency has determined that this final policy is a significant regulatory action subject to Office of Management and Budget review.

Currently, annual costs for processing applications (including analysis for environmental and heritage resources) and determining fees for communications uses are estimated at $63,000 for the Forest Service and $32,500 for applicants. Annual costs to the Forest Service to administer existing authorized communications site uses are estimated at $1,985,500.

Under the existing fee system, approximately $2 million are collected annually from the 6,300 authorized communications site users on National Forest System (NFS) lands. Fees are waived for other Federal, State, and local municipalities and some non-profit organizations.

Each of the 6,300 current authorizations is issued for one user. The Forest Service requires proof of FCC licensing for each authorization. Due to the complexity of communications technology, the Forest Service is unable to economically track each user within each building. It is estimated that there are between 500 and 1,000 unidentified and unauthorized users operating on NFS lands. These users may or may not be licensed by FCC and are not paying compensation for the use.

The new process reduces the number of applications and permits, increasing benefits through reduced costs, more efficient administration, and reduction of environmental planning analyses. Administrative savings to the government would be approximately $975,000 and savings to communication site applicants and users would be approximately $16,250. With a decrease in caseload, Forest Service personnel will be able to provide better customer service to the public. Additionally, reduced caseload will enable the Forest Service to better administer existing uses, thereby ensuring uses are consistent with the terms and conditions of the lease and applicable policies, regulations, and laws. Non-profit organization that have annual certification by the Internal Revenue Service, such as public television and radio broadcasters and religious broadcasters, will have their fees waived. Reductions in operating expenses for these organizations may increase their ability to provide goods and services to the publics they serve.

The new schedule increases receipts to the Federal treasury by an estimated $18 million annually by charging fees more accurately reflecting fair market value as required by the Federal Land Policy and Management Act. This is a conservative estimate based on the findings of the joint Forest Service and BLM 1991 Report to Congress where fees were determined to be $20 to $25 million below fair market value.

Fees under the new schedule are consistent with those on private sites and reduce discrepancies between Federal and private site fees. Increased revenue to the Federal treasury assists with Administration and Congressional efforts to reduce the Federal deficit.

The granting of a lease to communications site users with a guaranteed term provides benefits to the user for planning and may increase opportunities for obtaining financing. Additionally, a consistent fee system across the Forest Service and BLM reduces confusion and simplifies processing for corporate users who may require leases at more than one location.

Moreover, this final policy has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that act. The phase-in of annual fees described in this notice will allow small entities to adjust to the new fees over a period of time and thus minimize the risk of adverse impact on some businesses because of the magnitude of the increase in some fees.

Environmental Impact

Section 31.1b of Forest Service Handbook (FSH) 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures,

program processes or instructions.'' Based on consideration of the comments received and the nature and scope of this policy, the Forest Service has determined that this policy falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Dated: July 17, 1995.

David G. Unger,

Associate Chief.

Final Handbook Revision

Note: The Forest Service organizes its directive system by alphanumeric codes and subject headings. Only those sections of the Forest Service Handbook (FSH) 2709.11, Special Uses Handbook, affected by this policy are included in this notice. The intended audience for this direction is Forest Service employees charged with issuing and administering communications use authorizations. The text of the revised policy and fee schedule follows:

FSH 2709.11—Special Uses Handbook

Chapter 30—Fee Determination

36.2—Communications Site Fee Schedule. This section provides direction for use of the fee schedule for communications uses on National Forest System lands.

36.21—Determination of Fees. The authorized officer shall request that the holder provide a certified statement by October 15 of each year containing a list of tenants, by category of use, in the facility on September 30 of that year.

Calculate the annual fee using the fee schedule (ex. 01) and the population strata based on the Ranally Metro Area (RMA) population and city listing (ex. 02). The fee schedule provides rental fees by category of use and population. See section 36.21a for exceptions to using the fee schedule.

1. Consider the following when determining fees:

a. If the communications site serves an RMA community (ex. 02), determine the fee by the category of use and the corresponding population range on the fee schedule (ex. 01).

b. If the communications site does not serve a listed RMA community (ex. 02), determine the fee based on the population of the largest community (according to the most current ''Rand McNally Road Atlas'') served by the site.

c. If the communications site does not serve a community, determine the fee based on the lowest scheduled fee (ex. 01) for the category of use, except in situations described in section 36.21a.

d. Consider co-owned AM and FM stations located in the same facility as two radio stations in determining fees.

e. Do not apply the 25 percent schedule rate for customers (sec. 48.1, para. 5), including internal and private users, renting space in a communications facility.

2. Apply the fee schedule to communications uses providing the following services:

a. *Television Broadcast.* (Sec. 48.11a of this Handbook).

b. *AM and FM Radio Broadcast.* (Sec. 48.11b).

c. *Cable Television.* (Sec. 48.11c).

d. *Broadcast Translator, Low Power Television, and Low Power FM Radio.* (Sec. 48.11d).

e. *Commercial Mobile Radio Service (CMRS) and Facility Manager.* (Sec. 48.12a).

f. *Cellular Telephone.* (Sec. 48.12b).

g. *Private Mobile Radio Service.* Stand alone operations only. (Sec. 48.12c).

h. *Microwave.* Common carriers microwave relay and industrial microwave. (Sec. 48.12d).

i. *Other Communications Uses.* Stand alone operations only. This category includes the following uses: amateur radio; personal/private receive only; and natural resource and environmental monitoring. (Sec. 48.13).

3. Except for fees that apply to a facility manager (para. 4), assess fees for all the preceding uses in paragraphs 2a to 2i providing rental space to tenants as follows:

a. Determine a base fee from the schedule rate fee for the building owner or the use generating the highest schedule fee in the facility. If the highest schedule fee is a ''tenant'' fee, the ''tenant'' fee becomes the base fee and the building owner's schedule rate fee is used as a tenant fee for calculating additional fees (following para. b).

b. Add 25 percent of the schedule fee for each ''tenant'' (ex. 01). Include 25 percent of the building owner's scheduled fee if it is not the highest fee and, therefore, not used as the base fee.

Sample fee calculations are provided as follows:

Example 1: A communications facility serving an RMA population area of 200,000, with a CMRS provider (building owner), one TV broadcaster, two FM broadcasters, one cellular telephone, and two private mobile radio users.

Base fee=$6,000 (TV broadcast is the highest value use in the facility)+$750 (25% CMRS provider (building owner)+$2,000 (25% of two FM broadcasters)+$1,000 (25% cellular telephone)+$0.00 (no charge for PMRS)=Total fee for the facility: $9,750.

Example 2: A communications facility serving an RMA population area of 800,000, with a TV station (building owner), one FM broadcaster, and three private mobile radio users.

Base fee=$14,000 (TV broadcast is the highest value use in the facility)+$2,500 (25% FM broadcaster)+$0.00 (no charge for PMRS)=Total fee for the facility: $16,500.

4. Fees for facility managers are calculated differently from other uses. Facility managers provide rental space for other communications uses; they do not directly provide communications services to others. Determine the base fee as described in the proceeding paragraph. However, if the highest valued scheduled fee for the facility is not the facility manager's, do not ''substitute'' the 25 percent facility manager rental fee for the tenant fee used for the base fee.

Sample fee calculations for facility manager uses are provided as follows:

Example 1: A facility manager serving an RMA population area of 200,000, with three microwave providers and two amateur radio operators.

Base fee=$3,000 (the facility manager schedule rate is the highest valued use in the facility)+$1,500 (25% three microwave users)+$0.00 (no charge for amateur radio)=Total fee for the facility: $4,500.

Example 2: A facility manager serving an RMA population area of 800,000, with a TV station, three FM broadcasters, and three private mobile radio users.

Base fee=$14,000 (TV broadcast is the highest value use in the facility)+$7,500 (25% FM broadcaster)+$0.00 (no charge for PMRS)=Total fee for the facility: $21,500.

36.21a—Exceptions to Fee Schedule. Fees not established by use of the fee schedule shall be based on comparative market surveys, appraisals, or other reasonable methods. All such fee determinations shall be documented, supported, and approved by the authorized officer. The following are exceptions to the fee schedule:

1. The fee or use is not covered by the fee schedule.

2. The fee has been or will be established through competitive bid or appraisal and will be updated in accordance with the terms and conditions of the authorization.

3. The Regional Forester concurs with the authorized officer's determination that the communications site serves a population of 1 million or more and the expected fee for the communications use is more than $10,000 above the established fee schedule.

4. The expected fee exceeds the schedule rate fee by 5 times or more.

36.22—Phase-in of Fees. Fees for new uses (new construction) do not qualify for a phase-in. For existing uses, phase in first year increases in fees of more than $1,000 over a 5-year period. For example, if the current total fee is $700,

and the new total fee is $2,700, calculate the 5-year phase-in as follows:

1. *Year 1996.* $700 (current total fee in 1995) + $1,000 (limit of first year increase) = $1,700 (first year's fee in 1996);

2. *Year 1997.* $1,700 (first year fee in 1996) + $250 (¼ of remaining increase ($1,000) greater than $1,000) × 1.02* = $1,989 (second year's fee in 1997);

3. *Year 1998.* $1,989 (second year's fee in 1997) + $250 (¼ of remaining increase ($1,000) greater than $1,000) × 1.02* = $2,284 (third year's fee in 1998);

4. *Year 1999.* $2,284 (third year's fee in 1998) + $250 (¼ of remaining increase ($1,000) greater than $1,000) × 1.02* = $2,584 (fourth year's fee in 1999);

5. *Year 2000.* $2,584 (fourth year's fee in 1999) + $250 (¼ of remaining increase ($1,000) greater than $1,000) × 1.02* = $2,891 (fifth year's fee in 2000);

6. *Year 2001.* Phase-in of the fee schedule has been completed. In succeeding years, apply only the CPI–U to the previous year's fee. $2,891 (fifth year's fee in 2000) × 1.02* = $2,949 (fee in 2001).

*Assumed 2 percent increase each year in the United States Department of Labor Consumer Price Index for All Urban Consumers—U.S. City Average (CPI–U).

36.23—Updating Fee Schedule. The Director of Lands, Washington Office, shall update the fee schedule (sec. 36.21, ex. 01) annually, based on the CPI–U published in July of each year. Annual adjustments based on the CPI–U shall be limited to 5 percent. The Director of Lands shall review the fee schedule no later than 10 years after the date of implementation of this schedule, and at least every 10 years thereafter, to ensure that fees reflect fair market value.

The Director of Lands shall review and update the RMA city and population table (sec. 36.21, ex. 02) annually.

36.24—Fee Waivers and Exemptions. For direction on fee waivers and exemptions, see sections 31.2 through 31.4

36.25—Fee Adjustment for Required Free Use. In no circumstance require a private holder to provide free rental space to Federal agencies or any other entity. In order to rectify past situations in which the Forest Service required the holder to provide free rental space, discount the annual fee by the same percentage that the entity receiving free use occupies (in square feet) in that building. For example, if the Forest Service previously required a building owner to provide free use for 20 percent of the building, discount the annual fee by 20 percent. Such a discount is valid for the period of time specified in an existing agreement between the parties.

BILLING CODE 3410–11–M

36.21 - Exhibit 01

FEE SCHEDULE FOR COMMUNICATIONS USES

POPULATION	TELEVISION	AM/FM RADIO *	CABLE TELEVISION	BROADCAST TRANSLATOR/ LPTV/LPFM	CMRS/ FACILITY MANAGER	CELLULAR TELEPHONE	PRIVATE MOBILE RADIO SERVICE	MICROWAVE	OTHER	PASSIVE REF. & LOCAL EXCH. NETWORKS	SAMPLE RMA'S
5,000,000 plus	$45,000	$34,000	INSUFFICIENT	INSUFFICIENT	$12,000	$12,000	$10,000	$10,000	$75		Los Angeles, CA
2,500,000 to 4,999,999	$30,000	$21,000	MARKET DATA	MARKET DATA	$10,000	$10,000	$6,000	$8,000	$75		Seattle, WA
1,000,000 to 2,499,999	$18,000	$14,000	FEE TO BE DETERMINED	FEE TO BE DETERMINED	$8,000	$8,000	$6,000	$7,000	$75	FEES FOR	Phoenix, AZ San Diego, CA Portland, OR Riverside, CA
500,000 to 999,999	$14,000	$10,000	BY APPRAISAL OR OTHER	BY APPRAISAL OR OTHER	$5,000	$6,000	$4,000	$5,500	$75	THESE	Las Vegas, NV Salt Lake City, UT Tucson, AZ Albuquerque, NM
300,000 to 499,999	$12,000	$8,000	METHODS	METHODS	$4,000	$5,000	$2,500	$2,500	$75	USES	Bakersfield, CA Spokane, WA
100,000 to 299,999	$6,000	$4,000	$2,400	$2,400	$3,000	$4,000	$2,000	$2,000	$75	ARE DETERMINED	Boise, ID Anchorage, AK Reno, NV Palm Springs, CA Yakima, WA Yuma, AZ Billings, MT
50,000 to 99,999	$3,000	$2,000	$1,200	$1,200	$1,200	$3,000	$1,000	$1,500	$75	BY EACH REGION	Las Cruces, NM Grand Junction, CO Idaho Falls, ID Missoula, MT Santa Fe, NM Pocatello, ID Farmington, NM Roswell, NM
25,000 to 49,999	$1,500	$1,200	$1,000	$500	$1,000	$2,500	$600	$1,500	$75		Butte, MT
LESS THAN 25,000	$1,200	$900	$600	$100	$600	$2,500	$350	$1,500	$75		

** FEE FOR AM RADIO IS 70% OF THE FM SCHEDULED FEE*

36.21 - Exhibit 02

LISTING OF CITIES BY POPULATION STRATA

5,000,000 plus	2,500,000 to 4,999,999	1,000,000 to 2,499,999	500,000 to 999,999
Chicago, IL-IN-WI	Atlanta, GA	Baltimore, MD	Akron, OH
Los Angeles, CA	Boston, MA-NH (incl. Brockton Haverhill, Lawrence, Salem and Lowell, MA and Nashua, NH)	Buffalo, NY-CAN (incl. St. Cathannes-Niagara Falls, CAN)	Albany, NY (incl. Schenectady, and Troy)
New York, NY-NJ-CT (incl. Newark, NJ) and Danbury, CT)	Dallas, TX (incl. Fort Worth)	Cincinnati, OH-KY-IN	Albuquerque, NM
Philadelphia, PA-NJ-DC-MD (incl. Trenton, NJ Wilmington, DE, Coatesville, PA	Detroit, MI-CAN (incl. Ann Arbor, MI and Windsor, CAN)	Cleveland, OH	Allentown, PA-NJ (incl. Bethlehem,PA
San Francisco, CA (incl. Antioch, Oakland, and San Jose)	Houston, TX	Columbus, OH	Austin, TX
	Miami, FL (incl. Ft. Lauderdale)	Denver, CO	Birmingham, AL
	San Diego, CA-MEX (incl. Tijuana, MEX)	El Paso, TX-NM-MEX (incl. Ciudad Juarez, MEX)	Calexico, CA-MEX (incl. Mexicali, MEX)
	Seattle, WA (Tacoma)	Hartford, CT (incl. New Britain)	Charlotte, NC-SC
	Wash, DC-MD-VA	Indianapolis, IN	Dayton, OH
		Kansas City, MO-KS	El Paso, TX-NM
		Milwaukee, WI	Flint, MI
		Minneapolis, MN-WI (incl. St. Paul, MN)	Fresno, CA
		New Orleans, LA	Grand Rapids, MI
		Norfolk, VA (incl. Portsmouth)	Honolulu, HI
		Phoenix, AZ	Jacksonville, FL
		Pittsburg, PA	Knoxville, TN
		Portland, OR	Las Vegas, NV
		Riverside, CA (incl. San Bernadino)	Louisville, KY-IN
		Sacramento, CA	McAllen, TX (incl. Reynosa, MEX and Edinburg, TX)
		St. Louis, MO-IL	Memphis, TN-AR-MS
		St. Petersburg, FL (incl. Clearwater)	Nashville, TN
		San Antonio, TX	New Haven, CT
		San Diego, CA	Oklahoma City, OK
			Omaha, NE-AI
			Orlando, FL
			Providence, RI-MA
			Raleigh, NC
			Richmond, VA (incl. Petersburg)
			Rochester, NY
			Salt Lake City, UT
			Springfield, MA
			Syracuse, NY
			Tampa, FL
			Toledo, OH-MI
			Tucson, AZ
			West Palm Beach, FL

36.21 - Exhibit 02--Continued

LISTING OF CITIES BY POPULATION STRATA

300,000 to 499,999	100,000 to 299,999			
Augusta, GA-SC	Abilene, TX	Fayetteville, AR (incl. Springdale)	Monroe, LA	Springfield, IL
Bakersfield, CA	Albany, GA	Fayettsville, NC	Monterey, CA (incl. Seaside)	Springfield, MO
Baton Rouge, LA	Altoona, PA (incl. Bethlehem)	Fitchburg, MA	Montgomery, AL	Springfield, OH
Beaumont, TX (incl. Port Arthur)	Amarillo, TX	(incl. Leominster)	Muncie, IN	Steubenville, OH-WV (incl. Weirton, WV)
Bridgeport, CT	Anchorage, AK	Fort Collins, CO	Muskegon, MI	Tallahassee, FL
Brownsville, TX-MEX (incl. Matamoros, MEX)	Anderson, IN	(incl. Loveland)	Myrtle Beach, SC (incl. Conway)	Terre Haute, IN
Canton, OH	Appleton, WI	Fort Myers. FL	Naples, FL	Topeka, KS
Charleston, SC	Asheville, NC	(incl. Cape Coral)	New Bedford, MA	Tuscaloosa, AL
Chattanooga, TN-GA	Athens, GA	Fort Pierce, FL	Newburgh, NY	Tyler, TX
Colorado Springs, CO	Atlantic City, NJ	Fort Smith, AK-OK	New London, CT-RI (incl. Norwich, CT)	Utica, NY (incl. Rome)
Columbia, SC	Battle Creek, MI	Fort Walton Bch, FL	Nogales, AZ-MEX (incl. Nogales, MX)	Vineland, NJ
Corpus Christi, TX	Billings, MT	Frederick, MD	Ocala, FL	Visalia, CA
Des Moines, IA	Biloxi, MI (incl. Gulfport)	Gainesville, FL	Oceanside, CA	Waco, TX
Fort Wayne, IN	Binghamton, NY-PA	Galveston, TX (incl. Texas City)	Odessa, TX	Waterbury, CT
Greensboro, NC (incl. High Point)	Bloomington, IL (incl. Normal)	Gastonia, NC	Ogden, UT	Waterloo, IA
Greenville, SC	Bloomington, IN	Green Bay, WI	Olympia, WA	Wheeling, WV-OH
Harrisburg, PA	Boise, ID	Hagerstown, MD-PA-WV	Palm Springs, CA	Wichita Falls, TX
Jackson, MS	Boulder, CO (incl. Longmont)	Harlingen, TX	Panama City, FL	Williamsport, PA
Johnson City, TN-VA (incl. Kingsport and Bristol)	Bremerton, WA	Hemet, CA	Peoria, IL	Wilmington, NC
Lansing, MI	Brownsville, TX	Hickory, NC	Port Huron, MI-CAN (incl. Sarnia, CAN)	Winter Haven, FL
Laredo, TX-MEX (incl. Nuevo Laredo, MEX)	Bryan, TX (incl. College Station)	Houma, LA (incl. Thibodaux)	Portland, ME	Yakima, WA
Little Rock, AR	Burlington, NC	Huntington, WV-KY-OH	Portsmouth, NH-ME (incl. Dover and Rochester, NH)	York, PA
McAllen, TX (incl. Edinburg)	Burlington, VT	Huntsville, AL	Poughkeepsie, NY	Yuma, AZ-CA
Madison, WI	Cedar Rpaids, IA	Jackson, MS	Provo, UT (incl. Orem)	
Melbourne, FL (incl. Cocoa)	Champaign, IL (incl. Urbana)	Jacksonville, NC	Pueblo, CO	
Mobile, AL	Charleston, WV	(incl. Concord)	Racine, WI	
Newport News, VA (incl. Hampton)	Clarksville, TN-KY	Johnstown, PA	Reading, PA	
Oxnard, CA (incl. Ventura)	Columbus, GA-AL	Kalamazoo, MI	Redding, CA	
Pensacola, FL	Corvallis, OR (incl. Albany)	Kannapolis, NC (incl. Concord)	Reno, NV	
Rockford, IL-WI	Davenport, IA-IL (incl. Rock Island and Moline, IL)	Kenosha, WI	Richland, WA (incl. Kennewick and Pasco)	
Saginaw, MI (incl. Bay City and Midland)	Daytona Beach, FL	Killeen, TX	Roanoke, VA	
Sarasota, FL (incl. Bradenton)	Decatur, IL	Lafayette, IN (incl. W. Lafayette)	Salem, OR	
Scranton, PA (incl. Wilkes-Barre)	Duluth, MN-WI	Lafayette, LA	Salinas, CA	
Spokane, WA-ID	Durham, NC (incl. Chapel Hill)	Lake Charles, LA	Santa Barbara, CA	
Wichita, KS	Elkhart, IN-MI	Lakeland, FL	Santa Cruz, CA	
Winston-Salem, NC	Erie, PA	Lancaster, PA	Santa Rosa, CA	
Worcester, MA	Eugene, OR	Laredo, TX	Sault Ste. Marie, MI-CAN (incl. Sault Ste. Marie, CAN)	
Youngstown, OH-PA (incl. Warren, OH)	Evansville, IN-KY	Lexington, KY	Savannah, GA	
	Fairfield, CA (incl. Vacaville)	Lima, OH	Shreveport, LA-TX	
	Fall River, MA-RI	Lincoln, NE	Sioux City, IA-NE-SD	
	Fargo, ND-MN (incl. Moorehead MN)	Longview, TX	Sioux Falls, SD	
		Lubbock, TX	South Bend, IN-MI	
		Lynchburg, VA	Spartanburg, SC	
		Macon, GA		
		Manchester, NH		
		Mansfield, OH		
		Medford, OR		
		Merced, CA		
		Middletown, OH		
		Midland, TX		
		Modesto, CA		

36.21 - Exhibit 02--Continued

LISTING OF CITIES BY POPULATION STRATA

50,000 to 99,999			25,000 to 49,999	Less than 25,000
Alexandria, LA	Goldsboro, NC	New Castle, PA	Amherst, MA	Calexico, CA
Alliance, OH	Grand Forks, ND-MN	New Ibena, LA	Ashtabula, OH	Nogales, AZ
Ames, IA	Grand Junction, CO	Newport, RI	Bartiesville, OK	Sauit Ste. Marie,-MI
Anderson, SC	Great Falls, MT	Oshkosh, WI	Brunswick, ME (incl. Bath)	
Annapolis, MD	Greeley, CO	Owensboro, KY	Burlington, IA	
Anniston, AL	Hanover, PA	Paducah, KY-IL	Butte, MTIA-IL	
Auburn, AL (incl. Opelika)	Hattiesburg, MS	Parkersburg, WV-OH	Clinton, IA-IL	
	Hazleton, PA	Pascagoula, MS-AL	Clovis, NM	
Auburn, NY	Hilo, HI	Pine Bluff, AR	E. Liverpool, OH-WV	
Augusta, ME	Holland, MI	Pittsfield, MA	Enid, OK	
Bangor, ME	Hot Springs, AR	Pocatello, ID	Findley, OH	
Beckley, WV	Idaho Falls, ID	Porterville, CA	Fort Dodge, IA	
Bellingham, WA	Iowa City, IA	Port Huron, MI	Galesburg, IL	
Benton Harbor, MI (incl. St. Joseph)	Ithaca, NY	Portsmouth, OH-KY	Grand Island, NE	
	Jackson, TN	Pottstown, PA	Greenville, MS	
Bismark, ND	Jamestown, NY	Pottsville, PA	Hopkinsville, KY	
Bowling Green, KY	Janesville, WI	Quincy, IL	Hutchinson, KS	
Brunswick, GA	Jefferson City, MO	Rapid City, SD	Laurel, MS	
Butler, PA	Jonesboro, AR	Richmond, IN-OH	Leavenworth, KS	
Cape Girardeau, MO	Joplin, MO-KS	Rochester, MN	Lewiston, ID-WA	
Carbondale, IL	Kankakee, IL	Rock Hill, SC	Manhattan, KS	
Carlisle, PA	Kingston, NY	Rocky Mount, NC	Mankato, MN	
Casper, WY	Kokomo, IN	Rome, GA	Marietta, OH-WV	
Charlottesville, VA	La Crosse, WI-MN	Roswell, NM	Marshall, TX	
Cheyenne, WY	Lancaster, OH	Rutland, VT	Minot, ND	
Chico, CA	Las Cruces, NM	St. Cloud, MN	Natchez, MS-LA	
Clarkburg, WV	Latrobe, PA	St. Joseph, MO-KS	Northampton, MA	
Cleveland, TN	Lawrence, KS	Salisbury, MD-DE	Oil City, PA (incl. Franklin)	
Columbia, MO	Lawton, OK	Salisbury, NC		
Columbus, IN	Lebanon, PA	San Angelo, TX	Salina, KS	
Columbus, MS	Lewiston, ME (incl. Auburn)	Sandusky, OH	Stillwater, OK	
Concord, NH		Santa Fe, NM	Vicksburg, MS-LA	
Cumberland, MD-WV	Lockport, NY	Sharon, PA-OH	Waterville, ME	
Danville, IL	Logan, UT	Sheboygan, WI		
Danville, VA-NC	Lompoc, CA	Sherman, TX (incl. Denison)		
Davis, CA	Longview, WA-OR			
Decatur, AL	Lufkin, TX	State College, PA		
De Kalb, IL	Manitowoc, WI	Sumter, SC		
De Land, FL	Marion, IN	Taunton, MA		
Dothan, AL	Marion, OH	Temple, TX		
Dover, DE	Martinsville, VA	Texarkan, TX-AR		
Dubuque, IA-WI-IL	Meridian, MS	Titusville, FL		
Eau Claire, WI	Michigan City, IN-MI	Torrington, CT		
Elmira, NY	Middletown, NY	Uniontown, PA		
Eureka, CA (incl. Arcata)	Missoula, MT	Valdosta, GA		
	Monroe, MI	Venice, FL		
Fairbanks, AKM	Montpelier, VT (incl. Barre)	Victoria, TX		
Fairmont, WV		Washington, PA		
Farmington, NM	Morgantown, WV-PA	Watertown, NY		
Florence, AL	Morristown, TN	Watsonville, CA		
Florence, SC	Murfreesboro, TN	Wausau, WI		
Fond du Lac,WI	Muskogee, OK	Yuba City, CA (incl. Marysville)		
Freeport, TX (incl. Lake Jackson)	Nampa, ID (incl. Caldwell)	Zanesville, OH		
Gadsden, AL	Napa, CA			
Glen Falls, NY	Newark, OH			

BILLING CODE 3410–11–C

Chapter 40—Special Uses Administration

48—Communications.

48.1—Communications Uses. This special-uses group includes a variety of communications use categories which utilize National Forest System land. Typically the use occurs on a designated site and includes buildings, towers, and other support improvements.

1. *Authority.* Authorizations for all communications uses are issued under the authority of the Act of October 21, 1976 (43 U.S.C. 1761). This authority must be cited on all authorizations issued for communications uses.

2. *Objectives.* The objectives of communications use management are to authorize only those uses which meet forest land and resource management plan objectives; to facilitate the orderly development of sites to provide a safe and high quality communications environment; to maximize efficient use of the communications site; and to collect fair market value fees for communications uses on National Forest System lands.

3. *Policy.* Except for single uses which involve minor development (such as personal receive only use, resource monitoring use, or temporary use), communications sites must be designated before a new authorization for communications use can be issued. Communications site designation is a land use allocation and shall be made through the land resource management planning process (FSM 1920).

Fees for communication uses shall be assessed in accordance with direction in chapter 30 of this Handbook.

Authorized officers shall not consider or issue authorizations that involve bartering or augmentation of goods or services, such as requiring the holder to provide free government use of facilities or construction of other improvements not associated with the use.

4. *Responsibility.* The Regional Forester is responsible for approval of communication site plans; this responsibility may be delegated to the Forest Supervisor. Following communications site plan approval, Forest Supervisors have the authority to issue special-use permits, within the guidelines of the site plan. This responsibility may be delegated to the District Ranger.

5. *Definitions.* Definitions for other technical terms not listed in this section may be found in Federal Standard 1037 (FS 1037A), a standard glossary of telecommunication terms available from the General Services Administration.

Attenuation. Decrease in magnitude of current, voltage, or power of a signal in transmission between points. May be expressed in decibels (dB).

Band Width. A portion of the frequency spectrum authorized for use by a specific license; measured in kilohertz (KHz) or megahertz (MHz). Of concern is the amount of spectrum authorized: that is, a small amount (15 KHz) for two-way radio, a larger amount (6 MHz) for television broadcast, and a very large amount (many MHz) for radar.

Base Rent. The fee amount determined by the highest value use in a communications site facility. Base rent is applicable only to a facility owner's fee.

Beam Path. Direction or corridor of energy radiated from a directional antenna. Usually refers to microwave, which requires an unobstructed point-to-point corridor.

Continuous Broadcast or Constant Carrier. A continuously operating transmitter, not a microwave.

Communications Site. An area of National Forest System land designated through the land and resource management planning process. A communications site may be limited to a single communications facility, but most often encompasses more than one. Each site is identified by name; usually a local prominent landmark, such as Bald Mountain Communications Site.

Customer. An individual, business, organization, or agency that is paying a facility owner or tenant for communications services and is not re-selling communication services to others. Private (other use category) and internal (private mobile radio services category) communication uses leasing space in a building and not re-selling communication services to others are considered customers for fee calculation purposes.

Effective Radiated Power. The power supplied to the antenna multiplied by the relative gain of the antenna in a given direction.

Effective Receiver Sensitivity. The signal level required to detect and reproduce usable information from the local electromagnetic environment.

Electromagnetic Compatibility. The ability of telecommunications equipment, subsystems, or system to operate in their intended operational environments without suffering or causing unacceptable degradation because of electromagnetic radiation or response. Refers to coexistence of different types of equipment in the same area.

Facility. A building, tower, and/or other physical improvement that is built, installed, or established to house and support authorized communications uses.

Facility Manager. The holder of a Forest Service communications use authorization who leases space for other communication users. A facility manager does not directly provide communications services to third parties.

Frequency Assignment. The process of authorizing a specific frequency, group of frequencies, or frequency band to be used at a certain location under specific conditions such as band width, power, azimuth, duty cycle, or modulation.

Gain. The increase in effective signal power in transmission under stated conditions. (Note: Power gain is expressed in decibels.)

Harmful Interference. Any transmission, radiation, or induction which specifically degrades, obstructs, or interrupts the services provided by such stations.

High Gain Antenna. An antenna whose effective radiated power in a given direction is greater than the input power.

Microwave. High frequencies commonly between 900 and 30,000 megahertz.

Mobile Station. A two-way radio station designed for operation when in motion or at unspecified points.

Noise. An undesired disturbance within the useful frequency band.

Noise Floor. Existing volume (magnitude) of electronic noise power measured in decibels and referred to as an electronic value (such as milliwatt).

Omnidirectional Antenna. An antenna whose radiation pattern is nondirectional in azimuth (meaning it radiates or receives in 360 degrees).

Point-to-point Radio Communications. Radio communications between two fixed stations.

Polarization (Polarity). Term referring to antenna radiation polarity, which can be horizontal, vertical, or circular.

Radiation Pattern. A graphical representation of power radiation of an antenna, usually shown for the two principal planes, vertical and horizontal.

Receiver Desensitivity. A consequence of undesired reradiated frequency energy entering a receiver. Reduces the ability to receive weaker signals.

Repeater. A device that simultaneously transmits all properly coded input signals received, or in the case of pulses, amplifies, reshapes, retimes, or performs a combination of any of these functions on an input signal for retransmission.

Reradiation. Energy radiated by a galvanic junction in a nonlinear

manner. Sources may include radio equipment, antennas, metallic debris, defective structural components, unterminated antenna cables, or passive repeater.

Tenant. A communications user who rents space in a communications facility and operates communications equipment for the purpose of re-selling communications services to others for profit. Tenants may hold separate authorizations, without subtenancy rights, at the full schedule fee based on the category of use.

Trunking. A system which allows a number of radio channels to be operated as a single system allowing service to multiple users.

Wave Guide. A hollow metallic conduit within which electromagnetic waves may be propagated.

7. *Authorization and Administration.*

(4) *Issuance of Authorizations.* Use the appropriate authorization form to authorize use of National Forest System lands for communications uses by facility owners. Tenants in a facility owner's building are not required to have a separate authorization. If, however, a tenant requests an authorization, authorize tenant use using Form FS–2700–4a, Special-Use Permit for Communications Uses (ch. 50), without tenant occupancy rights, and charge the tenant the full schedule fee for that use (ch 30).

(5) *Fee Calculation.* Calculate fees for communications uses in accordance with the direction in chapter 30. Fees for new sites may be established using a prospectus.

48.11—Broadcast Uses.

48.11a—Television Broadcast. This category includes facilities licensed by the Federal Communications Commission (FCC) that broadcast UHF and VHF audio and video signals for general public reception and the communications equipment directly related to the operation, maintenance, and monitoring of the use.

Users include television stations (major and independent networks) that generate income through commercial advertisement and public television stations whose operations are supported by subscriptions, grants, and donations. Broadcast areas may overlap State boundaries. This category of use relates only to primary transmitters and not to any rebroadcast systems such as translators, transmitting devices such as microwave relays serving broadcast translators, or holders licensed by the FCC as low power television (LPTV).

48.11b—AM and FM Radio Broadcast. This category includes facilities licensed by the Federal Communications Commission (FCC) that broadcast AM and FM audio signals for general public reception and the communications equipment directly related to the operation, maintenance, and monitoring of the use.

Users include radio stations which generate revenues from commercial advertising and public radio stations whose revenues are supported by subscriptions, grants, and donations. Broadcast areas often overlap State boundaries. This category of use relates only to primary transmitters and not to any rebroadcast systems such as translators, microwave relays serving broadcast translators, or holders licensed by the FCC as low power FM radio.

48.11c—Cable Television. This category includes FCC-licensed facilities that transmit video programming to multiple subscribers in a community over a wired or wireless network, and the communications equipment directly related to the operation, maintenance, or monitoring of the use. These systems normally operate as a commercial entity within an authorized franchise area. The category does not include rebroadcast devices, or personal or internal antenna systems such as private systems serving hotels or residences.

48.11d—Broadcast Translator, Low Power Television, and Low Power FM Radio. This category of use consists of FCC-licensed translators, low power television (LPTV), low power FM radio (LPFM), and communications equipment directly related to the operation, maintenance, or monitoring of the use. Microwave facilities used in conjunction with the systems are included in the category. Translators receive a television or FM radio broadcast signal and rebroadcast it on a different channel or frequency for local reception. In some cases the translator relays the signal to another amplifier or translator. Low power television and FM radio stations are broadcast translators that originate programming. This category of use includes translators associated with public telecommunications service.

48.12—Non-Broadcast Uses.

48.12a—Commercial Mobile Radio Service (CMRS) and Facility Manager. This category of use includes FCC-licensed facilities providing mobile radio communications service to individual customers, and the communications equipment directly related to the operation, maintenance, or monitoring of the use. Examples of mobile radio systems in this category are two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment, and internal and private communications uses not sold for a profit (that is, private mobile radio, internal microwave, and so forth). Some holders may not hold FCC licenses or operate communications equipment, but they may lease building, tower, and related facility space as part of their business enterprise and act as facility managers.

48.12b—Cellular Telephone. Cellular telephone includes holders of FCC-licensed systems and related technologies for mobile communications that use a blend of radio and telephone switching technology to provide public switched network services for fixed and mobile users within a geographic area. The system consists of cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, and often microwave communications link equipment, and the communications equipment directly related to the maintenance and monitoring of the use.

48.12c—Private Mobile Radio Service. This use category includes holders of FCC-licensed private mobile radio systems primarily used by a single entity for the purposes of mobile internal communications, and the communications equipment directly related to the operation, maintenance, or monitoring of the use. The communications service is not sold to others and is limited to the user. Services generally include private local radio dispatch, private paging services, and ancillary microwave communications equipment for the control of the mobile facilities.

48.12d—Microwave. This use includes holders of FCC-licensed facilities used for long-line intrastate and interstate public telephone, television, information, and data transmissions, or used by pipeline and power companies, railroads, and land resource management companies in support of the holder's primary business. Also included is communications equipment directly related to the operation, maintenance, or monitoring of the use, such as mobile radio service.

48.12e—Local Exchange Network. This use refers to a radio service which provides basic telephone service, primarily to rural communities.

48.12f—Passive Reflector. Passive reflectors include various types of nonpowered reflector devices used to bend or ricochet electronic signals between active relay stations or between an active relay station and a terminal. A

passive reflector commonly serves a microwave communications system. The reflector requires point-to-point line-of-sight with the connecting relay stations, but does not require electric power. Maintenance is minimal and reflectors seldom require site visits for maintenance or monitoring.

48.13—Other Communications Uses. This category includes holders of FCC-licensed private communications uses such as amateur radio; personal/private receive-only antennas designed for the reception of electronic signals to serve private homes; natural resource and environmental monitoring equipment used by weather stations, seismic stations, and snow measurement courses; and other small, low power devices used to monitor or control remote activities. These facilities are personally owned and not operated for profit.

[FR Doc. 95–26490 Filed 10–26–95; 8:45 am]
BILLING CODE 3410–11–M

Federal Register

Friday
October 27, 1995

Part III

Department of Agriculture

Rural Housing and Community Development Service

Rural Business and Cooperative Development Service

Rural Utilities Service

Consolidated Farm Service Agency

7 CFR Parts 1900, 1910, 1924, et al.

Single Family Rural Housing Loans: Final Rule

DEPARTMENT OF AGRICULTURE

Rural Housing and Community Development Service

Rural Business and Cooperative Development Service

Rural Utilities Service

Consolidated Farm Service Agency

7 CFR Parts 1900, 1910, 1924, 1940, 1944, 1950, 1951, 1955, and 1965

RIN 0575–AB16 and RIN 0575–AA35

Single Family Rural Housing Loans

AGENCIES: Rural Housing and Community Development Service, Rural Business and Cooperative Development Service, Rural Utilities Service, and Consolidated Farm Service Agency; USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing and Community Development Service (RHCDS) is amending the regulations on Single Family Rural Housing Loans. Under the reorganization of the Department of Agriculture, RHCDS is the successor to the former Farmers Home Administration (FmHA) for the administration of rural housing (RH) programs under title V of the Housing Act of 1949. References to RHCDS will also include actions of FmHA prior to the reorganization. Regulations regarding Receiving and Processing Applications, Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts, and Security Servicing for Single Family Rural Housing Loans are also impacted by the proposed revisions. This action is taken to implement the provisions of section 315 of the Housing and Community Development Act of 1987, Pub. L. 100–242, to improve the delivery of the program to the public, provide for the orderly processing of loan applications, reduce workload of RHCDS field staffs, and to conform the RH direct loan program under section 502 of the Housing Act of 1949 with the Guaranteed Rural Housing Loan program and industry standards.

EFFECTIVE DATE: October 27, 1995.

FOR FURTHER INFORMATION CONTACT: Betsy McDaniel, Senior Loan Specialist, Rural Housing and Community Development Service, USDA, Room 5346–S, South Agriculture Building, 14th and Independence SW, Washington, DC 20250, Telephone (202) 720–1486.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been reviewed under Executive Order 12866 and the Office of Management and Budget has determined that this is a ''significant regulatory action.'' The rule provides significant changes which are customer friendly and have reduced the paperwork burden. Additionally, the cost of the program is reduced as a direct result of changing the method of subsidy determination. Size and cost containment restrictions on properties have been removed to allow applicants to chose a dwelling that meets their needs within their repayment ability. The result of this rule serves to limit the rate of subsidy and encourage the applicant to purchase a modestly priced property within their repayment ability.

Regulatory Flexibility Act

This final rule has been reviewed with respect to the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined that this action will not have a significant economic impact on a substantial number of small entities since the regulatory changes affect RHCDS processing of section 502 loans and individual applicant eligibility for the program.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' It is the determination of RHCDS that this action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1949, Pub. L. 91–190, an Environmental Impact Statement is not required.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.410, Low Income Housing Loans.

Intergovernmental Consultation

For the reason set forth in the final rule related notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Civil Justice Reform

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. In accordance with this rule: (1) all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3)pursuant to the Department of Agriculture Reorganization Act of 1994, Public Law 103–354 (October 13, 1994), administrative appeal proceedings must be exhausted before bringing suit in court challenging actions taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control 0575–0059 in accordance with the Paperwork Reduction Act of 1980. The collection requirements have been reduced as a result of reducing the need for Form FmHA 1944–3, Budget and/or Financial Statement for loanmaking decisions relating to the applicant's repayment ability. The Agency is now relying on the use of ratios for determining repayment ability. The total reduction in burden is 247,000 hours, or 19 percent as a direct result of the changes in this rule. These results are in keeping with the National Performance Review goal of reducing burden imposed on the public by Government programs. This final rule does not impose any new information collection or recordkeeping requirement in addition to those approved by OMB.

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize the net benefits to society and minimize costs imposed by those regulations. The Department has utilized comments and suggestions from the public to develop this regulation in accordance with these principles.

Background

Section 534 of the Housing Act of 1949 requires that all rules and regulations issued pursuant to that Act will be effective 30 days from the publication date. The one exception is for a rule or regulation issued on an emergency basis. This action is effective

immediately. The justification for the immediate effectiveness of this regulation is based on the administrative problems and expense to operate the program which will arise if the funding for the Fiscal Year 1996 single family housing loan program is commenced under the old part 1944, subpart A, regulation and shortly after the beginning of the fiscal year a complete and inconsistent revision becomes effective, with the new requirements and new provisions. Secondly, the Agency's budget for Fiscal Year 1996 was submitted in anticipation that the revised regulation would become effective on October 1, 1995. The revised regulation reduces the cost of the program by decreasing the subsidy and therefore makes more money available for additional loans from the appropriated funds to assist low-income families. The most effective way to avoid undue expense of operating the program and inconsistencies is to apply the new rule to all loans made during the new fiscal year. For the same reasons the Agency finds that good cause exists for an immediate effective date under section 553 of the Administrative Procedure Act.

This final rule incorporates two proposed rules and includes issues and comments from both. Both proposed rules are being finalized in this single final rule. The proposed rule published in the Federal Register (60 FR 25629) on May 12, 1995, provided for a 60-day comment period which ended on July 11, 1995. This proposed rule was a complete revision of the entire regulation and incorporates the appropriate changes from the first proposed rule published in the Federal Register (58 FR 507) on January 6, 1993. The Agency wishes to thank all of the commenters who responded to the proposed rules. The comments were helpful in formulating this final rule.

Proposed Rule Published on May 12, 1995

This proposed rule proposed a complete revision to the regulation with major changes in determining the amount of maximum dollar limitation for the property financed, use of ratios to determine repayment ability, changes to the calculation of payment assistance, and revisions to the procedures for loan processing.

Interested persons have been afforded an opportunity to participate in the making of this rule. Due consideration has been given to the 52 comments received. Twenty six comments were from RHCDS or other federal agency personnel. Twenty six comments were received from groups representing various public and private interest groups.

Many respondents issued strong support for the rule and requested that it be published as written. Other respondents were in support of the rule with particular suggested revisions. Several negative comments were received opposing the use of ratios as a replacement for the use of family budgets. Others supported the use of ratios with suggested changes to other percentages. Other negative comments were received regarding payment assistance calculations. These comments were reviewed and adjustments made. Other negative comments were received on restricting the loan amount so as not to exceed 85 percent of the maximum dollar limitation established under section 203(b) of the National Housing Act (12 U.S.C. § 1709). These comments were considered and changes made to allow the maximum amount under this law.

The proposed rule used the term ''monthly obligation to income'' (MOTI) defined as the principal, interest, taxes, insurance, (PITI) and homeowner and other assessments, and long term obligations. This term is generally not consistent with that used in the private sector and in subpart D of part 1980, Guaranteed Rural Housing Program. In order to be consistent, RHCDS has revised the final rule to change the term for this ratio from ''MOTI'' to ''total debt'' (TD).

Other administrative changes were made to the final rule as a result of comments received. RHCDS has defined ''participation loans'' and ''payment assistance'' in the definition section and has changed the term ''disabled person'' to ''person with a disability.''

Eleven comments were in favor of the use of ratios to determine repayment ability in lieu of the use of family budgets. Seven of these respondents felt the provisions of allowing the use of family budgets in unusual circumstances is not reasonable and too inconsistent to administer effectively. RHCDS concurs with these comments and has removed this language and replaced it with language describing compensating factors which may be used for exceptions to ratios. Family budgets may be used when an applicant presents documented evidence of having met housing related costs in the past six months that are equal to or greater than the projected housing costs after approval of the proposed loan. Several respondents felt that an applicant should provide documented evidence of having met housing related costs in the past 12 months. RHCDS has considered this comment and has made the decision not to adopt it at this time because the proposed requirement of six months provides sufficient documentation to demonstrate repayment ability. A family budget may be used in conjunction with the ratios in justifying the need for allowing compensating factors.

Three respondents from high cost areas were concerned about the effect the PITI and TD ratios would have on the amount of loan that can be made and stated it would curtail loan making in the respondents' States. RHCDS has provided for these situations by allowing the use of documented evidence of having met related costs in the past 6 months that are equal to or greater than the projected housing costs after approval of the proposed loan.

Ten respondents contend the changes in this rule are not conducive to participation loans with other lenders, particularly with the change in the way payment assistance is calculated and the use of ratios to determine repayment ability. It was suggested that the ratios for participation loans be increased to 33 percent for principal, interest, taxes and insurance and 38 percent for total debt. RHCDS considered this request and made a determination that a revision to the ratios would be advantageous and justified the revision based on comments from affordable lenders in the industry. The Agency decided to use ratios of 33 percent PITI and 38 percent TD for all loans to low-income applicants (as opposed to very low-income applicants), whether such loans are participation loans or are fully RHCDS funded direct section 502 loans. Because very low-income applicants have less flexibility in covering their basic living expenses, the Agency will use a 29 percent PITI ratio and a 38 percent TD ratio for all RHCDS section 502 direct rural housing loans for very low-income applicants. This will assist very low- and low-income applicants while allowing for a reasonable percentage of income for housing payments. For participation loans the PITI ratio will include the applicant's payments of principal and interest on the participation loan.

Participation loans will be obtained by those low-income families with higher incomes who can better afford a higher PITI ratio of 33 percent. This ratio will give some flexibility to participation loans charging market interest rates. Payment assistance in connection with the RHCDS portion of a participation loan will always be based on the equivalent interest rate matching the applicant's percent of median income. The payment ''floors''

will not be considered because in most cases the applicant will be exceeding the ''floors'' when including the participation loan. The change in ratios has been adopted in the final rule. Applicants receiving a participation loan are not eligible for deferred mortgage assistance.

Payment assistance subsidy is based the greater of either an equivalent interest rate based on the applicant's percentage of median income or on a minimum ''floor'' percentage of the applicant's adjusted income for principal, interest, taxes, and insurance. Other shelter costs such as utilities and maintenance, are not included as part of the calculation of subsidy. The Agency, in revising the regulation to streamline the process and model the regulations after industry practices, decided, like private industry, that other shelter costs are paid by the applicant over and above the PITI and TD expenses.

Twenty comments were received on the calculation of payment assistance and the use of ''floors,'' which are the minimum percentages of adjusted family income for PITI. Ten respondents were completely in favor with the change as proposed. Several respondents had conducted their own studies based on data supplied from various section 502 user organizations in different geographic locations. The other respondents opposing the change used these studies as their basis for opposition. The studies showed that the impact was most severe for those with income between 50.01 and 65 percent of median. These respondents advised the use of step increases for the percentages of adjusted family income at 22, 23, 24, 25, and 26 percent. Their study showed that some applicants/borrowers will pay more than 30 percent for total shelter costs which includes PITI, utilities and maintenance.

RHCDS has considered these comments and has determined there is merit to making a change in the determination of payment assistance for the 50.01 to 65 percent of median income category mentioned in the preceding paragraph. The abrupt jump from 22 to 26 percent of adjusted family income could cause undue hardship to these applicants and borrowers and could possibly result in increased delinquency and foreclosure rates. RHCDS has adopted the use of an additional ''floor'' of 24 percent of adjusted family income for applicants falling above 50 and at or below 65 percent of median income.

Twenty nine comments were received on restricting the loan amount so as not to exceed 85 percent of the maximum dollar limitation established under section 203(b) of the National Housing Act (12 U.S.C. § 1709). The majority of respondents felt 85 percent was too restrictive for their local market and would only provide financing for existing homes in their communities. The respondents were concerned that RHCDS financing could not be provided for new construction based on this cap. Several respondents were concerned that RHCDS would not be providing decent, safe and sanitary housing for eligible applicants as a result of this change. One respondent stated this change would effectively stop the program delivery in the respondents' particular community because there is no existing housing meeting decent, safe, and sanitary requirements falling at or below the prescribed loan maximum. All of these respondents wanted the cap to be set at 100 percent of the maximum dollar limitation established under section 203(b) of the National Housing Act (12 U.S.C. § 1709). Several respondents stated that the maximum dollar limitation established under section 203(b) is defined as modest housing by HUD and the section 502 Guaranteed Rural Housing program and that to limit this amount for the direct program is without reason and unfounded.

The Agency has considered these comments and has made the decision to increase the amount to the full amount of the maximum dollar limitation established under section 203(b). This decision was made because in most cases the limiting factor in the amount of the loan will be the affordability issue based on the percentage of the applicant's income as determined by the ratios. Loan amounts will be limited by the applicant's income and this change should not increase the cost of the program overall. There are provisions for exceptions to this limitation by the Administrator in rare circumstances.

Another respondent was concerned that 85 percent is too high in the respondent's community and will present opportunities for unnecessarily high loan amounts. RHCDS, in making this change, considered this possibility but has determined it will not affect the majority of applicants because of the use of ratios to determine repayment ability. An approved applicant will be presented a ''Certificate of Eligibility'' which states the amount of loan the applicant qualifies for based on current income and debt information. An applicant will be able to select a property that best suits the applicant's needs based on the applicant's resources.

Three respondents were concerned that RHCDS employees will no longer do inspections of existing properties to determine repairs needed to make a house financed structurally sound and functionally adequate. Another respondent was concerned that a third party inspection would cause undue hardship on the buyer and seller to pay. Third party inspections are not required and RHCDS will continue to inspect the property if a third party disinterested party has not done an inspection to determine if there is adequate security for the loan; however, the buyer has always had the right to obtain his or her own inspections to protect the buyer's interests.

We received nine comments from natural gas distributors applauding the elimination of ''prohibited features'' in the existing 7 CFR § 1944.16(e) particularly the prohibition in paragraph (6) ''Central air conditioning systems separate and apart from heat pumps.'' The natural gas industry has felt for a long time that this regulation was biased in the favor of electric space and water heating and has resulted in higher heating costs for consumers.

Two respondents were in favor of including loan packaging fees as an eligible loan purpose; however, they were both concerned with allowing State Directors discretion to determine what is reasonable within their jurisdiction. They continued by stating that in the past some State Directors and housing staffs opposed packaging fees. RHCDS believes the sections 1944.3(a)(17)(ii)(A), (B), and (C) give adequate guidance to allow geographic flexibility. RHCDS has added a sentence to § 1944.3(a)(17)(iii) to prohibit the amount from exceeding the amount prescribed in exhibit B of subpart B of part 1944.

One respondent commented that the RHCDS requirements for lending on manufactured homes are too restrictive and that any HUD approved unit should be accepted. No significant changes were proposed to be made to the existing regulations regarding manufactured housing. The requirements currently are, and have been since the inception of this authority, that the new unit must be built to the Federal Manufactured Home Construction and Safety Standards (FMHCSS) and RHCDS thermal requirements. FMHCSS standards are commonly known as the HUD standards for the construction, design, and performance of a manufactured home which meets the needs of the public including the need for quality, durability, and safety.

Eleven comments were received on the subject of deferred mortgage assistance. Two respondents stated that

the program is unreliable, difficult to interpret and puts the recipient in a worse position at the end of 15 years. They both recommended removing the entire section and eliminating deferred mortgage assistance. The deferred mortgage program provides a means of getting a home for applicants who would not otherwise qualify, however, it is correct that in many cases the borrower will owe a great deal on the property when it is sold due to interest credit recapture. This results from the tremendous reduction in interest received while making deferred payments. While RHCDS admits this assistance is potentially burdensome, there is a need for this type of assistance for very low-income applicants. At this time the section will not be eliminated.

Several respondents were concerned with the wording which allows deferred mortgage assistance to continue to a qualified borrower provided it is renewed without interruption. The intent of section 502(g) of the Housing Act of 1949 is to make this assistance available to qualified applicants at loan closing. RHCDS has determined that deferred mortgage assistance can be continued uninterrupted for up to 15 years. The purpose of deferred mortgage assistance is for very low-income applicants to obtain a loan initially. There are other servicing options available to borrowers whose deferred mortgage assistance has expired or whose income made them no longer eligible.

Two comments were received on the calculation of annual income. One respondent agreed with the use of historical data based on the previous 12 months or the last fiscal year when a projection could not logically be made. This decision by RHCDS is consistent with the private lending community.

Another respondent was concerned in § 1944.5(b) that persons seeking, but unable to find employment would have to use projected income from former employment. The intent of this paragraph is to prevent excluding income from employers that historically lay off seasonal employees and then rehire them at a later date. Annual family income should include projected income from this type of situation if the applicant or coapplicant has a recent history of this type of employment. An example of this would be a factory that seasonally shuts down production and lays employees off. These employees are later rehired to continue in the same job. If there is recent history of an applicant's employment at this factory, then this income should be included based on historical information unless the applicant provides a statement that the person does not intend to resume employment in the foreseeable future or during the terms of the payment assistance agreement.

Two comments were received regarding credit history review, specifically related to collection accounts. The first respondent felt § 1944.9(f)(1)(ix) was too liberal in allowing an applicant to have collection accounts which were paid in full within 3 months prior to application. The respondent stated the limit should be increased to at least 6 months. RHCDS has considered this comment and has made the determination that the regulation as proposed provides a sufficient time period for satisfying unresolved collection accounts.

The second respondent agreed with the changes made to § 1944.9 to make credit history requirements more reasonable; however, the respondent wanted clarification on § 1944.9(f)(1)(viii). Upon review by RHCDS, it was noted that under certain circumstances this section and the following section seemed to be incompatible. A decision was made to eliminate this sentence entirely and renumber the paragraphs of this section. Another respondent wanted clarification on when bankruptcy will not indicate unacceptable credit history. The Agency considered this and adopted the respondent's proposed language in § 1944.9(f)(2)(ii). Another respondent wanted clarification on § 1944.9(f)(2)(iii) regarding the timeframe for satisfied judgments. Clarification was made in this section that a judgment satisfied more than 12 months before the date of application would not be considered unacceptable credit history.

One respondent commented that if RHCDS intends to emulate the private industry then § 1944.8(a)(2) should be changed to require an applicant to be employed at one place of employment for at least 12 months prior to submitting the application. RHCDS does not require income to be obtained only from employment. Additionally, commercial residential mortgage lenders do not require 12 month employment history with one employer prior to application. Each case must be evaluated to determine if the situation was beyond the applicant's control or if the change in employment was to better the applicant's situation. Also, an applicant who did not have any break in employment and paid all bills when due demonstrates an adequate, dependable income.

Two comments were received regarding the use of section 502 funds to refinance existing mortgages for applicants. These comments fully supported the removal of the provision that a debt has to be delinquent to be eligible for refinancing.

One respondent commented that the wording in § 1944.17(a)(2) was confusing and could be misconstrued in relation to participation loans. It was suggested that the wording be changed to clarify the maximum loan amount when there is a senior loan. The Agency has considered this suggestion but has determined that the wording provides the necessary language to convey the maximum loan amount when there is a lien in a senior position to the RHCDS debt.

Two respondents commented that to change the language in the application processing section to ''rejected'' in § 1944.27(d)(2) is not customer-friendly. The use of the word ''withdrawn'' was suggested as an alternative. The Agency has considered this change and has adopted it in the final rule. A similar suggestion was made in § 1944.27(f) to change the wording from ''the borrower/applicant will submit to a personal interview with RHCDS'' to ''RHCDS will conduct a personal interview with an applicant.'' This suggested language was incorporated in the final rule.

Comments were received regarding net family assets. A respondent commented on the statement in the preamble of the proposed rule where the Agency allowed that the provision of a net family asset limit for receiving payment assistance is removed. The respondent commented that the Agency still defines net family assets. The Agency will continue to include as income either the actual derived income from all family assets or a percentage of the value of such assets based on the current passbook savings rate. Another respondent wanted more examples on inclusions to net family assets. The Agency considered this and determined that the broad description already defining net family assets is the most appropriate method of description for interpretation on a nationwide basis.

In the preamble to the proposed rule the Agency requested comments on the idea of implementing a 20-year balloon payment using the 33 or 38 year amortization period. This concept was not included as part of the proposed rule other than in the preamble. Of the nine comments received, the comments were evenly split between support and opposition to this proposal. RHCDS has chosen not to implement the 20-year balloon payment provision at this time.

Three comments were received regarding rates and terms as written in the proposed rule. Two respondents were concerned about the provision

where RHCDS will charge the lower of the two interest rates in effect at the time of loan approval or loan closing. The comments were concerned that lenders should have the ability to lock into a rate when they have a commitment from a secondary lender. The final rule has not been changed as this process is only for the RHCDS loan. A participation lender will treat their portion of the loan the same as any other loan they would be making. The other respondent wanted a provision added for a 15-year term for loans of $7,500 or less to be written with a best mortgage obtainable. The Agency considered this request and has elected not to adopt this suggestion at this time so as to better protect the Government's interest.

Seven comments were received regarding the use of HUD Handbook 4905–1 for repairs to existing properties. All respondents were opposed to using this handbook as it is rarely used by HUD anymore and establishes yet another guideline which is adequately covered in existing instructions. The Agency considered these comments and made the decision to remove the use of this handbook and replace it with a reference to subpart A of part 1924.

A comment was received regarding the definition of household or family concerning the language ''* * * all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months * * *'' It was suggested that the wording be changed to prevent the possibility of the borrower renting out a portion of the site for the placement of a mobile home or other dwelling on the property. The wording has been changed to clarify that the income from the entire property financed with a section 502 loan will be included in the income eligibility determination.

Six comments were received on site requirements. Several respondents commented that the paragraph under minimum adequate site, § 1944.11(c), would be more comprehensible if the sentences were reversed. The Agency considered this request and made the suggested change to the paragraph. Also changes were made to be consistent with the Agency's recent change to its regulation in subpart C of part 1924 of title 7. One respondent was concerned with the Agency's new description of minimum adequate site. The Agency determined this description would reduce the administrative burden on its field offices in requesting waivers for properties that exceed 1 acre. This criteria for a minimum adequate site also lessens the ability of local government to use zoning requirements for lot size to deter agency financed single family housing.

The Agency received a number of comments regarding the unavailability of exhibit J in the published regulation regarding income exempted by Federal statute. This exhibit merely restates and summarizes Federal law and will not be published in the final rule; however, it is available in any Rural Economic and Community Development (RECD) field office. This is income which applicable Federal law provides cannot be used to determine eligibility for the loan or eligibility for payment assistance.

There were eight comments on rural area determinations. Most of the respondents were in favor of the more frequent reviews allowed by the revision to this section. Several respondents stated that RHCDS assistance should not be available in communities with populations between 10,000 and 20,000 and objected to the term ''buffer'' zone. The Agency has determined this type of provision is advisable to avoid untenable situations where a loan would be made on one side of a street and not on the other. Another respondent stated that in the respondent's particular county one town is ineligible due to population while another town is eligible but has Class I soils where subdivisions are being developed. Pursuant to title V of the Housing Act of 1949, the rural area eligibility is based on population and is unrelated to soil type.

Two respondents supported public notification when an area is being changed from rural to nonrural. Further, these respondents had concerns regarding applications and conditional commitments already submitted for financing in these redesignated areas in the community. The Agency has allowed provisions for continuing with applications in areas converted from rural to nonrural that were on hand prior to the redesignation, new and existing conditional commitments received prior to the redesignation, inventory properties, and subsequent loans.

One respondent wanted a provision for loans to be made for the purchase of a dwelling located on land owned by a community land trust. The Agency is complying with the law and has added provisions in § 1944.15(a)(4) and § 1944.42 giving guidance on this subject.

One respondent wanted approval for planned unit developments and homeowners associations to be at the State Director level. This was the intent of the proposed rule and only if there is professional management employed will it be necessary to receive National Office approval. The wording was changed in § 1944.3(b)(16) to clarify this requirement.

One respondent was concerned that Agency personnel under § 1944.18(b)(2) and (3) would require mortgage insurance as security on American Indian land. The Agency has stated this as an example but clearly implies this is not the only form of security which will be accepted. No change was made to this paragraph.

One respondent stated that an appraisal fee should be waived when RHCDS uses another lender's appraisal in conjunction with a section 502 participation loan. The Agency has made the decision that it will lend up to $280 over the market value which includes funding for the appraisal fee. The money may be used at settlement to reimburse the applicant for the appraisal done by the participation lender for which the applicant previously paid.

One respondent commented that the definition of real estate taxes, which provides for reducing the amount due by any tax exemption available to the applicant, as too cumbersome in multi-county field offices. The respondent stated that the applicant should be counseled regarding the availability of tax exemptions. The Agency concurs that counseling the applicant is a part of the application process but does not agree that the exemption should only be used if the applicant has claimed it. It is the RECD field office's responsibility to know what tax exemptions are available in order to counsel applicants.

We received three comments regarding income from minors and students. The Department of Housing and Urban Development (HUD) recently changed its income eligibility restrictions. The Agency has made the final rule consistent with the HUD final rule which includes that income over $480 from a full-time student is not included. Additionally, the Agency has added § 1944.5(f) to designate income which will not be included in annual income nor will it be considered in determining repayment ability. These are: income from live-in aides, income from minors, and income for educational scholarships.

One respondent discussed § 1944.8(a)(3)(i) using 5 percent of the current balance on all revolving credit cards and suggested that the minimum payment on all credit cards with activity in the past 3 months be used. The Agency considered this comment and has decided to not change this requirement at this time. Five percent of the current balance is usually more than the minimum payment due and

provides some means for paying off the credit card debt. However, the Agency does not want to use debt which is historical and not currently owed to determine the total debt ratio as this is not an equitable arrangement for the applicant.

One comment was received regarding alien status under § 1944.9(c) and recent changes made by the Immigration and Naturalization Service (INS). It is the Agency's policy that loans will only be made to United States citizens and those categories of non-citizens covered in Section 501(b) of the Housing Act of 1949.

Four comments were received regarding when repairs are to be done to existing houses. The proposed rule stated repairs must be done after loan closing. The Agency considered the comments received and has made a change to allow the buyer and the seller agree among themselves to work out when and by whom the repairs will be done, and provide documentation to that effect to the RECD field office. All parties concerned must understand that prior to obligation of funds, there is a risk in putting money into the property in case funding is not available at a later date.

Five comments were received regarding the provision that the date of loan closing is the date the mortgage is recorded rather than the date the note and mortgage are signed. The actual date of closing is the date the mortgage is recorded and not the date the note and mortgage are signed.

Several comments were received related to loan purposes (§ 1944.3). One respondent questioned the need for allowing housing to be occupied by a farm manager, tenants, sharecroppers, or farm laborers and the apparent redundancy with the Agency's Farm Labor Housing regulations. The Agency has made the determination to maintain this provision under loan purposes in the section 502 program.

Several comments were received including lender's fees in connection with participation loans. Respondents recommended that the wording be changed to be consistent with that used in subpart D of part 1980. The Agency considered this recommendations and has adopted the same language as in subpart D of part 1980.

A respondent remarked that a paragraph was removed from the loan restrictions section regarding an applicant having the ability to carry out the required obligations of the loan, and maintaining a former residence in a responsible manner. This paragraph was not deleted but was moved to § 1944.9(h).

Nine comments were received regarding participation loans. The general consensus was the proposed rule was silent to any provision other than lender fees. The respondents remarked that for this program to be successful provisions would have to be made to fund these loans as a priority. The final rule has incorporated funding priority for participation loans.

Several comments were received regarding mutual self-help housing. Two respondents commented that the language in § 1944.38 indicates only low-income applicants may build their homes by this method. The words low-income have been removed as this was not the intent; the program is available to both very low- and low-income applicants. Several respondents supported the addition of personal liability insurance for self-help borrowers as an eligible loan purpose.

Two comments were received regarding conditional commitments. One respondent stated the subtitle to § 1944.45(d) was misleading and did not convey the proper message for cases where the property is presold to an applicant and the seller is submitting the package. The Agency considered this comment and agreed that the wording was misleading. The wording has been changed for clarification. Another respondent questioned the reimbursement of the appraisal fee at loan closing. The applicant will be charged for the appraisal and since this amount is included in the conditional commitment contractor's fee, the contractor should logically be reimbursed for the appraisal.

One respondent commented that requirements for graduating borrowers had been removed and should be included in the regulation as required by subpart F of part 1951. The Agency considered this comment and has included a paragraph on graduation requirements in § 1944.44.

Three respondents commented on the use of HUD's Credit Alert Interactive Voice Response System (CAIVRS). They were all in agreement that an application should be held in suspense rather than rejected upon identification by CAIVRS of a delinquent Federal debt. The Agency agrees applicants will have to contact the Federal agency in question to resolve the delinquency and during this time the application will be held in suspense.

One commenter disagreed with the proposal to change subpart J of part 1944, paragraph 1944.457 (a)(2), which increases the section 504 grant limit from $5,000 to $7,500. The commenter stated that very often an individual applicant would be able to use $7,500 to remove health and safety hazards, and this will cause the grant funds per grantee to increase. The commenter was concerned that unless there is going to be additional funding the Agency will not be able to assist as many families with this program. The Agency does not propose to change this revision because of this comment. The commenter's statement is correct, and the Agency has already considered this downside. The Agency believes this change is justified because inflation has increased more than the additional $2,500 since the $5,000 limit was established. There are more cases each year where $5,000 will not remove all the health and safety hazards.

One commenter agreed with the changes proposed in subpart J of part 1944, § 1944.461. However, the commenter suggested that the wording in (b) and (c) of that section, ''loans of $2,500 or more'' be changed to ''loans that exceed $2,500'' to be consistent with section 502 regulations. The commenter also suggested that paragraph (b)(1) of that section be changed to clarify that subsequent section 504 loans are secured by a mortgage only when the subsequent and existing section 504 loan balance will exceed $2,500.

The Agency cannot change this wording to ''loans that exceed $2,500'' as section 504(a) of the Housing Act of 1949 exempts only loans for ''less than $2,500'' from security requirements. We considered changing the section 502 regulation; however, that wording is simpler and would cause even more confusion than just leaving it alone. However, we do agree with the spirit of the last part of the commenter's suggestion and are changing the wording in paragraph (b)(1) to clarify that a mortgage will be taken when the subsequent and existing section 504 loan balance will be $2,500 or more.

One commenter agreed with the changes proposed in subpart J of part 1944, § 1944.463. However, the commenter suggested that changes be made in paragraphs (d) and (e) of that section to clarify that appraisals and title clearance are only required when the total section 504 indebtedness exceeds $7,500. The Agency agrees with the commenter and the changes are being made in paragraphs (d) and (e) to clarify that total section 504 indebtedness is all that is considered.

Three comments were received regarding the proposed changes to subpart G of part 1951. One comment objected to the provision stated in § 1951.313(e)(2)(ii) whereby payment assistance would not be renewed if the borrower's income exceeded the

moderate income limit for the area. The wording has been deleted from the final rule. Another respondent was concerned that the reorganization of offices would hinder the ability of RHCDS staff to hold personal interviews with borrowers to renew payment assistance. The Agency is aware of the reduction in staff in many areas of the country; however, this provision is being left in the final rule. Payment assistance renewals may be contracted out and the contractor will perform the direct borrower interview; although the ultimate decision on the continuation of and amount of payment assistance will remain with the Agency.

Sixteen comments were received on differing aspects of the provisions governing the calculation of applicant income. One respondent referred to the definition of live-in aides under section 1944.2(4) and requested that it be expanded. The commenter notes that, in many cases, live-in aides are actually household members who have gotten a divorce from their spouse in order to receive the financial resources needed to provide him or her essential care services. Under the regulations as currently written and present definition of terms, the former spouse's/live-in aide's income would not be counted as household annual income. The respondent feels that live-in aide's income should be considered in determining an applicant's annual income even if the aide is an ex-spouse providing essential care services. RHCDS does not concur with this recommended revision. While the respondent's observations may have merit, RHCDS is unable to make revisions to the provisions governing the definition of live-in aide and the exclusion of live-in aide's income from consideration. RHCDS is required under section 501(b)(5) of the Housing Act of 1949 to use the income guidelines and formulae established by HUD and the provisions in question were adopted in response to recent revisions to HUD's income guidelines and formulae. Another respondent referred to section 1944.5(d)(2)(v) and suggested that RHCDS should cite the specific Internal Revenue Service (IRS) publication related to allowable business expenses deductions. RHCDS does not concur with this recommendation. IRS publications may change on a periodic basis due to revisions to taxation legislation and/or regulatory revisions initiated by that Agency and, therefore, it would be inappropriate for RHCDS to cite any particular publication, as this information could easily become invalidated in the future. Information about IRS publications can easily be obtained from the IRS if needed.

One commenter requested clarification of section 1944.5(e)(1), which states that payments received for the care of foster children or foster adults will not be included in annual income but will be considered in determining repayment ability, in cases where foster care payments may be the sole source of household income. This respondent also considers foster care payments analogous to welfare payments and feels that it is not equitable for one form of assistance to be considered income while the other is not. Whether or not the respondent's observations have merit, they are immaterial since RHCDS is unable to make revisions to the provisions governing foster care income. RHCDS is required to use the income guidelines and formulae established by (HUD) and the provisions in question were adopted in response to recent revisions to HUD's income guidelines and formulae.

One comment was received recommending that RHCDS provided a deduction from annual income for child support payments. Agency regulations include periodic allowances such as child support payments received in an applicant's household as a part of the applicant's gross annual income. However, child support payments are considered a financial obligation and, therefore, RHCDS does not concur that payment of child support by an applicant or other adult household member to a former spouse should be included in the Agency's guidelines as a deductible item in determining annual adjusted income. Child support payments made to an outside household are considered analogous to debts from bills or other miscellaneous expenses.

Six comments were received expressing concern about the provisions under § 1944.5(e)(2), which states that the income of an applicant's spouse who has been living separately from that applicant, or spousal income when court proceedings for a divorce or legal separation have been commenced, will not be included in annual income but will be considered in determining repayment ability. Four of these respondents recommended that the term ''living apart'' be removed from this provision, and the other commenters recommended that a minimum separation time be included to provide greater guidance in those cases where applicants and their spouses are apart or that the section be otherwise clarified. RHCDS does not concur with these recommendations. RHCDS must be a prudent lender, but, as a part of its supervisory credit mission and the Department's goal to be customer friendly, the Agency must have the flexibility to accommodate adverse situations that its applicants may face. The Agency believes that these provisions are reasonable and that they will not present an undue burden to loan approval officials who are processing applications.

Two comments were received regarding the provisions under sections 1944.5(e)(6) and 1944.6(d)(1), which deal with the consideration of medical expenses. One of these respondents noted that the language under § 1944.6(d)(1), stating that amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses will not be included in annual income could be construed to include insurance premiums paid by the employer, and recommended clarification of this provision. RHCDS is unable to concur with this recommended revision. While the respondent's observations may have merit, the provision in question was adopted in response to recent revisions to HUD's income guidelines and formulae. The second commenter questioned why the medical expenses deduction is open only to elderly families, expressed concern that this may constitute discrimination, and recommended that the medical expenses deduction be open to all applicants. Again, while the respondent's observations may have merit, RHCDS is unable to make revisions to the provisions governing the definition of an elderly family or the provisions that limit the medical expenses deduction only to elderly families. RHCDS is required to use the income guidelines and formulae established by HUD and the provisions in question were adopted in response to recent revisions to HUD's income guidelines and formulae.

Four comments were received regarding the various provisions governing the consideration of loan co-signers. Two of these respondents recommended that RHCDS revise § 1944.8(c) so that co-signers will be required to meet the same creditworthiness requirements as applicants. The third respondent recommended that an applicant's principal, interest, taxes and insurance (PITI) be used in determining the co-signer's monthly obligations to income (MOTI) ratio. The fourth commenter recommended that entities be allowed to serve as loan co-signers as well as individuals. RHCDS has carefully considered all of these suggestions and concurs with the commenters' recommendations. Section 1944.8(c) has

been revised to incorporate these comments.

Three comments were received regarding differing aspects of the provisions under § 1944.9(f), which deal with the evaluation of applicant credit history, and the respondents generally favored the revisions to this section. However, one comment was received objecting to § 1944.9(f)(4)(ii), which requires RHCDS personnel, in cases where an applicant disputes credit information received from an on-line profile credit report made at the time of application, to determine if the applicant has subsequently provided conclusive proof that the report is in error. The commenter feels that errors could occur in interpreting creditor correspondence or court documents and the like which applicants submit to disprove the on-line report, and that misinterpretations of this type of information could lead to erroneous conclusions on RHCDS' part. The respondent recommends that the applicant be responsible for ensuring the veracity of materials used to invalidate information contained in the on-line report. RHCDS does not concur with this recommendation. The Agency recognizes that the information contained in such profile reports may not be complete or accurate. The use of profile reports is intended as an initial tool to assist applicants, who are in the preliminary stages of the consideration process, in removing any potential problems that could adversely affect them during the later stages of consideration, so that their chances of obtaining RHCDS credit are enhanced. A standard mortgage credit report must be requested at a later stage in the consideration process, and, therefore, we believe that it is appropriate for the loan approval official to use good judgment in reviewing materials submitted by the applicant to dispute erroneous profile report information.

One comment was received suggesting that RHCDS expand § 1944.9(f)(2)(ii), which outlines the circumstances under which a bankruptcy will not be considered an indication of an unacceptable credit history, to include specific information on the Chapter 7 and Chapter 13 bankruptcy processes. RHCDS concurs with this recommendation and has incorporated the respondent's proposed language in the final rule.

One comment was received objecting to the provisions contained under § 1944.9(g), which outline the circumstances under which an applicant may be considered for additional credit if the applicant had a previous RHCDS debt which was settled, if the applicant was released from personal liability for the debt, or if the applicant is currently under consideration for debt settlement. The respondent feels that any applicant who is being considered for debt settlement under subpart B of part 1956 or was granted a debt settlement under this subpart should be ineligible for further assistance from RHCDS. RHCDS does not concur with this recommendation. The language under this section both clearly delineates and limits the circumstances under which an applicant who has not been successful with a present or previous RHCDS debt may be considered for additional credit. In such cases, the applicant must clearly demonstrate that the applicant's failure to meet the loan obligation was due to circumstances beyond the applicant's control and that the underlying reasons which created those circumstances will not reoccur. This is consistent with RHCDS' mission of assisting those individuals and families who have been denied economic advancement and who are unable to obtain conventional credit.

Thirteen comments were received on differing aspects of the provisions governing the processing of applications. One respondent referred to § 1944.27(a)(1) specifically with respect to Form FmHA 410–4, ''Application for Rural Housing Assistance (Nonfarm Tract) Uniform Residential Loan Application'' (URLA), and recommended that the URLA be completely revised for a number of reasons. While the commenter's suggestions may have merit, the URLA itself was not a part of the proposed rule and, therefore, it is not under consideration for revision as a part of the final rule process at this time. However, we will keep the respondent's comments on file should the URLA become subject to review in the future.

Two comments were received recommending that §§ 1944.27(b)(2) and 1944.27(d)(1) be revised to indicate that a processing priority will be provided to applicants who are leveraging RHCDS funds with other resources and, accordingly, that § 1944.26 be revised to include a set-aside reserve for leveraging purposes. RHCDS concurs with these respondents' recommendations and has adopted them in the final rule.

One comment was received recommending minor, grammatical improvements to § 1944.27(b)(4) and (b)(5). RHCDS has revised this section for greater clarity.

Two comments were received recommending that RHCDS conduct an application ''open season,'' whereby public notice would be issued advertising a specific timeframe in which applications would be accepted in RECD field offices for processing within any given fiscal year. These respondents felt that, in light of the reduced allocations for the program, an open season would facilitate application processing and assist in the reduction of application backlogs. RHCDS is unable to concur with this recommendation. A revision to the program of this nature which would permit rejection of applications made outside of specific dates would not be consistent with the mission of giving very low- and low-income applicants an opportunity for home ownership which is not provided through any other means.

Seven comments were received objecting to the provisions contained under § 1944.27(c)(1)(ii), regarding the requirement that where there are more than 50 unprocessed applications on hand, the RHCDS loan approval official will inform each applicant, at least every 6 months, of the current funding status and provide an estimate of when the loan is to be processed, and these respondents generally felt that this requirement would be unduly burdensome on field office personnel. RHCDS does not concur with the recommendation that this provision be removed. In order to provide the best possible service to RHCDS customers, RHCDS personnel have a responsibility to keep applicants informed of the status of their application and the potential availability of funds. Since the notification process occurs only on a biannual basis, RHCDS does not agree that it would be an undue burden for its field offices to prepare and circulate such routine correspondence with its applicants. One comment was received requesting further clarification of § 1944.27(c)(1)(ii) regarding the number of biannual notices to be provided to applicants, and whether applicants have the right to request an appeal if they should fail to respond to the biannual notice regarding their continued interest in participating in the program. This section clearly states that notification will be provided at least every 6 months to each applicant whose application has not been processed when there are more than 50 unprocessed applications on hand. Thus, as long as the number of unprocessed applications exceeds 50, there would be no limit on the number of biannual notices that could potentially be provided. The failure of an applicant to respond will be considered withdrawal of the application by the applicant.

One comment was received recommending that RHCDS add language to § 1944.27(c) to require the screening of all applicants for eligibility

under the Guaranteed Rural Housing (GRH) loan program, and that any applicant found eligible under the GRH program would be disqualified for a direct loan with payment assistance. RHCDS does not concur with this recommendation. Under the procedure, assessing an applicant's ability to obtain other credit is required during the applicant interview, which is conducted after all information needed to make a determination of eligibility has been obtained. Therefore, RHCDS does not feel that further additions to § 1944.27(c) are needed at this time.

One comment was received objecting to the provisions under § 1944.27(e)(1)(v) which require applicants to provide a copy of the divorce decree or other legal document in order for RHCDS to verify the amount of alimony or child support payments, and the respondent noted that this information should not be solicited by RHCDS because this action would constitute discrimination against divorced persons. In order to provide financial assistance only to applicants who need it and in the amounts needed, RHCDS is required under law to verify applicant income, including alimony or child support payments, to determine the applicant's and eligibility for program assistance, and, therefore, requesting a copy of a divorce decree or other legal document is not considered a discriminatory act, provided the request is solely for the purpose of verifying income. Loan approval officials cannot require this information from all applicants who are divorced; it may be required only when it is necessary to verify alimony or child support payments received. Loan approval officials should consider obtaining other means of verification, such as checks, etc., when it is feasible to do so.

One comment was received recommending that, prior to filing an application, direct loan applicants should be required to take a ''Homebuyers' Education'' course, similar to provisions included under subpart 1980–D as a part of the GRH program. While RHCDS agrees that this type of course is beneficial to potential homeowners, and, in fact, is requiring homebuyers' education in association with the direct loan program as a pilot initiative in a small number of states, we are unable to require such a measure at this time on a nationwide basis due to budgetary constraints. We encourage RHCDS loan approval officials to counsel their applicants on the homebuyers' education programs available to them within their communities.

One comment was received suggesting that § 1944.27(f)(1) be revised to include partial participation loans when discussing other credit options with applicants during the applicant interview. RHCDS does not concur with this recommendation; however, it is expected that loan approval officials in states with active partial participation loan programs will routinely discuss participation options with applicants.

Two comments were received regarding § 1944.27(b)(5) regarding the use of an on-line profile credit report as one of the steps to process applications. Both commenters felt that the use of on-line profile credit reports have merit, but that RHCDS loan approval officials should be provided with the latitude to make an eligibility determination on the basis of the information contained in the profile report if it contains adverse information. RHCDS does not concur with this recommendation. The information contained in the profile report may not be complete or accurate and, therefore, it would be inappropriate and premature for the loan approval official to proceed with an eligibility determination on the basis of such a report. The use of profile reports is intended as a tool to assist applicants, who are in the preliminary stages of the consideration process, in removing any potential problems that could adversely affect them during the latter stages of consideration so that their chances of obtaining RHCDS credit are enhanced.

Seven comments were in favor of the requirement that all applicants will be required to submit a complete, legible copy of their most recently filed Federal income tax return to verify income. Three of these respondents felt that the provision requiring returns to be stored in a secure place separate from the loan docket to prevent any wrongful release of the tax return information is a cumbersome and inconvenient requirement, with one of the commenters who objected to this provision noting that RHCDS' files are already protected under the Privacy Act of 1974 and, thus, are secure and not made available to the public. RHCDS does not concur with the comments that the separate storage of tax return information is unnecessary.

Two of the respondents requested clarification of this provision, questioning who would be responsible for the separate maintenance of the returns and, further, noting that RHCDS already controls its applicant files and restricts access to those files. In order to assure the confidentiality of this information the Agency has determined that it is necessary for field offices to store tax return information separately in a locked storage facility as a result of Internal Revenue Service procedures governing taxpayer information.

One respondent recommended that RHCDS revise this provision and include language to require applicants to submit a copy of their most recent W–2 Form in addition to their return. RHCDS does not concur with this recommendation. W–2 Forms do not necessarily contain all information concerning an applicant's income. For example, certain types of business income not derived through the applicant's employer will not be revealed on the W–2 Form. For this reason, RHCDS believes that the applicant's tax returns are a more reliable tool for RHCDS' purposes and that they are a better source of comprehensive income information.

Another respondent recommended that RHCDS revise § 1944.27(a)(1) to indicate that a completed application will consist of Form FmHA 410–4, ''Application for Rural Housing Assistance (Nonfarm Tract) Uniform Residential Loan application'' (hereinafter called URLA) properly filled out, dated, and signed; an RHCDS form for verifying employment signed by the applicant or household member for each employer, all of which are available in any RECD field office; *and* a complete, legible copy of the applicant's most recently filed income tax return. The commenter suggests that this change would be consistent with the language included under § 1944.27(e) and industry standards. RHCDS does not concur with this suggestion. RHCDS does not believe that an applicant's tax return should be required to constitute a completed application because a tax return is not necessary in order to make a preliminary determination of eligibility for assistance. The tax return is intended to be used during the application processing phase as a means of verifying applicant income.

Five comments were received on the provisions contained in the proposed rule governing the issuance of a certificate of eligibility to applicants. Two of the respondents were in favor of the certificate, but felt that it should be issued to all eligible applicants and that applicants who submit packaged applications which already contain information necessary to complete a real estate appraisal should not be excluded from receipt of such a certificate. RHCDS does not concur with this recommendation. The certificate of eligibility provides an applicant who has not submitted a contract for a house, information that is necessary to

complete an appraisal and the amount of loan the applicant can afford based on current income and ratios. It is expected that packagers participating in the program who are responsible for assisting applicants in preparing applications in connection with the sale of a specific house will be well familiar with the program and will advise their clients of the eligibility requirements of an RHCDS loan, as well as the maximum loan amount that the applicants will be able to afford. Applicants who submit packaged applications in connection with the information necessary to complete a real estate appraisal will be provided written notice of their eligibility by the loan approval official rather than the certificate of eligibility.

Two respondents were opposed to the certificate and felt that it would be a cumbersome process that would remove processing flexibility from RHCDS personnel. These commenters recommended that this provision be removed. RHCDS does not concur with this recommendation. RHCDS believes that the certificate of eligibility is a better method of providing applicants with information concerning their loan repayment and affordability limits. The certificate is designed to provide information tailored to each individual applicant.

One respondent expressed concern over the certificate of eligibility in terms of the provisions that allow a maximum of two 60-day extensions to applicants if they are unable to provide the information needed to complete a real estate appraisal within 90 days, but satisfactorily demonstrate to RHCDS that they are actively working on compiling the information requested. The commenter recommended that the provisions authoring extensions be removed. RHCDS does not concur with this request. The Agency's requirements governing the suitability of dwellings to be financed under the program have been substantially revised to provide applicants greater flexibility in locating appropriate housing. Because RHCDS' property requirements are more relaxed under the new guidelines, extensions to prolong the viability of certificates of eligibility should not be necessary on a frequent basis, and we expect that loan approval officials will exercise this authority only under very limited circumstances.

Proposed Rule Published on January 6, 1993

Twelve comments were received from a variety of sources on this proposed rule, including six RHCDS employees. This rule proposed changes to eligibility restrictions, determination of annual income and payment assistance, and loan processing and servicing procedures.

The following changes were made in the final rule due to the comments received: (1) Earned income tax credits will be excluded in the determination of annual income; (2) income exempted by Federal statutes cannot be used to withhold an applicant's eligibility for assistance; (3) Income exclusion for Nazi victims has been included in this final rule; (4) The requirement that RHCDS post the selected Rural Housing applicants' names has been eliminated; (5) RHCDS's applicants are to submit Federal income tax returns as part of a completed loan application; and (6) revisions to the payment assistance regulation have been made.

All comments submitted with respect to this proposed rule were given due consideration and are discussed further in the following paragraphs:

One commenter indicated that the definition of income in § 1944.5(f)(3) needs to be revised in accordance with section 479B of the Higher Education Technical Amendments of 1987, Public Law 100–50, Act, as well as the changes required in Section 103 of the Housing and Community Development Act of 1992, Public Law 102–550. RHCDS agrees with this and has adopted the changes as final rule. This policy is consistent with current HUD regulations.

Regarding § 1944.5(e)(8) on earned income tax credit, section 11111(b) of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508, provided that the earned income tax credit may not be treated as income for purposes of title V of the Housing Act of 1949. One comment was received from an RHCDS employee. The employee supported the elimination of Earned Income Tax Credit as income because it caused the field offices to estimate earned income. This section excludes treating any earned income tax credit as income and is being adopted as a final rule.

Referencing § 1944.5(e)(7) on income exclusion for Nazi victims, Public Law 103–286, August 1, 1994, provided that payments made to individuals because of their status as victims of Nazi persecution must be disregarded in determining eligibility for and the amount of benefits under any federally assisted program which provides benefits or services based, in whole or in part, on need. We are therefore, adopting and including this exclusion in the final rule.

Of the three comments received regarding removing the posting of selected applicants' names on RECD field office bulletin boards, the majority of commenters supported the provision as proposed. One commenter stated loan officers can simply refer applicants to real estate brokers and contractors when the applicants are informed of their selection for processing. Two commenters supported the proposal, but expressed concern about the unavailability of services. They felt that the instruction should be revised to provide notice to the public that applicants, or their representative, upon request, may obtain a list of such applicants, including date of application and priority listed. Under the Freedom of Information Act (FOIA) as interpreted in *United States Department of Justice* v. *Reporters Committee for Freedom of the Press*, 489 U.S. 749 (1989), RHCDS applicants have a right to privacy and publication of names of related RHCDS selected applicants who must have low- or very low- income violates this right.

The payment assistance regulation under § 1944.34 is being updated and discrepancies with previously published regulations are removed in the final rule. Revisions to the payment assistance regulation are made to: (1) Provide a method for the verification of income from sources other than employment to make verification of miscellaneous income easier for the RHCDS personnel; (2) allow existing borrowers whose incomes have risen above the Department of Housing and Urban Development's yearly published low income levels to continue to receive payment assistance; (3) revise the effective period of the payment assistance agreement in situations where the borrower is unemployed; (4) ensure that the Agency handles a reduction in income consistently between the servicing regulations and the payment assistance regulation; and (5) remove the provision for canceling payment assistance benefits to a family that improved its property beyond what is considered to be modest for the area.

The following material discusses the amendments to payment assistance by sections:

Of the three comments received on § 1951.313(f) regarding the cancellation of payment assistance agreements (reasons for cancellation), all commenters requested clarification regarding cancellation of payment assistance agreements when a borrower is living in a nursing home, but the borrower's household goods remain in their dwelling financed by RHCDS. Several commenters pointed out that sometimes a stay in a nursing home or other care facility is temporary. One commenter stated that non-occupancy should be defined. RHCDS has analyzed

all comments received on this proposal and based on that analysis and its own review, we are providing additional guidance as follows: (1) While nursing homes and specialized care facilities are considered full time residences, only indefinite and prolonged stays should be considered as non-occupancy of the dwelling. A short term or specifically limited stay at full-care facilities that does not exceed 6 months, such as when an individual is recuperating from a serious accident or illness, should not be grounds for terminating payment assistance. If the stay at a special facility exceeds 6 months, the borrower must supply appropriate medical documentation to support this situation.

Section 1951.313(f)(1) on indicators of non-occupancy is being amended to state that the primary indicators of non-occupancy are when the borrower and his or her household belongings are absent from the property and the borrower fails to maintain the property or to arrange for its care. Several comments were received on the various indicators of non-occupancy and clarification was requested. In listing various indicators of non-occupancy, it was intended that the loan approval official should consider the circumstances and obtain information, as needed, to determine the appropriate action.

One comment was received on § 1951.313(f)(3) concerning a borrower who provides fraudulent or materially inaccurate financial information in connection with a payment assistance application/renewal. The commenter recommended that this provision be eliminated because it conflicts with existing regulations (7 CFR section 1951.608(b)(2) of subpart M of part 1951) and because it grants RHCDS staff too much discretion in determining when information is materially inaccurate or fraudulently provided. RHCDS disagrees and we are not amending this section. The Departmental appeals procedure will provide for a review of the materiality of inaccurate or fraudulently provided information.

Other Affected Regulations

Due to the revisions in the final rule to subpart A of part 1944, conforming changes were necessary to the following regulations as noted.

List of Subjects in 7 CFR Parts 1900, 1910, 1924, 1940, 1944, 1950, 1951, 1955, and 1965

Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations, is amended as follows:

1. The authority citation for parts 1900, 1950, 1951, 1955, and 1965 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

CHAPTER XVIII—[AMENDED]

2. 7 CFR chapter XVIII is amended by removing the words ''interest credit'' and adding in their place, the words ''payment assistance'', in the following places:

a. § 1950.105(c)
b. § 1965.26(c)(2) introductory text
c. § 1965.26(c)(3) (2 times)

§ 1955.66 [Amended]

3. Section 1955.66(e)(2) is amended by removing the words ''interest credits'' and adding in their place, the words ''payment assistance''.

4. Section 1900.52(l) is added to read as follows:

§ 1900.52 Definitions.

* * * * *

(l) *Interest credit.* The terms ''interest credit'' and ''interest credit assistance,'' as they relate to Single Family Housing (SFH), are interchangeable with the term ''payment assistance.'' Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

PART 1910—GENERAL

5. The authority citation for part 1910 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart A—Receiving and Processing Applications

6. Section 1910.1(d) is added to read as follows:

§ 1910.1 General.

* * * * *

(d) The terms ''interest credit'' and ''interest credit assistance,'' as they relate to Single Family Housing (SFH), are interchangeable with the term ''payment assistance.'' Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

7. Section 1910.4(a) is revised to read as follows:

§ 1910.4 Processing applications.

* * * * *

(a) *Completed RH applications.* Completed applications are those as described in § 1944.27 (copies available in any RECD office), and all applications for Rural Housing loans will be processed as outlined in that instruction.

* * * * *

8. Section 1910.5 is amended in paragraph (c)(6) by revising the reference ''§ 1944.4(c)'' to read ''§ 1944.9,'' and revising ''FmHA or its successor agency under Public Law 103–354'' to read ''CFSA or RHCDS,'' and by adding paragraph (e) to read as follows:.

§ 1910.5 Evaluating applications.

* * * * *

(e) *Delinquency on a Federal debt.* The Department of Housing and Urban Development Credit Alert Interactive Voice Response System (CAIVRS) will be used to help determine if an applicant is delinquent on any Federal debt.

§ 1910.6 [Amended]

9. Section 1910.6 is amended in the first sentence of paragraph (g) introductory by revising the words ''Rural Housing'' to read ''RH'' and by revising the reference ''§ 1944.26'' to read ''§ 1944.27,'' by revising the words ''section 41'' to ''section 44'' in the second sentence of paragraph (g)(1) and by revising the words ''section 41 of Form FmHA'' to read ''section 44 of Form FmHA 1940–1;'' in paragraph (j).

PART 1924—CONSTRUCTION AND REPAIR

10. The authority citation for part 1924 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart A—Planning and Performing Construction and Other Development

§ 1924.6 [Amended]

11. Section 1924.6(c) introductory text is amended in the first sentence by removing the words ''Exhibit E of.''

§ 1924.9 [Amended]

12. Section 1924.9(a) is amended in the second sentence by revising the references ''§ 1944.17(a)(2)(iv)'' to read ''§ 1944.17(a)(2)(iii)'' and ''subpart A of part 2024 of this chapter (available in any FmHA or its successor agency under Public Law 103–354 office)'' to read ''FmHA Instruction 2024–A (available in any RECD field office),'' and by revising ''FmHA'' to read ''RHCDS'' in the fourth and sixth (2 places) sentences.

PART 1940—GENERAL

13. The authority citation for part 1940 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart I—Truth in Lending—Real Estate Settlement Procedures

§ 1940.401 [Amended]

14. Section 1940.401(c)(3)(ii) is amended by revising the reference ''§ 1951.314'' to ''§ 1951.315.''

Subpart S—Accountability Requirements of Persons Paid To Influence the Making of an FmHA Housing Loan and/or Grant

15. Section 1940.903 is amended by removing the definitions of ''FmHA'' and ''FmHA housing loan and/or grant'' by adding new definitions of ''Interest Credit'' and ''RHCDS housing loan and/or grant'' in alphabetical order to read as follows:

§ 1940.903 Definitions

* * * * *

Interest credit. The terms ''interest credit'' and ''interest credit assistance,'' as they relate to Single Family Housing (SFH), are interchangeable with the term ''payment assistance.'' Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

* * * * *

RHCDS housing loan and/or grant. Any loan: insured; direct or guaranteed, made pursuant to the Housing Act of 1949, as amended. The term includes rental assistance (RA) and interest credits. The term does not include contracts, such as procurement contracts, which are subject to the Federal Acquisition Regulation (FAR).

* * * * *

PART 1944—HOUSING

16. The authority citation for Part 1944 is revised to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989, and 42 U.S.C. 1480.

17. Subpart A of part 1944 is revised to read as follows:

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

Sec.

1944.1 General.
1944.2 Definitions.
1944.3 Loan purposes.
1944.4 Loan restrictions.
1944.5 Annual income.
1944.6 Adjusted annual income.
1944.7 [Reserved]
1944.8 Income eligibility requirements.
1944.9 Other eligibility requirements.
1944.10 Rural area designation.
1944.11 Site requirements.
1944.12 Environmental requirements.
1944.13 National flood insurance.
1944.14 [Reserved]
1944.15 Ownership requirements.
1944.16 Dwelling requirements.
1944.17 Maximum loan amounts.
1944.18 Security requirements.
1944.19–1944.21 [Reserved]
1944.22 Refinancing non-RHCDS debts.
1944.23 [Reserved]
1944.24 Technical services.
1944.25 Rates and terms.
1944.26 Fund allocation.
1944.27 Application processing.
1944.28–1944.30 [Reserved]
1944.31 Loan approval.
1944.32 [Reserved]
1944.33 Loan closing.
1944.34 Payment assistance.
1944.35 Deferred mortgage payments.
1944.36 [Reserved]
1944.37 Subsequent section 502 RH loans.
1944.38 Mutual Self-Help Housing loans.
1944.39 RH loans to RHCDS employees and loan closing officials.
1944.40 [Reserved]
1944.41 Housing demonstration programs.
1944.42 Condominium and community land trust requirements.
1944.43 [Reserved]
1944.44 Borrower graduation.
1944.45 Conditional commitments.
1944.46 Appeals.
1944.47–1944.48 [Reserved]
1944.49 Administrative instructions.
1944.50 OMB control number.

PART 1944—HOUSING

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

§ 1944.1 General.

This subpart sets forth the policies and procedures and delegates authority for making section 502 Rural Housing (RH) loans to individuals under section 502 of title V of the Housing Act of 1949, as amended. The objective of section 502 RH loans is to provide eligible persons who will live in rural areas with an opportunity to own adequate but modest, decent, safe, and sanitary dwellings and related facilities. The requirements of subpart E of part 1901 will be applied as appropriate. Loans and services provided under this subpart shall not be denied to any person or applicant based on race, sex, national origin, color, religion, marital status, familial status, age, physical or mental disability (applicant must possess the capacity to enter into a legal contract for services or have a court appointed guardian or conservator empowered to obligate the applicant in real estate matters), receipt of income from public assistance, or because the applicant or borrower has, in good faith, exercised any right under the Consumer Credit Protection Act, 15 U.S.C. § 1601 et seq.

(a) In compliance with the Fair Housing Act as amended and the Americans with Disabilities Act of 1990, reasonable accommodation must be given to individuals who are developmentally disabled so that they have the opportunity to become successful homeowners. When an applicant or an applicant's representative indicates the existence of a disability during the loan process, e.g., by requesting the Rural Housing and Community Development Service (RHCDS) disability deduction to income due to mental or physical disability or through verification of income from a Federal or state government source because of mental or physical disability, RHCDS must ask the applicant or the applicant's representative what reasonable accommodation should be made in order for the loan to be processed. The reasonable accommodation request must be provided to RHCDS by the applicant or the applicant's representative. Reasonable accommodation can include allowing a court appointed guardian or conservator to execute appropriate loan making and loan closing documents on behalf of the applicant; the court order must show that the guardian or conservator has the power and responsibility to obligate the applicant in real estate matters and a copy of the court order must be made a part of the loan docket.

(b) Any processing or servicing activity conducted pursuant to this subpart involving authorized assistance to RHCDS employees, members of their families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900. Applicants for this assistance are required to identify any known relationship or association with an RHCDS employee.

(c) RHCDS will collect fees for credit reports, real estate appraisals, and conditional commitment applications when appropriate. RHCDS may use its own employees or other agents or institutions in carrying out its responsibilities under this subpart.

§ 1944.2 Definitions.

The following definitions apply to this subpart:

Annual payment borrowers. Borrowers who signed promissory notes providing for annual payments, including borrowers converted to monthly payments through the use of Form FmHA 1951–34, ''Direct Payment Plan Change.''

Certificate of Eligibility. Certificate issued by RHCDS to applicants who have received a final determination of

eligibility after verification of all income. Applicants can present this to real estate agents, builders, and sellers to indicate their eligibility for an RH loan in the amount set forth on the certificate.

Conditional commitment. Assurance from RHCDS, in exchange for a specific fee, to an owner, qualified builder, or dealer-contractor that a dwelling offered for sale will be acceptable for purchase by a qualified RH loan applicant under specified limited conditions.

Cosigner. A party who joins in the execution of a promissory note to compensate for any deficiency in the borrower's repayment ability. The cosigner becomes jointly liable to comply with the terms of the note in the event of the borrower's default, but is not entitled to any interest in the security or borrower rights. If the security is transferred to the cosigner, the cosigner may assume the RHCDS indebtedness on program or nonprogram (NP) terms, as applicable.

Deficient housing. A dwelling which meets one or more of the following conditions:

(1) Lacks complete plumbing; i.e. no bathtub or shower, wash basin, flush toilet, or hot running water for the exclusive use of the occupant;

(2) Lacks adequate heating;

(3) Is physically deteriorated or structurally unsound; i.e. roof leaks, falling plaster or sheetrock, extensive termite or wood rot damage, dangerous electrical service; or

(4) Overcrowding situations which will be corrected after loan closing; i.e., more than 2 persons per bedroom.

Elderly family. An elderly family consists of one of the following:

(1) A person who is the head, spouse, or sole member of a family and who is 62 years of age or older, or who is disabled, and is the applicant or borrower or the coapplicant or coborrower; or

(2) Two or more persons who are living together, at least one of whom is age 62 or older, or disabled, and who is the applicant or borrower or coapplicant or coborrower; or

(3) In the case of a family where the deceased borrower, coborrower, or spouse, was at least 62 years old, or disabled, the surviving household member shall continue to be classified as an ''elderly family'' for the purpose of determining adjusted income even though the surviving members may not meet the definition of elderly family on their own, provided:

(i) They occupied the dwelling with the deceased family member at the time of the death; and

(ii) If one of the surviving family members is the spouse of the deceased family member, the surviving family shall be classified as an elderly family only until the remarriage of the surviving spouse; and

(iii) At the time of the death of the deceased family member, the dwelling was financed under title V of the Housing Act of 1949.

Equivalent interest rate. The interest rate charged under payment assistance. It is determined by a comparison of the borrower's adjusted annual income to the median income for the area where the security property is located, based on income figures published by the Department of Housing and Urban Development (HUD) as reflected in exhibit C (available in any RECD field office).

Existing dwelling. A dwelling which is:

(1) More than 1 year old; or

(2) Less than 1 year old but the dwelling is covered by an approved 10-year warranty plan as described in subpart A of part 1924 and the contractor provides complete plans and specifications, together with a certification that construction was completed in compliance with said plans and specifications, applicable building codes, and thermal performance standards (TPS) for new construction. In addition, the contractor must provide evidence that the contractor meets any licensing requirements in the state and is an approved builder in good standing under the approved 10-year warranty plan.

Extended family. A family unit comprised of adult relatives who live together with the other members of the household, for reasons of physical dependency, economics, or social custom, who, under other circumstances, could maintain separate households. An example would be parents living with their adult children.

Farm. Includes the total acreage of one or more tracts of land which:

(1) Is owned by the applicant;

(2) Is operated as a single unit;

(3) Is in agricultural production; and

(4) Annually will produce agricultural commodities for sale and home use with a gross annual value equivalent to $400 in 1944.

Floor. A minimum percentage of adjusted family income which the borrower must pay for principal, interest, taxes and insurance.

Full-time student. A person who is carrying a subject load that is considered full-time for day students (excluding correspondence courses) under the standards and practices of the educational institution attended. An educational institution includes a vocational school with a diploma or certificate program, as well as an institution offering a college degree.

Homeowners association. An association of individual unit owners that is responsible for the common property and improvements for the benefit of all the individual owners, and enforcement of the organization's rules and regulations.

Household or family. The applicant, coapplicant, and all other persons who will make the applicant's dwelling their primary residence for all or part of the next 12 months (excluding foster children placed in the home and live-in aides). Children who are members of the family, but have been removed and placed in foster care, will be counted as residents of the household. Children who are subject to a joint custody agreement and live in the unit at least 50 percent of the time are considered to be household members.

HUD. The Department of Housing and Urban Development.

Income. Income limits, the definitions of which are included below in order from the lowest to the highest are contained in exhibit C (available in any RECD office).

(1) *Very low-income.* An adjusted annual income that does not exceed the very low-income limit according to size of household as established by HUD for the county or MSA where the property is or will be located.

(2) *Low-income.* An adjusted annual income greater than the very low-income limit but that does not exceed the low income limit according to size of household as established by HUD for the county or MSA where the property is or will be located.

(3) *Moderate-income.* An adjusted annual income greater than the low-income limit but that does not exceed the maximum limit for moderate-income households.

(4) *Above moderate-income.* An adjusted annual income that exceeds the maximum limit for moderate-income households.

Insurance. The insurance required by RHCDS as a condition of loan approval, including homeowners insurance, fire and extended coverage insurance including flood insurance, when applicable.

Insured warranty. Plan which offers new homeowners varying degrees of protection against builder default or major structural defects in their home.

Live-in aides. Persons living in the household for the sole purpose of providing essential care and well being for an elderly, or household member

who is disabled. Live-in aides cannot be related to a household member and would not be living in the unit except to provide essential supportive services.

Market value. For the purposes of this instruction, market value is defined as the appraised value of the property as improved.

Median income. An adjusted median annual income for the size of household as established by HUD for the county or MSA where the property is or will be located.

Metropolitan Statistical Area (MSA). MSAs are defined according to a set of detailed standards prepared by the Federal Committee on MSAs. An area qualifies as an MSA if it contains a city of at least 50,000 population or an urbanized area of at least 50,000 with a total metropolitan population of at least 100,000. MSAs are defined in terms of entire counties, except in the six New England States where they are defined in terms of cities and towns. An MSA may also include additional counties having strong economic and social ties to the central county. The term Standard Metropolitan Statistical Area (SMSA) was in use prior to the June 30, 1983, effective date of the MSA terminology.

Minor. For the purposes of determining adjusted annual income, this definition is restricted to persons under 18 years of age. Neither the head of household nor spouse may be counted as a minor. Foster children are not counted as minors for determining annual or adjusted annual income.

Monthly payment borrowers. Borrowers who signed promissory notes providing for payment of monthly installments.

MSA. Metropolitan Statistical Area.

Net family assets. Include:

(1) The value of equity in real property (other than the dwelling or site); cash on hand; savings; checking accounts; demand deposits; and the market value of stocks, bonds, and other forms of capital investments, including voluntary retirement plans that are accessible to the applicant such as individual retirement accounts (IRAs), 401(k) plans, and Keogh accounts, as well as amounts that can be withdrawn from other retirement and pension funds without retiring or terminating employment, but *exclude:*

(i) Interests in American Indian trust land,

(ii) Cash on hand which will be used to reduce the amount of the loan,

(iii) The value of necessary items of personal property such as furniture and automobile,

(iv) The assets that are a part of the business, trade, or farming operation in the case of any member of the household who is actively engaged in such operation, and

(v) The value of a trust fund that has been established where the trust is not revocable by, or under the control of, any member of the household, so long as the fund continues to be held in trust.

(2) The value of any business or household assets disposed of by a member of the household for less than fair market value (including disposition in trust, but not in a foreclosure or bankruptcy sale) during the 2 years preceding the date of application, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition shall not be considered to be for less than fair market value if the household member receives important consideration not measurable in dollar terms.

Nonfarm tract. A parcel of land that is not a farm and is located in a rural area, or a building site that is part of a farm, and which secures an RH loan in accordance with § 1944.18(b)(10).

Payment assistance. The generic term for the subsidy provided to eligible borrowers to reduce mortgage payments. This term is used interchangeably with the terms ''interest credit,'' ''interest credit assistance,'' and ''payment assistance in the form of interest credit.''

Participation loan. A loan that is made by another lender in conjunction and simultaneously with a loan made under this part.

Person with a disability. A person who is unable to engage in any substantially gainful activity by reason of any medically determinable physical or mental impairment expected to result in death or which: is expected to be of long or indefinite duration; substantially impede his or her ability to live independently; and is of such a nature that the person's ability to live independently could be improved by more suitable housing conditions. In the case of an individual who has attained the age of 55 and is blind, disability is defined as inability by reason of such blindness to engage in any substantially gainful activity requiring skills or abilities comparable to those of any gainful activity in which the individual has previously engaged with some regularity over a substantial period of time. Receipt of veteran's benefits for disability, whether service-oriented or otherwise, does not automatically establish disability. A person with a disability also includes a person with a developmental disability. A developmental disability means a severe, chronic disability of a person which:

(1) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(2) Is manifested before the person attains age 22;

(3) Is likely to continue indefinitely;

(4) Results in substantial functional limitations in three or more of the following areas of major life activity:

(i) Self-care,

(ii) Receptive and expressive language,

(iii) Learning,

(iv) Mobility,

(v) Self-direction,

(vi) Capacity for independent living, or

(vii) Economic self-sufficiency; and

(5) Reflects the person's need for a combination and sequence of special care, treatment, or other services which are of lifelong or extended duration, and are individually planned and coordinated.

Place. An area containing a concentration of inhabitants within a determinable unincorporated area.

Real estate taxes. The amount of real taxes and the annual portion of assessments estimated to be due and payable on the dwelling and the dwelling site, reduced by the amount of any tax exemption available to the borrower, regardless of whether such an exemption is actually claimed. Tax exemptions may include such things as homestead exemptions, special exemptions for low-income families, senior citizens, veterans, and others.

Rehabilitation. Major repairs and improvements to existing dwellings such as the installation or completion of bathroom facilities, installation of major items of equipment, additions, or structural changes.

RHCDS. Rural Housing and Community Development Service.

Senior citizen. Is a person who is 62 years of age or older.

Town. Is a municipality similar to a city but does not include a New England-type town which resembles a township or county in most states.

Urban area. Either a town, village, city, place, or any associated combination thereof which, with the immediately adjacent densely settled areas, has a population in excess of the limits prescribed in § 1944.10(a)(2) (i) and (ii).

§ 1944.3 Loan purposes.

(a) A loan may be made to an eligible applicant for the following purposes:

(1) To buy, build, rehabilitate, improve, or relocate a dwelling and provide related facilities for use by the applicant as a permanent residence;

(2) To buy, build, rehabilitate, improve, or relocate a dwelling, and

provide related facilities for a farm owner to provide housing to be occupied by the farm manager, tenants, sharecroppers, or farm laborers; and

(3) To refinance secured debts or unsecured debts as provided in § 1944.22, except the Agency will not refinance debts for manufactured homes;

(b) A loan made under paragraph (a) (1) or (2) of this section may be used to:

(1) Purchase, in fee title, a minimum adequate site, as outlined in § 1944.11 on which the improvements are or will be located, if the applicant does not own an adequate site;

(2) Pay reasonable acquisition costs for a leasehold interest in a minimum adequate site at the time of making the initial RH loan;

(3) Provide an adequate and safe water supply or an adequate wastewater disposal facility;

(4) Provide site preparation, including grading, foundation plantings, seeding or sodding of lawns, trees, walks, yard fences, and driveways to building sites;

(5) Purchase and install essential equipment in the dwelling including items such as a range, refrigerator, clothes washer or clothes dryer, if these items are normally sold with dwellings in the area, and if purchase of these items is not the primary purpose of the loan;

(6) Provide special design features or equipment when necessary because of physical disability of the applicant or of a member of the household;

(7) Purchase and install approved energy saving measures and approved furnaces and space heaters which use a type of fuel that is commonly used, and is economical and dependably available;

(8) Provide storm cellars and similar protective structures;

(9) Pay incidental expenses such as legal fees, costs of title clearance, and loan closing services; appraisal, surveying, environmental, and tax monitoring; personal liability insurance fees for self-help housing applicants; and incidental expenses authorized in exhibit G (available in any RECD field office);

(10) Pay lender charges and fees in connection with participation loans, (except as provided in § 1944.4), provided they are the same as those charged other applicants for similar types of transactions;

(11) Pay reasonable connection fees for utilities such as water, sewer, electricity, and gas, which are required to be paid by the applicant and which cannot be paid from other funds;

(12) Pay the applicant's share of Social Security taxes and similar taxes for labor hired by the applicant in connection with making the planned improvements;

(13) Pay real estate taxes which are due and payable on the building and site owned by the applicant at the time of closing an initial loan, if this amount is not a part of the loan;

(14) Establish escrow accounts for the payment of real estate taxes and property insurance premiums in those states where the use of escrow accounts is authorized by the National office;

(15) Provide living area for all members of the applicant's household, including ''extended family;''

(16) Finance the purchase of single family housing units located in a condominium development, community land trust, or planned unit development with a homeowners association. If professional management is employed (prior National office approval is required);

(17) Pay fees for the development and packaging of loan applications and related actions to public and private nonprofit organizations which are tax exempt under the Internal Revenue Code of 1986 (except when restricted under § 1944.4) when:

(i) The loan has been packaged in accordance with exhibit A (available in any RECD field office) and the limitations of § 1944.17; and

(ii) The charges are reasonable considering:

(A) The amount and purpose of the assistance;

(B) The repayment ability of the recipient; and

(C) The cost of similar services in the same or a similar rural area.

(iii) The State Director may issue a State Supplement outlining what is considered a reasonable amount for the jurisdiction. In no case may the amount exceed that found in exhibit B of subpart B of part 1944 (available in any RECD office).

§ 1944.4 Loan restrictions.

Loan funds may not be used to:

(a) Make a new loan to pay off existing RHCDS debts in lieu of a transfer with assumption.

(b) Refinance:

(1) RHCDS debts, except as authorized under § 1951.316.

(2) Debts on a manufactured home.

(c) Purchase or improve income-producing land, or buildings to be used principally for income-producing purposes, or buildings not essential for RH purposes, or buy or build buildings which are either largely, or in part, specifically designed to accommodate a business or income-producing enterprise. (Home based operations such as child care, home/beauty product sales, the production of crafts, etc., that do not require specifically designed features to accommodate the enterprise, are not restricted under this subpart; however, housing related expenses such as mortgage interest, real estate taxes, and insurance, which may be claimed as business expense deductions for income tax purposes, will not be allowed when determining annual income for RHCDS assistance.)

(d) Pay fees, charges, or commissions, such as finders' fees, fees for packaging the application (except as provided in § 1944.3), or placement fees for the referral of a prospective applicant to RHCDS.

(e) Pay packaging fees (as provided under § 1944.3) for the purchase of an RHCDS inventory property or where the packager is receiving a grant under subpart B of part 1944.

(f) Improve the entry of a homestead entryman or desert entryman prior to receipt of patent.

(g) Finance manufactured homes which are not constructed and installed in accordance with exhibit F of this subpart and exhibit J of subpart A of part 1924. (Both exhibits are available in any RECD field office.)

§ 1944.5 Annual income.

Annual income determinations will be thoroughly documented in the case file. Historical data based on the past 12 months or last fiscal year may be used if a determination of expected income cannot logically be made. Annual income will be calculated as follows:

(a) Current verified income, either part-time or full-time, received by the applicant and all adult members of the household including the spouse is derived by multiplying:

(1) An hourly wage by 2080 hours (for part-time employment use anticipated annual hours); or

(2) A weekly wage by 52 weeks; or

(3) A biweekly wage by 26 weeks; or

(4) A monthly wage by 12 months or a bimonthly wage by 24 pay periods.

(b) If the spouse or any other adult member of the household is not presently employed but there is a recent history of such employment, that person's income will be projected unless the applicant or the person involved signs a statement that the person is not presently employed and does not intend to resume employment in the foreseeable future, or, if payment assistance is involved, during the term of the payment assistance agreement.

(c) Income from such sources as seasonal work of less than 12 months duration, commissions, overtime, bonuses, and unemployment compensation will be computed as the

estimated annual amount of such income for the ensuing 12 months. Temporary income such as unemployment benefits, worker's compensation, etc., will be projected over 12 months when computing payment assistance on an annual basis. Historical data based on the past 12 months may be used if a determination of expected income cannot logically be made.

(d) The following *are* included in annual income:

(1) The gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips, bonuses, and other compensations for personal services of all adult members of the household. If a cost of living allowance or a proposed increase in income has been estimated to take place on or before loan approval, loan closing, or the effective date of the payment assistance agreement, it will be included as income.

(2) The *net* income from the operation of a farm, business, or profession. The following provisions apply:

(i) Expenditures for business or farm expansion, capital improvements, or payments of principal on capital indebtedness shall not be used as deductions in determining income. A deduction is allowed in the manner prescribed by Internal Revenue Service (IRS) regulations only for interest paid in amortizing capital indebtedness.

(ii) Farm and nonfarm business losses are considered ''0'' in determining annual income.

(iii) A deduction, based on straight line depreciation, is allowed in the manner prescribed by IRS regulations for the exhaustion, wear and tear, and obsolescence of depreciable property used in the operation of a trade, farm, or business by a member of the household. The deduction must be based on an itemized schedule showing the amount of straight line depreciation.

(iv) Any withdrawal of cash or assets from the operation of a farm, business, or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by a member of the household.

(v) A deduction is allowed for verified business expenses, such as lodging, meals, and fuel, for business trips made by salaried employees, such as long-distance truck drivers, who must meet these expenses without reimbursement.

(vi) Housing related expenses for the property being financed such as mortgage interest, real estate taxes, and insurance, which may be claimed as business expense deductions for income tax purposes, will not be deducted from annual income.

(3) Interest, dividends, and other net income of any kind from real or personal property, including:

(i) The share received by adult members of the household from income distributed from a trust fund.

(ii) Any withdrawal of cash or assets from an investment except to the extent the withdrawal is reimbursement of cash or assets invested by a member of the household.

(iii) Where the household has net family assets, as defined in § 1944.2, in excess of $5,000, the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by RHCDS.

(4) The full amount of periodic payments received from Social Security (including Social Security received by adults on behalf of minors or by minors intended for their own support), annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts. Amounts received from the United States Government which are attributable to underpayment of benefits for one or more prior months shall be excluded in the calculation of annual income as provided in 42 U.S.C. 1382b.

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay.

(6) Public assistance except as indicated in exhibit H (available in any RECD field office).

(7) Periodic allowances, such as:

(i) Alimony and child support awarded in a divorce decree or separation agreement, unless the applicant certifies the payments are not received, and the applicant provides documentation to RHCDS that a reasonable effort has been made to collect the payments through the official entity responsible for enforcing such payments; or

(ii) Recurring monetary gifts or contributions from someone who is not a member of the household.

(8) All regular pay, special pay (except for persons exposed to hostile fire), and allowances of a member of the armed forces who is the applicant or spouse, whether or not that family member lives in the home.

(e) The following *are not* included in annual income but may be considered in determining repayment ability:

(1) Payments received for the care of foster children or foster adults (usually individuals with disabilities, unrelated to the applicant, who are unable to live alone);

(2) The income of an applicant's spouse, when the spouse has been living apart from the applicant for less than 3 months (for reasons other than military or work assignment), but not if court proceedings for divorce or legal separation have commenced;

(3) Temporary, nonrecurring, or sporadic income (including gifts);

(4) Lump-sum additions to family assets such as inheritances, capital gains, insurance payments included under health, accident, hazard, or worker's compensation policies, and settlements for personal or property losses (except as provided in paragraph (d)(5) of this section);

(5) Amounts which are granted specifically for, or in reimbursement of, the cost of medical expenses;

(6) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(7) Reparation payments paid by a foreign government arising out of the Holocaust. If an applicant for an RHCDS loan was deemed ineligible because the applicant's income exceeded the low income (moderate income for guaranteed loans) because of the applicant's Nazi persecution benefits, the RHCDS approval official should notify the applicant to reapply for a loan;

(8) Any earned income tax credit;

(9) Adoption assistance payments in excess of $480 per adopted child;

(10) Deferred periodic payments of supplemental security income and Social Security benefits that are received in a lump sum;

(11) Amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(12) Amounts paid by a State agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; and

(13) Any other revenue which a Federal statute exempts shall not be considered income or used as a basis for determining eligibility for an RHCDS loan, payment assistance, or denying or reducing Federal financial assistance or benefits to which the recipient would otherwise be entitled. Additional financial assistance which is considered exempt income under Federal statutes. (See exhibit H available in any RECD field office).

(f) The following will not be counted when calculating annual income and

will not be considered in determination of repayment ability:

(1) Income of live-in aides as described in 1944.2.

(2) Income from employment of minors (including foster children) under 18 years of age. The applicant, coapplicant, or spouse may never be considered minors.

(3) The full amount of student financial assistance paid directly to the student or to the educational institution.

§ 1944.6 Adjusted annual income.

Adjusted annual income is annual income as determined in § 1944.5 less the following:

(a) A deduction of $480 for each member of the family residing in the household, as defined by § 1944.2, other than the applicant, coapplicant, or spouse who is:

(1) Under 18 years of age; or

(2) Eighteen years of age or older and is disabled; or

(3) A full-time student, aged 18 or older.

(b) A deduction of $400 for any elderly family.

(c) A deduction for the care of minors 12 years of age or under, to the extent necessary to enable a member of the applicant's family to be gainfully employed or to further the applicant's education. The deduction will be based only on moneys reasonably anticipated to be paid for care services and, if caused by employment, must not exceed the amount of income received from such employment. Payments for these services may not be made to persons whom the applicant is entitled to claim as dependents for income tax purposes.

(d) A deduction of the amount by which the aggregate of the following expenses of the household exceeds 3 percent of gross annual income:

(1) Medical expenses for any elderly family. This includes medical expenses, for any household member, the applicant anticipates incurring over the ensuing 12 months which are not covered by insurance. Examples of medical expenses are dental expenses, prescription medicines, medical insurance premiums, eyeglasses, hearing aids and batteries, the cost of home nursing care, the costs of transportation to and from medical treatment, monthly payments on accumulated major medical bills, and cost of full-time nursing or institutional care which cannot be provided in the home for a member of the household; and

(2) Reasonable attendant care and auxiliary apparatus expenses for each member of any household who is disabled to the extent necessary to enable any member of such household (including such member who is disabled) to be employed.

§ 1944.7 [Reserved]

§ 1944.8 Income eligibility requirements.

(a) *Repayment ability.* An applicant is eligible for a section 502 RH loan only if the following requirements are met:

(1) *Income limit.* The adjusted annual income as defined in § 1944.6 at the time of loan approval does not exceed the applicable income limit. (See exhibit C available in any RECD field office).

(2) *Adequate and dependable income.* The applicant (and coapplicant if applicable) has adequate and dependably available income. The determination of income dependability will include consideration of the applicant's past history of annual income and the history of the typical annual income of others in the area with similar types of employment. Such income must be sufficient to meet the income ratios described in § 1944.8(a)(3), as modified by § § 1944.34 and 1944.35.

(3) *Determining repayment ability.* In considering whether the applicant has adequate repayment ability, RHCDS must calculate the principal, interest, taxes, and insurance (PITI) and total debt (TD) ratios. If a participation loan is involved, the PITI will also include the principal and interest payments on the participation loan. The PITI ratio is calculated by dividing the monthly PITI for the proposed loan (less any payment assistance for which the applicant may qualify) by the gross monthly family income. The TD ratio is calculated by dividing the applicant's monthly obligations by total gross monthly family income.

(i) Total monthly debt consists of the PITI for the proposed loan (less any payment assistance for which the applicant may qualify), homeowner and other assessments, and long term obligations. Long term obligations include those obligations such as alimony, child support, child care, and other obligations with a remaining repayment period of more than 6 months, other shorter term obligations that are considered to have a significant impact on repayment ability, plus 5 percent of the current balance on all revolving credit cards.

(ii) Income, for the purpose of determining these ratios, includes the total gross monthly income of the applicant, coapplicant, and any other member of the household who will be a party to the note, including any income that may be excepted under § 1944.5.

(iii) The very low-income applicant is considered to have repayment ability when the proposed PITI and TD ratios are less than or equal to a PITI ratio of 29 percent and a TD ratio of 38 percent; however, the low-income applicant is considered to have repayment ability when the proposed PITI and TD ratios are less than or equal to a PITI ratio of 33 percent and a TD ratio of 38 percent as defined in § 1944.8(a)(3). Very low-income applicants whose PITI ratio exceeds the authorized ratio shall be considered for deferred mortgage assistance as provided in § 1944.35.

(iv) When the ratios do not support repayment of the proposed loan, at the applicant's request, RHCDS may make an exception to the above income ratio calculations under the following circumstances or compensating factors:

(A) When the applicant presents documented evidence of having met housing related costs in the past 6 months that are equal to or greater than the projected housing costs after approval of the proposed loan. These housing costs must have been maintained when the applicant's household income was equal to or less than the current annual income, and the applicant's household debt load was equal to or greater than the current debt load. Projected housing costs will include the RHCDS monthly payment after application of any payment assistance for which the applicant may qualify, projected real estate taxes and assessments, premiums for required property and flood insurance, estimated utility and maintenance costs, and any other costs expected to be incurred with home ownership.

(B) If the applicant's TD ratio and/or PITI ratio exceed the maximum authorized ratio, the State Director may allow a higher ratio based on compensating factors. Acceptable compensating factors include, but are not limited to, the applicant has recently entered a profession, in which the applicant has adequate schooling, that would historically lead to significant pay increases, the applicant has accumulated savings which, when added to the applicant's housing expense shows a capacity to make payments on the proposed loan, and the availability of overtime income to increase the applicant's income. A low TD ratio, by itself, does not compensate for a high PITI ratio.

(b) *Additional coapplicant.* Applicants applying who do not meet the requirements of paragraph (a)(2) of this section will be considered ineligible unless other adults in the household have adequate income and wish to join in the application as a coapplicant. The

combined incomes and obligations shall then be considered in determining repayment ability.

(c) *Cosigner.* RHCDS will also consider the use of a cosigner when the applicant applying for assistance does not meet the requirements of paragraph (a)(2) of this section. Cosigners must have adequate and dependably available income sufficient to repay the applicant's monthly installment with applicable payment assistance. Cosigners are subject to the same determination of repayment ability outlined in paragraph (a)(3) of this section as the applicant, with the amount of the applicant's monthly installment with applicable payment assistance considered as part of the cosigner's PITI ratio.

The cosigner may be an individual or an entity but may not be a member of the applicant's household.

§ 1944.9 Other eligibility requirements.

In addition to the income eligibility requirements of § 1944.8, the applicant must:

(a) Qualify as one of the following:

(1) A person who does not own a dwelling, (except for refinancing purposes), or owns a dwelling which is not structurally sound, functionally adequate, or large enough to accommodate the needs of the applicant, or,

(2) A farmowner without decent, safe, and sanitary housing for the farmowner's own use or for the use of farm tenants, sharecroppers, farm laborers, or farm manager.

(b) Be without sufficient resources to provide the necessary housing or related facilities, and be unable to secure the necessary credit from other sources upon terms and conditions which the applicant could reasonably be expected to fulfill.

(1) If the applicant has only an undivided interest in the land to be improved, those co-owners whose execution of the mortgage is required under § 1944.18(b)(8) must also be unable to provide the improvement with their own resources or obtain the necessary credit elsewhere, either individually or jointly with the applicant.

(2) Applicants are expected to reduce the need for loan funds by utilizing available nonessential assets and/or cash on hand; however, IRAs, Simplified Employee Pensions (SEPs), 401(k) plans, and similar personal retirement accounts do not have to be liquidated when considering other resources. Reasonable reserves may be retained for unforeseen events.

(3) RHCDS will provide information on area lenders participating in the section 502 guaranteed RH loan program and section 502 participation RH loan program to all applicants who are required to seek other credit.

(c) Be a natural person (individual) who resides as a citizen in any of the 50 States, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Marianas, the Federated States of Micronesia, the Republic of Palau, or the Republic of the Marshall Islands, or a noncitizen who resides in one of the foregoing areas after being legally admitted in one of the alien entry categories set forth in section 214 of the Housing and Community Development Act of 1980, 42 U.S.C. 1436a. An applicant who is not a United States citizen is required to submit evidence that the applicant has been lawfully admitted to the country as a resident in one of the categories specified in the preceding sentence. Verification is only required when the applicant is not a U.S. citizen.

(d) Possess legal capacity to incur the loan obligation (or have a court appointed guardian or conservator who is empowered to obligate the applicant in real estate matters), and have reached the legal age of majority in the State, or have had the disability of minority removed.

(e) Have the potential ability to personally occupy the home on a permanent basis. Due to the probability of transfer, or moving after graduation, military personnel on active duty and full-time students will not be granted loans unless:

(1) The applicant, if military personnel, will be discharged at an early date (usually within 1 year). The family must continue to occupy the home in case the borrower is transferred to another duty station before discharge;

(2) The applicant intends to make the home a permanent residence and there are reasonable prospects that employment will be available in the area after graduation; and

(3) An adult member of the household will be available to make inspections as the home is being constructed and to sign checks for work performed.

(f) Have a credit history which indicates a reasonable ability and willingness to meet obligations as they become due.

(1) Any or all of the following are indicators of an unacceptable credit history unless RHCDS determines that the cause was beyond the applicant's control (except for Federal judgments described in paragraph (f)(1)(i) of this section), and satisfies the criteria in paragraph (f)(3) of this section:

(i) An outstanding judgment obtained by the United States in a Federal Court (other than the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible for any loan or grant until the judgment is paid in full or otherwise satisfied. RHCDS loan or grant funds may not be used to satisfy the judgment. The Administrator may waive the rejection of an application based on verification of an outstanding Federal judgment upon specific determination that it is in the best interest of the Government to do so. Verification of delinquent Federal debt and processing of applications with such debt must comply with § 1944.27(b)(4).

(ii) Incidents of more than two debt payments being more than 30 days late if the incidents have occurred within the last 12 months. This includes more than two late payments on a single account. Instances of more than two late payments may be waived in the event that the RHCDS loan will result in a significant reduction in shelter costs, which will contribute to improved debt payment ability.

(iii) Loss of security due to a foreclosure if the foreclosure has been completed within the last 36 months.

(iv) An outstanding IRS tax lien.

(v) Other outstanding tax liens with no satisfactory arrangements for payments.

(vi) A court-created or affirmed obligation (judgment), caused by non-payment, that is currently outstanding or has been outstanding within the last 12 months, not including hospital or State motor vehicle liens described under § 1944.17.

(vii) Two or more rent payments paid 30 days or more past due, that have occurred within the last 2 years. Notwithstanding the previous sentence, if there have been no other credit problems in the applicant's last 2 years general credit history, only the past rental year will be considered. Instances of more than two late payments may be waived in the event that the RHCDS loan will result in a significant reduction in shelter costs, which will contribute to improved debt payment capability.

(viii) Collection accounts outstanding with no satisfactory, reasonable arrangements for repayment, or collection accounts which have been outstanding within the last 12 months which were paid in full within 6 months of an eligibility determination for RHCDS assistance, where there is no record of regular payments being

maintained on the account prior to receipt of the final payment.

(ix) Non-Agency debts written off within the last 36 months.

(x) Agency debts (including debts to predecessors of the Agency) which were debt settled pursuant to subpart B of part 1956, or by release from personal liability under subpart A of part 1955 or subpart C of part 1965, or debt settlement is being considered except where the conditions of paragraph (g) of this section can be met.

(2) The following will not indicate an unacceptable credit history:

(i) ''No history'' of credit transactions by the applicant.

(ii) A bankruptcy in which the debts were discharged (Chapter 7) more than 36 months prior to the date of the application or where an applicant successfully completed a bankruptcy debt restructuring plan or Chapter 13 plan, and has demonstrated a willingness to meet obligations when due for the past 12 months prior to the date of application.

(iii) A judgment satisfied more than 12 months before the date of application, or foreclosure with no monetary loss which was completed more than 12 months before the date of application.

(3) When an applicant has an unacceptable credit history, an exception may be considered by the loan approval official (except for Federal judgments described in paragraph (f)(1)(i) of this section) when the applicant provides documentation that:

(i) The circumstances were of a temporary nature, were beyond the applicant's control, and have been removed. Examples: loss of job; delay or reduction in benefits, or other loss of income; increased expenses due to illness, death, etc.

(ii) The adverse action or delinquency was the result of a refusal to make full payment because of defective goods or services or as a result of some other justifiable dispute relating to the goods or services purchased or contracted for.

(4) Applicants will be advised of adverse credit which is discovered as a result of an on-line profile credit report at the time of application and will be provided the telephone number and address of the credit repository so that the applicant may contact the repository directly to correct the negative or incorrect information or discuss the circumstances of the credit problem with the RHCDS staff. Applicants will not be rejected on the basis of information contained in an on-line credit report; however, once a full written credit report is received by RHCDS, it will be the responsibility of the applicant to work directly with the credit repository to correct any erroneous credit bureau records. The credit history cannot be determined satisfactory until:

(i) The credit repository issues a corrected report, showing that the error has been removed, or

(ii) The credit repository has not issued a corrected report within 30 days of the applicant's submission of disputed credit information but the applicant submits conclusive proof, acceptable to RHCDS, that the report is in error, such as creditor correspondence, court documents, etc.

(g) Meet the following conditions if the applicant had any previous RHCDS debt settled pursuant to subpart B of part 1956, or by release from personal liability under subpart A of part 1955 or subpart C of part 1965, or debt settlement is being considered:

(1) RHCDS must determine that failure to pay the debt was the result of circumstances beyond the applicant's control, or the conditions which necessitated the debt settlement or release, other than weather hazards, disasters, or price fluctuations, have been or will be removed by making the loan, and

(2) Before causing the applicant to incur any expense in connection with the loan, with the exception of the cost of a credit report, RHCDS must determine the applicant's eligibility and notify the applicant of same.

(h) Have the ability to carry out the required obligations of the loan. If the applicant has demonstrated inability to do so by recent failure to maintain a former residence in a habitable and responsible manner, or by unauthorized conversion or alteration of the structure, or by creating a public nuisance in or around a former residence, RHCDS must determine that the reasons contributing to such inability have been removed and are not likely to recur.

(i) Provide accurate and truthful application and financial information to RHCDS at the time of application. Applicants who have failed to fully disclose financial and application information will be denied program assistance.

§ 1944.10 Rural area designation.

(a) For the purposes of this subpart, a rural area is:

(1) Open country which is not part of or associated with an urban area.

(2) Any town, village, city, or place, including the immediately adjacent densely settled area, which is not part of or associated with an urban area and which:

(i) Has a population not in excess of 10,000 if it is rural in character, or

(ii) Has a population in excess of 10,000 but not in excess of 20,000, and

(A) Is not contained within an MSA, and

(B) Has a serious lack of mortgage credit for low- and moderate-income households as determined by the Secretary of Agriculture and the Secretary of HUD.

(3) An area classified as a rural area prior to October 1, 1990, (even if within an MSA), with a population exceeding 10,000, but not in excess of 25,000, which is rural in character, and has a serious lack of mortgage credit for low- and moderate-income families. This is effective through receipt of census data for the year 2000.

(b) A determination that open country, or any town, village, city, or place is not part of or associated with an urban area must include a finding that any densely populated section of the area in question is separated from the densely populated section of any adjacent urban area by open spaces. Open spaces include undeveloped, agricultural, or sparsely settled areas. Other spaces such as physical barriers (e.g., rivers, canals), public parks, commercial and industrial developments, small areas reserved for recreational purposes, recognized open spaces for which development is planned, and similar nonresidential areas, are not considered open spaces for the purpose of this program. RHCDS files must contain documentation that local planning boards, where available, were contacted at the time of each review to verify that areas considered as open spaces are not scheduled for development in the next 5 years.

(c) Two or more towns, villages, cities, and places may have contiguous boundaries, and each be considered separately if they are not otherwise associated with each other, and their densely populated areas are not contiguous, as determined after consideration of paragraphs (a) and (b) of this section.

(d) Population count in any area will be taken from the decennial U.S. Census of Population, national population updates published by the Bureau of the Census, any special population census conducted by the Bureau of the Census, and the following:

(1) Significant new development on the periphery of ineligible areas which requires a change in boundaries.

(2) Redesignation of corporate limits by local authorities which affects the eligibility status of an area.

(e) In determining population count for area eligibility, consideration must

be given to developed areas in counties or states which are contiguous to, and, therefore, a part of developed areas in other counties or states. This determination must be made in agreement between the State Directors concerned.

(f) In order to ensure that the RH program is limited to eligible areas, RHCDS will periodically review areas under their jurisdiction. If the review shows that an area is not rural, RHCDS will limit the RH program in that area after the date of the decision, to the loan purposes prescribed in paragraph (i) of this section.

(g) [Reserved]

(h) [Reserved]

(i) If an area designation is changed from rural to nonrural, loans may be made only in the following instances:

(1) Applications received by RHCDS prior to the change of designation may be processed.

(2) New conditional commitments may be issued and existing conditional commitments will be honored only in conjunction with the approval of RH loan applications which were received prior to the date the area was designated nonrural.

(3) Inventory property sales and transfers by assumption may be processed in such areas as authorized by § 1955.103 or § 1965.126, respectively.

(4) Subsequent loans may be made on property in an area where the designation was changed from rural to nonrural after the initial loan was made:

(i) To make necessary repairs.

(ii) To pay equity in connection with an assumption and transfer of an RH loan.

§ 1944.11 Site requirements.

(a) *Location.* The property on which the loan is made must be located in a designated rural area as defined in § 1944.10, or in an area where the designation has been changed as provided in § 1944.10(i) and must also meet the requirements of §§ 1944.12 and 1944.13. A nonfarm tract to be purchased or improved with loan funds must not include farm service buildings; however, a small outbuilding such as a storage shed may be included.

(b) *Access.* The property must be contiguous to and have direct access from a street, road, or driveway that meets the applicable requirements of § 1924.115(b).

(c) *Minimum adequate site.* The site must be of a size that it cannot be subdivided into two or more adequate sites under existing zoning ordinance requirements for the area. A site on which a loan is to be made must have an adequate water and/or wastewater disposal system, other related facilities, and a yard, or those items must be provided with loan funds.

(1) The water and/or wastewater disposal system whether individual, central or privately owned and operated must meet the applicable water and wastewater disposal system requirements of subpart C of part 1924 as well as the design requirements of the state Department of Health or comparable reviewing and regulatory agency.

(2) Written verification must be obtained from the regulatory agency that the wastewater disposal systems comply with the Safe Water Drinking Act and the Clean Water Act, respectively. There must be assurance of continuous service at reasonable rates for central water and wastewater disposal systems. A system owned or operated by a private party must have a legally irrevocable agreement which allows interested third parties to enforce the obligation of the operator to provide satisfactory service at reasonable rates.

§ 1944.12 Environmental requirements.

All applications shall receive the appropriate level of environmental review in accordance with subpart G of part 1940.

§ 1944.13 National flood insurance.

Flood insurance in accordance with 7 CFR part 1806, subpart B must be obtained and maintained for the life of the loan for all property located in a special flood hazard area as determined by the Federal Emergency Management Agency (FEMA). If flood insurance is not available in a special flood hazard area, the property is not eligible for federal financial assistance.

§ 1944.14 [Reserved]

§ 1944.15 Ownership requirements.

(a) After the loan is closed, the borrower must have an interest in the property to be purchased, improved, or refinanced, which qualifies as one of the following:

(1) Full marketable title with a deed vesting a fee interest in the property to the borrower. (The buyer and the seller will convert the purchaser's interest under a recorded land purchase contract to a deed/mortgage situation with full marketable title prior to loan closing.)

(2) An undivided interest if the co-owners meet the security requirements imposed by § 1944.18(b)(8).

(3) A life estate interest with rights of present possession, control, and beneficial use of the property if the remaindermen meet the security requirements imposed by § 1944.18(b)(9).

(4) Leasehold interest, including loans made for the purchase of a dwelling located on land owned by a community land trust as described in § 1944.42, if all of the following conditions are met:

(i) The applicant is unable to obtain fee title to the property and the rent charged for the lease does not exceed the rate being paid for similar leases.

(ii) The lessor owns the fee simple title. This provision does not apply to American Indians with leasehold interests on tribal allotted or trust land.

(iii) Neither the leasehold nor the fee simple title is subject to a prior lien unless RHCDS authorizes acceptance of the prior lien prior to approval of the loan. The amount of the RH loan plus any prior liens shall not exceed the market value of the leasehold.

(iv) The lease is in writing and contains the following provisions:

(A) The lessor's consent to the RH mortgage.

(B) Reasonable security of tenure. The borrower's interest must not be subject to summary forfeiture or cancellation.

(C) The right of RHCDS to foreclose the RH mortgage and sell without restrictions that would adversely affect the market value of the security.

(D) The right of RHCDS to bid at foreclosure sale or to accept voluntary conveyance of the security in lieu of foreclosure.

(E) The right of RHCDS, after acquiring the leasehold through foreclosure or voluntary conveyance in lieu of foreclosure, or in event of abandonment by the borrower, to occupy the property or sublet it, and to sell for cash or credit. In case of an inventory property sale of the leasehold, the right of RHCDS to take a mortgage with rights similar to those under the original RH mortgage.

(F) The right of the borrower, in the event of default or inability to continue with the lease and the RH loan, to transfer the leasehold, subject to the RH mortgage, to an eligible transferee with assumption of the RH debt.

(G) Advance written notice of at least 90 days to RHCDS of the lessor's intention to cancel or terminate the lease.

(H) Negotiated provisions as to the liability of RHCDS for unpaid rentals or other charges accrued at the time RHCDS acquires possession of the property or title to the leasehold, and those which become due during RHCDS's possession or ownership, pending further servicing or liquidation.

(v) An unexpired term which is at least 150 percent of the term of the RHCDS loan, unless the RHCDS loan is guaranteed by a public authority, Indian tribe, or Indian Housing Authority, in

which case the unexpired term of the lease must be at least 2 years longer than the repayment period of the loan; *Provided that:* in no event may the unexpired term of the lease be less than 15 years.

(5) Possessory rights on an American Indian reservation or State-owned land if the security requirements imposed by § 1944.18 are met.

(6) The interest of an American Indian in land held in severalty under trust patents or deeds containing restrictions against alienation if the security requirements imposed by § 1944.18(b)(3) are met.

(b) If an applicant's title to any part of the property does not qualify as an ownership interest under paragraph (a) of this section, an RH loan may nevertheless be made, if:

(1) The defect cannot be cured at a reasonable cost, and

(2) No improvements to be constructed or repaired with loan funds will be located on the parcel to which title is defective, and

(3) No security value will be accorded to the parcel to which title is defective.

§ 1944.16 Dwelling requirements.

Dwellings financed must provide modest, decent, safe, and sanitary housing. Costs of dwellings financed cannot exceed the maximum dollar limitation established under section 203(b) of the National Housing Act (12 U.S.C. 1709) (available from any HUD office) for the area in which the property is located unless authorized by RHCDS under § 1944.17(g). Loans shall not be approved for dwellings containing in-ground swimming pools or structures designed for income-producing facilities or purposes.

(a) *New dwellings.* Construction must meet the requirements contained in subpart A of part 1924 including the thermal performance standards for new construction outlined in exhibit D of subpart A of part 1924.

(b) *Existing dwellings.* Consideration should be given to financing existing dwellings in areas with a good supply of competitively priced, suitable housing. Homes financed should be affordable to the applicant, including operating and maintenance costs.

(1) Loans will not be made on an existing manufactured home unless it is already financed by RHCDS or is being sold from RHCDS inventory.

(2) Existing homes, including those already financed with an existing section 502 direct loan, must be inspected by RHCDS or by a disinterested third party inspector satisfactory to RHCDS who will determine and certify to RHCDS and the applicant that the dwelling meets the criteria outlined in paragraphs (b)(2)(i), (ii), and (iii) of this section. The sales agreement must identify the party (i.e., purchaser or seller) who has accepted responsibility for obtaining and paying for these inspections and certifications. Inspections are not required on public water and wastewater disposal systems. RHCDS inventory property will be inspected and repaired in accordance with subpart B of part 1955. The inspector will:

(i) Determine and certify to RHCDS and the applicant that the dwelling is structurally sound, functionally adequate, in good repair, or will be placed in good repair with loan funds, and meets the ''General'' requirements in Guide 2 of subpart A of part 1924 (available in any RECD field office).

(ii) Certify to RHCDS and the applicant that the dwelling meets thermal performance standards for existing dwellings required in exhibit D of subpart A of part 1924.

(iii) Certify to RHCDS and the applicant that the dwelling has adequate electrical, heating, plumbing, water, and wastewater disposal systems, and is free of termites and other wood damaging pests and organisms.

(c) *Repairs.* Any dwelling repaired with RH funds must be structurally sound, functionally adequate, and be placed in good repair with loan funds. If the loan is not more than $7,500 and is scheduled for repayment in not more than 15 years from the date of the note, the dwelling, after repair, may lack some equipment or features such as a complete bath, kitchen cabinets, closets, or completed finished interior in some rooms. Such dwellings must meet the housing needs of the applicant and provide decent, safe, and sanitary living conditions when the improvements financed with the loan are completed. Repairs required as a condition of loan approval will be performed in accordance with subpart A of part 1924. The applicant in cooperation with the seller will establish and provide documentation regarding who is responsible for the required repairs and when the repairs will be completed for RHCDS inspection. Repairs on manufactured homes are limited to those financed by a subsequent loan for existing homes currently financed with a section 502 RH loan, inventory property sales, and transfers.

(d) *Improvements.* Improvements financed with loan funds must be on land which, after loan closing, is part of a tract owned by the borrower in accordance with § 1944.15(a), or on an easement appurtenant to such a tract.

(e) *Manufactured homes.* Exhibit F (available in any RECD field office) contains supplemental information concerning construction requirements for manufactured homes.

§ 1944.17 Maximum loan amounts.

The amount of the loan may not exceed the maximum dollar limitation of section 203(b) of the National Housing Act (12 U.S.C. 1709) (available from any HUD office) unless authorized by RHCDS as an exception. Applicants are expected to reduce the need for loan funds by using available non-essential assets including cash on hand as outlined under § 1944.9.

(a) The amount will be the lesser of the cost of:

(1) The acquisition and any necessary development or

(2) The market value of the security, less the unpaid principal balance and past-due interest of any other liens against the security property, plus an appraisal fee, for the following types of dwellings:

(i) An existing dwelling, as described in § 1944.2, including one being financed by transfer or inventory property sale, except as provided in exhibit F (available in any RECD field office).

(ii) A new dwelling when any one of the following conditions exist:

(A) A conditional commitment was issued in accordance with § 1944.45.

(B) The RH loan will be closed prior to the start of construction, and construction conforms to the requirements contained in subpart A of part 1924.

(C) The required construction inspections were made by the Federal Housing Administration (FHA) or Veterans Administration (VA). If qualified under this paragraph, a complete set of plans and specifications must be submitted together with copies of construction phase inspection reports or certification by FHA or VA indicating the dwelling was built in accordance with approved plans and specifications. The builder will also furnish a certification of compliance with RHCDS thermal standards for new construction. (See exhibit D of subpart A of part 1924 available in any RECD office.)

(D) The manufactured home and site meet the requirements. (See exhibits F and J of subpart A of part 1924 available in any RECD office.)

(b) A loan will be limited to 90 percent of the market value of the security, plus an appraisal fee, for any dwelling that does not meet the requirements of paragraph (a) of this section, with the exception of manufactured housing units.

(c) Notwithstanding the provisions of paragraph (a) of this section, a loan on a dwelling which causes the total secured indebtedness to exceed the requirements of paragraph (a) of this section, may be made when the excess indebtedness is all or part of a lien held by a public body (except for a lien arising out of a judgment against the applicant in favor of the United States in a Federal Court other than the United States Tax Court), hospital, or welfare institution for advances made for medical bills, welfare payments, or provided:

(1) The applicant is unable to settle or compromise such lien sufficiently to avoid exceeding the market value;

(2) The lien securing the excess amount will at all times be inferior to the RHCDS mortgage securing the initial loan and any subsequent loan or advances determined by the RHCDS to be reasonably necessary to carry out the purpose of the initial loan or to protect the Government's financial interest;

(3) The existence of the excess lien will not jeopardize the security or servicing so as to preclude the making of a sound RH loan;

(4) The applicant has the ability to meet any payments on the excess debt as they become due or are likely to become due.

(d) Notwithstanding the provisions of paragraph (a) of this section, when a subsequent loan for closing costs only is made simultaneously with an inventory property sale (as provided in § 1955.117(f)) or a transfer, the total indebtedness may exceed the sale price or market value of the security property, whichever is less, by no more than 1 percent.

(e) Notwithstanding the provisions of paragraph (a) of this section, when RHCDS is refinancing the loan of an existing RHCDS borrower in accordance with § 1951.316, the debt may exceed the market value of the security property to the extent necessary to refinance the borrower's outstanding indebtedness plus closing costs required in connection with the refinancing.

(f) Notwithstanding the provisions of paragraph (a) of this section, when a subsequent loan is needed for repairs essential to protect the Government's security interest, the total RHCDS indebtedness may exceed the market value of the security by no more than the amount of the subsequent loan consisting of the cost of essential repairs and reasonable closing costs.

(g) RHCDS may grant exceptions to allow the amount of the loan to exceed the maximum dollar limitation of section 203(b) of the National Housing Act (12 U.S.C. 1709) under the following conditions:

(1) RHCDS may increase the loan amount in selected areas when the existing mortgage limit is insufficient to provide adequate housing for applicants and modest housing costs in the area exceed maximum loan limits or where different maximum loan limits exist in adjacent areas of the same community, for example: One limit on one side of the street compared to a higher limit on the other side.

(2) RHCDS may increase the loan amount where necessary to accommodate the specific needs of the family such as a larger home to correct overcrowding situations for exceptionally large households and reasonable accommodation for a household member who is disabled. When the request is to allow reasonable accommodation for a household member who is disabled, the additional loan amount will not exceed the cost of the special features provided and the amount of the appraisal fee.

§ 1944.18 Security requirements.

(a) *Adequate security.* Except as provided below, to protect the interests of RHCDS, all loans must be adequately secured. Except as provided in § 1944.17(c) and paragraph (b) of this section, a loan is adequately secured only when all of the following requirements are met:

(1) RHCDS obtains at closing a mortgage on all ownership interests in the entire tract.

(2) No liens prior to the RHCDS mortgage exist at the time of closing, and no junior liens are likely to be taken immediately subsequent to or at the time of closing.

(3) The provisions of subpart B of part 1927 regarding title clearance and the use of legal services are complied with.

(4) The property improvements and proposed improvements are totally on the site and do not encroach on adjoining property. RHCDS may require a survey, at the buyer's or seller's expense.

(b) *Exceptions.* Exceptions to the usual security requirements will be made only as follows:

(1) *Note only.* A loan of $2,500 or less, scheduled for repayment in not more than 10 years from the date of the note, that is not subject to recapture of subsidy in accordance with subpart I of part 1951, may be secured by the borrower's promissory note alone when RHCDS determines that:

(i) The applicant has a credit history which indicates an ability and willingness to pay debts when they are due;

(ii) The applicant will have sufficient income to readily meet all obligations; and

(iii) The applicant's equity in the real estate as improved, equals, or exceeds the amount of the proposed loan.

(2) *Mortgage insurance.* When the applicant is the holder of possessory rights on an American Indian reservation or State-owned land, adequate security is required. This may include mortgage insurance guaranteeing payment from a State agency or American Indian tribe. States will issue a State Supplement covering special security and title clearance requirements needed for loans of this type.

(3) *American Indian land.* American Indian land in trust or restricted status acquired with an RH loan will remain in trust or restricted status. These mortgages must be approved by the Secretary of the Interior. A State Supplement will be issued to prescribe the actions to be taken by RHCDS personnel to implement the making of loans under such conditions.

(4) *Best mortgage obtainable.* Loans of $7,500 or less scheduled for repayment in not more than 15 years from the date of the note and subsequent loans made for minimal essential repairs necessary to preserve the Government's security must be secured by a mortgage, except as provided in paragraph (b)(1) of this section, but title clearance and the use of legal services in accordance with subpart B of part 1927 are not required unless the loan approval official determines that the procedures in subpart B of part 1927 are necessary to assure repayment or accomplish the objective of the loan. Evidence of ownership must be in accordance with § 1944.24(d)(2).

(5) *Leasehold.* When the applicant owns only a leasehold interest will treat the lessee's interest like any other type of ownership interest in determining whether a mortgage on the leasehold is required. The lease must meet the requirements of § 1944.15(a)(5)(iv) and (v). In any state in which applicants are likely to own a leasehold interest, the State Director will issue a state supplement outlining the technical requirements for making such loans.

(6) *Security by junior lien.* RHCDS may take a junior mortgage as security for an RH loan if the tract, which will secure the RHCDS mortgage, provides adequate security for the entire prior lien debt and the RH loan, and

(i) The prior mortgage does not contain provisions that may jeopardize the RHCDS security position or the applicant's ability to repay the loan, such as provisions for future advances,

forfeiture, cancellation, foreclosure without adequate notice to junior lienholders, attorney's fees exceeding those customary for the area in cases of foreclosure; or

(ii) Such provisions are satisfactorily limited, modified, or waived; and

(iii) The conditions set forth in subpart B of part 1927 are met.

(7) *Liens junior to RHCDS lien.* Liens junior to the RHCDS lien will be allowed at closing or immediately subsequent to closing only when:

(i) The junior lien will not interfere with the purpose or repayment of the RH loan, and

(ii) The total amount of the RH loan, the junior lien, and any prior liens will not exceed the market value of the security except as provided in § 1944.17(c), and

(iii) The conditions set forth in subpart B of part 1927 are met.

(8) *Undivided interest.* When the applicant owns an undivided interest in the property, the co-owners' interests need not be included in the mortgage in the following instances:

(i) When one or more of the co-owners are not legally competent (and there is no representative who can legally consent to the mortgage) or cannot be located, or the ownership rights are divided among such a large number of co-owners that it is not practical for all their interests to be mortgaged, the mortgaging of interests not exceeding 50 percent may be excluded from the security requirements upon prior approval by RHCDS. All legally competent co-owners using or occupying the property will be required to sign the mortgage. Co-owners will be required to sign the note when necessary for a sound loan or to obtain the required security. The loan may not exceed the value of the percentage of the market value of the property represented by the interests of the owners who sign the mortgage. In determining such value, consideration will be given to any adverse effect which might result from sale of the mortgaged interests separately from the nonmortgaged interests.

(ii) When the applicant owns only an undivided interest in a building site which will be a part of the farm, the interest of the applicant's co-owners may be excluded from the security requirements upon approval by RHCDS if:

(A) The market value of the jointly owned tract is at least equal to the debts against it (including the RHCDS loan), and

(B) The applicant's participation in the joint ownership of part of the farm and its operations has been and is likely to continue to be successful.

(9) *Life estate.* When the applicant owns a life estate interest in the property, the remainder interests need not be included in the mortgage if one or more of the persons holding remainder interests are not legally competent (and there is no representative who can legally consent to the mortgage) or cannot be located, or if the remainder rights are divided among such a large number of people that it is not practicable to obtain the signatures of all the remainder interests. In the instance of numerous heirs, the mortgaging of remainder interests, not exceeding 50 percent of the total remainder interest may be excluded from the security requirements upon prior approval by RHCDS. In such cases, the loan may not exceed the value of the property interests owned by the persons executing the mortgage.

(10) *Farm dwelling.* When the applicant is the owner of a farm, a mortgage may be taken only on the dwelling and dwelling site provided the following conditions can be met:

(i) The tract to be mortgaged must not include farm service buildings, must be in a good residential location, be otherwise suitable as a residential type of nonfarm tract, provide adequate security for the loan, be contiguous to and have direct access to a public road, or

(ii) The tract to be mortgaged must contain at least enough land to clearly provide adequate security for the loan and to make the tract readily saleable in the area.

(11) *Land purchase contract.* When the ownership interest is by virtue of a land purchase contract (as described in § 1927.52), the ownership interest must be converted to a deed/mortgage interest prior to loan closing and meet the conditions of § 1944.22(b)(6) prior to loan closing.

(c) *Additional security.* When necessary to supplement the applicant's equity in the farm or nonfarm tract on which the dwelling is located, or to facilitate servicing of the loan, RHCDS may also require a mortgage on other real estate owned by the applicant.

(d) *Assignment of income from real estate to be mortgaged.* Income to be received by the applicant from royalties, leases, or other existing agreements under which the value of the real estate security will be depreciated will be assigned and disposed of in accordance with applicable portions of subpart C of part 1965, and the provisions for written consent of any prior lienholder. In small nonfarm tract cases, RHCDS may authorize withholding transmittal of assignments to lessees for execution until production begins.

§§ 1944.19–1944.21 [Reserved]

§ 1944.22 Refinancing non-RHCDS debts.

(a) Loan funds may be used for refinancing non-RHCDS debts on a dwelling (except for manufactured homes) if the debt was incurred by the applicant prior to the date the application was filed and the following conditions can be met:

(1) The debt was incurred for purposes for which a section 502 RH loan could be made or is a protective advance by the mortgagee for items covered by the mortgage to be refinanced, including accrued interest, insurance premiums, real estate tax advances, or preliminary foreclosure costs.

(2) The debt must be a lien against the property which will be security for the RH loan. The promissory note and security instrument for the debt to be refinanced must represent rates and terms that were typical and customary for long-term residential financing in the area at the time the debt was incurred.

(3) A loan to refinance a qualified secured debt may also include short-term or unsecured debts, if necessary to establish a sound repayment ability, if such short-term or unsecured debts were incurred for authorized section 502 RH loan purposes and are not a significant portion of the loan.

(4) Payments on the debt are so seriously delinquent or, if not delinquent, it must be evident that the applicant will be unable to continue to maintain payments, for reasons beyond the control of the applicant, and the applicant is likely to lose the dwelling at an early date if the debt is not refinanced. Such delinquency must be due to loss of employment or household income, illness, other similar events, or unforeseen circumstances.

(5) A statement must be obtained from the creditor for each debt to be refinanced showing the purpose for which the debt was incurred, the date on which it was incurred, the final due date, interest rate, amount and frequency of installments, unpaid principal and accrued interest, and amount of delinquency, if any.

(6) Refinancing such debts will not jeopardize the required priority of the RHCDS security instrument.

(b) Loan funds may be used for refinancing non-RHCDS debts on a building site without a dwelling when the applicant is unable to pay the debt from personal resources and failure to authorize the use of RH funds to pay

such costs would prevent the applicant from acquiring decent, safe, and sanitary housing and the following conditions can be met:

(1) The site meets the conditions prescribed in § 1944.11(c).

(2) The debt was incurred prior to the date of application for the sole purpose of purchasing the site.

(3) The debt is a lien against the property which will be used as security for the RH loan. The promissory note and security instrument for the debt represent rates and terms that were typical and customary for short-term residential financing in the area at the time the debt was incurred.

(4) The refinancing loan will include adequate funds for constructing a modest dwelling on the site for the use of the applicant, which conforms with the requirements of § 1944.16(a).

(5) A statement must be obtained from the creditor for each debt to be refinanced showing the purpose for which the debt was incurred, the date on which it was incurred, the final date due, interest rate, amount and frequency of installments, unpaid principal and accrued interest, and amount of delinquency, if any.

(6) Refinancing such debts will not jeopardize the required priority of the RHCDS security instrument.

(c) If a loan of $5,000 or more is necessary for repairs to correct major deficiencies and make the dwelling decent, safe, and sanitary, an existing lien which meets the requirements of paragraphs (a)(l), (2), (3), and (5) of this section may be refinanced regardless of delinquency, if necessary for the applicant to have repayment ability for the existing loan and the requested loan for repairs.

(d) Debts or costs incurred after the date of application may be refinanced if the costs were incurred for:

(1) Fees for legal, and other technical services, or

(2) Materials, construction, or site acquisition.

(e) RHCDS may authorize the use of RH funds to pay costs provided for in paragraphs (d) (1) and (2) of this section only when RHCDS retains the same lien priority as the debt to be refinanced and all of the following conditions exist:

(1) The costs were incurred after the applicant filed a written application for a loan but before the loan was closed. In the event of a subsequent loan to complete improvements previously planned, the costs must have been incurred after the initial loan was closed.

(2) The applicant is unable to pay such costs from personal resources or to obtain credit from other sources, and failure to authorize the use of RH funds to pay such costs would jeopardize the applicant's capability of repaying the loan.

(3) The construction or repair work conforms to that shown on the building plans and specifications or the RHCDS Development Plan, when applicable, and the costs were incurred for authorized section 502 RH loan purposes.

§ 1944.23 [Reserved]

§ 1944.24 Technical services.

(a) *Planning and performing construction work.* Any construction work will be planned and completed in accordance with subpart A of part 1924 or a lesser standard as may be prescribed by RHCDS for demonstration type loans.

(b) *Planning and performing site development work.* Any site development will be planned and completed in accordance with subpart C of part 1924, except as provided for manufactured homes in exhibit J of subpart A of part 1924.

(c) *Appraisals.* Appraisals will be required as follows:

(1) When a mortgage will be taken to secure a total indebtedness of more than $15,000, an appraisal of the security property will be made to ensure that the security requirements of the Agency are satisfied. The loan can exceed the market value of the security by the amount of an appraisal fee. A fee will be charged for each application for a section 502 RH loan when an appraisal is needed for initial and subsequent loans and assumptions. Fees will be waived for appraisals done for subsequent loans to existing borrowers for minimal essential repairs that are necessary to protect the Government's security property. The fee will be collected at loan closing by the closing agent.

(2) When the total indebtedness will be $15,000 or less, an appraisal of the real estate or leasehold interest is not required unless RHCDS is uncertain as to the adequacy of the security.

(3) Real estate mortgaged as additional security will be appraised when it represents a substantial portion of the security for the loan or when requested by the loan approving official.

(d) *Title clearance and legal services.*

(1) When real estate will be taken as security (including a mortgage on a leasehold), except on a best mortgage obtainable basis, title clearance and legal services for making and closing the loan will be provided in accordance with subpart B of part 1927. Title clearance and legal services will not be requested until the loan is approved.

(2) When real estate will not be mortgaged or when the best real estate mortgage obtainable is taken as security without title clearance or use of legal services, the applicant will be required to submit evidence of ownership of the farm or nonfarm tract. When RHCDS is uncertain as to whether or not the applicant is a qualified owner, such action will be taken as RHCDS considers necessary, such as requiring the applicant to furnish additional information. No loan will be made if RHCDS has actual knowledge that the applicant does not have valid title to the property.

§ 1944.25 Rates and terms.

(a) *Interest rate.* The interest rate charged by RHCDS will be the lower of the rates in effect at the time of loan approval or loan closing. Interest rates are specified in exhibit B of FmHA Instruction 440.1 (available in any RECD field office).

(b) *Amortization.* Loans will be scheduled for repayment over a period that will not exceed the expected useful life of the property as a dwelling. Only one of the amortization periods listed in this paragraph may be used for a borrower. Each loan will be scheduled for repayment from the date of the promissory note, for a period not to exceed one of the following as applicable:

(1) Thirty-three years for initial and subsequent loans.

(2) Thirty-eight years for initial loans (subsequent loans may be made for a period not to exceed the remaining years of the initial loan) when the following conditions are met:

(i) Adjusted annual income does not exceed 60 percent of the median income for the area as reflected in exhibit C, (available in any RECD field office), and

(ii) The longer term is necessary to show repayment ability, with or without mortgage payment deferral.

(3) Thirty years for manufactured homes.

(4) Ten years for loans not exceeding $2,500 which are not secured by a real estate mortgage.

(c) *Payment assistance.* Applicants may be eligible for a non-cash credit which may reduce the applicant's scheduled payment to a level equivalent to amortizing the loan to as low as 1 percent. The policies for granting and servicing payment assistance are set forth in § 1944.34 and subpart G of part 1951, respectively.

§ 1944.26 Fund allocation.

State Directors will maintain an adequate reserve to fund hardship applications, servicing type loans, the

State's portion of funds for Mutual Self-Help Housing loans and the RHCDS portion of participation loans. Reserve funds will be used for:

(a) *Hardship applications.*

(1) Hardship as determined by the State Director on a case-by-case basis, including applications from persons living in deficient housing as defined in § 1944.2, for more than 6 months.

(2) Refinancing non-RHCDS debts in accordance with § 1944.22(a) and RHCDS debts in accordance with § 1951.316.

(b) *Servicing type loans.*

(1) Financing for the purchase of Government-owned inventory properties;

(2) Subsequent loans for essential improvements or repairs;

(3) Subsequent loans in connection with inventory property sales or transfers with assumption of the RHCDS indebtedness.

(c) *Mutual Self-Help Housing loans.* Homes must be located in an RHCDS approved self-help project.

(d) *Participation loans.* Loans made by RHCDS in conjunction with another lender for the purchase of a dwelling.

§ 1944.27 Application processing.

(a) *Accepting applications.* RHCDS will accept completed applications in accordance with subpart A of part 1910.

(1) *Complete applications.* A completed application will consist of Form FmHA 410–4, ''Application for Rural Housing Assistance (Nonfarm Tract) Uniform Residential Loan Application,'' (URLA) and an RHCDS form for verifying employment, for each employer, all of which are available in any RECD field office.

(2) *Incomplete applications.* If the application is not dated and signed or sections are not properly completed, it may be returned for completion.

(3) *Packaged applications.* Builders, brokers, contractors, the applicant, and others, including not-for-profit organizations, may package loan applications in accordance with exhibit A (available in any RECD field office). Builders and sellers holding conditional commitments may also assist applicants in applying for an RH loan.

(b) *Processing steps.*

(1) [Reserved]

(2) Complete applications will be processed in the order received, in accordance with subpart A of part 1910 and subpart E of part 1901, except that preference will be given to applications for Mutual Self-Help Housing loans, loan servicing purposes, purchase of an inventory property, assumption of an existing RHCDS loan, and to applicants who qualify as a hardship, as outlined in § 1944.26. Veterans preference, as outlined in subpart A of part 1910, will apply.

(3) [Reserved]

(4) If HUD's Credit Alert Interactive Voice Response System (CAIVRS) identifies a delinquent Federal debt, RHCDS will immediately suspend processing of the application and the applicant will be notified in writing of the suspension and will be asked to contact the appropriate Federal agency, at the telephone number provided by CAIVRS, to resolve the delinquency. When the applicant provides RHCDS with official documentation that the delinquency has been paid in full or otherwise resolved, processing of the application will be continued. After 30 days from the suspension notification, if CAIVRS indicates the existence of an unsatisfied judgment in the favor of the United States, or if the applicant remains delinquent on a Federal debt and is unable to resolve the delinquency, the applicant will be rejected. The RHCDS Administrator may grant an exception to this requirement if it is in the best interest of the Government to do so.

(5) If an on-line profile credit report, where available, reveals adverse credit information, the applicant will be given the opportunity to correct the adverse information. Applications will not be rejected or withdrawal encouraged based on information provided in the on-line credit report. This service is provided for the sole purpose of providing assistance to the applicant by identifying any credit problems at the beginning of the loan process and to clarify the difference between eligibility for program assistance and loan approval.

(c) *Determination of eligibility and notification to applicant.* Eligibility determination will be made regardless of ranking or funding levels. If an applicant is determined ineligible because the applicant's income is too high, RHCDS may advise the applicant that applicant may qualify for the purchase of a Government inventory property or the assumption of an existing RHCDS borrower's loan on NP terms and may be counseled regarding the RH guaranteed loan program. If an applicant is given an adverse decision, the applicant will be given appeal rights to the Departmental National Appeals Division under Pub. L. 103–354.

(1) *Delayed processing.* When available loan funds are not adequate to complete the processing of all applications as they are received, or a large backlog of applications exists which prohibits immediate processing of the application, a preliminary determination of eligibility may be made based on the information provided by the applicant.

(i) If available funds are not adequate, applicants who appear eligible at the time of application will be advised in writing within 30 days of filing of the application of their *preliminary* eligibility determination and the estimated waiting period. They should be further advised that a final determination of eligibility will be made when loan funds are available for the processing of their application.

(ii) Where there are more than 50 unprocessed applications on hand, RHCDS will inform each applicant, at least every 6 months, of the current funding status and provide an estimate of when the loan is anticipated to be processed. At that time, the applicant should be advised to contact RHCDS if they are still interested in funding, and that the application will be withdrawn in 30 days if there is no response.

(2) *Immediate processing.* Where there is no backlog, available loan funds are adequate, and the application can be processed in a timely manner, RHCDS shall make a preliminary determination of eligibility based on information submitted by the applicant and will request additional information as necessary to make a final determination of eligibility.

(i) On-line profile credit reports may be used to allow a means for the loan approval official to determine if there is adverse credit information on the applicant's record prior to payment of the credit report fee.

(ii) The age of the applicant will not be considered except as provided in § 1944.9.

(iii) Repayment ability will be evaluated in accordance with § 1944.8.

(iv) RHCDS will apply the objective standards of credit evaluation, outlined in § 1944.9, for each applicant. All applications will be considered under the same standards.

(v) [Reserved]

(d) *Selection for processing.*

(1) Completed applications for a reserve funding category, as set out in § 1944.26, as well as applications for the assumption of an existing RHCDS loan, will be processed upon receipt.

(2) All other completed applications will be selected for processing in the order received, as funding becomes available. Selected applicants have 30 days to provide information required under paragraph (e) of this section (including any fees for credit reports) for a final determination of eligibility. Selected applicants who do not respond to this 30-day notice will be withdrawn. Applications selected will be funded in

the order that information is received, until all available loan funds are exhausted. Selected applicants who respond affirmatively to the first notice, but who are not funded within the quarter will be held over and counted as a selected applicant for the next quarterly allotment and will be so notified in writing. If all requested information is not received within 45 days after the second written selection notification, the application will be withdrawn.

(e) *Verification of information.*

(1) *Income verification.* All applicants will be required to submit a complete, legible copy of their most recently filed Federal income tax return (showing the applicant's signature) unless exempted from filing a return. In cases where a tax preparer has provided the applicant with copies of the return which was filed, one of the copies with the original signature of the tax preparer should be submitted. In Puerto Rico, applicants must submit a signed photocopy of the most recently filed State income tax returns. Applicants who do not have photocopies of their filed Federal returns should contact their Regional Internal Revenue Service. In addition to copies of tax returns, other income verification may be required.

(i) Applicants will complete such forms as required by RHCDS. A form will be used to verify employment income of each applicant except for self-employment.

(ii) RHCDS may confirm reported wages and earnings, including ''non-taxable income'' with the Department of Labor or similar agency where this information is available.

(iii) Applicants deriving their income from a farming or business enterprise, must provide current documentation of income and expenses. This information must not be older than the previous fiscal year.

(iv) Applicants must provide a copy of the most recent award or benefit letter prepared and signed by the authorizing agency to verify Social Security, pension, and disability income. In addition, the Cost-of-Living (COLA) in Social Security Benefits and Supplemental Security Income Payments Notice, Social Security Benefit Statement, Forms SSA–1099 and SSA–1042, or Notice of Change in Benefits may be required for documentation of Social Security and Supplemental Security Income.

(v) The applicant must provide a copy of the divorce decree or other legal document indicating the amount of the payments to verify alimony and child support payments. When the applicant states that less than the amount awarded is received, RHCDS may request documentation from the official entity through which payments are received, or other third parties capable of providing the verification when payment is not made through an official entity, indicating the dates and amounts of payments made to the applicant during the previous 12 months.

(vi) Income information that cannot be obtained by use of forms provided by RHCDS will be obtained in writing from knowledgeable third parties to the extent possible. When it is not feasible to verify income through third parties, RHCDS may accept an affidavit from the applicant; in the case of child support or alimony, the affidavit must state the effort made to collect the amount awarded, and the amounts and dates of payments received during the previous 12 months.

(2) *Verification of alien status.* Aliens are required to present documentation of their status. Exhibit B (available in any RECD field office) outlines the acceptable forms of documentation.

(3) *Verification of disability.* Form FmHA 1944–4, ''Certification of Disability or Handicap,'' is used to verify disability in cases where State Review Boards or Social Security records are not available. When Form FmHA 1944–4 contains information which could affect the applicant's eligibility, the applicant may be required to furnish a physician's written opinion regarding the applicant's capacity to incur the loan obligation.

(f) *Applicant interview.* After verification of all information necessary for making a final determination of eligibility but prior to issuance of the Certificate of Eligibility, RHCDS will conduct a personal interview with the applicant. The applicant may be accompanied by an advisor but the applicant or court appointed guardian or conservator must be personally responsive to all questions or issues during the interview. During the interview, RHCDS and the applicant will:

(1) Verify information concerning persons who will occupy the dwelling and on whose income eligibility for the loan and payment assistance is based. Applicants who may be able to obtain other credit will be told they are expected to apply for same from a lender making loans for similar purposes. If requested, the applicant will have the lender indicate the amount, interest rate, and terms of housing credit the lender would be willing to extend to the applicant.

(2) Reach an understanding that failure of the applicants to fully disclose financial and application information or material falsification or concealment of such information will result in a denial of assistance and possible penalties.

(g) *Issuance of ''Certificate of Eligibility.''* Once all information has been verified and eligibility has been determined, a ''Certificate of Eligibility'' will be issued to all applicants selected for further processing. The certificate will be valid for a period not to exceed 90 days. The certificate will not be issued to applicants who have submitted packaged applications that already contain information necessary to complete a real estate appraisal.

(1) *Appraisals.* After the Certificate of Eligibility is issued the applicant has 90 days to provide information needed to complete the real estate appraisal on the property to be financed.

(i) Information requested will include a copy of the option or sales agreement; a legal description of the property; a direction map; certified building plans and specifications or repair estimates as appropriate; copies of existing surveys, title information, and tax bills; and other information deemed necessary by the appraiser.

(ii) The applicant must advise RHCDS if they wish to have the cost of the real estate appraisal included in the loan funds.

(iii) Appraisals will generally be completed within 30 days of the date information requested is received.

(2) *Environmental review.* The Agency must complete the environmental review process pursuant to subpart G of part 1940 prior to loan approval or obligation, whichever occurs first.

(3) *Extensions or withdrawals.* At the end of 90 days, if the applicant has not submitted the information requested, the application will be deemed withdrawn unless an extension is approved based on evidence that the applicant is actively working on supplying the necessary information. A maximum of two 60-day extensions can be approved.

(h) *Appeals.* If the decision on the applicant's request for assistance is unfavorable, the applicant will be notified of the appropriate appeal rights under Pub. L. 103–354 to the National Appeals Division. The applicant will be notified that a new application may be filed when curative action is taken to remove the reasons for rejection.

(i) *Accountability.* Applicants should be made aware of the accountability requirements of persons paid to influence the making of an RHCDS housing loan or grant as set out in subpart S of part 1940.

§§ 1944.28–1944.30 [Reserved]

§ 1944.31 Loan approval.

(a) RHCDS employees are authorized to approve or disapprove loans, as delegated, in accordance with subpart A of part 1901.

(b) All loan approvals are subject to the availability of funds.

(c) [Reserved]

(d) [Reserved]

(e) If title evidence is required in accordance with subpart B of part 1927 or in accordance with any special requirements for the loan but is not included in the docket, the loan may be approved subject to the applicant furnishing the required title evidence. When the applicant furnishes required title evidence, RHCDS will proceed with processing the loan. In those cases in which the title evidence does not comply with the conditions specified, the docket will be reconsidered by the approval official.

§ 1944.32 [Reserved]

§ 1944.33 Loan closing.

(a) *Reverification of income.* If a loan made on program terms will be closed or the payment assistance agreement will be executed more than 90 days after the date of the last verification of employment, or if there is evidence to indicate the applicant's financial status has changed significantly, the applicant's income will be reverified in accordance with § 1944.27 and the amount of payment assistance will be determined on the basis of the applicant's new income, based on the schedules contained at § 1944.34(c). If the adjusted income is such that the applicant is no longer eligible for payment assistance, the loan may be closed if there is documented evidence to clearly indicate other credit is not available and the applicant has adequate repayment ability based on the revised income for the proposed loan. Payment assistance may be granted if the applicant's income was at or below the low-income level at the time of loan approval but payment assistance will not be granted if the adjusted income exceeds the moderate-income limit set forth in exhibit C (available in any RECD field office).

(b) *Promissory note.* An RHCDS approved ''Promissory Note'' will be prepared and signed in accordance with subpart B of part 1927. Payments of principal and interest will be deferred during the period the dwelling is not suitable for occupancy as a residence because of construction or repairs. If the loan is closed before any funds are advanced by RHCDS or loan funds are distributed by multiple advance, accrued interest is added to principal and repaid in regular amortized installments (payment alternative I) after the deferment period. The monthly payment provision will be used for all applicants except those who are existing RHCDS borrowers with previous loans which were made on an annual payment basis. If the annual payment provision is used and installments are not to be deferred, the amount of the first installment will be determined by RHCDS after considering the immediate debt paying ability of the applicant. The amount of the first installment may not be less than an amount equal to interest on the loan from the date of loan closing to the next January 1.

(c) *Real estate mortgage.* An RHCDS approved real estate mortgage form will be used for loans to be secured by a real estate mortgage.

(d) *Collection of the first installment.* If the annual payment provision of the note is used and payments are not to be deferred, the first installment of a loan closed during December will be paid at the time of loan closing.

(e) *Homeowners or fire and extended coverage insurance.* Buildings on the property taken as security for the loan will be insured in accordance with subparts A and B of part 1806. The policy and a paid receipt for 1 full year's premium must be presented by the applicant at loan closing.

(i) *Effective date of loan closing.* A loan secured by a real estate mortgage is closed when the mortgage is filed for record and the expected lien is obtained. In other cases, a loan is closed when the applicant executes the note and any other required instruments.

§ 1944.34 Payment assistance.

(a) *General.* It is the policy of RHCDS to grant payment assistance on loans to qualified applicants to assist them in obtaining and retaining decent, safe, and sanitary dwellings and related facilities. This section pertains to the granting of payment assistance connected with loan making activities. All other provisions dealing with payment assistance are contained in subparts G and I of part 1951.

(b) *Approval authority.* Officials who are authorized to approve section 502 RH loans are also authorized to approve payment assistance.

(c) *Amount of payment assistance.* Payment assistance granted will be the difference between the installment due on the promissory note and the amount the greater of the payment amortized at the equivalent interest rate related to the applicant's income or the payment calculated based on the floor related to the applicant's income.

(1) The floor is a minimum percentage of adjusted family income which the borrower must pay for PITI as follows:

(i) Very low-income borrowers will pay a minimum of 22 percent;

(ii) Low-income borrowers with adjusted family income below 65 percent of median income will pay a minimum of 24 percent;

(iii) Low-income borrowers with incomes between 65 percent to 80 percent of median will pay a minimum of 26 percent.

(2) The equivalent interest rate is determined by a comparison of the borrower's adjusted annual income as determined in § 1944.6 to the median income for the area where the security property is located, based on income figures published by HUD as reflected in exhibit C (available in any RECD field office). The following chart is to be used for determining the equivalent interest rate paid by the applicant when eligible for payment assistance, for loan making and loan servicing for loans closed after the effective date of this subpart. In determining percentages, rounding should *not* be used.

PERCENTAGE OF MEDIAN INCOME AND EQUIVALENT RATE OF INTEREST

When the applicant's adjusted income is:		
Equal to or more than	But less than	Then the equivalent rate of interest is**
00 percent	50.01 percent of median income	1 percent.
50.01 percent	55 percent of median income	2 percent.
55 percent	60 percent of median income	3 percent.
60 percent	65 percent of median income	4 percent.
65 percent	70 percent of median income	5 percent.

PERCENTAGE OF MEDIAN INCOME AND EQUIVALENT RATE OF INTEREST—Continued

When the applicant's adjusted income is:		
Equal to or more than	But less than	Then the equivalent rate of interest is**
70 percent	75 percent of median income	6 percent.
75 percent	80.01 percent of median income	6.5 percent.
80.01 percent	90 percent of median income	7.5 percent.
90 percent	100 percent of median income	8.5 percent.
100 percent	110 percent of median income	9 percent.
110 percent	Or more than median income	9.5 percent.

** Or note rate, whichever is less; in no case will the effective interest rate be less than 1 percent except as provided in § 1944.35.

(3) Payments for existing borrowers receiving subsequent loans approved after the effective date of this publication or whose loans are being reamortized with a change in the term will be determined under payment assistance.

(4) Present RHCDS borrowers who are currently receiving payment assistance as of the effective date of this subpart, will continue to be reviewed under the system in effect prior to the effective date of this issuance. Any other exception to the use of these interest rates or minimum percentages of adjusted family income will be made by the RHCDS Administrator under paragraph (h) of this section. Median income is that reflected in exhibit C (available in any RECD field office).

(d) *Recapture.* Borrowers must agree to provisions for recapture of any payment assistance the borrower may receive during the life of the loan. See subpart I of part 1951.

(e) *Eligibility.* To be eligible for payment assistance, an applicant must qualify for a section 502 RH loan, must personally occupy the dwelling, and must meet the following additional requirements:

(1) *Initial loans including inventory property sales.* Payment assistance may be granted at loan closing if:

(i) The applicant's adjusted annual income, at the time of loan approval, did not exceed the applicable low-income limit contained in exhibit C (available in any RECD field office).

(ii) The term of the loan will not be less than 25 years.

(2) *Subsequent loans.* Payment assistance may be granted on subsequent loans which meet the terms of paragraph (e)(1) of this section. If payment assistance is presently being granted on the initial loan and the applicant's adjusted income does not exceed the moderate-income limit, it may also be granted on a subsequent loan, providing the term of the subsequent loan is 25 years or more.

(3) *Assumptions.* Payment assistance may be granted to an applicant assuming an RH loan on new rates and terms, provided the assuming parties qualify according to paragraph (e)(1) of this section. Payment assistance may only be granted on ''same term'' assumptions if the original loan was approved on or after August 1, 1968.

(f) *Processing payment assistance.* The adjusted payment for which an applicant qualifies after application of payment assistance will be stated in the most current payment assistance agreement. Payment assistance agreements will be for a 12-month period, with the following exceptions:

(1) *Self-employed applicants.* For a self-employed applicant, the initial payment assistance agreement will run from the effective date to 3 months after the end of the applicant's business fiscal year, but not more than a 12-month period. This will allow subsequent agreements to coincide with the applicant's business fiscal year with a 3-month over-lap to provide sufficient time for the applicant to supply verification of the previous year's income.

(2) *Unemployed applicants.* For an applicant receiving unemployment benefits, the agreement will be effective for the period during which the applicant will receive unemployment benefits, or, if the period is unknown, no longer than 6 months. The expiration date of the agreement will be established by RHCDS.

(3) *Annual payment applicants.* For an applicant currently paying an annual installment, who receives a subsequent loan, the initial payment assistance agreement including the subsequent loan will be in effect until the next January 1.

(g) *Applicant notice of right to appeal.* All applicants who request and are denied payment assistance may appeal in accordance with Pub. L. 103–354 to the National Appeals Division, USDA.

(h) *Exceptions.* RHCDS may make exceptions to proposed transactions in which the conditions prescribed in the foregoing paragraphs of this section cannot be met. This paragraph is primarily intended to be used for those cases in which the granting of payment assistance is necessary for the applicant to retain or obtain a dwelling for the applicant's own use, and there are no other means to do so. RHCDS may authorize a further reduction of the equivalent rate of interest in high cost areas as determined by HUD when there is evidence to indicate that there is no adequate, lower-cost housing available to the applicant which would reduce the applicant's need for additional subsidy; the housing to be financed is comparable in cost to housing financed for very low-income applicants in the area; and the applicant will be unable to acquire adequate housing unless additional subsidy is authorized. This exception is limited to an additional one percentage point reduction in the equivalent rate of interest but in no event may the equivalent rate of interest be less than 1 percent except as authorized in § 1944.35. A high cost area is an area which has been designated as high cost by HUD under the maximum dollar limitation of section 203(b) of the National Housing Act (12 U.S.C. 1709) (available from any HUD office).

§ 1944.35 Deferred mortgage payments.

(a) *General.* It is the policy of RHCDS to defer up to 25 percent of the installment amount at the 1 percent equivalent interest rate to qualified RHCDS applicants, to assist them in obtaining decent, safe, and sanitary dwellings and related facilities. Only principal and interest can be deferred.

(b) *Approval authority.* Officials authorized to approve section 502 RH loans are also authorized to approve the deferral.

(c) *Eligibility.* In order to qualify for deferred mortgage payments under this section, the following conditions must exist:

(1) The applicant's adjusted family income, at the time of initial loan approval, must not exceed the applicable very low-income limits in exhibit C (available in any RECD field office);

(2) The term of the loan is 38 years, or 30 years for manufactured housing units;

(3) The applicant qualifies for the maximum payment assistance (equivalent to an interest rate of no more than 1 percent) allowable under § 1944.34;

(4) The applicant's PITI, calculated at 1 percent equivalent interest rate for 38 years, exceeds 29 percent of the adjusted annual income; and

(5) The initial deferral assistance under this section is granted in connection with the initial loan closing; or deferral assistance is being renewed, without interruption, during the 15-year period from the effective date of the initial agreement.

(d) *Amount and terms of deferral.*

(1) The deferral amount is determined as follows:

(i) The applicant will be at the maximum payment assistance allowable under § 1944.34.

(ii) RHCDS will calculate the applicant's PITI based on the equivalent 1 percent interest rate for 38 years (30 years for manufactured housing units), and the annual real estate taxes and insurance due for the current year (or escrow amounts for real estate taxes and insurance premiums due during the current year, where applicable).

(A) If the amount of real estate taxes due for the initial agreement is less than a typical year's taxes (such as in new construction), then ''eligibility'' for deferral assistance will be determined based on the amount of taxes due in a typical year but the ''amount'' of deferral for which the applicant qualifies will always be based upon *actual* taxes due for the current year. This may result in the applicant being eligible for assistance but not having anything deferred during the first year. Although there may not be any portion of the payment deferred in the first year, the 15-year period for assistance will still be calculated from the date of loan closing.

(B) For renewals of deferral assistance, only the regularly scheduled PITI due for the current year calculated at 1 percent equivalent interest rate for 38 years, will be considered when calculating the deferral amount. Protective advances, additional payment agreements, and other payment agreements will not be considered in this calculation.

(iii) If the reduced PITI calculated at 1 percent for 38 years (30 years for manufactured housing units) still exceeds 29 percent of gross annual income, the deferred mortgage payment will be 75 percent of the monthly installment amount at the 1 percent equivalent interest rate amortized over 38 years.

(2) Deferred mortgage payments will be effective for a 12-month period. The effective date will coincide with the anniversary date of the payment assistance agreement. Deferred mortgage assistance may be continued, without interruption, for up to 15 years after the date of loan closing. A borrower who no longer qualifies for deferred mortgage assistance because of an increase in income, will not receive deferred mortgage assistance again, even if income decreases at a later date.

(e) *Review process.* The borrower's income, taxes, and insurance will be reviewed annually to determine eligibility for continued deferred mortgage assistance and payment assistance. The review for both types of assistance shall be performed simultaneously. It is not the responsibility of RHCDS to monitor changes in the borrower's income. If a borrower whose payments are being deferred experiences a change in income that qualifies under subpart G of part 1951 for a change in payment assistance, the borrower should request a review for deferred mortgage payment assistance. Adjustments to deferred mortgage assistance and payment assistance will be effective as of the date of income change.

(1) *Annual review.* The annual review will be scheduled to take place during the payment assistance review period as defined in subpart G of part 1951 (available in any RECD field office).

(2) *Responsibilities of the applicant.* Before a deferral will be approved, the applicant must:

(i) Provide RHCDS with income verification, as described in § 1944.27;

(ii) Provide RHCDS with information needed to complete the deferral section of the Payment Assistance/Deferred Mortgage Assistance Agreement;

(iii) Review and sign the appropriate RHCDS forms and documents, and

(iv) Participate in an interview to review the deferral information.

(f) *Cancellation of deferral.* Deferral under this section may be canceled for any of the conditions for which payment assistance may be canceled in § 1951.313. Once a borrower goes off deferred mortgage payments, the borrower is not eligible to receive this assistance again. Deferred payments may only be continued for up to 15 years after the effective date of the loan closing.

(g) *Recapture.* The amount deferred is subject to repayment and recapture in accordance with subpart I of part 1951.

(h) *Appeal/review rights.* Because the deferred mortgage regulations are based on the objective application of formulas, deferred mortgage payment calculations are not appealable; however, a review may be requested in accordance with subpart B of part 1900. Applicants who request and are denied deferred mortgage payments, or whose deferral amount has been reduced, canceled, or not renewed based on contested income calculations, may appeal that decision in accordance with Pub. L. 103–354 to the National Appeals Division, U.S.D.A.

§ 1944.36 [Reserved]

§ 1944.37 Subsequent section 502 RH loans.

Subsequent section 502 RH loans may be made to existing borrowers for the same purposes and under the same conditions and limitations as an initial loan, except as provided in this section. A new credit report is required for all applicants for subsequent loans in accordance with § 1944.27.

(a) The subsequent loan will be processed in the same manner as an initial loan, except that a new appraisal report will be required in accordance with § 1944.24 only when real estate will be taken as security and at least one of the following conditions exists:

(1) The property was not appraised in connection with the initial loan;

(2) The latest appraisal report of the real estate is over 2 years old;

(3) The physical characteristics of the property have changed significantly;

(4) RHCDS is uncertain of the adequacy of the security; or

(5) The subsequent loan is in connection with a transfer of an existing loan subject to subsidy recapture in accordance with subpart I of part 1951.

(b) A subsequent RH loan may be made on a note-only basis, provided the amount of the subsequent loan plus the unpaid principal balance of any prior note-only RH loans do not exceed $2,500. Applicants for such loans must meet the requirements of § 1944.18.

(c) [Reserved]

(d) The subsequent loan will bear interest at a rate determined in accordance with exhibit B of FmHA Instruction 440.1 (available in any RECD field office).

(e) A subsequent loan may be made to permit the remaining borrower, if eligible, to purchase the equity of a departing coborrower.

(f) When an area designation has been changed from rural to nonrural,

subsequent RH loans may be made only in accordance with the provisions of § 1944.10.

(g) The loan approval official may authorize reamortization of a prior RH loan at the time a subsequent loan is made in those cases in which it is determined that the borrower cannot reasonably be expected to meet installments due unless the account is reamortized. If the account is reamortized, the reamortization must be in accordance with subpart G of part 1951.

(h) Title clearance and appraisal fees for subsequent loans to existing RHCDS borrowers for minimal essential repairs to protect the Government's security will be handled in accordance with §§ 1944.18 and 1944.24.

§ 1944.38 Mutual Self-Help Housing loans.

Applicants may build their homes by participating in a Mutual Self-Help Housing project sponsored by an RHCDS self help housing grantee. See subpart I of part 1944 for the requirements for an organization to become a self-help housing grantee.

§ 1944.39 RH loans to RHCDS employees and loan closing officials.

RHCDS employees, and loan closing agents, or members of their families may obtain a section 502 RH loan subject to the provisions of this subpart:

(a) Written evidence indicating the applicant's inability to obtain the needed credit elsewhere will be included in the application.

(b) Applications will be processed and loans will be serviced according to subpart D of part 1900.

(c) Loans, inventory property sales, or assumption agreements will not be approved under this authority for any of the following purposes:

(1) Buying RHCDS inventory property;

(2) Buying RHCDS security property from a borrower; or

(3) Buying RHCDS security property at foreclosure sale.

§ 1944.40 [Reserved]

§ 1944.41 Housing demonstration programs.

RHCDS may authorize limited demonstration programs that may not be consistent with some of the provisions of this chapter. Those demonstration programs will be clearly identified as such.

§ 1944.42 Condominium and community land trust requirements.

(a) *Condominiums.* A loan may be made on an existing condominium unit when the project has been approved or accepted by Housing and Urban Development (HUD), Federal National Mortgage Association (Fannie Mae), or Federal Home Loan Mortgage Corporation (Freddie Mac) provided the applicant and loan meet all other requirements in accordance with this subpart. Official documentation from the approving agency must be submitted with the sales contract. The condominium documents must ensure the following:

(1) The condominium project has been created and exists in full compliance with the requirements of the condominium enabling statute and all other applicable laws of the jurisdiction where the condominium project is located.

(2) Any right of first refusal in the condominium documents will not impair the rights of Rural Housing and Community Development Service (RHCDS) to:

(i) foreclose or take title to a condominium unit pursuant to the remedies in the mortgage;

(ii) accept a deed or assignment in lieu of foreclosure in the event of default by a mortgagor; and

(iii) sell or lease a unit acquired by RHCDS.

(3) If RHCDS obtains title to a condominium unit pursuant to the remedies in its mortgage or through foreclosure, RHCDS will not be liable for more than 3 months of the unit's unpaid regularly budgeted dues or charges accrued before acquisition of the title to the unit by RHCDS. The homeowners association's lien priority may not include costs of collecting unpaid dues.

(4) In case of condemnation or substantial loss to the units or common elements of the condominium project, unless at least two-thirds of the first mortgagees or unit owners of the individual condominium units have given their consent, the homeowners association may not:

(i) By act or omission seek to abandon or terminate the condominium project;

(ii) Change the pro rata interest or obligations of any condominium unit in order to levy assessments or charges, allocate distribution of hazard insurance proceeds or condemnation awards, or determine the pro rata share of ownership of each condominium unit in the common elements;

(iii) Partition or subdivide any condominium unit;

(iv) Seek to abandon, partition, subdivide, encumber, sell, or transfer the common elements by act or omission; (the granting of easements for public utilities or other public purposes consistent with the intended use of the common elements by the condominium project is not a transfer within the meaning of this clause); or

(v) Use hazard insurance proceeds for losses to any condominium property (whether units or common elements) for other than the repair, replacement, or reconstruction of the condominium property.

(5) The project, including all common elements and amenities, is complete. All amenities are covered by the mortgage at least to the same extent as the common elements.

(6) All taxes, assessments, and charges that may become liens prior to the first mortgage under local law relate only to the individual condominium units and not to the condominium project as a whole.

(7) No provision of the condominium documents gives a condominium unit owner or any other party priority over any rights of RHCDS as first or second mortgagee of the condominium unit pursuant to its mortgage in the case of a payment to the unit owner of insurance proceeds or condemnation awards for losses to or taking of condominium units or common elements.

(8) If the condominium project is on a leasehold the underlying lease provides adequate security of tenure.

(9) At least 70 percent of the units have been sold. Multiple purchases of condominium units by one owner are counted as one sale when determining if the sales requirement has been met.

(10) No more than 15 percent of the unit owners are more than 1 month delinquent in payment of homeowners association's dues or assessments at the time of delivery of the mortgage to RHCDS.

(b) *Community land trusts.* Loans may be made to finance the purchase of a dwelling located on land owned by a community land trust, provided the applicant and the loan meet all other requirements in accordance with this subpart.

(1) Community land trust is defined as a community housing development organization which is a private nonprofit organization, including State or locally chartered nonprofit organization. In addition to the statutory requirements the ownership requirements must be consistent with the leasehold provisions in § 1944.15(a)(5) of this subpart. The leasehold must be appraised in accordance with subpart C of part 1922 (available in any RECD office).

(2) The ownership requirements must be consistent with the leasehold provisions in § 1944.15(a)(5). The leasehold must be appraised in

accordance with subpart C of part 1922 (available in any RECD field office).

(i) The rights are held only by a governmental body or eligible nonprofit organization and exercised by them or someone they have identified as an eligible purchaser;

(ii) Any right is exercised within 45 days after the holder of these rights may exercise them (for example, the rights are often triggered by a notice of sale from the borrower); and

(iii) Any option price allows the borrower to recover the borrower's investment plus a reasonable share of appreciation. The national office may approve option rights to be held and exercised by another person or entity on a case-by-case basis.

(3) All restrictions relating to community land trusts that are allowed by RHCDS must automatically and permanently terminate upon foreclosure and deed-in-lieu of foreclosure. The relevant legal documents must have language that accomplishes this result. Merely subordinating the restrictions to the mortgage is not sufficient. The restrictions cannot come back in force upon subsequent resale by RHCDS.

§ 1944.43 [Reserved]

§ 1944.44 Borrower graduation.

Borrowers will be asked to refinance RH loans when the Agency determines that credit likely will be available at rates and terms prevailing in the area and on terms which the borrower can reasonably be expected to meet. Borrowers will be required to apply for a refinancing loan from one or more locally active lenders when asked and, if approved by a lender, accept such credit to pay the RHCDS loan in full.

§ 1944.45 Conditional commitments.

(a) *General.* A conditional commitment is assurance from RHCDS to a qualified builder, dealer-contractor, or seller that a dwelling to be offered for sale will be acceptable for purchase by qualified RH loan applicants if accepted by RHCDS and/or built or rehabilitated in accordance with RHCDS approved plans, specifications, and regulations, and priced at not more than a specified amount. The conditional commitment does not reserve funds nor does it assure that an eligible loan applicant will be available to buy the dwelling. The conditional commitment is not effective if the area does not remain rural.

(b) *Eligibility.* To be eligible for conditional commitments, the builder, dealer-contractor, or seller must:

(1) Be the owner as defined in § 1944.15, prior to the beginning of any planned construction, of the site on which the dwelling is located or to be built, except as set out in subpart G of part 1822 (FmHA Instruction 444.8).

(2) Have the experience and ability to complete any proposed work in a competent and professional manner.

(3) Be financially responsible and have the ability to finance or obtain financing for any proposed construction or rehabilitation.

(4) Comply with the requirements of subpart E of part 1901 and all applicable laws, regulations, and Executive Orders relating to equal opportunity.

(5) Plan to build or rehabilitate dwellings which will qualify for purchase by RH applicants and which will be in compliance with all applicable laws, ordinances, and codes.

(6) Have the legal capacity to enter into the required agreements and the actual capacity to carry them out.

(c) *Limitations.*

(1) Conditional commitments will be issued only in cases where the commitment applicant's selling price does not exceed the commitment price, which will never be more than the lower of the appraised value or the maximum loan amount as contained in § 1944.17.

(2) Conditional commitments will be issued by RHCDS for new homes to be constructed, new manufactured homes, or existing homes (other than manufactured).

(3) Conditional commitments for new or substantially rehabilitated dwellings will not be issued after construction has started.

(4) The total number of conditional commitments issued in any locality will not exceed the number of homes for which there is an immediate and ready market in that locality. In addition, the total number of conditional commitments outstanding in the area served by an RECD field office will not exceed the number on which the approval official can reasonably expect to be able to approve RH loans within 3 months after the houses covered by the commitments are completed, considering the availability of loan funds, and the number of applications in any RECD field office.

(5) The period of the conditional commitment will be for 12 months from the date of issuance. The commitment may be extended for an additional 6 months because of unexpected delays in construction caused by such factors as bad weather, materials shortages, or marketing difficulties.

(6) When five or more conditional commitments have been issued to one recipient during a 12-month period, an affirmative marketing plan will be required in accordance with § 1901.203(c).

(d) *Conditional commitments where the dwelling is presold to a specific applicant.* In cases where the dwelling is presold and is to be constructed for sale only to a specific applicant and the information on the house and the loan applicant is submitted at the same time, all of the following conditions must be met:

(1) The conditional commitment will not be approved until the RH loan has been approved;

(2) Construction will not begin until loan funds are obligated for the RH loan. RHCDS may make an exception to this requirement when it appears likely that funding will be forthcoming and it is necessary to begin construction because of weather conditions or similar circumstances *provided* the commencement of construction prior to closing the RH loan will not jeopardize RHCDS's lien priority.

(i) The sales agreement must indicate that the loan has been approved but not funded and must provide that if the loan is not closed within 90 days of the date of approval, the contractor may, in writing, terminate the sales agreement and sell the home to another party. If the sales agreement is terminated, the conditional commitment will be honored for another eligible RHCDS loan applicant for the remaining period of the commitment, providing the contractor has met all other requirements of this subpart.

(ii) If the sales agreement is terminated, a Certificate of Eligibility will be issued to the loan applicant in accordance with § 1944.27.

(3) The RH loan will be closed only after the dwelling is constructed or the required rehabilitation completed and final inspection has been made.

(e) *Fees.* Each commitment applicant will pay a fee for each conditional commitment at the time an application is submitted. Fees are established in exhibit G (available in any RECD field office). Conditional commitment contractors will be reimbursed at the time the section 502 RH loan is closed for an amount equal to the fee the section 502 RH applicant is charged for the real estate appraisal.

(f) *Processing applications.*

(1) *Application submission.* Applications for conditional commitments will be submitted on a form provided by the Agency. Attachments, as required by the form, will be included for each individual dwelling for which a conditional commitment is requested.

(2) [Reserved]

(3) *Evaluation of applications.* The commitment applicant must meet the requirements of paragraphs (b) and (c) of this section, and the dwelling and site must meet the requirements of this subpart and subpart A of part 1924 and comply with all local codes and ordinances. The property must meet the requirements of subpart C of part 1924 and subpart G of part 1940. If the commitment applicant, dwelling, and site qualify, an appraisal will be obtained in accordance with subpart C of part 1922.

(4) *Failure of applicant or dwelling to qualify.* If the application is denied for failure to meet the requirements of paragraph (b)(2) or (3) of this section, the applicant may appeal in accordance with Pub. L. 103–354 to the National Appeals Division, U.S.D.A.

(i) The application fee will be refunded if for any reason preliminary inspection of the property or investigation of the commitment applicant indicates that a conditional commitment will not be issued.

(ii) Application fees will not be refunded for any property on which the required appraisal has been made.

(5) *Conditional commitment price.* The commitment price may not exceed the loan approval authority for section 502 RH loans. See subpart A of part 1901.

(g) *Inspections.* Failure to correct any deficiencies or to complete the work in accordance with plans and specifications approved by RHCDS will be a basis for canceling the conditional commitment. The applicant must allow RHCDS access for the purpose of inspection. See subpart A of part 1924.

(h) *Changes in plans, specifications, or commitment price.* RHCDS may approve changes in plans and specifications that are consistent with the applicable development standard and exhibit D of subpart A of part 1924. If the changes are requested after an option has been executed by an RH applicant, the change will be approved only if the applicant and the commitment holder agree to the request in writing. If a change will reduce or increase the appraised value of the property, RHCDS will revise the commitment price and inform the commitment holder. Also, in cases when the holder of a commitment reports to RHCDS that costs associated with the construction or repair of a dwelling have increased, RHCDS may increase the commitment price provided the property has not been optioned by an RH applicant, and RHCDS determines that the increase is clearly justified, the circumstances causing the price increase were beyond the commitment holder's control, and the value of the property is adequate to permit the increased commitment price and the price does not exceed the maximum cost established pursuant to § 1944.16. A revised appraisal report will be prepared.

(i) *Cancellation of outstanding conditional commitments.*

(1) Conditional commitments may be canceled when construction of the dwelling is not begun within 60 days after the commitment is issued.

(2) Conditional commitments will be canceled when construction is not in accordance with all RHCDS requirements, approved plans, specifications, or the applicable development standards, and the builder does not make corrections necessary for compliance.

(j) [Reserved]

(k) *Builder's warranty.* The builder or seller, as appropriate, will execute an RHCDS approved ''Builder's Warranty,'' or provide a 10-year insured warranty when construction is completed or the loan to buy the dwelling is closed.

§ 1944.46 Appeals.

Any applicant who requests and is denied assistance or who has a right denied, reduced, or canceled may appeal the action in accordance with Pub. L. 103–354 to the National Appeals Division, U.S.D.A.

§§ 1944.47–1944.48 [Reserved]

§ 1944.49 Administrative instructions.

Detailed administrative instructions for administering this subpart are available in any RECD field office.

§ 1944.50 OMB control number.

The reporting and recordkeeping requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0059. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 1.5 hours per response, with an average of .41 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0059), Washington, D.C. 20503.

Subpart J—Section 504 Rural Housing Loans and Grants

§ 1944.452 [Amended]

18. Section 1944.452 is amended by removing ''handicap'' and adding the words ''physical or mental disability'' in their place and by revising ''FmHA'' to read ''RHCDS''.

19. Section 1944.453(d) is added to read as follows:

§ 1944.453 Definitions.

* * * * *

(d) *Owner-occupant.* Adults living in the household who have ownership rights in the property at the time a loan or grant is closed.

20. Section 1944.456 is amended by removing ''County Supervisor'' and replacing it with ''loan approval official'' in paragraphs (a)(1) and (2); by inserting '', environmental, tax monitoring,'' after the word ''architectural'' in paragraph (i); by removing the wording ''handicapped or disabled persons'' and inserting ''persons who are developmentally disabled'' in paragraph (l); by inserting '', not to exceed $300,'' after the word ''fees'' in paragraph (m) introductory text; by removing existing paragraph (m)(2); and by redesignating paragraph (m)(3) as paragraph (m)(2); and by adding a new paragraph (m)(3) to read as follows:

§ 1944.456 Loan and grant purposes.

* * * * *

(m) * * *

(3) The package is acceptable and the request is funded.

21. Section 1944.457 is amended by revising the heading; by inserting the word ''loan'' after the word ''Maximum'' in paragraph (a)(1); by removing the word ''individual'' in paragraphs (a) (1) and (2) and inserting the words ''owner-occupant;'' by revising ''$15,000'' to read ''$20,000'' at the end of paragraph (a)(1); by revising ''$5,000'' to read ''$7,500'' at the end of paragraph (a)(2); and by revising paragraph (a)(4) to read as follows:

§ 1944.457 Loan and grant restrictions and record keeping.

* * * * *

(a) * * *

(4) Document the amount of grant provided each grantee on a list of section 504 recipients and retain it in the office operational file. The list will contain the names of all owner-occupants at the time of the grant closing. The list must include the following information recorded at the time a section 504 grant is made:

(i) Grantee's names, address, and case number;

(ii) Amount of the grant; and
(iii) Date grant was closed.

* * * * *

22. Section 1944.458 is amended by revising ''District Director'' to read ''next level approval official'' in paragraph (d)(3), and paragraphs (d) (1) and (2) are revised to read as follows:

§ 1944.458 Eligibility requirements.

* * * * *

(d) * * *

(1) Evaluation of personal resources will exclude the dwelling and a minimum adequate site, personal automobile, household goods, and liquid assets up to $7,500. Liquid assets are cash or other assets that can be converted to cash in 90 days or less. Real estate acreage larger than a minimum adequate site will not be excluded from the evaluation.

(2) In cases where the family is experiencing unusually high medical expenses, the next level approval official may waive requiring the use of liquid assets down to $7,500.

* * * * *

23. Section 1944.461 is amended by revising the term ''County Supervisor'' to read ''loan approval official'' in paragraphs (a)(1)(iii)(A) and (d)(2), by revising the term ''County Supervisors'' to read ''loan approval officials'' in the introductory text of paragraph (a), by removing the words ''loan plus any outstanding'' and inserting in their place ''and existing section 504'' in paragraph (b)(1), by removing the word ''remaindermen's'' before the word ''interests'' and inserting the word ''remainder'' in its place in paragraph (b)(3) introductory text, and by revising paragraphs (b)(3), (i), (iii), and (iv) to read as follows:

§ 1944.461 Security and other requirements.

* * * * *

(b) * * *

(3) * * *

(i) One or more of the holders of remainder interests is not legally competent (and there is no guardian or conservator who can consent to the mortgage), cannot be located, or the remainder rights are divided among such a large number of people that it is not practical to obtain the signatures of all the remainder interests;

* * * * *

(iii) All legally competent persons (or the guardian or conservator for any person who is not legally competent) holding remainder interests who are using or occupying the dwelling sign the mortgage; and,

(iv) The loan does not exceed the market value of the portion of the property represented by the remainder interests of the persons signing the mortgage.

* * * * *

24. Section 1944.463 is amended by inserting the words ''or other construction development'' after the words ''safety hazards'' and by revising ''FmHA'' to read ''RHCDS'' in the first sentence of paragraph (a) introductory text; by inserting the words ''security is taken and the total section 504 indebtedness will be'' after the word ''when,'' by removing ''(including land sale contracts) is'' and by revising ''$7,500'' to read ''$15,000'' in the first sentence of paragraph (d) introductory text; by removing the words ''Total FmHA indebtedness'' from the first sentence of paragraphs (e)(1) and (e)(2) and inserting the words ''section 504 assistance'' in their place; by revising the term ''County Supervisor'' to read ''loan approval official'' in the second sentence of paragraph (e)(1); and by revising paragraph (d)(1) to read as follows:

§ 1944.463 Technical services.

* * * * *

(d) * * *

(1) On a nonfarm tract or small farm, or on a leasehold interest in a nonfarm tract or small farm, an estimate of value (limited vs. complete appraisal) will be done in accordance with subpart C of part 1922, based on the direct sales comparison approach only, utilizing the most recent comparable sales data available. The Uniform Residential Appraisal Report (URAR) will be used for this purpose. These appraisals will be done by RHCDS employees having a good understanding of appraisal concepts and adequate appraisal training. A small farm, for the purpose of this subpart, is a farm as defined in § 1944.2 which has value primarily as a residence rather than for the production of agricultural commodities, and repayment of the RH loan is not dependent on farm income.

* * * * *

25. Section 1944.467 is amended by removing paragraph (d); by removing and reserving paragraph (c) by redesignating paragraphs (e), (f), (g) and (h) as paragraphs (d), (e), (f) and (g) respectively; by revising the term ''County Supervisor'' to read ''loan approval official'' in paragraph (a)(1) and newly redesignated paragraph (e); and by revising the introductory text of paragraph (a), and paragraph (a)(3) to read as follows:

§ 1944.467 Processing applications.

(a) *Application.* Application for Section 504 assistance will be made on a form provided by the Agency. The application will be processed in accordance with § 1944.27 using applicable forms from exhibit E, available in any RECD field office.

* * * * *

(3) Actions taken under this subpart are subject to the environmental requirements of subpart G of part 1940.

* * * * *

§ 1944.468 [Amended]

26. Section 1944.468 is amended by removing the words ''must not be over 90 days old.'' at the end of paragraph (b) and inserting the words ''are as prescribed in subpart A of this part.''

§ 1944.469 [Amended]

27. Section 1944.469 is amended by revising the term ''County Supervisor'' to read ''loan approval official'' in the introductory paragraph; by removing and reserving paragraphs (b) and (c) and by adding the words ''or Deed of Trust'' to the name of Form FmHA 1927–1 after the word ''Mortgage'' in paragraph (d).

28. Section 1944.472 is amended by adding new language at the end of the paragraph to read as follows:

§ 1944.472 Subsequent Section 504 loans and/or grants.

* * * If the area designation has changed from rural to nonrural, subsequent loans and grants will be made only for essential repairs.

29. Section 1944.500 is revised to read as follows:

§ 1944.500 OMB control number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0062. Public reporting burden for this collection of information is estimated to average 5 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0062), Washington, D.C. 20503.

PART 1951—GENERAL

Subpart D—Final Payment on Loans

§ 1951.155 [Amended]

30. Section 1951.155(c) introductory text is amended to remove ''FmHA'' and replace it with ''RHCDS, RBCDS, RUS, and/or CFSA'' in the next to the last sentence of the paragraph.

Subpart G—Borrower Supervision, Servicing, and Collection of Single Family Housing Loan Accounts

§ 1951.301 [Amended]

31. Section 1951.301 is amended by revising ''Farmers Home Administration or its successor agency under Public Law 203–354'' to read ''Rural Housing and Community Development Service (RHCDS) or its successor agency,'' by revising ''FmHA or its successor agency under Public Law 103–354'' to read ''RHCDS,'' and replacing the word ''handicap'' with ''disability''.

32. Section 1951.304(d) is added to read as follows:

§ 1951.304 Definitions.

* * * * *

(d) *Interest credit.* The terms ''interest credit'' and ''interest credit assistance,'' as they relate to Single Family Housing (SFH), are interchangeable with the term ''payment assistance.'' Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.''

§ 1951.312 [Amended]

33. Section 1951.312, in paragraph (b), the heading is revised to read ''Payment Assistance'' and the words ''and § 1951.313 of this subpart'' are added at the end of the paragraph.

§§ 1951.313–1951.319 [Amended]

34. Sections 1951.313 through 1951.319 are redesignated as §§ 1951.314 through 1951.320, and a new § 1951.313 is added to read as follows:

§ 1951.313 Payment assistance.

(a) *General.* The correction, renewal, and cancellation of payment assistance agreements and payment assistance granted as a servicing action on existing loans is handled under this section. Payment assistance granted under this section will be approved and computed in accordance with subpart A of part 1944 of this chapter. Recapture of payment assistance will be calculated and repaid in accordance with subpart I of this part.

(b) [Reserved]

(c) *Existing loans.* Payment assistance may be granted at any time after loan closing if the following conditions are met.

(1) The loan was approved on or after August 1, 1968.

(2) The borrower personally occupies the dwelling unless determined uninhabitable by RHCDS or is temporarily not occupied for reasons such as seasonal or migratory employment, military call-up, or hospitalization.

(3) The borrower's adjusted annual income does not exceed the moderate-income limit contained in exhibit C of subpart A of Instruction 1944 (available in any RECD field office).

(i) If there is not a reasonable expectation that current income will continue for 12 months, income will be projected for the period expected rather than for 12 months. For example, if a borrower is receiving unemployment benefits, the payment assistance agreement will be effective for the period of the benefits. At the end of the benefit period or earlier if circumstances change, the borrower's situation will be reviewed and appropriate action taken based on current circumstances.

(ii) [Reserved]

(iii) If one coborrower has left the dwelling due to domestic discord, payment assistance may be based on the remaining borrower's income if the following conditions are met:

(A) The remaining coborrower is occupying the dwelling, owns a legal interest in the property, is liable for the debt, and agrees to notify RHCDS if the other coborrower returns.

(B) Legal papers have been filed to commence divorce or legal separation, a restraining order has been obtained, or one coborrower has not been living in the dwelling for at least 3 months.

(iv) Payment assistance will not be granted if separation is due to work assignment or military orders.

(4) The term of the loan at closing was at least 25 years. If an account has been reamortized and the term of the loan was at least 25 years initially, payment assistance may be granted even though the term of the reamortized loan is less than 25 years. If the term of the loan was less than 25 years prior to reamortization, the reamortized term must be at least 25 years.

(5) The amount of payment assistance granted will be based upon the borrower's adjusted family income compared to median income for the area where the property is located as determined by § 1944.34(c).

(6) Payment assistance may be granted retroactively for up to 6 months if the conditions described in paragraphs (c)(1) through (c)(5) of this section existed at the time.

(d) *Correction.* A corrected payment assistance agreement will be prepared under the following circumstances.

(1) *Change in income.* RHCDS is not responsible for monitoring changes in a borrower's income. If RHCDS becomes aware of income changes outside of the renewal period that will change the amount of authorized payment assistance as defined in § 1944.34(c), a new 12-month agreement will be prepared effective the due date following the date RHCDS became aware of the change.

(2) *Insufficient payment assistance.* If a borrower received less payment assistance than the borrower was eligible to receive, a corrected agreement will be prepared. The effective date of the corrected agreement will be the same date as the agreement being replaced.

(3) *Unauthorized assistance.* If a borrower received unauthorized payment assistance, the account will be serviced in accordance with Subpart M of this part. This includes situations where the borrower did not advise RHCDS of income increases as required on the Payment Assistance/Deferral/Repayment form.

(e) *Renewal.*

(1) *Contractors.* State Directors are authorized to enter into contracts for the processing of payment assistance renewals. Renewal contracts will cover all required actions except approval or cancellation of payment assistance.

(2) *Annual renewal period.* Monthly, the Finance Office will provide each County Office or contractor a list of borrowers whose payment assistance agreements expire in approximately 120 days.

(i) *Borrower Interview.* The borrower must be available for an interview during each renewal period.

(ii) *Determination of eligibility.* Adjusted annual income will be determined and documented in the file. All borrowers will be required to submit a copy of their most recent Federal income tax return. In addition, income for wage earning borrowers will be verified by use of an RHCDS form (available in any RECD field office), and wage matching, if available. Borrowers receiving social security or retirement benefits must provide copies of their most recent benefit/award letters. Payment assistance will not be renewed if the borrower's adjusted family income exceeds the moderate-income limit, (available in any RECD field office) or if the borrower does not occupy the dwelling.

(iii) *Renewals not completed prior to expiration of existing agreement.* If not due to RHCDS error, the effective date of the renewal will be the next due date after the date of approval. If due to RHCDS error, the effective date will be the expiration date of the previous agreement.

(3) *Termination of foreclosure action.* If a payment assistance agreement expired after a problem case report recommending foreclosure was submitted and the foreclosure action was terminated prior to sale or payment in full, payment assistance will be renewed effective as of the expiration date of the previous agreement if RHCDS is to continue with the loan.

(f) *Cancellation.* Payment assistance will be canceled when any of the following conditions occur:

(1) The borrower has never occupied the dwelling and RHCDS will not continue with the loan. Cancellation will be effective as of the date of loan closing or amortization effective date, whichever is applicable.

(2) The borrower ceases to occupy the dwelling. Cancellation will be effective the payment due date following the date of non-occupancy if known; otherwise, the payment due date following the date RHCDS became aware of non-occupancy.

(3) The borrower has received improper payment assistance as determined in accordance with subpart M of this part and a corrected agreement will not be submitted. Cancellation will be effective the payment due date following the date RHCDS became aware of the situation.

(4) The borrower is no longer eligible for payment assistance due to an increase in income. Cancellation will be effective the payment due date following the date RHCDS became aware of the increase.

(5) The borrower sells the property or title to the security property is otherwise transferred. Cancellation will be effective the payment due date subsequent to the date title transferred. When security property is acquired by RHCDS, cancellation will be effective the payment due date prior to the date of acquisition.

(g) [*Reserved*]

(h) *Notice of right for review or appeal.* All borrowers who request and are denied payment assistance or whose payment assistance is reduced, canceled, or not renewed may appeal or request a review in accordance with Pub. L. 103–354 to the National Appeals Division, U.S.D.A.

(i) [*Reserved*]

(j) *Hardship waiver.* The approval official may submit to the District Director any situation in which the borrower cannot meet the conditions of paragraphs (c) and (e) of this section and it is determined that without payment assistance the borrower would experience extreme hardship or lose the property through foreclosure. A waiver may be granted if the above can be determined and the borrower has no other means of retaining the dwelling.

§ 1951.314 [Amended]

35. Section 1951.314 is amended by revising the reference ''§ 1944.5(d)(11)'' to lead ''§ 1944.5(e)(2)'' in paragraph (e).

§ 1951.330 [Amended]

36. Section 1951.330(b)(4) is amended by revising the reference ''§ 1944.34'' to read ''§ 1951.313(d)(1)'' and by removing ''FmHA or its successor agency under Public Law 103–35'' and replace it with ''RHCDS.''

37. Section 1951.330(c) is amended by revising the reference ''§§ 1951.313 and 1951.314'' to read ''§§ 1951.314 and 1951.315''.

Subpart I—Recapture of Section 502 Rural Housing Subsidy

38. Section 1951.401 is revised to read as follows:

§ 1951.401 Purpose.

This subpart outlines the policies and procedures for the recapture of interest credits or Homeownership Assistance Program (HOAP) subsidy granted on initial and subsequent section 502 Rural Housing (RH) loans, transfers, and credit sales approved on or after October 1, 1979. The terms ''interest credit'' and ''interest credit assistance,'' as they relate to Single Family Housing (SFH), are interchangeable with the term ''payment assistance.'' Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

Subpart J—Management and Collection of Nonprogram (NP) Loans

39. Section 1951.457(b) is revised as follows:

§ 1951.457 Payments.

* * * * *

(b) Payments not received when due. NP borrowers are expected to make scheduled payments when due. The Agency personnel are not required to provide program supervision, servicing, management or credit counseling in accordance the agency servicing instructions if payments are not received when due. To ensure consistency, a series of contacts will be made when servicing delinquent accounts. All actions taken, agreements reached and recommendations made in the servicing of the borrower's account are to be documented. When appropriate, the Agency may work out a reasonable agreement with an NP borrower to cure a delinquency; however, such an agreement will not usually exceed 1 year. Failure to make payments as agreed will result in actions determined by the agency to best protect the Government's interest. Collection of a delinquency from an Internal Revenue Service (IRS) offset will be used to the extent permitted by law.

Subpart M—Servicing Cases Where Unauthorized Loan or Other Financial Assistance Was Received—Single Family Housing

40. Section 1951.602 is amended by redesignating paragraphs (g), (h), and (i) as paragraphs (h), (i), and (j), respectively; and adding a new paragraph (g) to read as follows:

§ 1951.602 Definitions.

* * * * *

(g) *Interest credit.* The terms ''interest credit'' and ''interest credit assistance,'' as they relate to SFH, are interchangeable with the term ''payment assistance.'' Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.''

* * * * *

§ 1951.604 [Amended]

41. Section 1951.604(a)(1)(iv)(E) is amended by revising ''§ 1944.2(h)'' to read ''§ 1944.2.''

42. Section 1951.608 is amended by revising the last sentence of paragraph (a)(3)(ii) to read as follows:

§ 1951.608 Decision on servicing actions.

(a) * * *

(3) * * *

(ii) * * * A form provided by the Agency must be submitted simultaneously with the lump sum payment to cancel payment assistance or adjust the amount of payment assistance for each period of time unauthorized payment assistance was granted.

* * * * *

PART 1955—PROPERTY MANAGEMENT

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

43. Section 1955.3 is amended by adding the definition of ''Interest credit'' to read as follows:

§ 1955.3 Definition.

* * * * *

Interest credit. The terms ''interest credit'' and ''interest credit assistance,'' as they relate to Single Family Housing (SFH) loans, are interchangeable with the term ''payment assistance.'' Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

* * * * *

§ 1955.15 [Amended]

44. Section 1955.15(d)(2)(iv) is amended in the next to last sentence by revising the reference ''§ 1951.314'' to read ''§ 1951.315.''

Subpart B—Management of Property

§ 1955.63 [Amended]

45. In § 1955.63, paragraph (c) introductory text is amended by removing the words ''except the requirements relating to size and/or design features will not be considered'', and by revising the phrase ''the Agency'' to read ''RHCDS''. Paragraph (c)(1) is amended by removing the words ''in size, design and/or cost.''

PART 1965—REAL PROPERTY

Subpart A—Servicing of Real Estate Security For Farmer Program Loans and Certain Note-Only Cases

§ 1965.26 [Amended]

46. Section 1965.26(c)(2)(iv)(C) is amended by revising the reference to paragraph ''(c)(iv)(A)'' in the first sentence to read ''(c)(2)(iv)(A)'' and to replace ''FmHA or its successor agency under Public Law 103–354'' with ''RHCDS'' each time it appears.

47. Section 1965.26(c)(3) is amended by revising the reference to ''§ 1951.314'' to read ''§ 1951.315'' in the last sentence of the paragraph.

Subpart C—Security Servicing for Single Family Rural Housing Loans

48. Section 1965.101 is revised to read as follows:

§ 1965.101 Purpose.

This subpart prescribes policies and procedures for servicing actions related to real estate which secures section 502 and section 504 Rural Housing (RH) loans on nonfarm tracts or on farms when the borrower is indebted to Rural Housing and Community Development Service (RHCDS) for the RH loan only herein referred to as Single Family Housing (SFH) loans. Security servicing for RH loans when the borrower is also indebted for Farmer Program loans is under subpart A of part 1965 of this chapter. Security servicing for nonprogram (NP) loans on a single family residence will be according to subpart J of part 1951 of this chapter. The terms ''interest credit'' and interest credit assistance,'' as they relate to SFH in this subpart, are interchangeable with the term ''payment assistance.'' Payment assistance is the generic term for the subsidy provided to eligible SFH borrowers to reduce mortgage payments.

§ 1965.126 [Amended]

49. Section 1965.126 is amended as follows:

a. In paragraph (b)(3) by removing the phrase ''FmHA or its successor agency under Public Law 103–354'' each time it appears and inserting the term ''RHCDS'' in its place and by removing the words ''serve as a minimum adequate site for another dwelling.'' and inserting the words ''be subdivided and sold.'' in their place at the end of the first sentence.

b. In paragraph (b)(4)(i) by removing the term ''FmHA'' in the first sentence and inserting the term ''RHCDS'' and by removing the second, third, and fourth sentences and the word ''however;'' and the comma preceding it in the last sentence.

c. In paragraph (b)(4)(ii)(A) by removing the word ''clearly,'' and by removing the words ''size, design, and/or cost.'' and inserting in their place the word ''value.''

d. In paragraph (b)(8) by removing the phrase ''FmHA or its successor agency under Public Law 103–354'' each time it appears and replacing it with the term ''RHCDS'' and by adding the words ''except as provided in § 1944.17 of subpart A of part 1944 of this chapter,'' following the words ''being assumed'' in the first sentence.

Dated: October 13, 1995.

Jill Long Thompson,

Under Secretary for Rural Economic and Community Development.

Dated: October 13, 1995.

Dallas Smith,

Deputy Under Secretary for Farm and Foreign Agriculture Services.

[FR Doc. 95–26553 Filed 10–26–95; 8:45 am]

BILLING CODE 3410–07–U

Federal Register

Friday
October 27, 1995

Part IV

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for First Aid at Metal and Nonmetal Mines; First Aid Training for Selected Supervisors; Proposed Rule and Notice

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

Safety Standards for First Aid at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule; notice of public hearings; close of record.

SUMMARY: This proposal would revise existing standards for metal and nonmetal mines requiring operators to have supervisors trained in first aid. The proposed rule is based on a petition for rulemaking from the National Mining Association (NMA).

If public hearings are requested by commenters, the Mine Safety and Health Administration (MSHA) will hold public hearings on its proposed rule.

DATES: Written comments must be submitted on or before December 11, 1995.

If requested, hearings will be held in Pittsburgh, Pennsylvania and Denver, Colorado in December 1995. Both hearings will begin at 9:00 a.m. The record for the rulemaking will close on January 8, 1996.

ADDRESSES: Send comments and requests to make oral presentations to the Mine Safety and Health Administration, Office of Standards, Regulations and Variances; Room 631, Ballston Towers No. 3; 4015 Wilson Boulevard, Arlington, Virginia 22203. The exact location of the public hearings, if held, will be contained in a later notice.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director; Office of Standards, Regulations, and Variances, MSHA; 703–235–1910. FAX: (703) 235–5551.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This proposed rule contains no information collection or paperwork requirements subject to the Paperwork Reduction Act of 1995.

II. Introduction and Rulemaking Background

Existing MSHA standards at §§ 56/57.18010 state, ''Selected supervisors shall be trained in first aid. First aid training shall be made available to interested employees.'' The primary purpose of these standards is to assure that a responsible person, trained to provide first aid treatment, is available to render assistance in the event a miner is injured. An additional purpose is to encourage first aid education among miners so they may be able to help an injured fellow worker.

These provisions were originally promulgated as advisory standards on July 31, 1969, by the United States Department of the Interior, Bureau of Mines, predecessor Agency to MSHA. The standards were made mandatory on August 29, 1973, following a recommendation by the Federal Metal and Nonmetal Mine Safety Advisory Committee, which was appointed pursuant to Section 7 of the Federal Metal and Nonmetallic Mine Safety Act and composed of mining industry and labor representatives. On March 19, 1975 a policy notice was issued giving guidance on the standard's application.

In response to determinations of repeated instances of noncompliance with §§ 56/57.18010, on October 3, 1994, MSHA issued Program Policy Letter (PPL) No. P94–IV–2, First Aid Training for Selected Supervisors, to underscore the standard's intent. The policy letter emphasized that the requirement for first aid training is separate from 30 CFR part 48, training and retraining for miners, and also addressed frequently asked questions concerning the standards.

MSHA received a number of objections and withdrew the October policy letter by Federal Register notice of February 22, 1995 (60 FR 9986). The Agency began a new process of seeking public comment on certain policies. In an accompanying notice, MSHA requested comments on the October policy letter for first aid training.

MSHA received written comments from labor and industry representatives and subsequently held two public meetings. Although the mining industry supported MSHA's new process for public input into the development of certain policies, it continued to object to the draft policy for first aid training as an expansion of the existing standard which should be addressed through rulemaking. Labor representatives requested a more expansive interpretation of the standard.

By letter of August 25, 1995, the NMA petitioned the Secretary of Labor requesting that MSHA institute rulemaking on the first aid issue and suggested language for a new standard. The recommended revision would require that an individual capable of providing first aid be available on all shifts. The NMA recommendation would also retain the existing requirement that first aid training be made available to all interested employees.

MSHA believes that NMA's recommendation promotes the original intent of the first aid training standard in a positive way. MSHA, therefore, is revising the existing standard, based in part on the NMA's petition, and will not finalize the draft policy letter. Notice of the Agency's decision not to finalize the draft policy is published elsewhere in this issue of the Federal Register.

Written comments previously submitted to MSHA concerning the Agency's draft policy letter on first aid will be included in the rulemaking record. Members of the public are encouraged to submit new comments pursuant to this notice.

III. Discussion and Summary of Proposed Rule

Sections 56/57.18010, First Aid

Current MSHA standards require that selected supervisors be trained in first aid and that first aid training be made available to interested miners. Although the specific language of this standard does not preclude mine operators from using medical professionals and certified emergency medical technicians (EMT) in the treatment of injured miners, it does specify that ''selected supervisors'' receive first aid training.

The proposed standard would revise the language in the first sentence of the existing standards to require that mine operators have an ''individual capable of providing first aid available on all shifts.'' The revision would broaden the scope of the persons who could meet the requirements of the rule. This change would recognize that many metal and nonmetal operations employ physicians, EMTs, first responders, and registered nurses who are trained to render first aid and in some cases medical treatment.

For clarity, MSHA is modifying the suggested language in the NMA petition. The proposal specifies what skills a person must be able to perform to be considered capable. These skills include: Patient assessment and artificial respiration; control of bleeding; treatment of shock, wounds, burns, and musculoskeletal injuries; and handling and transporting injured persons. Nationally recognized and other quality first aid courses include these in their programs and they have historically formed the basis for adequate first aid response.

During deliberations on the draft policy letter, commenters questioned whether part 48 training would provide persons with skills necessary to meet the first aid capability under the proposal. MSHA is concerned that part 48 training may not accomplish this

goal. Training under part 48 is intended to impart skills and knowledge to all miners in a broad range of job-related safety and health subjects. The first aid portion of this training is frequently an abridged course which would not develop the skills needed to achieve the objectives of the proposed rule. The agency believes that all part 48 training is important for the safety and health of miners. First aid training of sufficient duration to produce the necessary skill levels could impact the time allotted for other subjects important to miner safety.

Currently, MSHA determines compliance with the existing first aid training required by reviewing course documentation and, under the proposal, MSHA would continue this practice. The Agency believes it is not imposing any paperwork burden on the industry because MSHA accepts available documentation, such as course completion certificates, maintained in the normal course of a mine operator's business.

The proposed standard would require operators to have a person available on all shifts capable of providing first aid. MSHA anticipates applying this requirement consistent with the existing standard. The standard would not apply to off-shift activities such as those performed by a security person. At multi-shift operations, a person capable of providing first aid would be required to be available on each shift.

The proposal would retain the language in the second sentence of the existing rule, which requires operators to make first aid training available to all interested miners. Consistent with the existing standard and past MSHA policy, this provision applies to mine employees and training must be offered at an accessible location. Operators are also expected to inform employees in a timely manner of scheduled first aid training so they may take the training.

IV. Executive Order 12866 and the Regulatory Flexibility Act

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of proposed regulations. MSHA has determined that this rulemaking is not a significant regulatory action and, therefore, has not prepared a separate analysis of costs and benefits. The Regulatory Flexibility Act requires regulatory agencies to consider a rule's impact on small entities. This proposed rule would not have a significant economic impact on a substantial number of small entities. The analysis contained in this preamble meets MSHA's responsibilities under Executive Order 12866 and the Regulatory Flexibility Act.

MSHA does not believe that this rule will result in any increased costs to the mining industry since the proposal broadens the scope of persons who could provide the first aid capability required by the standard. In some cases, this would mean that a mine operator could rely on existing personnel who possess these special skills.

Dated: October 20, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

It is proposed to amend parts 56 and 57, subchapter N, chapter I, title 30 of the Code of Federal Regulations as follows:

PART 56—[AMENDED]

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811, 956 and 961.

2. Section 56.18010 is revised to read as follows:

§ 56.18010 First aid.

An individual capable of providing first aid shall be available on all shifts. The individual shall have the skills to perform patient assessment and artificial respiration; control bleeding; treat shock, wounds, burns, and musculoskeletal injuries; and handle and transport injured persons. First aid training shall be made available to all interested miners.

PART 57—[AMENDED]

3. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811, 956 and 961.

4. Section 57.18010 is revised to read as follows:

§ 57.18010 First aid.

An individual capable of providing first aid shall be available on all shifts. The individual shall have the skills to perform patient assessment and artificial respiration; control bleeding; treat shock, wounds, burns, and musculoskeletal injuries; and handle and transport injured persons. First aid training shall be available to all interested miners.

[FR Doc. 95–26635 Filed 10–26–95; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

First Aid Training for Selected Supervisors

AGENCY: Mine Safety and Health Administration. Labor.

ACTION: Notice.

SUMMARY: The Mine Safety and Health Administration (MSHA) has decided against issuing a Program Policy Letter (PPL) concerning first aid training for selected supervisors. Instead, the Agency is revising the existing standard. Notice of the new standard is published elsewhere in this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Rodric M. Breland, Chief Division of Safety, Metal and Nonmetal Mine Safety and Health, 703–235–8647.

SUPPLEMENTARY INFORMATION: In response to determinations of repeated instances of noncompliance with §§ 56/57.18010, on October 3, 1994, MSHA issued Program Policy Letter (PPL) No. P94–IV–2, First Aid Training for Selected Supervisors, to underscore the standard's intent. The policy letter emphasized that the requirement for first aid training is separate from 30 CFR part 48, Training and retraining for miners, and also addressed frequently asked questions concerning the standards. MSHA received a number of objections and withdrew the October policy letter by Federal Register notice of February 22, 1995 (60 FR 9986). The Agency began a new process of seeking public comment on certain policies. In an accompanying notice, MSHA requested comments on the October policy letter for first aid training.

MSHA received written comments from labor and industry representatives and subsequently held public meetings on July 6, 1995, in Cleveland, Ohio; July 12, 1995, in Elko, Nevada; and July 19, 1995, in Dallas, Texas. At the public meetings, MSHA officials discussed the purpose and enforcement history of the standard as well as compliance problems raised by industry.

Commenters at the public meetings had a number of objections to the draft policy statement, expressing their concerns about training in first aid being required for supervisors when medical professionals were available at the mine; the belief that supervisory presence was being required during off-shifts; subjects included in a first aid course; duration of training; refresher training requirements; and the offering of the first aid training to interested miners. The commenters requested specifically that MSHA not issue a policy, but rather promulgate a new first aid standard.

MSHA has reviewed both written and oral comments from the mining community. In response to commenters, MSHA will not issue a final PPL on this standard, but will continue its existing enforcement policy pertaining to this standard while proposing a new standard. Notice of the Agency's proposed rule is published elsewhere in this issue of the Federal Register.

If persons have questions on compliance requirements of 30 CFR 56/57.18010, they should contact the MSHA district manager in their area or the MSHA official as indicated in this notice.

Dated: October 20, 1995.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 95–26636 Filed 10–26–95; 8:45 am]

BILLING CODE 4510–43–P

Federal Register

Friday
October 27, 1995

Part V

Executive Office of the President

Budget Rescissions and Deferrals; Notice

TO THE CONGRESS OF THE UNITED STATES:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report three deferrals of budgetary resources, totaling $122.8 million.

These deferrals affect the International Security Assistance program, and the Departments of Health and Human Services and State.

William J. Clinton

THE WHITE HOUSE, October 19, 1995.

BILLING CODE 3110–01–M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D96-1	Economic Support Fund and International Fund for Ireland	75,000
	Department of Health and Human Services:	
	Social Security Administration:	
D96-2	Limitation on Administrative Expenses	7,321
	Department of State:	
	Other:	
D96-3	United States Emergency Refugee and Migration Assistance Fund	40,486
	Total, deferrals	122,807

Deferral No. 96-1

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority.....** $ _____
BUREAU: International Security Assistance	**Other budgetary resources.....** $ 150,000,000
Appropriations title and symbol: Economic support fund and International fund for Ireland 1/ 725/61037 72X1037	**Total budgetary resources.....** $ 150,000,000
	Amount to be deferred: Part of year..... $ 75,000,000 Entire year..... $ _____
OMB identification code: 72-1037-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [X] Multi-year: September 30, 1996 (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic Support Fund and International Fund for Ireland.....	725/61037	72-1037-0-1-152	$ 50,000,000
	72X1037	72-1037-0-1-152	$ 25,000,000
			$ 75,000,000

JUSTIFICATION: The President is authorized by the Foreign Assistance Act of 1961, as amended, to furnish assistance to countries and organizations, on such terms and conditions as he may determine, in order to promote economic or political stability. Section 531(b) of the Act makes the Secretary of State, in cooperation with the Administrator of the Agency for International Development, responsible for policy decisions and justifications for economic support programs, including whether there will be an economic support program for a country and the amount of the program for each country. This deferral of funds for the Economic Support Fund has no effect on the availability of funds for International Fund for Ireland.

Funds are deferred pending the development of country-specific plans that assure that aid is provided in an efficient manner and are reserved for unanticipated program needs. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1995 (D95-1B).

Deferral No. 96-2

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of Health and Human Services	**New budget authority.....** $ _____
BUREAU: Social Security Administration	**Other budgetary resources.....** $ 217,370,543
Appropriation title and symbol: Limitation on administrative expenses 1/ 75X8704	**Total budgetary resources.....** $ 217,370,543
	Amount to be deferred: Part of year..... $ _____ Entire year..... $ 7,320,543
OMB identification code: 20-8007-0-7-651	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

JUSTIFICATION: This account includes funding for construction, renovation, and expansion of Social Security Trust Fund-owned headquarters and field office buildings. In addition, funds remain available for costs associated with acquisition of land in Colonial Park Estates adjacent to the Social Security Administration complex in Baltimore, Maryland. The Social Security Administration has received an approved FY 1996 apportionment for $50,000 to cover potential upward adjustments of prior-year costs related to field office roof repair and replacement projects. The remaining funds will not be needed for obligation in FY 1996. This deferral reflects the actual amount available for construction in FY 1996, less the $50,000 apportioned for potential upward adjustments in FY 1996. This action is taken pursuant to the Antideficiency Act (31 U.S..C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1995 (D95-6A).

Deferral No. 96-3

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State	**New budget authority**..... $ _____
BUREAU: Bureau for Refugee Programs	**Other budgetary resources**..... $ 40,486,000
Appropriation title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	**Total budgetary resources**..... $ 40,486,000
	Amount to be deferred: Part of year..... $ 40,486,000
	Entire year..... $ _____
OMB identification code: 11-0040-0-1-151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multi-year: _____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other _____

JUSTIFICATION: Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94-141) and Section 414(b) (1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the Fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the Fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1995 (D95-7).

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BILLING CODE 3110–01–C

Federal Register

Friday
October 27, 1995

Part VI

Department of Agriculture

Cooperative State Research, Education, and Extension Service

7 CFR Part 3401

Rangeland Research Grants Program; Administrative Provisions; Proposed Rule

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

7 CFR Part 3401

Rangeland Research Grants Program; Administrative Provisions

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) proposes to amend its regulations relating to the administration of the Rangeland Research Grants Program, which prescribe the procedures to be followed annually in the solicitation of rangeland research grant proposals, the evaluation of such proposals, and the award of rangeland research grants under this program. This proposed amendment: Implements the requirements of the National Environmental Policy Act as outlined in § 3401.6(c)(16), revises the objectives of the program as stated in § 3401.17(a), changes the agency name to reflect the Departmental Reorganization, and makes a few additional minor changes. CSREES is publishing these regulations in their entirety to enhance their use by the public and to ensure expeditious submission and processing of grant proposals.

DATES: Comments are invited from interested individuals and organizations. To be considered in the formulation of the final rule all relevant material must be received on or before November 27, 1995.

ADDRESSES: Comments should be sent to Louise Ebaugh, Director, Awards Management Division, Competitive Research Grants and Awards Management, Cooperative State Research, Education, and Extension Service, United States Department of Agriculture, AG Box 2245, Room 322, Aerospace Center, Washington, DC 20250–2245.

FOR FURTHER INFORMATION CONTACT: Louise Ebaugh at (202) 401–5024.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction

The Office of Management and Budget has previously approved the information collection requirements contained in the current regulations at 7 CFR part 3401 under the provisions of 44 U.S.C. Chapter 35 and OMB Document No. 0524–0022 has been assigned. Public reporting burden for the information collections contained in these regulations is estimated to vary from ½ hour to 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB Document No. 0524–0022), Washington, DC 20503.

Classification

This rule has been reviewed under Executive Order 12866, and it has been determined that it is not a ''significant regulatory action'' rule because it will not have an annual effect on the economy of $100 million or more or adversely and materially affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This proposed rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order No. 12866.

Executive Order No. 12778

The following information is given in compliance with Executive Order No. 12778. All State and local laws and regulations that are in conflict with this rule are preempted. No retroactive effect is to be given to this rule. This rule does not require administrative proceedings before parties may file suit in court.

Executive Order No. 12612

This proposed rule has been reviewed under Executive Order No. 12612 pertaining to Federalism. While this proposed rule will affect institutions of higher education and other nonprofit organizations, it will do so only to the extent of requiring that applicants and grantees comply with existing laws, regulations, public policies, and the dictates of good management to ensure the safeguarding of public funds. For this reason, CSREES has determined that this proposed rule will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Department certifies that this proposed rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Pub. L. No. 96–534 (5 U.S.C. 601 *et seq*).

Regulatory Analysis

Not required for this rulemaking.

Environmental Impact Statement

This proposed regulation does not significantly affect the environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969, as amended. (42 U.S.C. 4321 *et seq*.)

Catalog of Federal Domestic Assistance

The Rangeland Research Grants Program is listed in the Catalog of Federal Domestic Assistance under No. 10.200. For reasons set forth in the Final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Background and Purpose

Under the authority of section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, the Secretary of Agriculture is authorized to make grants to land-grant colleges and universities, State agricultural experiment stations, and colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland research, as determined by the Secretary, to carry out rangeland research. 76 CFR 2.107(a)(21) delegates this authority to the Administrator of CSREES. On April 23, 1993, the Rangeland Research Program regulations, 7 CFR part 3401, were formally set out and published in the Federal Register. CSREES now proposes to amend the administrative regulations governing the Rangeland Research Grant Program authorized by section 1480 in order to implement the requirements of the National Environmental Policy Act in § 3401.6(c)(16), revise the program objectives in § 3401.17, change the Agency name from the Cooperative State Research Service to the Cooperative State Research, Education, and Extension Service, and make a few minor changes.

List of Subjects in 7 CFR Part 3401

Grant programs—agriculture, Grants administration.

For the reasons set out in the preamble, title 7, subtitle B, chapter XXXIV, part 3401 of the Code of Federal Regulations, is proposed to be revised to read as follows:

CHAPTER XXXIV—COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE, DEPARTMENT OF AGRICULTURE

PART 3401—RANGELAND RESEARCH GRANTS PROGRAM

Subpart A—General

Sec.

3401.1 Applicability of regulations of this part.
3401.2 Definitions.
3401.3 Eligibility requirements.
3401.4 Matching funds requirement.
3401.5 Indirect costs and tuition remission costs.
3401.6 How to apply for a grant.
3401.7 Evaluation and disposition of applications.
3401.8 Grant awards.
3401.9 Use of funds; changes.
3401.10 Other Federal statutes and regulations that apply.
3401.11 Other conditions.

Subpart B—Scientific Peer Review of Research Applications for Funding

3401.12 Establishment and operation of peer review groups.
3401.13 Composition of peer review groups.
3401.14 Conflicts of interest.
3401.15 Availability of information.
3401.16 Proposal review.
3401.17 Review criteria.

Authority: Section 1470 of the National Agricultural Research, Extension and Teaching Policy Act of 1977 (7 U.S.C. 3316).

Subpart A—General

§ 3401.1 Applicability of regulations of this part.

(a) The regulations of this part apply to rangeland research grants awarded under the authority of section 1480 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333) to land-grant colleges and universities, State agricultural experiment stations, and colleges, universities, and Federal laboratories having a demonstrable capacity in rangeland, as determined by the Secretary, to carry out rangeland research. The Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) shall determine and announce, through publication each year of a Notice in the Federal Register, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance or any other appropriate means, research program areas for which proposals will be solicited, to the extent that funds are available.

(b) The regulations of this part do not apply to research grants awarded by the Department of Agriculture under any other authority.

§ 3401.2 Definitions.

As used in this part:

(a) *Administrator* means the Administrator of CSREES and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

(b) *Department* means the Department of Agriculture.

(c) *Principal investigator* means a single individual designated by the grantee in the application for funding and approved by the Administrator who is responsible for the scientific and technical direction of the project.

(d) *Grantee* means the entity designated in the grant award document as the responsible legal entity to whom a grant is awarded under this Part.

(e) *Research project grant* means the award by the Administrator of funds to a grantee to assist in meeting the costs of conducting, for the benefit of the public, an identified project which is intended and designed to establish, discover, elucidate, or confirm information or the underlying mechanisms relating to a research program area identified in the annual solicitation of applications.

(f) *Project* means the particular activity within the scope of one or more of the research program areas identified in the annual solicitation of applications, which is supported by a grant award under this part.

(g) *Project period* means the total length of time that is approved by the Administrator for conducting the research project as outlined in an approved application for funding.

(h) *Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

(i) *Awarding official* means the Administrator and any other officer or employee of the Department to whom the authority to issue or modify research project grant instruments has been delegated.

(j) *Peer review group* means an assembled group of experts or consultants qualified by training or experience in particular scientific or technical fields to give expert advice, in accordance with the provisions of this part, on the scientific and technical merit of applications for funding in those fields.

(k) *Ad hoc reviewers* means experts or consultants qualified by training or experience in particular scientific or technical fields to render special expert advice, whose written evaluations of applications for funding are designed to complement the expertise of the peer review group, in accordance with the provisions of this part, on the scientific or technical merit of Applications for Funding in those fields.

(l) *Research* means any systematic study directed toward new or fuller knowledge and understanding of the subject studied.

(m) *Methodology* means the project approach to be followed and the resources needed to carry out the project.

§ 3401.3 Eligibility requirements.

(a) Except where otherwise prohibited by law, any land-grant college and university, State agricultural experiment station, and college, university, and Federal laboratory have a demonstrable capacity in rangeland research, as determined by the Secretary, shall be eligible to apply for and to receive a project grant under this part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in paragraph (b) of this section.

(b) To qualify as responsible, an applicant must meet the following standards as they relate to a particular project:

(1) Have adequate financial resources for performance, the necessary experience, organizational and technical qualifications, and facilities, or a firm commitment, arrangement, or ability to obtain such (including proposed subagreements);

(2) Be able to comply with the proposed or required completion schedule for the project;

(3) Have a satisfactory record of integrity, judgment, and performance, including, in particular, any prior performance under grants and contracts from the Federal government;

(4) Have an adequate financial management system and audit procedure which provide efficient and effective accountability and control of all property, funds, and other assets; and

(5) Be otherwise qualified and eligible to receive a research project grant under applicable laws and regulations.

(c) Any applicant who is determined to be not responsible will be notified in writing of such findings and the basis therefor.

§ 3401.4 Matching funds requirement.

In accordance with section 1480 of the National Agricultural Research,

Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3333), except in the case of Federal laboratories, each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding.

§ 3401.5 Indirect costs and tuition remission costs.

Pursuant to section 1473 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3319), funds made available under this program to recipients other than Federal laboratories shall not be subject to reduction for indirect costs or tuition remission costs. Since indirect costs and tuition remission costs, except in the case of Federal laboratories, are not allowable costs for purposes of this program, such costs may not be used to satisfy the matching requirement set forth in § 3401.4.

§ 3401.6 How to apply for a grant.

(a) *General.* After consultation with the Rangeland Research Advisory Board, established pursuant to section 1482 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3335), a request for proposals will be prepared and announced through publications such as the Federal Register, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means of solicitation, as early as practicable each fiscal year. It will contain information sufficient to enable all eligible applicants to prepare rangeland research grant proposals and will be as complete as possible with respect to:

(1) Descriptions of specific research program areas which the Department proposes to support during the fiscal year involved, including anticipated funds to be awarded;

(2) Deadline dates for having proposal packages postmarked;

(3) Name and address where proposals should be mailed;

(4) Number of copies to be submitted;

(5) Forms required to be used when submitting proposals; and

(6) Special requirements.

(b) *Application kit.* An Application Kit will be made available to any potential grant applicant who requests a copy. This kit contains required forms, certifications, and instructions applicable to the submission of grant proposals.

(c) *Format for research grant proposals.* Unless otherwise stated in the specific program solicitation, the following format applies:

(1) *Application for funding.* All research grant proposals submitted by eligible applicants should contain an Application for Funding form, which must be signed by the proposing principal investigator(s) and endorsed by the cognizant authorized organizational representative who possesses the necessary authority to commit the applicant's time and other relevant resources.

(2) *Title of project.* The title of the project must be brief (80-character maxim), yet represent the major thrust of the research. This title will be used to provide information to the Congress and other interested parties who may be unfamiliar with scientific terms; therefore, highly technical words or phraseology should be avoided where possible. In addition, phrases such as ''investigation of'' or ''research on'' should not be used.

(3) *Objectives.* Clear, concise, complete, enumerated, and logically arranged statement(s) of the specific aims of the research must be included in all proposals.

(4) *Procedures.* The procedures or methodology to be applied to the proposed research plan should be stated explicitly. This section should include but not necessarily be limited to:

(i) A description of the proposed investigations and/or experiments in the sequence in which it is planned to carry them out;

(ii) Techniques to be employed, including their feasibility;

(iii) Kinds of results expected;

(iv) Means by which data will be analyzed or interpreted;

(v) Pitfalls which might be encountered; and

(vi) Limitations to proposed procedures.

(5) *Justification.* This section of the grant proposal should describe:

(i) The importance of the problem to the needs of the Department and to the Nation, including estimates of the magnitude of the problem;

(ii) The importance of starting the work during the current fiscal year; and

(iii) Reasons for having the work performed by the proposing organization.

(6) *Literature review.* A summary of pertinent publications with emphasis on their relationship to the research should be provided and should include all important and recent publications. The citations should be accurate, complete, written in acceptable journal format, and be appended to the proposal.

(7) *Current research.* The relevancy of the proposed research to ongoing and, as yet, unpublished research of both the applicant and any other institutions should be described.

(8) *Facilities and equipment.* All facilities, including laboratories, that are available for use or assignment to the proposed research project during the requested period of support, should be reported and described. Any materials, procedures, situations, or activities, whether or not directly related to a particular phase of the proposed research, and which may be hazardous to personnel, must be explained fully, along with an outline of precautions to be exercised. All items of major instrumentation available for use or assignment to the proposed research project during the requested period of support should be itemized. In addition, items of nonexpendable equipment needed to conduct and bring the proposed project to a successful conclusion should be listed.

(9) *Collaborative arrangements.* If the proposed project requires collaboration with other research scientists, corporations, organizations, agencies, or entities, such collaboration must be explained fully and justified. Evidence should be provided to assure peer reviewers that the collaborators involved agree with the arrangements. It should be specifically indicated whether or not such collaborative arrangements have the potential for any conflict(s) of interest. Proposals which indicate collaborative involvement must state which applicant is to receive any resulting grant award, since only one eligible applicant, as provided in § 3401.3 may be the recipient of a research project grant under one proposal.

(10) *Research timetable.* The applicant should outline all important research phases as a function of time, year by year.

(11) *Personnel support.* All personnel who will be involved in the research effort must be identified clearly. For each scientist involved, the following should be included:

(i) An estimate of the time commitments necessary;

(ii) Vitae of the principal investigator(s), senior associate(s), and other professional personnel to assist reviewers in evaluating the competence and experience of the project staff. This section should include curricula vitae of *all* key persons who will work on the proposed research project, whether or not Federal funds are sought for their support. The vitae are to be no more than two pages each in length, excluding publication listings; and

(iii) A chronological listing of the most representative publications during

the past five years shall be provided for each professional project member for whom a curriculum vitae appears under this section. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these usually appear in journals.

(12) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the Application Kit identified under § 3401.6(b) and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested is allowable under applicable Federal cost principles and can be identified as necessary for successful conduct of the proposed research project. As stated in § 3401.4 each grant recipient must match the Federal funds expended on a research project based on a formula of 50 percent Federal and 50 percent non-Federal funding. As stated in § 3401.5, indirect costs and tuition remission costs are not allowable costs for purposes of this program and, thus, may not be used to satisfy the matching requirement set forth in § 3401.4.

(13) *Research involving special considerations.* A number of situations encountered in the conduct of research require special information and supporting documentation before funding can be approved for the project. If such situations are anticipated, the proposal must so indicate. It is expected that a significant number of rangeland grant proposals will involve the following:

(i) *Recombinant DNA molecules.* All key personnel identified in a proposal and all endorsing officials of a proposed performing entity are required to comply with the guidelines established by the National Institutes of Health entitled, ''Guidelines for Research Involving Recombinant DNA Molecules,'' as revised. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for such certification of compliance. In the event a project involving recombinant DNA and RNA molecules results in a grant award, the Institutional Biosafety Committee must approve the research before CSREES funds will be released.

(ii) *Human subjects at risk.* Responsibility for safeguarding the rights and welfare of human subjects used in any research project supported with grant funds provided by the Department rests with the performing entity. Regulations have been issued by the Department under 7 CFR part 1c, Protection of Human Subjects. In the event that a project involving human subjects at risk is recommended for award, the applicant will be required to submit a statement certifying that the research plan has been reviewed and approved by the Institutional Review Board at the proposing organization or institution. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for such certification. In the event a project involving human subjects results in a grant award, funds will be released only after the Institutional Committee has approved the project.

(iii) *Laboratory animal care.* The responsibility for the humane care and treatment of any laboratory animal, which has the same meaning as ''animal'' in section 2(g) of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2132(g)), used in any research project supported with Rangeland Research Grant Program funds rests with the performing organization. In this regard, all key personnel identified in a proposal and all endorsing officials of the proposed performing entity are required to comply with the applicable provisions of the Animal Welfare Act of 1966, as amended (7 U.S.C. 2131 *et seq.*) and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR parts 1, 2, 3, and 4. In the event that a project involving the use of a laboratory animal is recommended for award, the applicant will be required to submit a statement certifying such compliance. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for such certification. In the event a project involving the use of living vertebrate animals results in a grant award, funds will be released only after the Institutional Animal Care and Use Committee has approved the project.

(14) *Current and pending support.* All proposals must list any other current public or private research support, in addition to the proposed project, to which key personnel listed in the proposal under consideration have committed portions of their time, whether or not salary support for the person(s) involved is included in the budgets of the various projects. This section must also contain analogous information for all projects underway and for pending research proposals which are currently being considered by, or which will be submitted in the near future to, other possible sponsors, including other Departmental programs or agencies. Concurrent submission of identical or similar projects to other possible sponsors will not prejudice its review or evaluation by the Administrator or experts or consultants engaged by the Administrator for this purpose. The Application Kit, identified above in § 3401.6(b), contains a form which is suitable for listing current and pending support.

(15) *Additions to project description.* Each project description is expected by the Administrator, members of peer review groups, and the relevant program staff to be complete in itself. However, in those instances in which the inclusion of additional information is necessary, the number of copies submitted should match the number of copies of the application requested in the annual solicitation of proposals as indicated in § 3401.6(a)(4). Each set of such materials must be identified with the title of the research project as it appears in the Application for Funding and the name(s) of the principal investigator(s). Examples of additional materials may include photographs which do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the proposal.

(16) *National Environmental Policy Act.* As outlined in CSREES's implementing regulations of the National Environmental Policy Act of 1969 (NEPA) at 7 CFR part 3407, environmental data or documentation for the proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. These responsibilities include determining whether the project requires an Environmental Assessment or an Environmental Impact Statement or whether it can be excluded from this requirement on the basis of several categorical exclusions listed in 7 CFR part 3407. In this regard, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one ore more of the exclusions, and should indicate if it does so on the National Environmental Policy Act Exclusions Form (Form CSREES—1234) provided in the Application Kit. Even though the applicant considers that a proposed project may fall within a categorical exclusion, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for a proposed project should substantial controversy on environmental grounds exist or if other extraordinary conditions or circumstances are present that may

cause such activity to have a significant environmental effect.

(17) *Organizational management information.* Specific management information relating to an applicant shall be submitted on an *one-time basis prior to the award of a research project grant* identified under this part if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the agency specified in this part once a research project grant has been recommended for funding.

§ 3401.7 Evaluation and disposition of applications.

(a) *Evaluation.* All proposals received from eligible applicants in accordance with eligible research problem or program areas and deadlines established in the applicable request for proposals shall be evaluated by the Administrator through such officers, employees, and others as the Administrator determines are particularly qualified in the areas of research represented by particular projects. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Administrator may solicit the advice of peer scientists, *ad hoc* reviewers, or others who are recognized specialists in the research program areas covered by the applications received. Specific evaluations will be based upon the criteria established in subpart B of this part, § 3401.17, unless CSREES determines that different criteria are necessary for the proper evaluation of proposals in one or more specific program areas, and announces such criteria and their relative importance in the annual program solicitation. The overriding purpose of such evaluations is to provide information upon which the Administrator can make informed judgments in selecting proposals for ultimate support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

(b) *Disposition.* On the basis of the Administrator's evaluation of an application in accordance with paragraph (a) of this section, the Administrator will approve support using currently available funds, defer support due to lack of funds or a need for further evaluations, or disapprove support for the proposed project in whole or in part. With respect to approved projects, the Administrator will determine the project period (subject to extension as provided in § 3401.9(c)) during which the project may be supported. Any deferral or disapproval of an application will not preclude its reconsideration or a reapplication during subsequent fiscal years.

§ 3401.8 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make research project grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. The date specified by the Administrator as the beginning of the project period shall be no later than September 30 of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's ''Uniform Federal Assistance Regulations'' (parts 3015 and 3019 of this title).

(b) *Grant award document and notice of grant award.*—(1) *Grant award document.* The grant award document shall include at a minimum the following:

(i) Legal name and address of performing organization or institution to whom the Administrator has awarded a rangeland research project grant under the terms of this part;

(ii) Title of project;

(iii) Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

(iv) Identifying grant number assigned by the Department;

(v) Project period, which specifies how long the Department intends to support the effort without requiring recompetition for funds;

(vi) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(vii) Legal authority(ies) under which the research project grant is awarded to accomplish the purpose of the law;

(viii) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the research project grant award; and

(ix) Other information or provisions deemed necessary by the Department to carry out its granting activities or to accomplish the purpose of a particular research project grant.

(2) *Notice of grant award.* The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

(c) *Categories of grant instruments.* The major categories of grant instruments by which the Department may provide support are as follows:

(1) *Standard grant.* This is a grant instrument by which the Department agrees to support a specified level of research effort for a predetermined project period without the announced intention of providing additional support at a future date. This type of research project grant is approved on the basis of peer review and recommendation and is funded for the entire project period at the time of award.

(2) *Renewal grant.* This is a document by which the Department agrees to provide additional funding under a standard grant as specified in paragraph (c)(1) of this section for a project period beyond that approved in an original or amended award, provided that the cumulative period does not exceed the statutory limitation. When a renewal application is submitted, it should include a summary of progress to date under the previous grant instrument. Such a renewal shall be based upon new application, *de novo* peer review and staff evaluation, new recommendation and approval, and a new award instrument.

(3) *Continuation grant.* This is a grant instrument by which the Department agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interests of the Federal government and the public. It involves a long-term research project that is considered by peer reviewers and Departmental officers to have an unusually high degree of scientific merit, the results of which are expected to have a significant impact on the productivity of the Nation's rangelands, and it supports the efforts of experienced scientists with records of outstanding research accomplishments. This kind of document normally will be awarded for an initial one-year period and any subsequent continuation research project grants also will be

awarded in one-year increments, but in no case may the cumulative period of the project exceed the statutory limit. The award of a continuation research project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. A grantee must submit a separate application for continued support for each subsequent fiscal year. Requests for such continued support must be submitted in duplicate at least three months prior to the expiration date of the budget period currently being funded. Such requests must include: An interim progress report detailing all work performed to date; An Application for Funding; a proposed budget for the ensuing period, including an estimate of funds anticipated to remain unobligated at the end of the current budget period; and current information regarding other extramural support for senior personnel. Decisions regarding continued support and the actual funding levels of such support in future years usually will be made administratively after consideration of such factors as the grantee's progress and management practices and within the context of available funds. Since initial peer reviews were based upon the full term and scope of the original rangeland research application for funding, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the application for funding originally reviewed and approved), additional reviews may be required prior to approval of continued funding.

(4) *Supplemental grant.* This is an instrument by which the Department agrees to provide small amounts of additional funding under a standard, renewal, or continuation grant as specified in paragraphs (c)(1), (c)(2), and (c)(3) of this section and may involve a short-term (usually six months or less) extension of the project period beyond that approved in an original or amended award, but in no case may the cumulative period of the project, including short term extensions, exceed the statutory time limitation. A supplement is awarded only if required to assure adequate completion of the original scope of work and if there is sufficient justification of need to warrant such action. A request of this nature normally does not require additional peer review.

(d) *Obligation of the Federal government.* Neither the approval of any application nor the award of any research project grant shall commit or obligate the United States in any way to make any renewal, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 3401.9 Use of funds; changes.

(a) *Delegation of fiscal responsibility.* The grantee may not delegate or transfer in whole or in part, to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(b) *Change in project plans.* (1) The permissible changes by the grantee, principal investigator(s), or other key project personnel in the approved research project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the projects' approved goals. If the grantee or the principal investigator(s) is uncertain as to whether a change complies with this provision, the question shall be referred to the Administrator for a final determination.

(2) Changes in approved goals, or objectives, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(3) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the Department prior to effecting such changes.

(4) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the Department prior to effecting such changes, except as may be allowed in the terms and conditions of a grant award.

(c) *Changes in project period.* The project period determined pursuant to § 3401.7(b) may be extended by the Administrator without additional financial support, for such additional period(s) as the Administrator determines may be necessary to complete, or fulfill the purposes of, an approved project. Any extension, when combined with the originally approved or amended project period, shall be conditioned upon prior request by the grantee and approval in writing by the Department, unless prescribed otherwise in the terms and conditions of a grant award.

(d) *Changes in approved budget.* The terms and conditions of a grant will prescribe circumstances under which written Departmental approval will be requested and obtained prior to instituting changes in an approved budget.

§ 3401.10 Other Federal statutes and regulations that apply.

Several other Federal statutes and/or regulations apply to grant proposals considered for review or to research project grants awarded under this part. These include but are not limited to:

7 CFR part 1c—USDA implementation of the Federal Policy for the Protection of Human Subjects;

7 CFR part 1.1—USDA implementation of Freedom of Information Act;

7 CFR part 3—USDA implementation of OMB Circular A–129 regarding debt collection;

7 CFR part 15, Subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964;

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (i.e., Circular Nos. A–110, A–21, and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977), as well as general policy requirements applicable to recipients of Departmental financial assistance;

7 CFR part 3017, as amended—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants);

7 CFR part 3018—USDA implementation of New Restrictions on Lobbying. Imposes new prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans;

7 CFR part 3019—USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations;

7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions;

7 CFR part 3407—CSREES procedures to implement the National Environmental Policy Act;

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR part 15B (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs; and

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

§ 3401.11 Other conditions.

The Administrator may, with respect to any research project grant or to any

class of awards, impose additional conditions prior to or at the time of any award when, in the Administrator's judgment, such conditions are necessary to assure or protect advancement of the approved project, the interests of the public, or the conservation of grant funds.

Subpart B—Scientific Peer Review of Research Applications for Funding

§ 3401.12 Establishment and operation of peer review groups.

Subject to § 3401.7, the Administrator will adopt procedures for the conduct of peer reviews and the formulation of recommendations under § 3401.16.

§ 3401.13 Composition of peer review groups.

Peer review group members will be selected based upon their training or experience in relevant scientific or technical fields, taking into account the following factors:

(a) The level of formal scientific or technical education by the individual;

(b) The extent to which the individual has engaged in relevant research, the capacities in which the individual has done so (e.g., principal investigator, assistant), and the quality of such research;

(c) Professional recognition as reflected by awards and other honors received from scientific and professional organizations outside of the Department;

(d) The need of the group to include within its membership experts from various areas of specialization within relevant scientific or technical fields;

(e) The need of the group to include within its membership experts from a variety of organizational types (e.g., universities, industry, private consultant(s)) and geographic locations; and

(f) The need of the group to maintain a balanced membership, e.g., minority and female representation and an equitable age distribution.

§ 3401.14 Conflicts of interest.

Members of peer review groups covered by this Part are subject to relevant provisions contained in Title 18 of the United States Code relating to criminal activity, Department regulations governing employee responsibilities and conduct (part O of this title), and Executive Order 11222 (3 CFR, 1964–1965 Comp., p. 306), as amended.

§ 3401.15 Availability of information.

Information regarding the peer review process will be made available to the extent permitted under the Freedom of Information Act (5 U.S.C. 552), the Privacy Act (5 U.S.C. 552a.), and implementing Departmental regulations (part 1 of this title).

§ 3401.16 Proposal review.

(a) All research Applications for Funding will be acknowledged. Prior to technical examination, a preliminary review will be made for responsiveness to the request for proposals (e.g., relationship of application to research program area). Proposals that do not fall within the guidelines as stated in the annual request for proposals will be eliminated from competition and will be returned to the applicant. Proposals whose budgets exceed the maximum allowable amount for a particular program area as announced in the request for proposals may be considered as lying outside the guidelines.

(b) All applications will be reviewed carefully by the Administrator, qualified officers or employees of the Department, the respective merit review panel, and ad hoc reviewers, as required. Written comments will be solicited from ad hoc reviewers when required, and individual written comments and in-depth discussions will be provided by peer review group members prior to recommending applications for funding. Applications will be ranked and support levels recommended within the limitation of total available funding for each research program area as announced in the applicable request for proposals.

(c) Except to the extent otherwise provided by law, such recommendations are advisory only and are not binding on program officers or on the awarding official.

§ 3401.17 Review criteria.

(a) Federally funded research supported under these provisions shall be designed to, among other things, accomplish one or more of the following purposes:

(1) Improve management of rangelands as an integrated system and/or watershed;

(2) remedy unstable or unsatisfactory rangeland conditions;

(3) increase revegetation and/or rehabilitation of rangelands/

(4) examine the health of rangelands; and

(5) define economic parameters associated with rangelands.

(b) In carrying out its review under § 3401.16, the peer review panel will use the following form upon which the evaluation criteria to be used are enumerated, unless, pursuant to § 3401.7(a), different evaluation criteria are specified in the annual solicitation of proposals for a particular program:

Peer Panel Scoring Form

Proposal Identification No. _____

Institution and Project Title _____

I. Basic Requirement:

Proposal falls within guidelines? _____Yes _____No. If no, explain why proposal does not meet guidelines under comment section of this form.

II. Selection Criteria:

	Score 1–10	Weight factor	Score X weight factor	Comments
1. Overall scientific and technical quality of proposal	.....	10	.....	.....
2. Scientific and technical quality of the approach	.....	10	.....	.....
3. Relevance and importance of proposed research to solution of specific areas of inquiry	.....	6	.....	.....
4. Feasibility of attaining objectives; adequacy of professional training and experience, facilities and equipment	.....	5	.....	.....

Score _____

Summary Comments _____

(c) Proposals satisfactorily meeting the guidelines will be evaluated and scored by the peer review panel for each criterion utilizing a scale of 1 through 10. A score of one (1) will be considered low and a score of ten (10) will be considered high for each selection criterion. A weighted factor is used for each criterion.

Done at Washington, DC, this 19th day of October 1995.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 95–26652 Filed 10–26–95; 8:45 am]

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Federal Register

Friday
October 27, 1995

Part VII

The President

Executive Order 12979—Agency Procurement Protests

Federal Register
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Friday, October 27, 1995

Presidential Documents

Title 3—

The President

Executive Order 12979 of October 25, 1995

Agency Procurement Protests

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to ensure effective and efficient expenditure of public funds and fair and expeditious resolution of protests to the award of Federal procurement contracts, it is hereby ordered as follows:

Section 1. Heads of executive departments and agencies (''agencies'') engaged in the procurement of supplies and services shall prescribe administrative procedures for the resolution of protests to the award of their procurement contracts as an alternative to protests in fora outside the procuring agencies. Procedures prescribed pursuant to this order shall:

(a) emphasize that whenever conduct of a procurement is contested, all parties should use their best efforts to resolve the matter with agency contracting officers;

(b) to the maximum extent practicable, provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests, including, where appropriate and as permitted by law, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel;

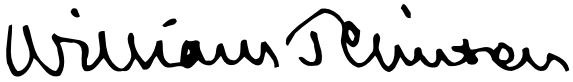
(c) allow actual or prospective bidders or offerors whose direct economic interests would be affected by the award or failure to award the contract to request a review, at a level above the contracting officer, of any decision by a contracting officer that is alleged to have violated a statute or regulation and, thereby, caused prejudice to the protester; and

(d) except where immediate contract award or performance is justified for urgent and compelling reasons or is determined to be in the best interest of the United States, prohibit award or performance of the contract while a timely filed protest is pending before the agency. To allow for the withholding of a contract award or performance, the agency must have received notice of the protest within either 10 calendar days after the contract award or 5 calendar days after the bidder or offeror who is protesting the contract award was given the opportunity to be debriefed by the agency, whichever date is later.

Sec. 2. The Administrator for Federal Procurement Policy shall: (a) work with the heads of executive agencies to provide policy guidance and leadership necessary to implement provisions of this order; and

(b) review and evaluate agency experience and performance under this order, and report on any findings to the President within 2 years from the date of this order.

Sec. 3. The Administrator of General Services, the Secretary of Defense, and the Administrator of the National Aeronautics and Space Administration, in coordination with the Office of Federal Procurement Policy, shall amend the Federal Acquisition Regulation, 48 C.F.R. 1, within 180 days of the date of this order to further the purposes of this order.



THE WHITE HOUSE,
October 25, 1995.

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