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

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- WHEN:** September 17, 1996 at 9:00 am.
- WHERE:** National Archives—Northwest Region
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- RESERVATIONS:** 800-688-9889
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WASHINGTON, DC

- WHEN:** September 24, 1996 at 9:00 am.
- WHERE:** Office of the Federal Register
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- RESERVATIONS:** 202-523-4538



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Reader Aids

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Electronic Bulletin Board

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

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Title 3—

Presidential Determination No. 96–50 of September 4, 1996

The President

POW/MIA Military Drawdown for Cambodia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 535 of the 1996 Foreign Operations Assistance Act (Public Law 104–107) (the “Act”), I hereby determine that it is necessary to draw down defense articles from the stocks of the Department of Defense for Cambodia for the purposes set forth in the Act of supporting efforts to locate and repatriate members of the United States Armed Forces and civilians employed directly or indirectly by the United States Government who remain unaccounted for from the Vietnam War.

Therefore, I hereby authorize and direct the drawdown of up to \$151,000 of such defense articles from the stocks of the Department of Defense for Cambodia, for the purposes and under the authorities of section 535 of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the Federal Register.



THE WHITE HOUSE,
Washington, September 4, 1996.

Presidential Documents

Presidential Determination No. 96-51 of September 4, 1996

Presidential Determination Under Subsections 402(a) and 409(a) of the Trade Act of 1974, as Amended—Emigration Policies of Mongolia

Memorandum for the Secretary of State

Pursuant to the authority vested in me by subsections 402(a) and 409(a) of the Trade Act of 1974 (19 U.S.C. 2432(a) and 2439(a)) (“the Act”), I determine that Mongolia is not in violation of paragraph (1), (2), or (3) of subsection 402(a) of the Act, or paragraph (1), (2), or (3) of subsection 409(a) of the Act.

You are authorized and directed to publish this determination in the Federal Register.

A handwritten signature in black ink, reading "William Clinton". The signature is written in a cursive style with a large, stylized "W" and "C".

THE WHITE HOUSE,
Washington, September 4, 1996.

[FR Doc. 96-23831
Filed 9-13-96; 8:45 am]
Billing code 4710-10-M

Rules and Regulations

Federal Register

Vol. 61, No. 180

Monday, September 16, 1996

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

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

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1789

RIN 0572-AB17

Use of Consultants Funded by Borrowers

AGENCY: Rural Utilities Service, USDA.
ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) hereby establishes procedures and policies pursuant to which a borrower under the RE Act may fund consultants used by the Administrator for financial, legal, engineering, environmental and other technical advice and services. The use of the consultants will assist RUS in the expeditious review of applications for financial assistance or other approvals sought by borrowers.

EFFECTIVE DATE: This rule is effective October 16, 1996.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, STOP 1522, Washington, D.C. 20250-1522. Telephone: (202) 720-0736.

SUPPLEMENTARY INFORMATION: This final rule has been determined to be not significant for purposes of Executive Order 12866, Regulatory Planning and Review, and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of RUS has determined that a rule relating to the RUS electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and, therefore, the Regulatory Flexibility Act does not apply to this rule. The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the

National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts RUS electric loans and loan guarantees from coverage under this Order. This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in Section 3 of the Executive Order.

The programs covered by this rule are listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.850, Rural Electrification Loans and Loan Guarantees, 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402-9325.

Information Collection and Recordkeeping Requirements

The recordkeeping and reporting burden contained in this rule will be submitted to the Office of Management and Budget (OMB) for approval under control number 0572-0108. The paperwork contained in this rule will not be effective until approved by OMB.

Send questions or comments regarding any other aspect of this collection of information, including suggestions for reducing the burden, to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, U.S. Department of Agriculture, Rural Utilities Service, STOP 1522, Washington, D.C. 20250-1522.

Background

On January 2, 1996, at 61 FR 21, the Rural Utilities Service (RUS) published a proposed rule, 7 CFR Part 1789, Use of Consultants Funded by Borrowers, which proposed the agency's policies and procedures pursuant to which a borrower may fund consultants used by the Administrator for financial, legal, engineering, environmental and other technical advice and services.

A total of eleven different organizations commented on the proposed rule. Comments were received from the National Rural Electric Cooperative Association (NRECA), the National Telephone Cooperative Association, CoBank, the National Rural Utilities Cooperative Finance Corporation (CFC), four borrowers, an engineering services firm, a law firm and the U.S. Department of Treasury.

Comments by the NRECA asserted that staffing constraints at RUS and the Office of General Counsel (OGC) have often caused burdensome and costly delays for RUS borrowers in their applications and approval requests. NRECA recommended allowing the borrower to initiate RUS' consideration of use of a borrower-funded consultant. NRECA observed that following the lengthy full and open competition provisions of the Federal Acquisition Regulation (FAR) would, in many cases, negate the usefulness of hiring a third party consultant, and urged that RUS consider authorized exceptions to FAR's full competition requirements.

RUS is of the view that the rule does not prohibit a borrower from initiating a discussion with the applicable regional director; however a requirement that obligates RUS program officials to extensive justification for turning down requests, is unnecessary and takes time away from the administration of RUS programs.

RUS agrees that the application of the FAR may diminish the usefulness of hiring a third party consultant and will consider authorized exceptions to FAR's full competition requirements. RUS will continue to investigate ways in which the procurement process can be streamlined.

NRECA and two other commentators protested that the conflict of interest provisions were too restrictive. They argue that timely response to borrower approval requests required, in many cases, that the consultant have extensive, ready knowledge of RUS programs. NRECA stated that there is a relatively small cadre of lawyers, accountants, and other professionals who are versed in the unique aspects of RUS programs. RUS is of the view that the agency has sufficient internal expertise with respect to specific attributes of the cooperative industry. However, the definition of organizational conflict of interest has

been modified to conform with the definition found in the FAR. The determination of whether or not a conflict exists, using the FAR definition, may be made by either the Administrator or the responsible contracting officer.

NRECA, CoBank and CFC commented that RUS should consider a letter of credit payment mechanism as an alternative to the proposed escrow account arrangement. CFC and Oglethorpe supported direct payment from borrowers to consultants. The use of a letter of credit payment mechanism was one of the first inquiries made by RUS as the agency sought to implement this law. RUS is of the view that direct payment by borrowers to consultants can undermine the integrity of the client-consultant relationship. The final rule is unchanged from the proposed rule with respect to the payment mechanism, but RUS will continue to explore whether a letter of credit mechanism may be substituted for the escrow account mechanism.

One commenter argued that borrowers should be able to select the consultant used by RUS. Alternatively, the commenter said that a borrower should be able to veto RUS' selection of a consultant. Nothing in the proposed rule prohibits borrowers from making recommendations or suggestions to RUS regarding the choice of consultant. Under the final rule, the government retains the authority to select the consultant to be used.

Oglethorpe proffered the third party contracting process set up by the Federal Energy Regulatory Commission (FERC) for preparing environmental impact statements as a model for RUS consultant procurements. RUS followed the FERC developments with great interest and actively explored the possibility of emulating it, with some modifications. The agency was particularly interested in adopting the "pre-qualified list" approach. The statutory authorizations are sufficiently different so as to preclude the agency from emulating the FERC third party contracting process. Among other examples of how the FERC process differs from RUS, the guidance documents issued by FERC in this regard emphasize that those are not federal procurements.

The only law firm which commented urged that the use of legal consultants should be kept to an absolute minimum. The firm voiced the concern that the proposed rule will create a class of "professional consultants" with a vested interest in promoting their participation in RUS transactions. From this, the firm projects the possibility of a proliferation

in the use of legal consultants by RUS and its borrowers, thereby resulting in significantly increased time consumption and transaction costs for matters involving RUS approval.

RUS believes that many aspects of this final rule will be self-policing. The use of borrower funded consultants is a joint decision on the part of RUS and the borrower. If borrowers elect to incur the costs associated with funding third party consultants, it will be because it is to their advantage to do so. Proliferation under those circumstances is not necessarily undesirable.

List of Subjects in 7 CFR Part 1789

Administrative practice and procedure, Electric power, Electric utilities, Legal services, Loan programs—energy, Loan programs—telecommunications, Reporting and recordkeeping requirements.

For the reasons stated, RUS amends 7 CFR Chapter XVII to add a new part 1789 to read as follows:

PART 1789—USE OF CONSULTANTS FUNDED BY BORROWERS

Subpart A—Policy and Procedures With Respect to Consultant Services Funded by Borrowers—General

Sec.

- 1789.150 Purpose.
- 1789.151 Definitions.
- 1789.152 Policy.
- 1789.153 Borrower funding.
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- 1789.164—1789.165 [Reserved]

Subpart B—Escrow Account Funding and Payments

- 1789.166 Terms and conditions of funding agreement.
- 1789.167 Terms and conditions of escrow agreement.
- 1789.168—1789.175 [Reserved]

Authority: 7 U.S.C. 901–950b; Pub. L. 103–354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

Subpart A—Policy and Procedures With Respect to Consultant Services Funded by Borrowers—General

§ 1789.150 Purpose.

This part sets forth policies and the procedures for implementing subsection (c) of section 18 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*)(RE Act) which authorizes the Rural Utilities Service

(RUS) to use the services of Consultants funded by the Borrowers to facilitate timely action on Applications by Borrowers for financial assistance and other approvals.

§ 1789.151 Definitions.

As used in this part:

Administrator means the Administrator of the Rural Utilities Service (RUS).

Application means a request for financial assistance under the RE Act or such other approvals as may be required of the RUS pursuant to the terms of outstanding loan or security instruments or otherwise.

Borrower means any organization which has an outstanding loan(s) made or guaranteed by RUS or its predecessor agency, the Rural Electrification Administration (REA) under the RE Act or any organization which has submitted or submits an Application before RUS.

Consultant means a person or firm which has been retained pursuant to this subpart under a contract to provide financial, legal, engineering, environmental, or other technical advice and services.

Consultant Contract means a contract for the performance of consulting services for RUS, to be paid using funds provided by a Borrower, which may be in the form of a Retainer Contract, purchase order, or other form as may be appropriate.

Escrow Account means an account established pursuant to § 1789.158.

Escrow Agreement means an agreement, between a Borrower, a Consultant and a Third-party Commercial Institution, meeting the requirements of § 1789.167.

Final Invoice means the closing Invoice prepared for a given Task Order.

Financial Consultant means a Consultant retained pursuant to this part to provide financial advisory services.

Funding Agreement means an agreement, between a Borrower and a Consultant, providing for the Borrower to fund the costs of a Task Order and otherwise meeting the requirements of § 1789.166.

Indemnification Agreement means an agreement by a Borrower meeting the requirements of § 1789.162.

Invoice means an invoice prepared by a Consultant pursuant to the terms of a Consultant Contract.

Legal Consultant means any Consultant retained pursuant to this part to provide legal services to RUS.

Notice of Proposal to Fund means a notice meeting the requirements of § 1789.156 provided to RUS by the Borrower.

Organizational Conflict of Interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Retainer Contract means a Consultant Contract providing for a minimum required payment to a Consultant irrespective of whether services are utilized by RUS thereunder.

Task Order means a written request for consultant services pursuant to the terms of a Consultant Contract.

Third-party Commercial Institution means a commercial financial institution mutually acceptable to the Borrower and the Consultant.

§ 1789.152 Policy.

(a) As provided in this subpart, RUS may, at its discretion, use the services of Consultants funded by a Borrower where such services will facilitate timely action on an Application by such Borrower for financial assistance or other approvals. Such Consultants may provide financial, legal, engineering, environmental or other technical advice and services in connection with the review of an Application.

(b) With the approval of RUS, a Borrower may fund the cost of consulting services in connection with the review by RUS of an Application by such Borrower. Such funding shall be provided pursuant to the terms of a Funding Agreement between the Borrower and the Consultant designated by RUS.

(c) RUS may not, without the consent of the Borrower, require, as a condition of processing any Application for approval, that the Borrower agree to pay the costs of a Consultant hired to provide services to RUS.

(d) The government shall retain sole discretion in the selection of Consultants to provide services to RUS and the form of contract utilized. RUS may either use the services of one or more Consultants retained under Retainer Contracts or the government may elect to retain a Consultant not otherwise on retainer. The government shall have sole discretion to prescribe terms and conditions of Consultant Contracts. The Borrower may bring considerations to the attention of the government which the Borrower deems pertinent to the selection process.

(e) RUS shall retain sole discretion as to whether to further pursue use of an outside consultant for the relevant application in the event the Borrower

does not enter into the agreements referenced in § 1789.158(c)(3)(iii) within 60 days of the government providing to the Borrower the information set forth in § 1789.158(c)(3).

§ 1789.153 Borrower funding.

Borrowers shall use their general funds for the purposes of funding consultant services hereunder. Borrowers may not use the proceeds of loans made or guaranteed under the RE Act for costs incurred by Borrowers pursuant to the funding of consultant services for RUS.

§ 1789.154 Eligible borrowers.

All Borrowers are eligible to fund consultant services under this part.

§ 1789.155 Approval criteria.

RUS will consider approving the use of consultant services funded by a Borrower on a case by case basis taking into account, among other matters, the following:

(a) Whether such services are required to facilitate timely action on a Borrower's Application. RUS shall determine what represents timely action with respect to each Application considering, among other matters, the review period normally required for such projects by RUS and other lenders and the consequences to the Borrower of adjusting the review period.

(b) The availability of staff resources, the priorities of other projects then before RUS, and the efficiencies to be realized from the use of consultant services.

(c) Whether it is in the best interest of RUS to use Borrower-funded Consultants. Certain types of projects, such as those involving issues of program-wide significance, may not be well suited for the use of Borrower funded Consultants.

§ 1789.156 Proposal procedure.

(a) In the event RUS determines that consideration should be given to the use of a Borrower-funded consultant in connection with the review of an Application, the RUS Regional Director or the Director of the Power Supply Division, as appropriate, will discuss with the Borrower the nature of the Application and the projected review period required of RUS. If RUS concludes that the projected review period will not result in timely action on the Application, and after being so notified in writing by RUS the Borrower wishes to fund consultant services to facilitate RUS review, the Borrower shall submit to the same Director a funding proposal. The proposal shall set forth the following:

(1) Identification in the heading or caption as a Notice of Proposal to Fund Consulting Services;

(2) Borrower's REA/RUS designation;

(3) Borrower's legal name and address;

(4) A description of the Application, critical issues and concerns relating to the Application, time deadlines, and the consequences of any delays in RUS review;

(5) A description of the consulting service(s) that would facilitate timely RUS review of the Application; and

(6) Such additional documents and information as RUS may request.

(b) RUS will review the Notice of Proposal to Fund and any additional information RUS deems relevant in determining whether to proceed with procuring Borrower funded Consultants. If RUS proposes to utilize Legal Consultants, RUS must obtain the concurrence of the Office of General Counsel (OGC) of the Department of Agriculture. RUS will notify the Borrower in writing of its determination.

§ 1789.157 Consultant contract.

(a) The Federal Acquisition Regulation (FAR), 48 CFR Ch. 1, and the Agriculture Acquisition Regulation (AGAR), 48 CFR Ch. 4, shall apply to all Consultant Contracts entered into pursuant to this part except as provided in this section.

(1) Contracts for Legal Consultants shall provide for a technical representative from OGC.

(2) All Consultant Contracts shall provide for an escrow account funding mechanism pursuant to this part and for the government's sole discretion in determining whether payments are to be made from the Escrow Account to the Consultant.

(3) All Consultant Contracts shall provide that payment of all obligations for work performed thereunder must be satisfied by amounts available in the Escrow Account; with the exception of the annual retainer fee, if any, Consultants shall not be entitled to any payments from the government.

(b) The provisions of paragraph (a) of this section shall be given prominent emphasis in requests for proposals issued under this part.

§ 1789.158 Implementation.

(a) Upon making a determination to go forward with Borrower funding for consulting services, RUS shall initiate a procurement request for a Consultant to provide the services. The government may either contract with a Consultant on a case by case basis or elect to use a Consultant pursuant to an outstanding

Retainer Contract. The Borrower will not be informed of the Consultant selected until such time as the government provides the information set forth in paragraph (c)(3) of this section.

(b) If the government determines to contract with a Consultant on a case by case basis, the government shall notify the Borrower of the applicable procedures.

(c) If the government determines to contract with a Consultant under an outstanding Retainer Contract, the following procedures will normally apply:

(1) Pursuant to the terms of the contract, the government will prepare a draft Task Order requesting consultant services in connection with the review of the Borrower's Application. The draft Task Order shall set forth for the Consultant's review and acceptance, a description of the services to be provided and applicable time frames for the provision of such services.

(2) The government will request that the Consultant:

(i) Notify the government as to the acceptability of the form and substance of the draft Task Order;

(ii) Notify the government as to its ability to provide a satisfactory conflict of interest certification consistent with the requirements of the FAR (48 CFR ch. 1); and

(iii) Provide a cost estimate for the draft Task Order.

(3) When the government is satisfied with the response(s) received pursuant to paragraph (c)(2) of this section, the government shall promptly provide to the Borrower:

(i) A copy of the draft Task Order identifying the Consultant;

(ii) The Consultant's cost estimate for the draft Task Order; and

(iii) Contract information required to enable the Borrower to develop a Funding Agreement, an Escrow Agreement and an Indemnification Agreement (the "agreements").

(4) The Borrower shall develop and submit to the government for approval executed originals of:

(i) The agreements; and

(ii) A certified copy of a resolution of the board of directors authorizing the Borrower to enter into the agreements and to take such other action as is necessary to effect the purposes of the agreements.

(5) Upon receiving written RUS approval of the agreements and the form and substance of the board resolution, the Borrower shall:

(i) Establish and fund the Escrow Account; and

(ii) Provide written notice to the government of the Escrow Account

number, the funding thereof, and such other information as required pursuant to the agreements.

(6) After the Borrower has funded the Escrow Account, the government shall issue Task Order(s) for consultant services in accordance with the terms and conditions of the applicable Retainer Contract.

§ 1789.159 Contract administration.

The government shall be solely responsible for the administration of a Consulting Contract and shall have complete control over the scope of the Consultant's work, the timetable for performance, the standards to be applied in determining the acceptability of deliverables and the approval of payment of Invoices.

§ 1789.160 Access to information.

The Borrower shall not have rights in nor right of access to the work product of the Consultant. All analyses, studies, opinions, memoranda, and other documents and information provided by the Consultant pursuant to a Consulting Contract may be released and made available to the Borrower only with the approval of RUS. This section does not restrict release of information by RUS pursuant to the Freedom of Information Act (5 U.S.C. 552(a)(2)) or other legal process.

§ 1789.161 Conflicts of interest.

The standard for determining organizational conflicts of interest shall be as set forth in the FAR subpart 9.5 (48 CFR part 9, subpart 9.5); however, the identification of the existence of an organizational conflict of interest may be made by either the Administrator or the cognizant Contracting Officer. In the event an organizational conflict of interest is determined to exist, the cognizant Contracting Officer shall take the actions prescribed at FAR 9.504 (48 CFR 9.504) to attempt to avoid, neutralize or mitigate the conflict. Should these actions be deemed by the Administrator and the Contracting Officer to adequately resolve the conflict, the contracting action with the offeror/contractor may proceed. Should the Administrator or the Contracting Officer determine that an organizational conflict of interest still exists such that contract award or other contracting action cannot be taken (award of task/delivery order, etc.) the offeror/contractor shall be so informed by the Contracting Officer and be provided a reasonable opportunity to respond in accordance with FAR 9.504(e) (48 CFR 9.504(e)). After considering the contractor's response, if it is found by both the Administrator and Contracting

Officer to remedy the conflict of interest, the contracting action may proceed. If the Administrator and Contracting Officer determine that the contractor's response does not resolve the conflict of interest, yet continuing with the contracting action with the offeror/contractor in question is considered in the best interest of the United States, a waiver in accordance with FAR 9.503 (48 CFR 9.503) may be executed. This waiver shall be submitted under the Contracting Officer's signature and approved by the Administrator. The Administrator has been delegated Head of Contracting Activity authority by the USDA Senior Procurement Executive solely for the purpose of waiver approval.

§ 1789.162 Indemnification agreement.

As a condition of approving Borrower funding, the government will require the Borrower to enter into an Indemnification Agreement, in form and substance satisfactory to RUS, providing that the Borrower will indemnify and hold harmless the government and any officers, agents or employees of the government from any and all liability, including costs, fees, and settlements arising out of, or in any way connected with the payment of the Consultant's fee pursuant to the Consultant Contract. The Indemnification Agreement may recognize, as a condition of liability thereunder, the rights of the borrower to prompt notice, to use of counsel of its own choosing, and to participation in any settlement of a claim against which indemnification is sought.

§ 1789.163 Waiver.

RUS may waive any requirement or procedure of this subpart by determining that its application in a particular situation would not be in the government's interest, except that certain provision that the subject contracts are subject to the provisions of the FAR (48 CFR ch. 1) and AGAR (48 CFR ch. 4).

§§ 1789.164—1789.165 [Reserved]

Subpart B—Escrow Account Funding and Payments

§ 1789.166 Terms and conditions of funding agreement.

Funding Agreements between the Borrower and a Consultant shall be in form and substance satisfactory to RUS and provide for, among other matters, the following:

(a) Specific reference by number to the applicable Consulting Contract entered into between the government and the Consultant;

(b) Specific reference by number to the applicable Task Order (where applicable);

(c) A brief description of the Application;

(d) A requirement that Invoices make specific reference to:

(1) The applicable contract and Task Order(s); and

(2) The Escrow Account from which payment is to be made;

(e) A requirement that the Final Invoice for a Task Order be clearly identified as such;

(f) A description of the services to be provided by the Consultant to RUS and the applicable time frames for the provision of such services;

(g) Agreement that the Borrower shall pay for the Consultant services provided to RUS under the applicable contract through an Escrow Account established pursuant to an Escrow Agreement, the Consultant shall not provide services to RUS under the applicable contract unless there are sufficient funds in the Escrow Account to pay for such services, the Consultant shall seek compensation for services provided under the applicable contract from, and only from, funds made available through the Escrow Account, and the Consultant must submit all Invoices to the government for approval.

(h) A form of Escrow Agreement satisfactory to the Borrower, Consultant and the designated Third-party Commercial Institution;

(i) A schedule setting forth when and in what amounts the Borrower shall fund the Escrow Account;

(j) Acknowledgment by the Consultant of the Indemnification Agreement provided by the Borrower to the government; and

(k) The Funding Agreement shall not be effective unless and until approved in writing by RUS.

§ 1789.167 Terms and conditions of escrow agreement.

Escrow Agreements between and among the Borrower, Consultant and Third-party Commercial Institution shall be in form and substance satisfactory to RUS and provide for, among other matters, the following:

(a) Specific reference by number to the applicable contract for services;

(b) Specific reference by number to the applicable Task Order;

(c) Specific reference by number to the Escrow Account into which funds are to be deposited;

(d) Invoices to specifically identify the applicable contract and Task Order(s);

(e) Funds to be held in the Escrow Account by the escrow agent until paid

to the Consultant pursuant to the government's authorization;

(f) The Escrow Account to be closed and all remaining funds remitted to the Borrower after payment of the Final Invoice, unless otherwise directed by the government;

(g) The government, the Consultant and the Borrower to have the right to be informed, in a timely manner and in such form as they may reasonably request, as to the status of and activity in the Escrow Account; and

(h) The Escrow Agreement shall not be effective unless and until approved in writing by RUS.

§§ 1789.168–1789.175 [Reserved]

Dated: September 6, 1996.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 96–23512 Filed 9–13–96; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 96–ASW–5; Special Condition 29–ASW–19]

Special Condition: Aerospatiale Model SA–365N, SA–365N1, and AS–365N2 “Dauphin” Helicopters, Electronic Flight Instrument System and Digital Standby Instrument System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special condition; request for comments.

SUMMARY: This special condition is issued for these Aerospatiale Model SA–365N, SA–365N1, and AS–365N2 “Dauphin” helicopters. These helicopters will have a novel or unusual design feature associated with the Electronic Flight Instrument System and with the digital standby system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these critical function systems from the effects of external high intensity radiated fields (HIRF). This special condition contains additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

DATES: Effective September 16, 1996. Comments must be received on or before October 16, 1996.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation

Administration (FAA), Office of the Assistant Chief Counsel, Attn: Rules Docket No. 96–ASW–5, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments must be marked Docket No. 96–ASW–5. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 9 a.m. and 3 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert McCallister, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110; telephone (817) 222–5121.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delay delivery of the affected helicopter. These notice and comment procedures are also considered unnecessary since the public has been previously provided with a substantial number of opportunities to comment on substantially identical special conditions, and their comments have been fully considered. Therefore, good cause exists for making this special condition effective upon issuance.

Comments Invited

Although this final special condition was not subject to notice and opportunity for prior public comment, comments are invited on this final special condition. Interested persons are invited to comment on this final special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified under the caption “ADDRESSES.” All communications received on or before the closing date for comments will be considered. This special condition may be changed in light of comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this special condition must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to Docket No. 96–ASW–5.” The postcard

will be a date and time stamped and returned to the commenter.

Background

On March 5, 1996, American Eurocopter Corporation, Grand Prairie, Texas, applied for a Supplemental Type Certificate for installation of an Electronic Flight Instrument System and a digital stand-by instrument in Aerospatiale Model SA-365N, SA-365N1, and AS-365N2 "Dauphin" helicopters. Each of these models is a 13 passenger, two engine, 9,370 pound transport category helicopter.

Type Certification Basis

The certification basis established for the Aerospatiale Model SA-365N, SA-365N1, and AS-365N2 "Dauphin" helicopters includes: 14 Code of Federal Regulations (CFR) 21.29 and part 29 effective February 1, 1965, Amendments 29-1 through 29-11; Airworthiness Criteria for Helicopter Instrument Flight dated December 15, 1978, for Instrument Flight Rule (IFR) certification. Aerospatiale has elected to comply with part 29 Amendments 29-12 through 29-16 except for § 29.397 relating to rotor brakes and except for § 29.173 for longitudinal static stability for SA-365N1 and AS-365N2. In addition to the applicable airworthiness regulations and special conditions, the Model AS-365N2 must comply with the noise certification requirements of part 36, Amendments 36-1 through 36-16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1). If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these helicopters because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2) for changes to the type certificates.

Discussion

The Aerospatiale Model SA-365N, SA-365N1, and AS-365N2 "Dauphin" helicopters, at the time of application,

were identified as having modifications that incorporate one and possibly more electrical, electronic, or combination of electrical and electronic (electrical/electronic) systems that will perform functions critical to the continued safe flight and landing of the helicopters. The electronic flight instrument system and the standby instrument system performs the attitude display function. The display of attitude, altitude, and airspeed is critical to the continued safe flight and landing of the helicopters for IFR operations in instrument meteorological conditions. American Eurocopter will provide the FAA with a hazard analysis that will identify any other critical functions performed by the electrical/electronic systems that are critical to the continued safe flight and landing of the helicopters.

Recent advances in technology have prompted the design of aircraft that include advanced electrical and electronic systems that perform functions required for continued safe flight and landing. However, these advanced systems respond to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields (HIRF) incident on the external surface of the helicopters. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television; and the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical and electronic systems required for the continued safe flight and landing of the helicopters. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions: (1) Increased use of sensitive electronics that perform

critical functions, (2) reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials, (3) adverse service experience of military aircraft using these technologies, and (4) an increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with technological developments and a changing environment and in 1986 initiated a high priority program to (1) Determine and define electromagnetic energy levels; (2) develop guidance material for design, test, and analysis; and (3) prescribe and promulgate regulatory standards.

The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified a level of HIRF environment that a helicopter could be exposed to during IFR operations. While the HIRF requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems that perform critical functions. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopters' electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent the worst-case exposure for a helicopter operating under IFR.

The HIRF environment specified in this special condition is based on many critical assumptions. With the exception of takeoff and landing at an airport, one of these assumptions is that the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating under visual flight rules (VFR) routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the defined environment by 100 percent or more.

This special condition will require the systems that perform critical functions, as installed in the aircraft, to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and operational

capabilities of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF environment. The FAA has determined that the environment defined in Table 1 is acceptable for critical functions in helicopters operating at or above 500 feet AGL. For critical functions of helicopters operating at less than 500 feet AGL, additional factors must be considered.

The applicant may also demonstrate by a laboratory test that the electrical/electronic systems that perform critical functions can withstand a peak electromagnetic field strength in a frequency range of 10 KHz to 18 GHz. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 volts per meter (v/m) and other considerations, such as an alternate technology backup that is immune to HIRF, are appropriate for critical functions during IFR operations. A level of 200 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are more appropriate for critical functions during VFR operations. Applicants must perform a hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopters. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. The two basic options of either testing the rotorcraft to the defined environment or laboratory testing may not be combined. The laboratory test allows some frequency areas to be under tested and requires other areas to have some safety margin when compared to the defined environment. The areas required to have some safety margin are those shown, by past testing, to exhibit greater susceptibility to adverse effects from HIRF; and laboratory tests, in general,

do not accurately represent the aircraft installation. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

The modulation that represents the signal most likely to disrupt the operation of the system under test, based on its design characteristics, should be selected. For example, flight control systems may be susceptible to 3 Hz square wave modulation while the video signals for electronic display systems may be susceptible to 400 Hz sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KHz sine wave with 80 percent depth of modulation in the frequency range from 10 KHz to 400 MHz and 1 KHz square wave with greater than 90 percent depth of modulation from 400 MHz to 18 GHz. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

As discussed above, these special conditions are applicable to the Aerospatiale Model SA–365N, SA–365N1, AS–365N2 "Dauphin" helicopters modified by American Eurocopter Corporation. Should American Eurocopter Corporation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. H10EU to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well, under provisions of § 21.101(a)(1).

Conclusion

This action affects only certain unusual or novel design features on three models of helicopters. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the affected helicopters.

The substance of this special condition for similar installations in a variety of helicopters has been subjected to the notice and comment procedure and has been finalized without substantive change. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the helicopter, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impractical, and good cause exists for adopting this special condition immediately. Therefore, this special condition is being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to prior opportunities for comment.

List of Subjects in 14 CFR Part 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The authority citations for this special condition are as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special condition is issued as part of the type certification basis for the Aerospatiale Model SA–365N, SA–365N1, and AS–365N2 "Dauphin" helicopters
Protection for Electrical and Electronic Systems From High Intensity Radiated Fields.

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopter is exposed to high intensity radiated fields external to the helicopter.

Issued in Fort Worth, Texas, on August 28, 1996.

Eric Bries,

*Aircraft Manager, Rotorcraft Directorate,
Aircraft Certification Service.*

[FR Doc. 96-23671 Filed 9-13-96; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 95-NM-266-AD; Amendment 39-9745; AD 88-09-05 R1]

RIN 2120-AA64

Airworthiness Directives; De Havilland Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain de Havilland Model DHC-8 series airplanes, that currently requires clearly marking the location and means of entering the lavatory. That action was prompted by reports of passengers mistaking the airstair door operating handle for the means of gaining access to the lavatory. The actions specified by that AD are intended to prevent inadvertent opening of the airstair door and consequent depressurization of the airplane. This amendment limits the applicability of the rule to fewer airplanes.

DATES: Effective October 21, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Marc Goldstein, Aerospace Engineer, Systems and Equipment Branch, ANE-172, FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7513; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 88-09-05, amendment 39-5908 (53 FR 15363, April 29, 1988), which is applicable to certain de Havilland Model DHC-8 series airplanes, was published in the Federal Register on July 3, 1996 (61 FR 34767). The action proposed to revise AD 88-09-05 to continue to require clearly marking the location and means of entering the lavatory. The action also proposed to limit the applicability of the existing AD to fewer airplanes.

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

The commenter supports the proposed rule.

Conclusion

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

Cost Impact

There are approximately 30 de Havilland Model DHC-8-100 series airplanes of U.S. registry that will be affected by this AD.

Since this AD merely deletes airplanes from the applicability of the rule, it adds no additional costs, and requires no additional work to be performed by affected operators. The current costs associated with this AD are reiterated below for the convenience of affected operators:

The actions that are currently required by AD 88-09-05, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of \$60 per work hour. Required parts are supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact on U.S. operators of the actions currently required is estimated to be \$1,800, or \$60 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39-5908 (53 FR 15363, April 29, 1988), and by adding a new airworthiness directive (AD), amendment 39-9745, to read as follows:

88-09-05 R1 de Havilland, Inc.: Amendment 39-9745. Docket 95-NM-266-AD. Revises AD 88-09-05, Amendment 39-5908.

Applicability: Model DHC-8 series airplanes, serial numbers 3 through 79 inclusive, on which Modification 8/0757 has not been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an

alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent opening of the airstair door and consequent depressurization of the airplane, accomplish the following:

(a) Within 60 days after June 10, 1988 (the effective date of AD 88-09-05, amendment 39-5908), replace the labels marking the location and means of opening the lavatory, in accordance with the Accomplishment Instructions of de Havilland Service Bulletin 8-11-14, Revision A, dated July 31, 1987; or Revision B, dated July 1, 1988, or Revision C, dated September 29, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with de Havilland Service Bulletin 8-11-14, Revision A, dated July 31, 1987; or de Havilland Service Bulletin 8-11-14, Revision B, dated July 1, 1988; or de Havilland Service Bulletin 8-11-14, Revision C, dated September 29, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario, Canada M3K 1Y5. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 21, 1996.

Issued in Renton, Washington, on August 29, 1996.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-22598 Filed 9-13-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 95-CE-78-AD; Amendment 39-9750; AD 96-19-02]

RIN 2120-AA64

Airworthiness Directives; Industrie Aeronautiche E Meccaniche Model Piaggio P-180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Industrie Aeronautiche E Meccaniche (I.A.M.) Model Piaggio P-180 airplanes. This action requires modifying the passenger seat cushion next to the emergency exit door handle. Reports of interference between the passenger seat cushion and the emergency exit door handle, preventing the door from opening from the outside, prompted this AD action. The actions specified by the AD are intended to prevent the possibility of not being able to open the emergency exit door during an emergency evacuation of the airplane, which could result in injury to the passengers.

DATES: Effective October 28, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 28, 1996.

ADDRESSES: Service information that applies to this AD may be obtained from I. A. M. Rinaldo Piaggio, S.p.A., Via Cibrario, 4 16154 Genoa, Italy. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 95-CE-78-AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Rodriguez, Program Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium; telephone 32.2.508.27.17; facsimile 32.2.230.68.99; or Mr. Roman T. Gabrys, Project Officer, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone (816) 426-6934; facsimile (816) 426-2169.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to

Piaggio Model P-180 airplanes was published in the Federal Register on April 29, 1996 (61 FR 8696). The action proposed to require modifying the passenger seat cushion to prevent the seat cushion trim from interfering with the emergency exit door handle.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA discovered minor errors in the notice of proposed rulemaking (NPRM) after it was published. In the NPRM, the reference to the service bulletin (SB) that is applicable to this action contained the wrong issue date, September 30, 1993. The correct date for I.A.M. Rinaldo Piaggio SB 80-0043 is July 28, 1993, and is correctly reflected in the final rule AD. In addition, the FAA has changed the designation of the type certificate holder and the airplane model to reflect what is currently included in the type certificate data sheet.

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the above referenced changes and minor editorial corrections. The FAA has determined that these changes and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

The FAA estimates that 4 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish this action, and that the average labor rate is approximately \$60 an hour. Parts will be furnished by the manufacturer at no cost to the owners/operators. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be \$960. This figure is based on the assumption that none of the owners/operators of the affected airplanes have modified the airplanes. I.A.M. has informed the FAA that all 4 of the Model Piaggio P-180 airplanes registered for operation in the United States had the passenger seat cushion modified. Consequently, there is no further cost to U.S. operators for this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in

accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

96-19-02. Industrie Aeronautiche E Meccaniche: Amendment 39-9750; Docket No. 95-CE-78-AD.

Applicability: Model Piaggio P-180 airplanes (serial numbers 1002, and 1004 through 1022), certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent the possibility of not being able to open the emergency exit door during an emergency evacuation of the airplane, which could result in injury to the passengers, accomplish the following:

(a) Modify the passenger seat cushion in accordance with I.A.M. Rinaldo Piaggio Service Bulletin SB-80-0043; Original Issue: July 28, 1993.

(b) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Brussels Aircraft Certification Division, FAA, Europe, Africa, and Middle East Office, c/o American Embassy, B-1000 Brussels, Belgium or the Manager, Small Airplane Directorate, Aircraft Certification Service, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64105. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Brussels Aircraft Certification Division or the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Brussels Aircraft Certification Division or the Small Airplane Directorate.

(d) The modification required by this AD shall be done in accordance with I.A.M. Rinaldo Piaggio Service Bulletin SB-80-0043; Original Issue: July 28, 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from I. A. M. Rinaldo Piaggio, S.p.A., Via Cibrario, 4 16154 Genoa, Italy. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment (39-9750) becomes effective on October 28, 1996.

Issued in Kansas City, Missouri, on August 30, 1996.

Michael Gallagher,
Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-22952 Filed 9-13-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39

[Docket No. 96-NM-225-AD; Amendment 39-9754; AD 96-19-06]

RIN 2120-AA64

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Jetstream Model 4101 airplanes. This action requires a one-time inspection of the airplane records to determine the serial number, the total number of hours time-in-service accumulated, and the date of installation of the yaw damper servo in the autopilot system; and to determine the date of installation of a particular kit, if installed. This action also requires removing and replacing the yaw damper servo, or rendering the yaw damper servo inoperative. This action also provides for optional terminating action for the requirements of this AD. This amendment is prompted by reports of smoke in the flight deck due to overheat failure of the Flight Control Computer (FCC). The actions specified in this AD are intended to prevent such overheat failure, which could result in smoke in the flight deck that could inhibit the ability of the flightcrew to safely operate and land the airplane.

DATES: Effective October 1, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 1996.

Comments for inclusion in the Rules Docket must be received on or before November 15, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-225-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer,

Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model 4101 airplanes. The CAA advises that it received several reports indicating that smoke was observed in the flight deck of these airplanes due to overheat failure of the Flight Control Computer (FCC). Investigation revealed that this failure occurred due to contamination and internal corrosion of the yaw damper servo, which is mounted in the tailcone of the airplane. This condition caused corrosion deposits to build up in the pins and shell of the electrical connector of the yaw damper servo and consequent electrical breakdown and high current flow through the connecting wires to the FCC, which is mounted under the flight deck floor. While this current flow was not high enough to trip the 7.5A circuit breaker that protects the FCC, it was sufficient to cause burning of the circuit boards within the FCC. Such burning, if not corrected, could result in smoke in the flight deck, which could inhibit the ability of the flightcrew to safely operate and land the airplane.

Explanation of Relevant Service Information

Jetstream has issued Alert Service Bulletin J41-A22-005, dated July 1, 1996, which describes procedures for a one-time inspection of the airplane records (Part 1 of the Accomplishment Instructions) to determine the serial number, the total number of hours time-in-service accumulated, and the date of installation of the yaw damper servo in the autopilot system; and to determine the date of installation of Kit JK42716 (reference Jetstream Service Bulletin J41-53-016 or J41-22-007), if installed. In addition, the alert service bulletin describes procedures for accomplishment of one of the following actions after accomplishment of the inspection:

- Remove and replace the yaw damper servo (Part 2 of the Accomplishment Instructions of the alert service bulletin). Among other things, this involves removal of the yaw damper servo; installation of a new protective box (Kit JK42716), if not installed previously; an inspection of the connector for damage, and replacement of damaged parts;

installation of a serviceable yaw damper servo; and an operational test of the autopilot system.

- Render the yaw damper servo inoperative (Part 3 of the Accomplishment Instructions of the alert service bulletin). Among other things, this involves disconnecting, capping, and stowing a cable that supplies current to the clutch of the yaw damper servo; installation of a temporary placard near the autopilot controller; and an operational test of the autopilot system.

Jetstream also has issued Service Bulletin J41-22-006, dated July 1, 1996, which describes procedures for installation of circuit breakers on the avionics relay panel (Kit JK42867) that will open when the current through certain servos is more than a set value. This installation entails installing a bracket and two circuit breakers on the avionics relay panel, re-routing two cables, installing two new cables, and performing an operational test of the autopilot system. Accomplishment of the installation will prevent overheat failure of the FCC. In addition, accomplishment of the installation eliminates the need for the one-time inspection, removing and replacing the yaw damper servo and installing a new protective box (if not installed previously), or rendering the yaw damper servo inoperative.

The CAA classified these service bulletins as mandatory, and issued British airworthiness directive 002-07-96, dated July 1996, in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent overheat failure of the FCC,

which could result in smoke in the flight deck that could inhibit the ability of the flightcrew to safely operate and land the airplane. This AD requires a one-time inspection of the airplane records to determine the serial number, the total number of hours time-in-service accumulated, and the date of installation of the yaw damper servo in the autopilot system; and to determine the date of installation of Kit JK42716, if installed. This AD also requires removing and replacing the yaw damper servo and installing a new protective box (if not installed previously), or rendering the yaw damper servo inoperative. This AD also provides for an optional terminating action for the requirements of this AD. The actions are required to be accomplished in accordance with the service bulletins described previously.

Interim Action

This is considered to be interim action. The FAA may consider further rulemaking action to require the accomplishment of the optional terminating action currently specified in this AD. However, the proposed compliance time for accomplishment of that action is sufficiently long so that prior notice and time for public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-225-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in airplane, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96-19-06 Jetstream Aircraft Limited:
Amendment 39-9754. Docket 96-NM-225-AD.

Applicability: Model 4101 airplanes having serial numbers 41004 through 41092 inclusive, on which Jetstream Service Bulletin J41-22-006, dated July 1, 1996 (Kit JK42867), has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overhear failure of the Flight Control Computer (FCC), which could result in smoke in the flight deck that could inhibit the ability of the flightcrew to safely operate and land the airplane, accomplish the following:

(a) Within 14 days after the effective date of this AD, perform a one-time inspection of the airplane records to determine the serial number, the total number of hours time-in-service accumulated, and the date of installation of the yaw damper servo in the autopilot system; and to determine the date of installation of Kit JK42716 (reference Jetstream Service Bulletin J41-53-016 or J41-22-007), if installed. Accomplish the inspection in accordance with Part 1 of the Accomplishment Instructions of Jetstream Alert Service Bulletin J41-A22-005, dated July 1, 1996. Thereafter, either remove and replace the yaw damper servo and install Kit JK42716 (if not installed previously), or render the yaw damper servo inoperative, in accordance with Part 2 or 3 of the alert service bulletin, respectively, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) If Kit JK42716 has not been installed: Prior to the accumulation of 1,000 hours total

time-in-service on the yaw damper servo, or within 30 days after the effective date of this AD, whichever occurs later.

(2) If Kit JK42716 has been installed and the yaw damper servo was installed prior to the installation of Kit JK42716: Prior to the accumulation of 1,000 hours total time-in-service on the yaw damper servo, or within 30 days after the effective date of this AD, whichever occurs later.

(3) If Kit JK42716 has been installed and the yaw damper servo was installed after the installation of Kit JK42716: Prior to the accumulation of 3,000 total hours time-in-service on the yaw damper servo, or within 30 days after the effective date of this AD, whichever occurs later.

(b) Installation of circuit breakers on the avionic relay panel (Kit JK42867) in accordance with Jetstream Service Bulletin J41-22-006, dated July 1, 1996, constitutes terminating action for the requirements of this AD.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The actions shall be done in accordance with Jetstream Alert Service Bulletin J41-A22-005, dated July 1, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 1, 1996.

Issued in Renton, Washington, on September 4, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 96-23099 Filed 9-13-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39**[Docket No. 95-NM-221-AD; Amendment 39-9756; AD 96-19-09]****RIN 2120-AA64****Airworthiness Directives; McDonnell Douglas Model DC-9-80 Series Airplanes and Model MD-88 Airplanes****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes, that requires a one-time inspection to detect cracking of the main landing gear (MLG) pistons, and repair or replacement of the pistons with new or serviceable parts, if necessary. This amendment is prompted by reports of failure of the MLG pistons that occurred during towing of the airplanes. The actions specified by this AD are intended to prevent fatigue cracking of the MLG pistons, which could result in failure of the pistons and subsequent damage to the airplane structure or injury to airplane occupants.

DATES: Effective October 21, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 21, 1996.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM-120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (310) 627-5237; fax (310) 627-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to certain McDonnell Douglas Model DC-9-80 series airplanes and Model MD-88 airplanes was published in the Federal Register on April 15, 1996 (61 FR 16413). That action proposed to require a one-time dye penetrant and magnetic particle inspection to detect cracking of the main landing gear (MLG) pistons, and repair or replacement of the pistons with new or serviceable parts, if necessary.

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

Support for the Proposal

One commenter supports the proposed rule.

Request to Review Availability of Spare Parts

Several commenters request that, prior to the issuance of a final rule, the FAA consider the availability of spare MLG pistons. The commenters are concerned that ample replacement parts may not be available to the fleet in a timely manner.

The FAA has contacted the McDonnell Douglas Corporation, who advises that it has anticipated the need for additional spares and is addressing that issue with the gear manufacturer. Additionally, the FAA has approved procedures for removal of cracks from MLG pistons. Cracked pistons have been found on several aircraft so far, and the approved repairs (rather than replacement) have been applicable to most of those pistons.

Request to Extend Compliance Time for Inspection

Two commenters request that the proposed compliance time be extended. One commenter indicates that the proposed compliance time of 12 months or 1,500 landings (whichever occurs first) is not acceptable due to a lack of spare parts. The commenter suggests that a compliance time of 18 months or 3,000 landings (whichever occurs first) will provide an acceptable level of safety.

The FAA does not concur with the commenters' request. In developing an appropriate compliance time for this AD, the FAA considered not only the safety implications, but parts availability and normal maintenance schedules for timely accomplishment of the inspection of the affected fleet. In consideration of these factors, the FAA determined that the compliance time, as proposed, represents an appropriate interval in which the inspection can be

accomplished in a timely manner within the fleet and an adequate level of safety can still be maintained. Additionally, as discussed above, parts availability should not pose a problem for affected operators. However, the provisions of paragraph (f) of this AD afford operators the opportunity to request an adjustment of the compliance time, provided that adequate justification is presented to support such a request.

Request to Revise Applicability of the Rule

One commenter requests that the FAA revise the applicability of the proposed AD to exempt from the AD requirements all Model MD-88 airplanes that have an improved or reworked/reidentified MLG piston.

The FAA concurs with the commenter's request. The FAA finds that the only Model MD-88 airplanes that are subject to the addressed unsafe condition are those airplanes equipped with MLG pistons having part numbers 5935347-1 through 5935347-509, inclusive. The FAA has revised the applicability of the final rule accordingly.

Request to Cite Additional Service Information

One commenter requests that the FAA revise the proposal to cite the original issue of McDonnell Douglas Service Bulletin MD80-32-277 as an additional source of service information for accomplishment of the proposed inspection.

The FAA concurs. The FAA has determined that the original issue of the service bulletin contains the same inspection criteria outlined in Revision 1 of the service bulletin, which was referenced in the proposal as the appropriate source for service information. The FAA considers accomplishment of the inspection in accordance with the original issue of the service bulletin to be acceptable for compliance with this AD. Paragraph (a) of the final rule has been revised accordingly.

Request to Revise Work Hour Estimate

One commenter considers that the cost estimate presented in the preamble to the proposal was too low. The commenter indicates that the cost estimate should be revised to specify that the proposed inspection necessitates 8 work hours to accomplish.

The FAA does not concur that the number of work hours required is higher than approximated previously. The airplane manufacturer advises that it

has worked extensively with operators of the affected airplanes to determine the length of time necessary for accomplishment of the required inspection. Several airplanes have already been inspected, and 2 work hours, as specified in the proposal, has been shown to be a reasonable estimate for accomplishment of the inspection.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,119 Model DC-9-80 series airplanes and Model MD-88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 609 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is \$60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be \$73,080, or \$120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has

been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96-19-09 McDonnell Douglas: Amendment 39-9756. Docket 95-NM-221-AD.

Applicability: Model DC-9-81 (MD-81), DC-9-82 (MD-82), DC-9-83 (MD-83), and DC-9-87 (MD-87) series airplanes; and Model MD-88 airplanes equipped with main landing gear (MLG) pistons having part numbers 5935347-1 through 5935347-509 inclusive; as listed in McDonnell Douglas Service Bulletin MD80-32-277, Revision 01, dated February 23, 1996; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the main landing gear (MLG) pistons, which could result in failure of the pistons and subsequent damage to the airplane structure or injury to airplane occupants, accomplish the following:

(a) Perform a one-time dye penetrant and magnetic particle inspection to detect cracking of the MLG pistons, in accordance with McDonnell Douglas Service Bulletin MD80-32-277, dated October 4, 1995, or Revision 01, dated February 23, 1996, at the

later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 4,000 total landings on the MLG piston.

(2) Within 1,500 landings or 12 months after the effective date of this AD, whichever occurs first.

(b) If no cracking is found, no further action is required by this AD.

(c) If any cracking is found that is within the limits specified in McDonnell Douglas Service Bulletin MD80-32-277, Revision 01, dated February 23, 1996, prior to further flight, repair in accordance with the service bulletin.

(d) If any cracking is found that is outside the limits specified in McDonnell Douglas Service Bulletin MD80-32-277, Revision 01, dated February 23, 1996, prior to further flight, replace the MLG piston with a new or serviceable part in accordance with the service bulletin.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with McDonnell Douglas Service Bulletin MD80-32-277, dated October 4, 1995; or McDonnell Douglas Service Bulletin MD80-32-277, Revision 01, dated February 23, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Department C1-L51 (2-60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on October 21, 1996.

Issued in Renton, Washington, on September 5, 1996.

James V. Devany,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 96-23243 Filed 9-13-96; 8:45 am]

BILLING CODE 4910-13-U

14 CFR Part 39**[Docket No. 96-NM-231-AD; Amendment 39-9755; AD 96-19-08]****RIN 2120-AA64****Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This action requires repetitive visual inspections to detect whether the de-icing system boots on the horizontal stabilizer are inflating fully. It also requires modification of the stabilizer de-icing system tube as terminating action for the repetitive inspections. This amendment is prompted by reports indicating that condensational water may collect in the de-icing system tube, freeze in low temperatures, and keep the boots from inflating fully. The actions specified in this AD are intended to prevent such failure which, if not corrected, could keep the stabilizer de-icing system from operating properly, and consequently result in reduced controllability of the airplane.

DATES: Effective October 1, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 1996.

Comments for inclusion in the Rules Docket must be received on or before November 15, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-231-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruth Harder, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1721; fax (206) 227-1149.

SUPPLEMENTARY INFORMATION: The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that it has received reports indicating that the de-icing system boots on the horizontal stabilizer do not always inflate fully in low temperatures. Condensational water, which collects in the stabilizer de-icing system, can freeze in low temperatures and prevent air from moving through the de-icing tube and properly inflating the boots. This condition, if not corrected, could result in failure of the de-icing system for the horizontal stabilizer, consequently leading to reduced controllability of the airplane.

In addition, the LFV has received reports indicating that the Engine Indication and Crew Alerting System (EICAS) displays in the cockpit continue to show that the de-icing system is operating properly although the stabilizer boots may not be inflating fully; consequently, the flightcrew is not aware that this system is not operating properly.

Explanation of Relevant Service Information

Saab has issued Service Bulletin SAAB 2000-30-006, dated December 22, 1995, which describes procedures for modifying the de-icing system tube. Modification is accomplished by drilling a hole in the tube. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive (SAD) 1-084, dated January 3, 1996, in order to assure the continued airworthiness of these airplanes in Sweden.

In that SAD, the LFV also required repetitive visual inspections of the stabilizer de-icing boots prior to modification of the de-icing tube, and established conditions for conducting those inspections.

FAA's Conclusions

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent condensational water from collecting in the tube of the de-icing system on the horizontal stabilizer. This AD requires repetitive visual inspections of the stabilizer de-icing boots after each flight to determine if they are operating fully. This AD also requires the de-icing tube to be modified by drilling a hole to allow condensational water to drain; such modification constitutes terminating action for the repetitive inspections. The modification is required to be accomplished in accordance with the service bulletin described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 96-NM-231-AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

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

96-19-08 Saab Aircraft AB: Amendment 39-9755. Docket 96-NM-231-AD.

Applicability: Model SAAB 2000 series airplanes having serial numbers 004 through 030, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent condensational water from collecting in the tube of the de-icing system for the horizontal stabilizer, which could cause the system to fail in low temperatures, and consequently lead to reduced controllability of the airplane, accomplish the following:

(a) Within 10 days after the effective date of this AD, conduct a visual inspection of the boots of the stabilizer de-icing system to determine whether the boots on the horizontal stabilizer are inflating fully. This inspection shall be conducted while the airplane is parked, using the Auxiliary Power Unit (APU) bleed air to operate the stabilizer de-icing system for one cycle, to determine whether the boots on the horizontal stabilizer have inflated fully.

(1) If the boots inflate fully, repeat the inspection after each flight until the modification required by paragraph (b) of this AD has been accomplished.

(2) If the boots do not inflate fully, prior to further flight, perform the modification required by paragraph (b) of this AD.

(b) Within 30 days after the effective date of this AD, modify the tube in the stabilizer de-icing system by drilling a hole, in accordance with Saab Service Bulletin SAAB 2000-30-006, dated December 22, 1995. This modification constitutes terminating action for the visual inspections required by paragraph (a) of this AD.

(c) As of the effective date of this AD, no person shall install on any airplane a de-icing tube having Saab part number (P/N) 7330100-542 (on Model SAAB 2000 series airplanes having serial numbers 004 through 008, inclusive) or P/N 7330101-651 (on Model SAAB 2000 series airplanes having serial numbers 009 through 030, inclusive) unless that tube has been modified in accordance with Saab Service Bulletin SAAB 2000-30-006, dated December 22, 1995, prior to installation.

(d) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The modification shall be done in accordance with Saab Service Bulletin SAAB 2000-30-006, dated December 22, 1995. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 1, 1996.

Issued in Renton, Washington, on September 5, 1996.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96-23242 Filed 9-13-96; 8:45 am]

BILLING CODE 4910-13-U

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("Commission") amends its Appliance Labeling Rule by publishing new ranges of comparability to be used on required labels for dishwashers, instantaneous water heaters, and central air conditioners and heat pumps sold as single package units. The Commission also announces that the current ranges of comparability for storage-type water heaters, heat pump water heaters, pool heaters, room air conditioners, furnaces, boilers, and

split-system central air conditioners, and heat pumps will remain in effect until further notice. Finally, the Commission amends the portions of Appendices H (Cooling Performance and Cost for Central Air Conditioners) and I (Heating Performance and Cost for Central Air Conditioners) to Part 305 that contain cost calculation formulas. These amendments change the figures in the formulas to reflect the current Representative Average Unit Cost of Electricity that was published in January by the Department of Energy ("DOE").

EFFECTIVE DATE: December 16, 1996.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580 (202-326-3035).

SUPPLEMENTARY INFORMATION: The Appliance Labeling Rule ("Rule") was issued by the Commission in 1979¹ in response to a directive in the Energy Policy and Conservation Act of 1975.² The Rule covers eight categories of major household appliances: refrigerators and refrigerator-freezers, freezers, dishwashers, clothes washers, water heaters (this category includes storage-type water heaters, instantaneous water heaters, and heat pump water heaters), room air conditioners, furnaces (this category includes boilers), and central air conditioners (this category includes heat pumps). The Rule also covers pool heaters³ and contains requirements that pertain to fluorescent lamp ballasts,⁴ certain plumbing products,⁵ and certain lighting products.⁶

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires that manufacturers include, on labels and factsheets, an energy consumption or efficiency figure and a

"range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule requires that manufacturers also include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report annually (by specified dates for each product type)⁷ the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. Under Section 305.10 of the Rule, to keep the required information on labels consistent with these changes, the Commission publishes new ranges (but not more often than annually) if an analysis of the new information indicates that the upper or lower limits of the ranges have changes by more than 15%. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

The annual submissions of data for dishwashers, room air conditioners, central air conditioners and heat pumps (including single package units and split systems), water heaters (including storage-type, instantaneous, and heat pump water heaters), furnaces, boilers, and pool heaters have been made and have been analyzed by the Commission.

The ranges of comparability for room air conditioners, split system central air conditioners and heat pumps, storage-type water heaters, heat pump water heaters, furnaces, boilers and pool heaters have not changed by more than 15% from the current ranges for these products. Therefore, these ranges will remain in effect until further notice.⁸

⁷ Reports for room air conditioners, water heaters (storage-type, instantaneous, and heat pump-type), furnaces, boilers, and pool heaters are due May 1; reports for dishwashers are due June 1; reports for central air conditioners and heat pumps are due July 1.

⁸ The current ranges of comparability for central air conditioners and heat pumps were published on August 5, 1994 (59 FR 39951). The current ranges for storage-type water heaters, furnaces and boilers were published on September 23, 1994 (59 FR 48796). The current ranges for instantaneous water

The data submissions for dishwashers, instantaneous water heaters, and central air conditioners and heat pumps that are sold as single package units have resulted in new ranges of comparability figures for these products, which will supersede the current ranges.⁹

The Commission also is amending the cost calculation formulas appearing in section 2 of Appendices H and I to Part 305. These sections contain heating and cooling performance cost information for central air conditioners and heat pumps. Manufacturers must provide the formulas on fact sheets and in directories so consumers can calculate their own costs of operation for the central air conditioners and heat pumps that they are considering purchasing. This amendment changes the figures in the formulas to reflect the current Representative Average Unit Cost of Electricity—8.6 cents per kilowatt-hour—that was published on January 19, 1996, by DOE¹⁰ and by the Commission on February 14, 1996.¹¹

In consideration of the foregoing, the Commission revises Appendix C, Appendix D4, Appendix H, and Appendix I of Part 305 by publishing the following ranges of comparability for use in required disclosures (including labeling) for dishwashers, instantaneous water heaters, and central air conditioners and heat pumps sold as single package units manufactured on or after December 16, 1996. The Commission also amends the cost calculation formulas in Appendices H and I of Part 305 so they will include the 1996 Representative Average Unit Cost for electricity. In addition, as of this effective date, manufacturers must base the disclosures of estimated annual operating cost required at the bottom of

heaters, heat pump water heaters, pool heaters, and room air conditioners (originally) were published on August 21, 1995 (60 FR 43367). A corrected version of the ranges for room air conditioners was published on November 13, 1995 (60 FR 56945, at 56949).

⁹ The current ranges for dishwashers and instantaneous water heaters were published on August 21, 1995 (60 FR 43367). Because the Commission has never received any submissions of data for oil-fired instantaneous water heaters, the ranges for these products show "no data submitted" for all size categories. The Commission will not, therefore, amend the ranges for oil-fired instantaneous water heaters because they have not changed. The current ranges for central air conditioners and heat pumps sold as single package units were published on August 5, 1994 (59 FR 39951).

¹⁰ 61 FR 1366. This figure, along with national average cost figures for natural gas, propane, heating oil and kerosene, is published annually by DOE for the industry's use in calculating, among other figures, the cost figures required by the Commission's Rule.

¹¹ 61 FR 5679.

¹ 44 FR 66466 (Nov. 19, 1979).

² 42 U.S.C. 6294. The statute also requires DOE to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

³ 59 FR 49556 (Sept. 28, 1994).

⁴ 54 FR 28031 (July 5, 1989).

⁵ 58 FR 54955 (Oct. 25, 1993).

⁶ 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

EnergyGuides for dishwashers and instantaneous water heaters on the 1996 Representative Average Unit Costs of Energy for electricity (8.6 cents per kilowatt-hour), natural gas (62.6 cents per therm), propane (90 cents per gallon), and/or heating oil (92 cents per gallon) that were published by DOE on January 19, 1996,¹² and by the Commission on February 14, 1996.¹³

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliance, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix C to Part 305 is revised to read as follows:

Appendix C to Part 305—Dishwashers

Range Information:

“Compact” includes countertop dishwasher models with a capacity of fewer than eight (8) place settings.

“Standard” includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings.

Place settings shall be in accordance with Appendix C to 10 CFR Part 430, Subpart B.

Load patterns shall conform to the operating normal for the model being tested.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
Compact	302	302
Standard	451	699

3. Appendix D4 to Part 305 is revised to read as follows:

Appendix D4 to Part 305—Water Heaters—Instantaneous—Gas

Range Information

Capacity	Range of estimated annual energy consumption (therms/yr. and gallons/yr.)			
	Natural gas therms/yr.		Propane gallons/yr.	
	Low	High	Low	High
First hour rating:				
Less than 21	(*)	(*)	(*)	(*)
21 to 24	(*)	(*)	(*)	(*)
25 to 29	(*)	(*)	(*)	(*)
30 to 34	(*)	(*)	(*)	(*)
35 to 40	(*)	(*)	(*)	(*)
41 to 47	(*)	(*)	(*)	(*)
48 to 55	(*)	(*)	(*)	(*)
56 to 64	(*)	(*)	(*)	(*)
65 to 74	(*)	(*)	(*)	(*)
75 to 86	(*)	(*)	(*)	(*)
87 to 99	411	411	451	451
100 to 114	230	240	230	256
115 to 131	(*)	(*)	(*)	(*)
Over 131	237	422	238	464

*No data submitted.

4. Section 1 of appendix H to Part 305 is revised to read as follows:

Appendix H to Part 305—Cooling Performance and Cost for Central Air Conditioners

1. Range Information:

Single package units		Range of SEER's	
Manufacturer's rated cooling capacity (Btu's/hr.)		Low	High
Central Air Conditioners (Cooling Only): All capacities		9.70	16.05
Heat Pumps (Cooling Function): All capacities		9.70	15.60
Split system units		Range of SEER's	
Manufacturer's rated cooling capacity (Btu's/hr.)		Low	High
Central Air Conditioners (Cooling Only): All capacities		10.00	17.00
Heat Pumps (Cooling Function): All capacities		10.00	16.40

* * * * *

5. In section 2 of Appendix H of Part 305, the text and formulas are amended by removing the figure “8.67¢” wherever it appears and by adding, in

its place, the figure “8.6¢”. In addition, the text and formulas are amended by removing the figure “13.01¢” wherever it appears and by adding, in its place, the figure “12.90¢”.

6. Section 1 of appendix I to Part 305 is revised to read as follows:

¹² 61 FR 1366.

¹³ 61 FR 5679.

Appendix I to Part 305—Heating
Performance and Cost for Central Air
Conditioners

1. Range Information:

Single package units	Range of HSPF's	
Manufacturer's rated heating capacity (Btu's/hr.)	Low	High
Heat Pumps (Heating Function): All capacities	6.60	8.20
Split system units	Range of HSPF's	
Manufacturer's rated heating capacity (Btu's/hr.)	Low	High
Heat Pumps (Heating Function): All capacities	6.80	10.20

The HSPF shall be the Region IV value based on the appropriate average design heat loss from the table below.

* * * * *

7. In section 2 of Appendix I of Part 305, the text and formulas are amended by removing the figure "8.67¢" wherever it appears and by adding, in its place, the figure "8.6¢". In addition, the text and formulas are amended by removing the figure "13.01¢" wherever it appears and by adding, in its place, the figure "12.90¢".

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 96-23401 Filed 9-13-96; 8:45 am]

BILLING CODE 6750-01-M

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES**

Food and Drug Administration

21 CFR Part 178

[Docket No. 92F-0117]

**Indirect Food Additives; Adjuvants,
Production Aids, and Sanitizers**

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture of methylated 4,4'-bis(2-benzoxazolyl)stilbenes, with the major portion consisting of 4-(2-benzoxazolyl)-4'-(5-methyl-2-benzoxazolyl)stilbene and lesser portions consisting of 4,4'-bis(5-methyl-2-benzoxazolyl)stilbene and 4,4'-bis(2-benzoxazolyl)stilbene, as an optical brightener in all food-contact polymers. This action is in response to a petition filed by Hoechst Aktiengesellschaft.

DATES: Effective September 16, 1996; written objections and requests for a hearing by October 16, 1996.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-606-0202.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of April 8, 1992 (57 FR 11958), FDA announced that a food additive petition (FAP 2B4317) had been filed by Hoechst Aktiengesellschaft, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297) to provide for the safe use of a mixture of methylated 4,4'-bis(2-benzoxazolyl)stilbenes, with the major portion consisting of 4-(2-benzoxazolyl)-4'-(5-methyl-2-benzoxazolyl)stilbene and lesser portions consisting of 4,4'-bis(5-methyl-2-benzoxazolyl)stilbene and 4,4'-bis(2-benzoxazolyl)stilbene, as an optical brightener in all food-contact polymers. (Because of a printing error, 4,4'-bis(5-methyl-2-benzoxazolyl)stilbene was not listed in the filing notice summary as a lesser component of the proposed additive. However, the correct composition of the additive was given in the supplemental information section of the filing notice.)

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and that therefore, the regulations in § 178.3297 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 16, 1996 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description

and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178
Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 178.3297 is amended in the table in paragraph (e) by alphabetically adding a new entry under the headings “Substances” and “Limitations” to read as follows:

§ 178.3297 Colorants for polymers.
* * * * *
(e) * * *

Substances	Limitations
* * * * *	* * * * *
Mixed methylated 4,4'-bis(2-benzoxazolyl)stilbenes with the major portion consisting of 4-(2-benzoxazolyl)-4'-(5-methyl-2-benzoxazolyl)stilbene (CAS Registry No. 5242-49-9) and lesser portions consisting of 4,4'-bis(5-methyl-2-benzoxazolyl)stilbene (CAS Registry No. 2397-00-4) and 4,4'-bis(2-benzoxazolyl)stilbene (CAS Registry No. 1533-45-5).	For use as an optical brightener only at levels not to exceed 0.05 percent by weight of rigid and semirigid polyvinyl chloride and not to exceed 0.03 percent by weight in all other polymers. The finished food-contact articles shall be used only under conditions of use D, E, F, and G described in Table 2 of § 176.170(c) of this chapter.
* * * * *	* * * * *

Dated: August 28, 1996.
Fred R. Shank,
Director, Center for Food Safety and Applied Nutrition.
[FR Doc. 96-23549 Filed 9-13-96; 8:45 am]
BILLING CODE 4160-01-F

21 CFR Part 524
Ophthalmic and Topical Dosage Form New Animal Drugs; Gentamicin Otic 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 Med-Pharmex, Inc. The ANADA provides for use of gentamicin sulfate and betamethasone valerate otic solution to treat acute and chronic canine otitis externa and canine and feline superficial infected lesions caused by bacteria sensitive to gentamicin.

EFFECTIVE DATE: September 16, 1996.
FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1617.

SUPPLEMENTARY INFORMATION: Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767, filed ANADA 200-183, which provides for use of gentamicin otic solution (gentamicin sulfate equivalent to 3 milligrams (mg) gentamicin and betamethasone valerate equivalent to 1 mg betamethasone) topically to treat acute and chronic canine otitis externa and canine and feline superficial infected lesions caused by bacteria sensitive to gentamicin.
The ANADA is approved as a generic copy of Schering Plough's NADA 46-821 Gentocin Otic Solution (gentamicin sulfate with betamethasone valerate). ANADA 200-183 is approved as of July 31, 1996, and the regulations are amended in 21 CFR 524.1044b(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, 12420 Parklawn Dr., rm. 1-23, 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 524
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 524 is amended as follows:
PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS
1. The authority citation for 21 CFR part 524 continues to read as follows:
Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).
§ 524.1044b [Amended]
2. Section 524.1044b *Gentamicin sulfate, betamethasone valerate otic solution* is amended in paragraph (b) by removing “No. 000061” and adding in its place “Nos. 000061 and 051259”.
Dated: September 4, 1996.
Stephen F. Sundlof,
Director, Center for Veterinary Medicine.
[FR Doc. 96-23668 Filed 9-13-96; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF AGRICULTURE**Forest Service****36 CFR Part 223****Sale and Disposal of National Forest System Timber; Appraisal of Timber for Land Exchange, Right-of-Way, or Other Authorized Use****AGENCY:** Forest Service, USDA.**ACTION:** Final rule; technical amendment.

SUMMARY: The Forest Service is amending regulations for appraising the value of timber under special circumstances. These regulations were reviewed under phase II of the President's Regulatory Reinvention Initiative and were determined to be repetitive and in need of revision. The intended effect of this technical amendment is to remove ambiguity and improve the usefulness of the rules by consolidating the content of similar rules that provide the Chief of the Forest Service appropriate appraisal methods for determining fair market value of timber on land exchanges; right-of-ways, or other authorized use.

EFFECTIVE DATE: September 16, 1996.**FOR FURTHER INFORMATION CONTACT:**

Jim Naylor, Timber Management Staff, Forest Service, telephone: (202) 205-0858.

SUPPLEMENTARY INFORMATION:**Background**

The Organic Administration Act (16 U.S.C. 478) and the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*) authorize the Secretary to allow occupancy and use of the national forests for egress or ingress, for right-of-ways, or other authorized uses.

The National Forest Management Act (16 U.S.C. 472a(a)) directs that all timber sold from National Forest System land be sold at not less than its appraised, or fair market, value. Therefore, all timber of merchantable size and quality sold in exchange for land or as timber cut for right-of-ways or for other authorized uses is appraised according to requirements set out in 36 CFR 223.60, Determining fair market value. Section 223.60 was amended February 14, 1996 (61 CFR 5684), to remove the residual value appraisal procedure as the primary method for determining fair market value. While the residual value appraisal method may still be used and currently is used by Region 10, it has been replaced primarily by the transaction evidence appraisal method used in other regions.

Currently, there are two rules that address the process for appraising the value of timber under special circumstances, one for exchange of timber—Section 223.65, and another for right-of-way or occupancy uses—Section 223.66. In this rulemaking, section 223.65 is being amended to include appraisal of timber for right-of-way or other authorized use, and § 223.66 is being removed.

When the residual value method was the primary method for appraising timber, direction was needed for the special circumstances of appraising the value of timber when an exchange of land, right-of-way, or other authorized use was granted. In order to ensure that the method of appraisal under these specific circumstances reflected fair market values, the rules at § 223.65 and § 223.66 included the following language: "Where residual value method is used, prices paid for comparable timber will be considered and the residual value adjusted accordingly." This statement allowed the use of transaction evidence (the prices paid for comparable timber) in determining the value of the timber. Since the amendment to § 223.60 states that "Valid methods to determine fair market value include, but are not limited to, transaction evidence appraisals, analytical appraisals, comparison appraisals, * * *" direction permitting the use of transaction evidence in determining the value of the timber is no longer needed in the revised § 223.65. Therefore, § 223.65 is being revised to state that "The value of the timber * * * is to be determined by the appraisal methods in § 223.60 of this part."

Regulatory Impact

This is a technical rule with no substantive effect; therefore, it is not subject to review under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. As a technical amendment, this final rule also is exempt from further analysis under Executive Order 12630, Takings Implications; the Unfunded Mandates Reform Act of 1995; the Paperwork Reduction Act of 1995; or Executive Order 12778, Civil Justice Reform.

List of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting requirements, Timber sales.

Therefore, for the reasons set forth in the preamble, Part 223 of Title 36 of the Code of Federal Regulations is hereby amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER

1. The authority citation continues to read as follows:

Authority: 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618; 104 Stat. 714-726, 16 U.S.C. 620-620h, unless otherwise noted.

§ 223.65 [Amended]

2. Revise § 223.65 to read as follows:

§ 223.65 Appraisal of timber for land exchange; right-of-way, or other authorized use.

The value of timber in land exchange or the value of timber required to be cut for occupancy of a right-of-way or other authorized use of National Forest System land for which payment will be made is to be determined by the appraisal methods in § 223.60 of this part.

§ 223.66 [Removed and Reserved]

3. Remove and reserve § 223.66.

Dated: September 3, 1996.

David G. Unger,
Associate Chief.

[FR Doc. 96-23480 Filed 9-13-96; 8:45 am]

BILLING CODE 3410-11-M

36 CFR Part 242**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service****50 CFR Part 100****RIN 1018-AD42**

**Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—1996-1997
Subsistence Taking of Fish and Wildlife Regulations; Correcting Amendments**

AGENCY: Forest Service, USDA. Fish and Wildlife Service, Interior.

ACTION: Correcting amendments.

SUMMARY: These corrections amend the Subsistence Management Regulations for Public Lands in Alaska (50 CFR part 100 and 36 CFR part 242, published in the Federal Register on July 30, 1996 (61 FR 39697)) implementing the subsistence priority for rural residents of Alaska under Title VIII of the Alaska National Interest Lands Conservation Act of 1980.

EFFECTIVE DATES: The amendments to § _____.24 are effective August 1, 1996. The amendments to § _____.25 are effective August 1, 1996, through June 30, 1997.

FOR FURTHER INFORMATION CONTACT:

Thomas H. Boyd, Office of Subsistence

Management, U.S. Fish and Wildlife Service, telephone (907) 786-3864. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 586-7921.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell v. State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the Federal Register (55 FR 27114-27170). Consistent with Subparts A, B, and C of these regulations, a Federal Subsistence Board (Board) was established to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in

development of regulations for Subparts A, B, and C, and the annual Subpart D regulations. All Board members have reviewed these corrections and agree with their substance. Because Subparts C and D relate to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical correcting text will be incorporated into 36 CFR Part 242 and 50 CFR Part 100.

Proposed Subpart C regulations for customary and traditional use determinations and Subpart D regulations for the 1996-1997 seasons and bag limits, and methods and means were published on August 15, 1995, in the Federal Register (60 FR 42085). A 60-day comment period providing for public review of the proposed rule was advertised by mail, radio, and newspaper. Subsequent to that 60-day review period, the Board prepared a booklet describing all proposals for change. The public then had an additional 30 days in which to comment on the proposals for changes to the regulations. The Federal Subsistence Regional Advisory Councils met in regional centers, received public comments, and formulated recommendations to the Board on proposals for their respective regions. The final regulations, published on July 30, 1996 (61 FR 39697-39753) reflect Board review and consideration of Regional Council recommendations and public comments submitted to the Board during their April/May meeting. The Board heard public testimony and deliberated Requests for Reconsideration and Special Action in public forum on July 16, 1996, and August 14, 1996.

These correcting amendments are a result of Requests for Reconsideration of some of the Board's decisions in April/May and some requests for Special Action as a result of resource concerns. Below are summaries of each action.

Subpart D

Units 6, 7, 11, 13, 14, 15 (B) and (C), and 16—Lynx—The Board acted on a request from the Alaska Department of Fish and Game (ADF&G) to open the trapping season in Units 6, 7, 14, 16, and 15 (B) and (C) and to lengthen the season in Units 11 and 13. This follows the Board's previous agreement to follow a harvest tracking strategy where possible. The strategy calls for shortening or closing trapping seasons when lynx numbers are low and lengthening or opening seasons when lynx are abundant. The Regional Councils for the affected areas supported this action to protect the

viability of the lynx populations in those Units.

Unit 13—Caribou—Upon receipt of a request for Special Action the Board, at its July 16, 1996, meeting lengthened the caribou season in Unit 13. The caribou herd continues to increase significantly raising concerns about deteriorating range conditions. The Board concurs with the Alaska Department of Fish and Game's management strategy to encourage additional harvest to prevent significant population declines in the future. A similar action was taken last year when the State extended the season and the Board approved a matching extension on Federal lands.

Unit 15(A)—Moose—Upon receipt of a Request for Reconsideration of an action taken at the April meeting and as a result of a judicial order, the Board deliberated the customary and traditional use determination for moose in Unit 15(A). As a result, the Board determined that four communities have customary and traditional use for Unit 15(A) and established a subsistence season of August 18 to September 20. This action was again the subject of a Request for Reconsideration that the Board heard on August 14, 1996. The Board upheld its previous decision to afford four communities a positive customary and traditional determination and to establish a subsistence moose season in Unit 15(A).

Only the items described above are being changed; but for clarity, the entire table section for the pertinent species in each Unit is reproduced.

The above actions were supported by the Regional Councils in the affected areas. Notice of the Board meeting and the subjects to be considered were widely circulated and the public had an opportunity to comment and participate.

The Board finds that additional public notice and comment requirements under the Administrative Procedures Act (APA) for this final rule are impracticable, unnecessary, and contrary to the public interest. A lapse in regulatory control could seriously affect the continued viability of wildlife populations, adversely impact future subsistence opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C.553(b)(B) to waive the public notice and comment procedures prior to publication of this rule. The Board finds good cause under 5 U.S.C.553(d)(3) to make this rule effective August 1, 1996.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture—Forest Service, to implement a modified Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964) implements the Federal Subsistence Management Program and includes a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis

determination appears in the April 6, 1992, ROD which found that the Federal Subsistence Management Program, under a modified Alternative IV with an annual process for setting hunting and fishing regulations, had no significant possibility of a significant restriction of subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below have been submitted to OMB for approval. This collection of information will not be required until it has been approved by OMB.

The collection of information will be achieved through the use of the Federal Subsistence Hunt Permit Application. This collection information will establish whether the applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence hunts on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy wildlife populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 500, yielding a total annual reporting and recordkeeping burden of 125 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, D.C. 20503.

Economic Effects

This rule was not subject to OMB review under Executive Order 12866. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small

businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, it is estimated that 2 million pounds of meat are harvested State-wide by the local subsistence users annually and, if given a dollar value of \$3.00 per pound, would equate to \$6 million State wide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of \$100 million or more in any given year on local or state governments or private entities.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Drafting Information. These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Peggy Fox, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA—Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National

Forests, Public Lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public Lands, Reporting and recordkeeping requirements, Subsistence, Wildlife.

For the reasons set out in the preamble, Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, are amended as set forth below.

**PART _____—SUBSISTENCE
MANAGEMENT REGULATIONS FOR
PUBLIC LANDS IN ALASKA**

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Section _____.24(a)(1) is amended in the table by removing the two entries for “Unit 15(A) Moose” and “Unit 15 (B) and (C) Moose” and adding one new entry in their place to read as follows:

§ _____.24 Customary and traditional use determinations.

(a) * * *

(1) * * *

Area	Species	Determination
* * *	* * *	* * *
15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
* * *	* * *	* * *

3. Section _____.25(k)(6)(iii)(B) is amended in the table under “Trapping” by adding, after the entry for “Fox, Red” an entry for Lynx to read as follows:

§ _____.25 Subsistence taking of wildlife.

* * * * *

(k) * * *

(6) * * *

(iii) * * *

(B) * * *

Harvest limits	Open season
* * *	* * *
Trapping	
* * *	* * *
Lynx:	
No limit	Jan. 1–Jan. 31.
* * *	* * *

* * * * *

4. Section _____.25.25(k)(7)(iii) is amended in the table under “Trapping”

by adding, after the entry for “Fox, Red” an entry for Lynx to read as follows:

* * * * *

(k) * * *

(7) * * *

(iii) * * *

Harvest limits	Open season
* * *	* * *
Trapping	
* * *	* * *
Lynx:	
No limit	Jan. 1–Jan. 31.
* * *	* * *

* * * * *

5. Section _____.25(k)(11)(i) is amended in the table under “Trapping” by revising the entry for “Lynx” to read as follows:

* * * * *

(k) * * *

(11) * * *

(i) * * *

Harvest limits	Open season
* * *	* * *
Trapping	
* * *	* * *
Lynx:	
No limit	Dec. 1–Jan. 15.
* * *	* * *

* * * * *

6. Section _____.25(k)(13)(iii) is amended in the table under “Hunting” by revising the entry for “Caribou” to read as follows:

* * * * *

(k) * * *

(13) * * *

(iii) * * *

Harvest limits	Open season
* * *	* * *
Hunting	
* * *	* * *
Caribou:	
2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified by an area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 1–Sept. 30. Oct. 21–Mar. 31.
* * *	* * *
* * *	* * *

7. Section _____.25(k)(13)(iii) is amended in the table under “Trapping” by revising the entry for “Lynx” to read as follows:

* * * * *

(k) * * *

(13) * * *

(iii) * * *

Harvest limits	Open season
* * *	* * *
Trapping	
* * *	* * *
Lynx:	
No limit	Dec. 1–Jan. 15.
* * *	* * *

* * * * *

8. Section _____.25(k)(14)(iii) is amended in the table under “Trapping” by adding, after the entry for “Fox, Red” an entry for Lynx to read as follows:

* * * * *

(k) * * *

(14) * * *

(iii) * * *

Harvest limits	Open season
* * *	* * *
Trapping	
* * *	* * *
Lynx:	
No limit	Dec. 15–Jan. 15.
* * *	* * *

* * * * *

9. Section _____.25(k)(15)(iii)(D) is amended in the table under “Hunting” by revising the entry for “Moose” to read as follows:

* * * * *

(k) * * *

(15) * * *

(iii) * * *

(D) * * *

Harvest limits	Open season
* * *	* * *
Hunting	
* * *	* * *
Moose:	
Unit 15(A) excluding Skilak Loop Wildlife Management Area—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 18–Sept. 20.
Unit 15(A) Skilak Loop Wildlife Management Area.	No open season.

Harvest limits	Open season
Unit 15(B) and (C)—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 10–Sept. 20.
* * *	* *

10. Section _____.25(k)(15)(iii)(D) is amended in the table under "Trapping" by adding, after the entry for "Fox, Red" an entry for Lynx to read as follows:

(k) * * *
(15) * * *
(iii) * * *
(D) * * *

Harvest limits	Open season
Trapping	
Lynx:	
Unit 15(B) and (C)—No limit.	Jan. 1–Jan. 31.
Unit 15(C)	No open season.
* * *	* *

11. Section _____.25(k)(16)(iii) is amended in the table under "Trapping" by adding, after the entry for "Fox, Red" an entry for Lynx to read as follows:

(k) * * *
(16) * * *
(iii) * * *

Harvest limits	Open season
Trapping	
Lynx:	
No limit	Dec. 15–Jan. 15.
* * *	* *

Dated: August 22, 1996.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

Dated: August 26, 1996.

James A. Caplan,

Acting Regional Forester, USDA-Forest Service.

[FR Doc. 96–23413 Filed 9–13–96; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA016–5917a; FRL–5603–3]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia—1990 Base Year Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a revision to the Virginia State Implementation Plan (SIP) which pertains to the 1990 base year ozone emission inventory for the Richmond-Petersburg, Norfolk-Virginia Beach, and Smyth County ozone nonattainment areas. These areas were classified by EPA as moderate (Richmond-Petersburg area) and marginal (Norfolk-Virginia Beach area and Smyth County). The SIP was submitted by the Commonwealth of Virginia Department of Environmental Quality (VDEQ) for the purpose of establishing the 1990 baseline emissions contributing to ozone nonattainment problems in these three areas. This action is being taken under section 110 of the Clean Air Act.

DATES: This action is effective November 15, 1996, unless notice is received on or before October 16, 1996, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to David Arnold, Section Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III office, or via e-mail at quinto.rose@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION:

Background

Under the 1990 Clean Air Act Amendments (CAAA), states have the responsibility to inventory emissions contributing to NAAQS nonattainment, to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAAA requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce VOC emissions by 15 percent within six years after 1990 (15% plan). The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the 1990 base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15% plan. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The 1990 base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above that are located outside transport regions.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)–(e) of Title I of the CAAA. EPA has issued a General Preamble describing EPA's preliminary views on how EPA intends to review SIP revisions submitted under Title I of the CAAA, including requirements for the preparation of the 1990 base year inventory [see 57 FR 13502; April 16, 1992 and 57 FR 18070; April 28, 1992]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Virginia ozone 1990 base year emissions inventory, EPA is applying its interpretations taking into consideration the specific factual issues presented.

Those states containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the CAAA to submit a final, comprehensive, accurate, and current inventory of actual ozone season, weekday emissions from all sources within 2 years of enactment (November 15, 1992). This inventory is for calendar year 1990 and is denoted as the 1990 base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compound (VOC), nitrogen oxides (NO_x), and carbon monoxide (CO). The inventory is to address actual VOC, NO_x, and CO emissions for the area during the peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as highway mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Criteria for Inventory Approval

There are general and specific components of an acceptable emission inventory. In general, the state must meet the minimum requirements for reporting each source category. Specifically, the source requirements are detailed below.

The Level I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the state and assesses whether the emissions were developed according to current EPA guidance. The data quality is also evaluated.

The Level III review process is outlined here and consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) must be provided and the Quality Assurance (QA) program contained in the IPP must be performed and its implementation documented.
2. Adequate documentation must be provided that enables the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.
3. The point source inventory must be complete.

4. Point source emissions must be prepared or calculated according to the current EPA guidance.

5. The area source inventory must be complete.

6. The area source emissions must be prepared or calculated according to the current EPA guidance.

7. Biogenic emissions must be prepared according to current EPA guidance or another approved technique.

8. The method (e.g., HPMS or a network transportation planning model) used to develop VMT estimates must follow EPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources", Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992. The VMT development methods must be adequately described and documented in the inventory report.

9. The MOBILE model (or EMFAC model for California only) must be correctly used to produce emission factors for each of the vehicle classes.

10. Non-road mobile emissions must be prepared according to current EPA guidance for all of the source categories.

The base year emission inventory is approvable if it passes Levels I, II, and III of the review process. Detailed Levels I and II review procedures can be found in the following document; "Quality Review Guidelines for 1990 Base Year Emission Inventories", Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. Level III review procedures are specified in a memorandum from David Mobley and G. T. Helms to the Regions "1990 O₃/CO SIP Emission Inventory Level III Acceptance Criteria", October 7, 1992 and revised in a memorandum from John Seitz to the Regional Air Directors dated June 24, 1993.

State Submittal

VDEQ submitted revisions to the SIP on November 11, 1992 (for the Richmond-Petersburg area) and November 18, 1992 (for the Norfolk-Virginia and Smyth County areas). The revised inventory was submitted to EPA on November 1, 1993 and again on December 15, 1994 for the Richmond-

Petersburg, Norfolk-Virginia and Smyth County areas.

The SIP revisions were reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete on April 14, 1993.

EPA Analysis

Based on EPA's level III review findings, Virginia has satisfied all of EPA's requirements for providing a comprehensive, accurate, and current inventory of actual emissions in the ozone nonattainment areas. A summary of EPA's level III findings is given below:

1. The Inventory Preparation Plan (IPP) and Quality Assurance (QA) program was approved by EPA and implemented on March 27, 1992.
2. The documentation was adequate for all emission types (stationary point, area, non-road mobile, on-road mobile and biogenic sources) for the reviewer to determine the estimation procedures and data sources used to develop the inventory.
3. The point source inventory was found to be complete.
4. The point source emissions were estimated according to EPA guidance.
5. The area source inventory was found to be complete.
6. The area source emissions were estimated according to EPA guidance.
7. The biogenic source emissions were estimated using the Biogenic Emission Inventory System (PC-BEIS) in accordance with EPA guidance.
8. The method used to develop vehicle miles traveled (VMT) estimates was in accordance with EPA guidance and was adequately described and documented.
9. The mobile model was used correctly.
10. The non-road mobile emission estimates were correctly prepared in accordance with EPA guidance.

Thus, EPA has determined that Virginia's submittal meets the essential reporting and documentation requirements for an Emission Inventory.

A summary of the emission inventories broken down by point, area, biogenic, on-road, and non-road mobile sources are presented in the tables below.

RICHMOND-PETERSBURG OZONE SEASON EMISSIONS IN TONS PER DAY
[Richmond Ozone Nonattainment Area]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
VOC	45.2	59.5	64.7	17.78	153.3	340.2
NO _x	9.62	144.1	62.9	22.28	N/A	238.9
CO	39.2	19.8	430.1	130.76	N/A	619.1

NORFOLK-VIRGINIA BEACH OZONE SEASON EMISSIONS IN TONS PER DAY
[Hampton Roads Ozone Nonattainment Area]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
VOC	86.12	36.4	107.5	43.48	64.9	338.4
NO _x	14.29	67.9	75.5	52.31	N/A	210.0
CO	28.24	15.5	713.2	272.46	N/A	1029.4

SMYTH COUNTY OZONE SEASON EMISSIONS IN TONS PER DAY
[White Top Mountain Ozone Nonattainment Area]

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
VOC	N/A	12.89	N/A	N/A	35.13	48.02
NO _x	N/A	1.19	N/A	N/A	N/A	1.19
CO	N/A	0.45	N/A	N/A	N/A	0.45

EPA has determined that the submittal made by the Commonwealth of Virginia satisfies the relevant requirements of the CAAA. EPA's detailed review of Virginia's Emission Inventories is contained in a Technical Support Document (TSD) which is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will become effective November 15, 1996 unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such

comments are received, the public is advised that this action will be effective on November 15, 1996.

Final Action

EPA is approving revisions to the Virginia SIP to include the 1990 Emission Inventories for the Richmond-Petersburg, Norfolk-Virginia Beach, and Smyth County ozone nonattainment areas. The inventories consist of point, area, non-road mobile, biogenics and on-road mobile source emissions for VOC, NO_x and CO. This revision was submitted to EPA by the Commonwealth of Virginia on November 11, 1992 and November 18, 1992, as amended on November 1, 1993 and December 15, 1994.

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

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR

2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA 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, EPA may certify that the rule will not have a significant economic 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 CAAA 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, the Regional Administrator certifies 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 CAAA,

preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), 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 approval action proposed/promulgated 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.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

Petitions for Judicial Review

Under section 307(b)(1) of the CAAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 1996. Filing a petition for reconsideration by the Administrator of this 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 regarding the Richmond-Petersburg, Norfolk-Virginia Beach and Smyth County, Virginia ozone Emission Inventories may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 21, 1996.

W. Michael McCabe,
Regional Administrator, Region III.

Part 52, Chapter I, title 40 of the Code of Federal Regulations 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 VV—Virginia

2. Section 52.2425 is amended by revising the section heading; by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.2425 1990 Base Year Emission Inventory.

* * * * *

(b) EPA approves as a revision to the Virginia State Implementation Plan the 1990 base year emission inventories for the Richmond-Petersburg, Norfolk-Virginia Beach, and Smyth County ozone nonattainment areas submitted by the Director, Virginia Department of Environmental Quality on November 11, 1992, November 18, 1992, November 1, 1993, and December 15, 1994. These submittals consist of the 1990 base year point, area, non-road mobile, biogenic and on-road mobile source emission inventories in each area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO_x).

[FR Doc. 96–23260 Filed 9–13–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[VA041–5005a; FRL–5603–5]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia—1990 Base Year Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is approving a revision to the Virginia State Implementation Plan (SIP) which pertains to the 1990 base year ozone emission inventory for the Northern Virginia nonattainment area. This area was classified by EPA as serious for ozone. The SIP was submitted by the Commonwealth of Virginia Department of Environmental Quality (VDEQ) for the purpose of establishing the 1990 baseline emissions contributing to ozone nonattainment problems in Northern Virginia. This action is being taken under section 110 of the Clean Air Act.

DATES: This action is effective November 15, 1996, unless notice is received on or before October 16, 1996, that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Comments may be mailed to David Arnold, Section Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566–2182, at the EPA Region III office, or via e-mail at quinto.rose@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION:

Background

Under the 1990 Clean Air Act Amendments (CAAA), states have the responsibility to inventory emissions contributing to NAAQS nonattainment,

to track these emissions over time, and to ensure that control strategies are being implemented that reduce emissions and move areas towards attainment. The CAAA requires ozone nonattainment areas designated as moderate, serious, severe, and extreme to submit a plan within three years of 1990 to reduce VOC emissions by 15 percent within six years after 1990 (15% plan). The baseline level of emissions, from which the 15 percent reduction is calculated, is determined by adjusting the 1990 base year inventory to exclude biogenic emissions and to exclude certain emission reductions not creditable towards the 15% plan. The 1990 base year emissions inventory is the primary inventory from which the periodic inventory, the Reasonable Further Progress (RFP) projection inventory, and the modeling inventory are derived. Further information on these inventories and their purpose can be found in the "Emission Inventory Requirements for Ozone State Implementation Plans," Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, March 1991. The 1990 base year inventory may also serve as part of statewide inventories for purposes of regional modeling in transport areas. The 1990 base year inventory plays an important role in modeling demonstrations for areas classified as moderate and above that are located outside transport regions.

The air quality planning requirements for marginal to extreme ozone nonattainment areas are set out in section 182(a)-(e) of Title I of the CAAA. EPA has issued a General Preamble describing EPA's preliminary views on how EPA intends to review SIP revisions submitted under Title I of the CAAA, including requirements for the preparation of the 1990 base year inventory [see 57 FR 13502; April 16, 1992 and 57 FR 18070; April 28, 1992]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in today's proposal and the supporting rationale. In today's rulemaking action on the Northern Virginia ozone 1990 base year emissions inventory, EPA is applying its interpretations taking into consideration the specific factual issues presented.

Those states containing ozone nonattainment areas classified as marginal to extreme are required under section 182(a)(1) of the CAAA to submit a final, comprehensive, accurate, and current inventory of actual ozone

season, weekday emissions from all sources within 2 years of enactment (November 15, 1992). This inventory is for calendar year 1990 and is denoted as the 1990 base year inventory. It includes both anthropogenic and biogenic sources of volatile organic compound (VOC), nitrogen oxides (NO_x), and carbon monoxide (CO). The inventory is to address actual VOC, NO_x, and CO emissions for the area during the peak ozone season, which is generally comprised of the summer months. All stationary point and area sources, as well as highway mobile sources within the nonattainment area, are to be included in the compilation. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Criteria for Inventory Approval

There are general and specific components of an acceptable emission inventory. In general, the state must meet the minimum requirements for reporting each source category. Specifically, the source requirements are detailed below.

The Levels I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the state and assesses whether the emissions were developed according to current EPA guidance. The data quality is also evaluated.

The Level III review process is outlined here and consists of 10 points that the inventory must include. For a base year emission inventory to be acceptable it must pass all of the following acceptance criteria:

1. An approved Inventory Preparation Plan (IPP) must be provided and the Quality Assurance (QA) program contained in the IPP must be performed and its implementation documented.
2. Adequate documentation must be provided that enables the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory.
3. The point source inventory must be complete.
4. Point source emissions must be prepared or calculated according to the current EPA guidance.
5. The area source inventory must be complete.
6. The area source emissions must be prepared or calculated according to the current EPA guidance.
7. Biogenic emissions must be prepared according to current EPA guidance or another approved technique.

8. The method (e.g., HPMS or a network transportation planning model) used to develop VMT estimates must follow EPA guidance, which is detailed in the document, "Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources", Environmental Protection Agency, Office of Mobile Sources and Office of Air Quality Planning and Standards, Ann Arbor, Michigan, and Research Triangle Park, North Carolina, December 1992. The VMT development methods must be adequately described and documented in the inventory report.

9. The MOBILE model (or EMFAC model for California only) must be correctly used to produce emission factors for each of the vehicle classes.

10. Non-road mobile emissions must be prepared according to current EPA guidance for all of the source categories.

The base year emission inventory is approvable if it passes Levels I, II, and III of the review process. Detailed Levels I and II review procedures can be found in the following document; "Quality Review Guidelines for 1990 Base Year Emission Inventories", Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC, July 27, 1992. Level III review procedures are specified in a memorandum from David Mobley and G. T. Helms to the Regions "1990 O₃/CO SIP Emission Inventory Level III Acceptance Criteria", October 7, 1992 and revised in a memorandum from John Seitz to the Regional Air Directors dated June 24, 1993.

State Submittal

On November 30, 1992, the Commonwealth of Virginia submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of 1990 base year emission inventories for Northern Virginia ozone nonattainment areas composed of Arlington County, Alexandria City, Fairfax County, Fairfax City, Loudon County, Falls Church City, Prince William County, Stafford County, Manassas City, and Manassas Park City. A revised version of the inventory was submitted to EPA on November 1, 1993 and again on April 3, 1995.

The SIP revisions were reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR Part 51, Appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete on April 14, 1993 for the November 30, 1992 submittal, and June 5, 1995 for the April 3, 1995 submittal.

EPA Analysis

Based on EPA's level III review findings, Virginia has satisfied all of EPA's requirements for providing a comprehensive, accurate, and current inventory of actual emissions in the ozone nonattainment areas. A summary of EPA's level III findings is given below:

1. The Inventory Preparation Plan (IPP) and Quality Assurance (QA) program was approved by EPA and implemented on August 27, 1992.

2. The documentation was adequate for all emission types (stationary point, area, non-road mobile, on-road mobile and biogenic sources) for the reviewer to

determine the estimation procedures and data sources used to develop the inventory.

3. The point source inventory was found to be complete.

4. The point source emissions were estimated according to EPA guidance.

5. The area source inventory was found to be complete.

6. The area source emissions were estimated according to EPA guidance.

7. The biogenic source emissions were estimated using the Biogenic Emission Inventory System (PC-BEIS) in accordance with EPA guidance.

8. The method used to develop vehicle miles traveled (VMT) estimates

was adequately described and documented.

9. The mobile model was used correctly.

10. The non-road mobile emission estimates were correctly prepared in accordance with EPA guidance.

Thus, EPA has determined that Virginia's submittal meets the essential reporting and documentation requirements for an Emission Inventory.

A summary of the emission inventories broken down by point, area, biogenic, on-road, and non-road mobile sources are presented in the table below.

NORTHERN VIRGINIA OZONE SEASON EMISSIONS IN TONS PER DAY

NAA	Area source emissions	Point source emissions	On-road mobile emissions	Non-road mobile emissions	Biogenic	Total emissions
VOC	75.966	8.277	111.76	28.49	147.38	371.873
NO _x	84.319	64.853	113.63	33.42	N/A	296.222
CO	49.559	3.609	909.13	364.98	N/A	1308.438

EPA has determined that the submittal made by the Commonwealth of Virginia satisfies the relevant requirements of the CAAA. EPA's detailed review of Virginia's Emission Inventories is contained in a Technical Support Document (TSD) which is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this notice.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will become effective November 15, 1996, unless, within 30 days of publication, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent notice that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 15, 1996.

Final Action

EPA is approving revisions to the Virginia SIP to include 1990 Emission Inventories for the Northern Virginia ozone nonattainment areas. The inventories consist of point, area, non-road mobile, biogenics and on-road mobile source emissions for VOC, NO_x and CO. This revision was submitted to EPA by the Commonwealth of Virginia on November 30, 1992, as amended on November 1, 1993 and April 3, 1995.

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

Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA 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, EPA may certify that the rule will not have a significant economic 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 CAAA 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, the Regional Administrator certifies 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 CAAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), 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 approval action proposed/promulgated 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.

Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

Petitions for Judicial Review

Under section 307(b)(1) of the CAAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 15, 1996. Filing a petition for reconsideration by the Administrator of this 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 regarding the Northern Virginia ozone Emission Inventory may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, and SIP requirements.

Dated: August 21, 1996.
W. Michael McCabe,
Regional Administrator, Region III.

Part 52, Chapter I, title 40 of the Code of Federal Regulations 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 VV—Virginia

2. Section 52.2425 is amended by adding paragraph (c) to read as follows:

§ 52.2425 1990 Base Year Emission Inventory.

* * * * *

(c) EPA approves as a revision to the Virginia State Implementation Plan the 1990 base year emission inventories for the Northern Virginia ozone nonattainment areas submitted by the Director, Virginia Department Environmental Quality, on November 30, 1992, November 1, 1993, and April 3, 1995. These submittals consist of the 1990 base year point, area, non-road mobile, biogenic and on-road mobile source emission inventories in each area for the following pollutants: volatile organic compounds (VOC), carbon monoxide (CO), and oxides of nitrogen (NO_x).

[FR Doc. 96-23262 Filed 9-13-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 261

[SW-FRL-5608-9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is granting a petition submitted by Bekaert Steel Corporation (Bekaert) of Rogers, Arkansas, to exclude from hazardous waste control (or delist) certain solid wastes generated at its facility. This action responds to Bekaert's petition to delist these wastes under those regulations that allow any person to petition the Administrator to modify or revoke any provision of certain hazardous waste regulations of the Code of Federal Regulations, and specifically provide generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis

from the hazardous waste lists. After careful analysis, EPA has concluded that the petitioned waste is not hazardous waste when disposed of in Subtitle D landfills. This exclusion applies only to wastewater treatment sludge generated from electroplating operations at Bekaert's Rogers, Arkansas, facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in Subtitle D landfills.

EFFECTIVE DATE: September 16, 1996.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in the EPA Library of the 12th floor from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665-6444 for appointments. The reference number for this docket is "F-96-ARDEL-BEKAERT". The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of \$0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: For general and technical information concerning this notice, contact David Vogler, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas, (214) 665-7428.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 265 and 268 of Title 40 of the Code of Federal Regulations; and § 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the

waste to be a hazardous waste, that such factors do not warrant retaining the waste as a hazardous waste.

B. History of this Rulemaking

Bekaert petitioned EPA to exclude from hazardous waste control the its filter cake resulting from the treatment of wastewaters originating from its electroplating operations at the Rogers, Arkansas, facility. After evaluating the petition, EPA proposed, on June 25, 1996, to exclude Bekaert's waste from the lists of hazardous wastes under §§ 261.31 and 261.32. *See* 61 FR 32746. This rulemaking addresses public comments received on the proposal and finalizes the proposed decision to grant Bekaert's petition.

II. Disposition of Petition

Bekaert Steel Corporation, Rogers, Arkansas

A. Proposed Exclusion

Bekaert petitioned the EPA to exclude from the lists of hazardous wastes contained in 40 CFR § 261.31 and 261.32, its wastewater treatment sludges from its electroplating operations. Specifically, in its petition, Bekaert petitioned the Agency to exclude its wastewater treatment filter cake presently listed as EPA Hazardous Waste No. F006—"Wastewater treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (5) cleaning/stripping associated with tin, zinc, and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum." The listed constituents of concern for EPA Hazardous Waste No. F006 are: cadmium, hexavalent chromium, nickel and cyanide (complexed). *See* 40 CFR part 261, Appendix VII. Bekaert petitioned the EPA to exclude this waste because it does not believe that the waste meets the criteria for which it was listed. Bekaert also believes that the waste does not contain any other constituents that would render it hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments (HSWA) of 1984. *See* section 222 of HSWA, 42 U.S.C. 6921(f), and 40 CFR 260.22(d)(2) through (4).

In support of its petition, Bekaert submitted: (1) Descriptions of its manufacturing and wastewater treatment processes, including schematic diagrams; (2) a list of all raw materials and Material Safety Data

Sheets (MSDSs) for all trade name products used in the manufacturing and waste treatment processes; (3) results from total constituent analyses for fourteen metals including the eight Toxicity Characteristic (TC) metals listed in § 261.24 (i.e., the TC metals) and antimony, beryllium, copper, nickel, thallium, and zinc from representative samples of the petitioned waste; (4) results from the Toxicity Characteristic Leaching Procedure (TCLP, SW-846 Method 1311) for fourteen metals which include the eight TC metals, and antimony, beryllium, copper, nickel, thallium, and zinc from representative samples of the petitioned waste; (5) results from total constituent analysis for total and reactive sulfide and cyanide for representative samples of the petitioned waste; (6) results from total oil and grease analyses from representative samples of the petitioned waste; (7) test results and information regarding the hazardous characteristics of ignitability, corrosivity, and reactivity; and (8) results from total constituent analyses for certain volatile and semi-volatile organic compounds from representative samples of the petitioned waste.

B. Summary of Responses to Public Comments

The EPA received public comment on the June 25, 1996, proposal from one interested party, the American Zinc Association (AZA).

Classification of Zinc as a Hazardous Constituent

Comment: The AZA is concerned that EPA, in connection with the delisting petition filed by Bekaert Steel Corporation, appears to view zinc as a "hazardous constituent" to which the EPA Composite for Model Landfills (EPACML) must be applied. The AZA contends that zinc is not considered a "hazardous constituent" as defined under RCRA, is not listed on Appendix VIII to 40 CFR part 261 and is specifically excluded from the definition of "underlying hazardous constituents" in 40 CFR 268.2 (i). The AZA requests that the final rule be changed to exclude zinc.

Response: The criteria for making a successful petition to amend part 261 to exclude a waste produced at a particular facility can be found in 40 CFR part 260.22. The regulations in 40 CFR part 260.22(a)(2) state that based on a complete application, the Administrator must determine where there is a reasonable basis to believe that factors (including additional constituents), other than those for which the waste was listed, could cause the waste to be

a hazardous waste; and that such factors do not warrant retaining the waste as a hazardous waste.

The EPA understands the AZA's concern regarding implication that zinc is being viewed as a "hazardous constituent" in this delisting petition. In response to this concern, EPA will revise the preamble language to future rulemakings to read "the EPACML will be used to predict the concentrations of constituents that may be released from the petitioned waste, once it is disposed." To evaluate delisting petitions, any constituent detected in the leachate of the petitioned waste must be evaluated by the EPACML. All organic and inorganic constituents detected in the leachate of a petitioned waste are evaluated for their potential hazard to human health and the environment. Zinc, while it may not meet the definitions of hazardous constituent or "underlying hazardous constituent" as defined under the Land Disposal Restrictions, is a constituent found in Bekaert Steel's waste and moreover, in the leachate of the petitioned waste. Therefore, to meet the delisting criteria, zinc must be evaluated to determine if, as a result of leaching into the groundwater, the concentration of zinc would pose a significant hazard to human health or the environment.

In the analysis of the leachate from Bekaert's waste, levels of zinc were detected and the maximum value is reported on the list of inorganic constituents found in Table 1 of the June 25, 1996, notice. The evaluation of zinc as an "additional constituent" is conducted and compared to its health-based value and the secondary drinking water regulations to determine whether the levels of zinc detected could cause the waste to be a potential hazard. In the case of Bekaert's waste, the value for zinc is below the level of regulatory concern and should not present a hazard to human health or the environment.

C. Final Agency Decision

For reasons stated in both the proposal and this notice, EPA believes that Bekaert's petitioned waste should be excluded from hazardous waste control. The EPA, therefore, is granting a final exclusion to Bekaert Steel Corporation, located in Rogers, Arkansas, for a maximum annual rate 1,250 cubic yards of waste to be measured on a calendar year basis, described in its petition as EPA Hazardous Waste No. F006. This exclusion only applies to the waste described in the petition.

Although management of the waste covered by this petition is relieved from

Subtitle C jurisdiction, the generator of the delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling, or reclamation. See 40 CFR part 260, Appendix I.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Because a petitioner's waste may be regulated under a dual system (i.e., both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact the State regulatory authority to determine the current status of their wastes under the State law.

Furthermore, some States (e.g., Louisiana, Georgia, Illinois) are authorized to administer a delisting program in lieu of the Federal program, i.e., to make their own delisting decisions. Therefore, this exclusion does not apply in those authorized States. If the petitioned waste will be transported to and managed in any State with delisting authorization, Bekaert must obtain delisting authorization from that State before the waste can be managed as non-hazardous in the State.

IV. Effective Date

This rule is effective September 16, 1996. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. These reasons also provide a basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12866, EPA must conduct an "assessment of the potential costs and benefits" for all "significant" regulatory actions. The effect of this rule is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. The reduction is achieved by excluding waste from EPA's lists of hazardous wastes, thereby enabling a facility to treat its waste as non-hazardous. As discussed in EPA's response to public comments, this rule is unlikely to have an adverse annual effect on the economy of \$100 million or more. Therefore, this rule does not represent a significant regulatory action under the Executive Order, and no assessment of costs and benefits is necessary. The Office of Management and Budget (OMB) has exempted this rule from the requirement for OMB review under Section (6) of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. §§ 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on any small entities.

This regulation will not have an adverse impact on any small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

VIII. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, which was signed into law on March 22, 1995, EPA generally must

prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the UMRA, EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon State, local, or tribal governments or the private sector. The EPA finds that today's delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, today's delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

Lists of Subjects in 40 CFR Part 261

Hazardous Waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: September 3, 1996.

Jane N. Saginaw,
Regional Administrator.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of Appendix IX, part 261 add the following waste stream in

alphabetical order by facility to read as follows:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22

* * * * *

TABLE 2.—WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description

Bekaert Steel Corporation	Rogers, Arkansas	Wastewater treatment sludge (EPA Hazardous Waste No. F006) generated from electroplating operations (at a maximum annual rate of 1250 cubic yards to be measured on a calendar year basis) after [insert publication date of the final rule]. In order to confirm that the characteristics of the waste do not change significantly, the facility must, on an annual basis, before July 1 of each year, analyze a representative composite sample for the constituents listed in §261.24 as well as antimony, copper, nickel, and zinc using the method specified therein. The annual analytical results, including quality control information, must be compiled, certified according to §260.22(i)(12) of this chapter, maintained on site for a minimum of five years, and made available for inspection upon request of any employee or representative of EPA or the State of Arkansas. Failure to maintain the required documents on site will be considered by EPA, at its discretion, sufficient basis to revoke the exclusion to the extent directed by EPA. <i>Notification Requirements:</i> Bekaert Steel Corporation must provide a one-time written notification to any State Regulatory Agency to which or through which the delisted waste described above will be transported for disposal at least 60 days prior to the commencement of such activities. Failure to provide such a notification will result in a violation of the delisting petition and a possible revocation of the decision.

[FR Doc. 96-23657 Filed 9-13-96; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-259; RM-7309, RM-7942, RM-7943, RM-7944, RM-7948]

Radio Broadcasting Services; Canovanas, Culebra, Las Piedras, Mayaguez, Quebradillas, San Juan, and Vieques, PR, and Christianted and Frederiksted, VI

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: This document directs WKJB AM-FM, Inc.licensee of Station WKJB-FM, Channel 256B, Mayaguez, Puerto Rico, and Arso Radio Corporation, licensee of Station WPRM-FM, Channel 253B, San Juan, Puerto Rico, to show cause why their respective licenses should not be modified to specify operations on Channel 254B and Channel 256B. These modifications would accommodate a Channel 252A channel substitution at Vieques, Puerto Rico, a reallocation of Channel 252A to Las Piedras, Puerto Rico, and modification of the license of Station WSAN license to specify operation on Channel 252A at Las Piedras.
EFFECTIVE DATE: September 23, 1996.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418-2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order to Show Cause* in MM Docket No. 91-259, adopted August 12, 1996, and released August 19, 1996. The full text of this Commission action 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 action may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 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.
Federal Communications Commission.
John A.Karousos,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 96-23621 Filed 9-13-96; 8:45 am]
BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 96-126; RM-8815]

Radio Broadcasting Services; Cross Hill, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Ron Moore, allots Channel 231A at Cross Hill, South Carolina, as the community's first local aural transmission service. See 61 FR 31490, June 20, 1996. Channel 231A can be allotted to Cross Hill in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 kilometers (9.1 miles) southeast to avoid short-spacings to the licensed sites of Station WGOR(FM), Channel 230C3, Martinez, Georgia, and Station WMUU-FM, Channel 233C, Greenville, South Carolina. The coordinates for Channel 231A at Cross Hill are North Latitude 34-13-04 and West Longitude 81-51-41. With this action, this proceeding is terminated.

DATES: Effective October 21, 1996. The window period for filing applications will open on October 21, 1996, and close on November 21, 1996.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 96-126, adopted August 30, 1996, and released September 6, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of

this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73
Radio broadcasting.

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

Part 73—[AMENDED]

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

Authority: Sections 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 South Carolina, is amended by adding Cross Hill, Channel 231A.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96-23620 Filed 9-13-96; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment*, 4 FCC Rcd 2413 (1989), and the *Amendment of the Commission's Rules to permit FM Channel and Class Modifications [Upgrades] by Applications*, 8 FCC Rcd 4735 (1993).

EFFECTIVE DATE: September 16, 1996.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, adopted August 30, 1996, and released September 6, 1996. The full text of this Commission decision is available for inspection and copying

during normal business hours in the Commission'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 Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

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 Arizona, is amended by removing Channel 231A and adding Channel 231C3 at Wickenburg.

3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 227A and adding Channel 226C2 at DeQueen.

4. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 262C3 and adding Channel 262A at Quincy.

5. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Channel 226C1 and adding Channel 226C at Honolulu.

6. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 227A and adding Channel 227C3 at Bowling Green.

7. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 244C3 and adding Channel 244C2 at Belgrade.

8. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 225A and adding Channel 224C1 at Ocracoke.

9. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 272A and adding Channel 273C3 at Eufaula.

10. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 292A and adding Channel 292C2 at Gonzales and by removing Channel 297A and adding Channel 297C3 at Ingleside.

11. Section 73.202(b), the Table of FM Allotments under Vermont, is amended by removing Channel 252A and adding Channel 249C3 at Lyndon.

12. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 221A and adding Channel 224A at Clarksburg.

13. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended

by removing Channel 276A and adding Channel 276C1 at Sundance.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96-23617 Filed 9-13-96; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1996 Update

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules; Delay of effectiveness.

SUMMARY: The Surface Transportation Board (Board) is delaying the effective date for Fee Item (60), Labor arbitration proceedings and Fee Item (61), Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d), to allow sufficient time for the Board to consider the related petition to reopen that has been filed in this proceeding.

EFFECTIVE DATE: The effective date for 49 CFR 1002.2(f), fee items (60) and (61), published in the Federal Register at 61 FR 42190 (August 14, 1996) is delayed until the Board issues a decision on the merits of the related petition to reopen filed in this proceeding. The Board will announce further information in the Federal Register regarding the effective date of these two fee items when a decision on the merits of the related petition to reopen filed in this proceeding is issued.

FOR FURTHER INFORMATION CONTACT:

Kathleen M. King, (202) 927-5249 or David T. Groves, (202) 927-6395. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: The Board issued final rules to implement its 1996 user fee update on August 14, 1996 at 61 FR 42190. Those rules are scheduled to go into effect on September 16, 1996.

On August 26, 1996, Joseph Szabo, the Illinois Legislative Director for the United Transportation Union (Mr. Szabo), filed a petition for stay

requesting that the Board stay the establishment of the new \$7,600 filing fee for Fee Item (60), Labor arbitration proceedings, and the new \$150 filing fee for Fee Item (61), Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d), pending the disposition of his petition to reopen the August 14, 1996 decision. In letters filed August 26, 1996, the United Transportation Union and the Brotherhood of Locomotive Engineers also objected to the establishment of these two fees and supported Mr. Szabo's petition for stay. On September 3, 1996, Mr. Szabo filed his petition to reopen this proceeding.

Under the authority of 49 U.S.C. 721(a), I am granting a "housekeeping" delay of the effective date of Fee Items (60) and (61) so that the Board will have sufficient time to consider the issues raised in the related petition to reopen. The Board intends to act on that petition by October 1, 1996. All other fee items will go into effect as scheduled.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: August 11, 1996.

By the Commission, Chairman Morgan.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, the effective date of 49 CFR 1002.2(f), fee items (60) and (61), published at 61 FR 42190 (August 14, 1996), is delayed until the Board issues a decision on the merits of the related petition to reopen filed in this proceeding. The Board will announce further information in the Federal Register regarding the effective date of these two fee items when a decision on the merits of the petition to reopen is issued.

[FR Doc. 96-23664 Filed 9-13-96; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 091096C]

Atlantic Tuna Fisheries; Recreational Fishery Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishery reopening; catch limit adjustment.

SUMMARY: NMFS has adjusted the Atlantic bluefin tuna (ABT) Angling category quota by transferring 10 metric tons (mt) from the Inseason Reserve. Therefore, the Angling category fishery for school ABT will open for the northern area beginning Friday, September 13, at 1 a.m. local time and close on Sunday, September 15 at 11:30 p.m. local time. The daily catch limit for this reopening is set at one school ABT per vessel. This action is being taken to extend scientific data collection on school ABT while preventing overharvest of the adjusted subquota for the northern area.

EFFECTIVE DATES: The transfer of 10 mt from the Reserve to the Angling category, and the transfer of 10 mt from the Incidental longline south subcategory to the Reserve are effective September 11, 1996. The Angling category fishery for school ABT will open for the northern area beginning Friday, September 13, at 1 a.m. local time and close on Sunday, September 15 at 11:30 p.m. local time.

FOR FURTHER INFORMATION CONTACT: John Kelly, 301-713-2347, or Mark Murray-Brown, 508-281-9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) governing the harvest of ABT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. Section 285.22 subdivides the U.S. quota recommended by the International Commission for the Conservation of Atlantic Tunas among the various domestic fishing categories.

NMFS is required, under § 285.20(b)(1), to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of ABT will equal the quota and publish a Federal Register announcement to close the applicable fishery.

Angling Category Reopening

Implementing regulations for the Atlantic tuna fisheries at § 285.22 provide for a quota of 138 mt of school ABT and 100 mt of large school/small medium ABT to be harvested from the regulatory area by vessels fishing under the Angling category quota during calendar year 1996. The school ABT quota is further subdivided into 65 mt for states Delaware and south and 73 mt for states New Jersey and north.

Based on catch estimates obtained through angler interviews, NMFS closed

the southern school ABT fishery on July 25, 1996 (61 FR 38656, July 25, 1996) and the coastwide large school/small medium July 31 (61 FR 40352, August 2, 1996). Although catch estimates did not indicate that the quota was reached, NMFS closed the school ABT Angling category fishery for the northern area effective August 17, 1996 (61 FR 43027, August 20, 1996) due to estimated overharvests of the school ABT southern area subquota and the coastwide large school/small medium ABT quota.

Under the implementing regulations at 50 CFR 285.22(f), the Assistant Administrator for Fisheries, NOAA (AA), has the authority to make adjustments to quotas involving transfers from the Inseason Reserve after considering the following factors: (1) The usefulness of information obtained from catches of the particular category of the fishery for biological sampling and monitoring the status of the stock, (2) the catches of the particular gear segment to date and the likelihood of closure of that segment of the fishery if no allocation is made, (3) the projected ability of the particular gear segment to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season, and (4) the estimated amounts by which quotas established for other gear segments of the fishery might be exceeded.

Because scientific information from the northern school ABT fishery is needed to broaden the temporal and geographic range of data incorporated into the school ABT index of abundance, NMFS transfers 10 mt from the Inseason Reserve to allow the northern school ABT fishery to reopen. Such transfer responds to the four criteria listed above as follows: (1) Angling category landings are a major contributor to the collection of biological data on this fishery, (2) catch in the Angling category to date has precluded the northern area school ABT fishery as planned and this fishery cannot occur if no allocation is made, (3) the Angling category is projected to harvest the additional amount of Atlantic bluefin tuna before the anticipated end of the fishing season, and (4) the impact on other gear segments is minimal since sufficient quota remains for the incidental category, the purse seine fishery is managed under individual quotas and other gear segments of the fishery have previously been closed or are subject to predetermined set-asides.

Catch Limit Adjustment

Implementing regulations for the Atlantic tuna fisheries at § 285.24

provide for a daily catch limit of school or large school ABT of one fish per angler. However, the AA has the authority to make adjustments to catch limits to effect maximum utilization of the available quota and a fair distribution of fishing opportunities. For this reason the catch limit is reduced to one school ABT per vessel for the duration of this reopening.

This action is being taken to extend the season for the Angling category, provide for fishing opportunities in the northern fishing area, and ensure additional collection of biological assessment and monitoring data without exceeding the adjusted quota.

Classification

This action is taken under 50 CFR 285.20(b) and 50 CFR 285.22 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.*

Dated: September 10, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries,
National Marine Fisheries Service.

[FR Doc. 96-23646 Filed 9-11-96; 2:33 pm]

BILLING CODE 3510-22-F

50 CFR Part 622

[Docket No. 960807218-6244-02; I.D. 072996D]

RIN 0648-AG89

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The approved provisions of the regulatory amendment: Increase the annual commercial quota for red snapper; reopen the commercial red snapper fishery on September 15, 1996, to allow harvest of the remainder of the 1996 quota; split the 1997 commercial quota between two seasons, the first beginning on February 1, 1997, with a quota of 3.06 million lb (m lb) (1.39 million kg (m kg)) and the second beginning on September 15, 1997, with

a quota equal to the unharvested balance of the annual commercial quota; extend the rebuilding schedule for red snapper; and increase the total allowable catch (TAC) of red snapper. The intended effect of this action is to maximize the economic benefits from the red snapper resource while extending for 10 years the rebuilding program for this overfished resource.

EFFECTIVE DATE: October 16, 1996, except that the amendment to § 622.42(a)(1) is effective September 15, 1996.

ADDRESSES: Requests for copies of the final regulatory flexibility analysis (FRFA) should be sent to Robert Sadler, Southeast Region, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813-570-5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Council and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The regulatory amendment submitted by the Council would have reduced the minimum size limit for red snapper taken under the commercial quota from 15 inches (38.1 cm) to 14 inches (35.6 cm), and eliminated the FMP's automatic size limit increase to 16 inches (40.6 cm) scheduled for January 1, 1998. Based on a preliminary evaluation of the regulatory amendment, NMFS concluded that these measures were inconsistent with the Magnuson Act and the agency's policy of risk-averse decision-making. NMFS published a proposed rule to implement the remaining measures of the regulatory amendment (61 FR 42413, August 15, 1996). The rationale for the remaining measures, as well as the reasons for the disapproval of the size limit measures, are contained in the preamble of the proposed rule and are not repeated here. After considering the public comment received on the proposed rule, NMFS approved the remaining measures of the Council's proposal and is issuing this final rule to give effect to them.

Comments and Responses

Twenty-three comments were received from the public. These comments are summarized below followed by the agency response. The comments and responses are grouped by general subject heading.

Disapproved Measures Regarding the Commercial Fishery Minimum Size Limit

Comment: Four commenters supported the Council's proposed measures for decreasing the minimum size limit for the commercial red snapper fishery from 15 to 14 inches and eliminating the automatic increase from 15 to 16 inches scheduled for 1998. One commenter supported the proposed 15-inch size limit but opposed the scheduled change to 16 inches in 1998. One commenter opposed both size limit measures.

Response: NMFS acknowledges these comments on the size limit measures as contained in the Council's proposed regulatory amendment. NMFS refers the reader to the above explanation of the agency's disapproval of the size limit measures.

Increase in TAC and Reopening of the Commercial Fishery

Comment: Six commenters opposed the proposed increase in TAC and/or the proposed reopening of the commercial fishery. Each of the opposing commenters expressed various concerns that the actions would prevent recovery of the overfished resource by the year 2019.

Response: NMFS disagrees with these commenters because the proposed TAC is within the allowable biological catch range as required under the FMP's framework procedure. Implementation of the TAC, in combination with the 50-percent reduction in shrimp trawl bycatch of juvenile red snapper beginning in 1997, is expected to achieve recovery of the red snapper resource consistent with the revised rebuilding schedule.

Comment: Twelve commenters supported both the increased TAC and reopening of the commercial fishery and stated that such action would increase economic benefits to the commercial fishery while maintaining the stock rebuilding schedule. A commenter supported both the increased TAC and reopening of the commercial fishery and stated that such action would allow continuation of the recreational catch limits and thereby stabilize the fishery while achieving the recovery goals.

Response: NMFS agrees.

Probability of Achieving Necessary Bycatch Reduction

Comment: Seven commenters supported taking action to ensure the 50-percent reduction in shrimp trawl bycatch of juvenile red snapper that is necessary for recovery of the red snapper stock. Three commenters stated

that the 50-percent reduction already may have been achieved by a combination of factors, including reduced shrimping effort and additional red snapper abundance in areas avoided by shrimp trawlers.

Response: NMFS believes that some reduction in shrimp trawl bycatch of juvenile red snapper already may have occurred. NMFS believes that the target 50-percent reduction beginning in 1997 is achievable, based on the available bycatch reduction technology, and the commitment of the Council to take action to meet that target.

Extension of the Rebuilding Target Year from 2009 to 2019

Comment: Two commenters stated the extension was unjustified because it was not supported by available data and was contrary to the recovery of the overfished red snapper stock.

Response: The determination that the rebuilding target date may, consistent with the FMP, be extended to a date as late as 2019 is consistent with the best available scientific information. The Council's choice of the year 2019 is expected to minimize adverse socioeconomic impacts on commercial and recreational fishery participants while achieving stock recovery consistent with provisions of the FMP.

Comment: Seven commenters supported the proposed rebuilding schedule extension as appropriate and beneficial, based on the recovering status of the resource.

Response: NMFS acknowledges the commenters' support for this measure, but wants to make clear the reasons why NMFS approved this measure. Based on new scientific findings, NMFS's 1995 red snapper stock assessment concluded that this species has a longer life span and a lower natural mortality rate than previously estimated. These factors are used to estimate the generation time for red snapper. Accordingly, the revised estimate of the generation time was 19.6 years as opposed to the earlier estimate of 13.6 years (refer to the proposed rule preamble for a more detailed discussion). The FMP's framework procedure for annual adjustments in red snapper TAC and other related measures specifies that the stock rebuilding time for red snapper cannot exceed 1.5 times the estimate of generation time. Based on new calculations, the outer limit for the stock rebuilding date was changed from 2009 to 2019. In determining the new rebuilding period for red snapper, and consistent with its prior decision regarding the 2009 target date, the Council chose the outer limit allowed by the FMP in order to minimize

adverse socioeconomic impacts on resource users. The longer the stock recovery time, the less restrictive the TAC must be to ensure stock recovery.

Relation of Amendment 13 to This Rule

In FMP Amendment 13, the Council proposed, and NMFS approved, an extension of the red snapper vessel permit endorsement and trip limit system and suspension of implementation of the red snapper individual transferable quota (ITQ) system approved under Amendment 8. As explained in the proposed rule for Amendment 13 (61 FR 32422, June 24, 1996), NMFS is prohibited from implementing the ITQ system for the foreseeable future. NMFS intends to issue the final rule implementing Amendment 13 to be effective on September 15, 1996. Accordingly, when the commercial fishery for red snapper opens on September 15 under the provisions of this final rule, the fishery will be subject to the red snapper vessel permit endorsement and trip limit system.

Classification

This final rule has been determined to be not significant under E.O. 12866.

The Council prepared an Initial Regulatory Flexibility Analysis (IRFA) that described the expected significant economic effects on a substantial number of the small business entities engaged in harvesting the reef fish resources in the Gulf of Mexico. Following public comment, NMFS prepared a Final Regulatory Flexibility Analysis (FRFA). The FRFA noted that there were no public comments on the IRFA and consequently no changes have been made in the economic analysis. The FRFA finds that the regulatory changes are needed since they will allow for a major increase in revenues. The increase in revenues will occur because the allowable catch of red snapper will be increased by about 50 percent through this final rule; this result will meet the objective of maximizing benefits from the fishery in concert with an orderly rebuilding of the overfished red snapper resource. The increased catches will provide significant benefits in terms of increased revenues to a substantial number of the 1,532 commercial vessels in the fishery as well as to a portion of the 930 for-hire (838 charter and 92 headboat) vessels. Each of these categories is comprised entirely of small business entities. The FRFA also confirms that the rule does not create any additional reporting, recordkeeping or other compliance requirements. Finally, the FRFA indicates that a set of alternative

regulatory actions, including no-action alternatives, were considered and rejected by the Council on the basis that the alternatives did not provide the level of benefits available to small business entities that will be afforded by the actions implemented by this rule. Since there were no adverse economic effects on small entities under all considered alternatives to the status quo, the agency took no specific action to minimize the impacts of the proposed and approved measures. The overall conclusion of the FRFA is that this rule will have a significant positive economic impact on a substantial number of the small entities engaged in the harvest of Gulf of Mexico reef fish resources. Copies of the FRFA are available (see ADDRESSES).

The measures in this final rule that increase the commercial quota for red snapper and reopen the commercial fishery for red snapper on September 15, 1996, constitute a substantive rule that relieves a restriction. Therefore, as authorized under 5 U.S.C. 553(d)(1), a 30-day delay in effectiveness of these measures is not required.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: September 10, 1996.

Nancy Foster,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.34, effective October 16, 1996, paragraph (l) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) 1997 closure of the commercial fishery for red snapper. From January 1 through 31, 1997, the possession of red snapper in or from the Gulf EEZ and on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2),

respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1).

3. In § 622.42, effective September 15, 1996, paragraph (a)(1) is revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) Red snapper—4.65 million lb (2.11 million kg), round weight, apportioned in 1996 and 1997 as follows:

(i) 3.06 million lb (1.39 million kg) available February 1, 1996, and February 1, 1997; and

(ii) The remainder available September 15, 1996, and September 15, 1997.

* * * * *

[FR Doc. 96-23584 Filed 9-11-96; 10:49 am]

BILLING CODE 3510-22-F

50 CFR Part 660

[Docket No. 960614176-6176-01; I.D. 050796A]

RIN 0648-A118

Fisheries Off West Coast States and in the Western Pacific; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Correction to final rule.

SUMMARY: This document corrects errors in §§ 660.306(j), 660.306(k), and 660.323(a)(4)(i), and the section number “§ 663.324” in the final rule (I.D. 050796A) concerning Fisheries Off West Coast States and in the Western Pacific, published July 2, 1996 (61 FR 34570).

EFFECTIVE DATE: July 1, 1996.

FOR FURTHER INFORMATION CONTACT: Cheri Sexton McCarty, NMFS, 301-713-2341.

SUPPLEMENTARY INFORMATION:

Need for Correction

In the final rule document, FR Doc. 96-16234, beginning on page 34593 in the issue of Tuesday, July 2, 1996, the cite “§ 663.323(a)(4)(iv)” is incorrectly numbered and should be corrected to read “§ 660.323(a)(4)(iv).”

Also, on pages 34592, 34593, and 34595, the section number for the Pacific Coast treaty Indian fisheries is incorrectly numbered as “§ 663.324.” The section number should be corrected to read “§ 660.324.”

On page 34595, § 660.323(a)(4)(i) incorrectly indicates that the remaining

40 percent of the harvest guideline is reserved for harvest by vessels delivering to shoreside processors. The second sentence should read, “The remaining 40 percent of the commercial harvest guideline is reserved for harvest by vessels delivering to shoreside processors.”

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on July 2, 1996, of the final rule document (I.D. 050796A), which was the subject of FR Doc. 96-16234, is corrected as follows:

§ 660.306 [Corrected]

On page 34592, in the third column, in § 660.306, paragraph (j), the cite “§ 663.324” is corrected to read “§ 660.324.”

On page 34593, in the first column, in § 660.306, paragraph (k), the cites “§ 663.324” and “§ 663.323(a)(4)(iv)” are corrected to read “§ 660.324” and “§ 660.323(a)(4)(iv)”, respectively.

§ 660.323 [Corrected]

On page 34595, in the first column, in § 660.323, paragraph (a)(4)(i), the second sentence is corrected to read, “The remaining 40 percent of the commercial harvest guideline is reserved for harvest by vessels delivering to shoreside processors.”

§ 663.324 [Corrected]

On page 34595, in the third column, the section number is corrected from “§ 663.324” to read “§ 660.324.”

Dated: September 9, 1996.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96-23531 Filed 9-13-96; 8:45 am]

BILLING CODE 3510-22-F

50 CFR Part 660

[Docket No. 951227306-6117-02; I.D. 090696E]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; End of Pacific Whiting Regular Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces the end of the “regular season” for the Pacific

whiting (whiting) fishery off Washington, Oregon, and California and the reimposition of a 10,000-lb (4,536-kg) trip limit coastwide. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan, which governs the harvest of groundfish in the U.S. exclusive economic zone off the coasts of Washington, Oregon, and California. This action is intended to keep landings close to the 1996 commercial harvest guideline for whiting while allowing small quantities to be landed by fresh fish and bait fisheries and as bycatch in other fisheries.

DATES: Effective 0001 hours (local time) September 11, 1996, until the effective date of the 1997 annual specifications and management measures for the Pacific Coast Groundfish Fishery, which will be published in the Federal Register. Comments will be accepted until September 25, 1996.

ADDRESSES: Comments on this action should be sent to Mr. William Stelle, Jr., Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115-0070; or Ms. Hilda Diaz-Soltero, Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213. Information relevant to this action has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William L. Robinson 206-526-6140; or Rodney R. McInnis 310-980-4040.

SUPPLEMENTARY INFORMATION: At its October 1995 meeting, the Pacific Fishery Management Council (Council) recommended that a 10,000-lb (4,536-kg) trip limit apply to landings of whiting after the end of the regular season (61 FR 279, January 4, 1996). The end of the regular season occurs when the “commercial harvest guideline” is projected to be reached (61 FR 28786, June 6, 1996; 61 FR 34570, July 2, 1996, as modified.) The commercial harvest guideline is the harvest guideline minus any amount allocated to the Washington coastal treaty Indian tribes. Therefore, the end of the regular season in 1996 occurs when the commercial harvest guideline of 197,000 metric tons (mt) (the 212,000-mt harvest guideline minus the 15,000 mt tribal allocation) is projected to be reached.

The commercial harvest guideline is divided between shore-based and at-sea sectors, according to the regulations at 50 CFR 660.323(a)(4). At-sea processing of whiting was prohibited on June 1,

1996 (61 FR 28796, June 6, 1996) when 118,200 mt (60 percent of the 197,000-mt commercial harvest guideline) was projected to have been taken (112,776 mt for at-sea processing and 8,201 mt for shore-based processing). The remainder of the commercial harvest guideline was reserved for vessels delivering to shore-based processors.

Based on the best available information on current and projected rates of landings, the Director, Northwest Region, NMFS, has determined that 189,214 mt of whiting has been caught in the non-treaty fisheries through August 31, 1996, and, at a rate of about 805–828 mt delivered shoreside per day, the 197,000-mt commercial harvest guideline would be reached on September 10, 1996.

Therefore, the regular season ends and the 10,000-lb (4,536-kg) trip limit for whiting resumes on September 11, 1996. Because at-sea processing of whiting is prohibited, this trip limit applies only to vessels delivering shoreside. The trip limit is intended to accommodate small bait and fresh fish markets and the bycatch of whiting in other fisheries.

Tribal fisheries for whiting are governed by other regulations at 50 CFR 660.324.

NMFS action: NMFS announces the following change to the 1996 management measures for whiting published at (61 FR 279, January 4, 1996) as modified:

Paragraph IV.F(1)(a) is revised to read as follows:

IV. * * *

F. * * *

(1) * * *

“(a) No more than 10,000 lb (4,536 kg) of whiting may be taken and retained, possessed, or landed, per vessel per fishing trip. This includes any whiting caught shoreward of 100 fathoms (183 m) in the Eureka subarea (see paragraph IV.F.(1)(b) at 61 FR 279).”

Classification

The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the office of the Director, Northwest Region, NMFS (see **ADDRESSES**) during business hours. This action was recommended by the Council at its October 1995 meeting,

and was announced in the annual specifications and management measures for 1996 that published on January 4, 1996, at 61 FR 279. There was an opportunity for public comment at the August and October 1995 Council meetings. Supporting documents (catch projections) were available for public inspection prior to, and at, the August 21–23, 1996, Council meeting in Portland, OR. Because of the need for immediate action, and because the public had an opportunity to comment on the action at Council meetings, NMFS has determined that good cause exists for this notice to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. This action is taken under the authority of 50 CFR 660.323(a)(4), and is exempt from review under E.O. 12866.

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

Dated: September 10, 1996.

Richard W. Surdi,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 96–23559 Filed 9–10–96; 4:56 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 61, No. 180

Monday, September 16, 1996

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 34

[Docket No. PRM-34-5]

Amersham Corporation, Receipt of a Petition for Rulemaking: Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; extension of comment period.

SUMMARY: On June 18, 1996 (61 FR30837), the Nuclear Regulatory Commission (NRC) published for public comment a petition for rulemaking filed by Amersham Corporation. The petitioner requested that the NRC amend its regulations by removing the reference to "associated equipment" from the radiography equipment regulations. The petitioner believes that this amendment would clarify the licensing reviews of sealed sources and radiographic exposure devices to meet the applicable requirements. The comment period for this petition for rulemaking was to have expired on September 3, 1996.

A public workshop was held by NRC on August 29, 1996, concerning the issues raised in the petition, and many of the attendees were planning to follow up their public comments with letters on the petition. The petitioner believes that the issues raised in the petition require significant input from the affected licensees in order that the most effective regulations can be put in place. Therefore, Amersham Corporation has requested that the comment period be extended until September 30, 1996.

DATES: The comment period has been extended and now expires on September 30, 1996. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSES: Send written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

FOR FURTHER INFORMATION CONTACT:

Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Telephone 301-415-7163 or Toll Free: 800-368-5642.

Dated at Rockville, Maryland, this 10th day of September 1996.

For the Nuclear Regulatory Commission,
John C. Hoyle,
Secretary of the Commission.

[FR Doc. 96-23632 Filed 9-13-96; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 352

[Docket No. 78N-0038]

RIN 0910-AA01

Sunscreen Drug Products for Over-the-Counter Human Use; Amendment to the Tentative Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking that amends the tentative final monograph (proposed rule) for over-the-counter (OTC) sunscreen drug products. This amendment would establish conditions under which products containing avobenzone (Parsol® 1789) are generally recognized as safe and effective and not misbranded at concentrations of up to 3 percent alone and 2 to 3 percent avobenzone in combination with the sunscreen ingredients cinoxate,

diethanolamine methoxycinnamate, dioxybenzone, homosalate, octocrylene, octyl methoxycinnamate, octyl salicylate, oxybenzone, sulisobenzene, and/or trolamine salicylate. OTC marketing pursuant to this amendment may not begin until FDA publishes a subsequent notice in a future issue of the Federal Register. This proposal is in response to a citizen petition and is part of the ongoing review of OTC drug products conducted by FDA.

DATES: Written comments by October 16, 1996; written comments on the agency's economic impact determination by October 16, 1996. The agency is requesting comments within a 30-day period, instead of the normal 90 days, so that the marketing status of OTC avobenzone-containing sunscreen drug products can be determined in an expeditious manner (see section II.E. of this document). FDA is proposing that any final rule based on this proposal become effective 12 months after its date of publication in the Federal Register.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. Desk copies of these written comments to Debra L. Bowen, Center for Drug Evaluation and Research (HFD-560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD-105), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-2304.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of August 25, 1978 (43 FR 38206), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC sunscreen drug products. Proposed § 352.10 listed the active ingredients to be generally recognized as safe and effective for use in these products. Avobenzone was not included in § 352.10 at that time. Subsequently, a manufacturer petitioned the agency to reopen the administrative record for OTC sunscreen drug products and to include avobenzone, an ultraviolet A (UVA)

radiation-absorbing sunscreen ingredient, in the monograph based upon avobenzone's history of use in several countries other than the United States since 1981 (Ref. 1).

In the Federal Register of May 12, 1993 (58 FR 28194), FDA published a notice of proposed rulemaking (tentative final monograph) for OTC sunscreen drug products. Although the petition to include avobenzone in the monograph was discussed in the proposal (58 FR 28194 at 28210 and 28211), the agency stated that it had not reached a decision concerning the use of foreign marketing data as the sole basis to support the inclusion of an ingredient in the OTC drug review. The agency stated that it would not be in the public interest to unduly delay publication of the proposed rule for OTC sunscreen drug products and noted that a decision concerning the petition would be announced in a future issue of the Federal Register.

In the proposed rule, the agency also discussed the public health significance of UVA radiation and the characteristics and proposed labeling of OTC sunscreen drug products that claim to provide protection from UVA radiation (58 FR 28194 at 28232 and 28233). Testing procedures for sunscreen drug products with UVA radiation protection claims were discussed in the proposed rule (58 FR 28194 at 28248 to 28250) and at a public meeting on May 12, 1994 (as noted in the Federal Register of April 5, 1994 (59 FR 16042)).

In response to the proposed rule, one cosmetic manufacturers' association, one professional association, one consumer, one U.S. Senator, two health care professionals, and seven manufacturers submitted comments. Copies of the comments received are on public display in the Dockets Management Branch (address above).

On March 3, 1993, FDA received a petition (Ref. 2) requesting the agency to: (1) Reopen the rulemaking for OTC sunscreen drug products to include avobenzone as an active ingredient in the proposed rule for OTC sunscreen drug products; (2) permit broad spectrum combination sunscreen products containing avobenzone to be marketed with a range of sun protection factor (SPF) values; and (3) permit interim marketing of such products. The petitioner also made several subsequent submissions of data and other information (Refs. 3 through 8).

Following publication of the proposed rule for OTC sunscreen drug products on May 12, 1993, the agency responded to the petition in letters dated August 19, 1993, October 27, 1993, May 9, 1994, and May 9, 1996, and during meetings

on May 11, 1994, March 6, 1995, and August 11, 1995 (Refs. 9 through 15). The petitioner subsequently clarified and modified its requests (Ref. 3): (1) To include avobenzone alone and in combination with all of the proposed monograph sunscreen ingredients except the aminobenzoates; (2) to limit the concentration of avobenzone to 1 to 3 percent (if data do not support up to 5 percent); and (3) to utilize approved new drug application (NDA) labeling and proposed monograph labeling as guides in proposing labeling for avobenzone-containing sunscreen drug products. Following the August 11, 1995 meeting, a manufacturer, in support of the petition, publicly released safety data from its NDA (approved by the agency in December 1992) for an OTC sunscreen drug product (Shade UVAGuard® SPF 15 lotion containing avobenzone, octyl methoxycinnamate, and oxybenzone) along with additional data and information concerning avobenzone (Refs. 16 and 17). The first NDA for a sunscreen drug product (Photoplex® containing avobenzone with padimate O) was approved in September 1988.

II. The Agency's Evaluation of the Petition and Other Data

A. General

1. The petition requested that the agency reopen the rulemaking for OTC sunscreen drug products to include avobenzone as an active ingredient in the proposed rule for OTC sunscreen drug products. Several comments requested that the agency include avobenzone in the final monograph for these products. The petition and comments expressed concern about the potential hazards of UVA radiation and the need for making broad spectrum sunscreens widely available so that consumers can protect themselves from UVA as well as ultraviolet B (UVB) radiation. The petition contended that avobenzone has been marketed in the United States (and abroad) to a material extent and for a material time under generally safe and effective conditions.

The agency has determined that avobenzone has been marketed in OTC sunscreen drug products for a material time and to a material extent. Avobenzone has been continuously marketed in the United States under NDA's for approximately 8 years and subject to the adverse event reporting requirements. Over 5,000,000 units of avobenzone containing products have been sold in the United States. Accordingly, the agency has determined that avobenzone can be considered in this rulemaking for OTC sunscreen drug

products. This document amends the proposed rule to include avobenzone. Accordingly, the agency has determined that avobenzone can be included in the monograph for OTC sunscreen drug products. This document amends the proposed rule to include avobenzone.

2. Several comments objected to the definition of a sunscreen active ingredient in proposed § 352.3(c) (58 FR 28194 at 28295) which states: "An active ingredient that absorbs at least 85 percent of the radiation in the UV range at wavelengths from 290 to 320 nanometers, but may or may not transmit radiation at wavelengths longer than 320 nanometers." The comments contended that the proposed definition is inadequate because it fails to include safe and effective ingredients whose absorption maxima are in the UVA wavelength range of 320 to 400 nanometers (nm).

The agency is aware that avobenzone's maximum absorbance is in the UVA wavelength range and agrees with the comments that the proposed definition of a sunscreen active ingredient needs to be modified to represent ingredients that sufficiently absorb, reflect, or scatter radiation in the UVA wavelengths. As the proposed definition impacts other sunscreen ingredients, the agency intends to address this issue in a future issue of the Federal Register.

B. Safety of Avobenzone

3. The petition (Ref. 2) requested that FDA include avobenzone as an active ingredient in the proposed monograph and permit broad spectrum combination sunscreen drug products with avobenzone to be marketed with a range of SPF values. The petition contended that avobenzone is generally recognized as safe based on substantial evidence consisting of the results of adequate and well-controlled published studies, unpublished data, safe domestic OTC marketing of two sunscreen drug products that are the subjects of approved NDA's, and several years of foreign marketing. The petition provided numerous published and unpublished studies in humans and animals (Refs. 2, and 3 through 8) in support of the safety of avobenzone.

An Australian clinical study (Ref. 6) evaluated the frequency of reactions to a SPF 15 broad spectrum sunscreen formulation containing 2 percent avobenzone in combination with 8 percent octyl methoxycinnamate and another formulation containing only the cream base without the sunscreen active ingredients. This randomized, longitudinal, double-blinded study involved 603 adults who were directed

to apply either the sunscreen or the cream based formulation daily for 7 months.

At the end of the 7-month study, 114 participants (18.9 percent) reported adverse skin reactions; 90 (14.9 percent of the 603 adults) had inflammatory skin reactions. Further testing confirmed that 45 of these 90 subjects had a history of allergic reactions. Patch testing of 22 of these 45 subjects indicated that 4 who had positive patch-test reactions gave a history of cosmetic intolerance. A majority of the adverse responses were consistent with irritant reactions to both the sunscreen preparation and the cream base control. However, the data indicated that none of the participants who were patch tested because of reported inflammatory skin reactions tested positive to the sunscreen active ingredients alone. The agency finds this study provides additional support for the safety of 2 percent avobenzone with octyl methoxycinnamate and suggests that avobenzone is not a potent photosensitizer.

The cumulative irritation potential of 8 test products was compared in an occlusive repeat insult patch test evaluation procedure on 25 healthy adult volunteers (Ref. 6). Each test product contained 1 to 3 percent avobenzone with various combinations of 2 to 7.5 percent octyl methoxycinnamate, 2 percent phenylbenzimidazole sulfonic acid, and/or 5 percent micronized titanium dioxide. Patches were applied 3 times a week over a 2-week period and were removed after 48 hours (when applied on Monday and Wednesday) or 72 hours (when applied on Friday). Skin sites were evaluated on a scale of 0 to 4 (increasing severity) for skin irritation and sensitization reaction. The test product containing 2 percent avobenzone in combination with 7.5 percent octyl methoxycinnamate was the only test product to demonstrate noticeable levels of irritation. However, a report included with the study indicated that these results were due to the emulsification system. Although only low levels of cumulative irritancy were observed with all but one formulation, the agency believes that additional subjects should have been tested in order to assess cumulative irritation potential in this study.

Four clinical occlusive skin patch tests involving 199 subjects were conducted using 4 test formulations containing combinations of 0.075 to 0.5 percent avobenzone and 7.5 to 8.0 percent octyl methoxycinnamate (Ref. 6). Each subject was patch tested with the test formulations for 48 and 72

hours, followed by an immediate and 24-hour observation reading for skin reactivity. No control group was included. The results of the study indicated that avobenzone was not a primary irritant and elicited no significant immediate or delayed skin reaction at the site of application. These data are supportive of the safety of low (0.075 to 0.5 percent) concentrations of avobenzone in combination with 7.5 to 8.0 percent octyl methoxycinnamate.

A Canadian company provided a certification describing the number of consumer complaints of skin irritancy and sensitivity reactions associated with a sunscreen drug product containing 2 percent avobenzone, 8.5 percent octyl methoxycinnamate, and 2.2 percent phenylbenzimidazole sulfonic acid (Ref. 6). The company reported only four complaints of skin reactions related to the use of this product from January 1993 to June 1994, noting that over 180,000 liters (L) were marketed during this time period. Although the agency considers the very low number of complaints (based on the number of L sold) as supportive of the safety of 2 percent avobenzone in this combination product, the reported marketing history only covers an 18-month period.

Skin sensitization potential of 4 percent avobenzone in combination with 7 to 7.5 percent octyl methoxycinnamate and 4.5 to 6.5 percent titanium dioxide was assessed in a study on the albino guinea pig (Ref. 6). No sensitization reactions to either formulation were reported. A study (Ref. 6) on hairless mice compared and demonstrated the protective effect of two commercially available broad-spectrum sunscreens against chronic exposure to UVA irradiation (340 to 400 nm). One sunscreen product contained 3 percent avobenzone (the other active ingredients were not given) and the other contained 3 percent oxybenzone. The study also emphasized the importance of assessing the safety of the vehicle or base of the sunscreen product to minimize skin irritation or photodamage. The agency considers the preclinical safety data for avobenzone submitted by the comments to be adequate.

The comment (Ref. 6) also included the following: (1) A statement from a company certifying that avobenzone had been used for 10 years in a wide variety of skin creams and sunscreen products (in combination with octyl methoxycinnamate and oxybenzone) without any material adverse biological effects, and (2) a table of sunscreen products marketed and sold in Canada that contain 2 to 5 percent avobenzone in combination with other active

sunscreen ingredients. However, no other supporting data were provided with these documents.

A clinical study (Ref. 7) assessed the cumulative dermal irritancy and allergic potential of a sunscreen product containing 2 percent avobenzone, 7.5 percent octyl methoxycinnamate, and 3.0 percent titanium dioxide. In this study, the sunscreen product was applied to the back of 50 adults under occlusive cutaneous test plasters. After 48 hours (or 72 hours at the weekend), the plasters were removed and the test sites were evaluated 6 hours later to assess irritancy. The test sunscreen product was again applied to the same areas under cutaneous test plasters. This repetitive process covered a period of 3 weeks, followed by a 6-day pause, and then a challenge phase during which the sunscreen was reapplied to untreated areas of the back and removed 72 hours after application. The test sites were examined 6 hours after removal of the plaster. The agency considers the cumulative irritancy and allergic potential assessment data from this study as supportive of the safety of 2 percent avobenzone.

Utilizing a similar protocol, six clinical studies (Ref. 7) assessed the cumulative dermal irritancy and allergic potential of sunscreen products containing 0.2 to 1.5 percent avobenzone in combination with 1.5 to 7.5 percent octyl methoxycinnamate, 8 percent titanium dioxide, 0.6 to 3.45 percent methylbenzylidene camphor, and/or 3.5 to 4.5 percent phenylbenzimidazole sulfonic acid. The investigators found no evidence that any of these sunscreen products caused cumulative irritation. The cumulative irritancy data are supportive of the safety of low (0.2 to 1.5 percent) concentrations of avobenzone. Phototoxicity assessments were reported for two products (containing 1.0 and 1.5 percent avobenzone). However, two study summaries noted that the phototoxicity/photoallergenicity test protocols did not involve multiple applications of the products or multiple irradiation exposures of the test sites and can only be considered a phototoxicity assay. The agency concludes that the results from the two phototoxicity/photoallergenicity studies do not adequately address the phototoxicity or photoallergenicity of the test products.

Six studies (Ref. 8) assessed the safety of the following four sunscreen drug products: (1) A gel containing 3 percent avobenzone in combination with 8.5 percent octyl methoxycinnamate, 3 percent oxybenzone, and 5 percent octyl salicylate; (2) a gel containing 3 percent

avobenzone in combination with 8.5 percent octyl methoxycinnamate, 6 percent oxybenzone, and 6 percent octyl salicylate; (3) a cream containing 3 percent avobenzone in combination with 8.5 percent octyl methoxycinnamate, 3 percent oxybenzone, and 5 percent octyl salicylate; and (4) a cream containing 3 percent avobenzone in combination with 8.5 percent octyl methoxycinnamate, 6 percent oxybenzone, and 6 percent octyl salicylate. The studies included the following tests: (1) A 21-day cumulative irritation test, (2) a phototoxicity test, (3) a photocontact allergy test, (4) a comedogenic potential test, (5) an in-use irritation potential test in children, and (6) an in-use irritation potential test in adults.

Results of the 21-day cumulative irritancy test (Ref. 8) indicated that the most frequently observed response to the cream and gel sunscreen formulations was minimally visible erythema. The agency notes that 3 of 23 subjects recorded a moderate erythema in response to the second sunscreen formulation, and 4 of 23 subjects recorded a moderate erythema reaction in response to the fourth formulation.

The phototoxicity potential of these 4 products was assessed in 11 adults (Ref. 8). Each product was applied to two skin sites with a third test site used as an untreated control. One set of treated test sites was covered with nonwoven cotton cloth and not irradiated. The second set of treated sites was irradiated first with 10 times the predetermined minimal erythema dose (MED) of UVA irradiation, then with 0.5 times the predetermined MED of UVA/UVB irradiation. Both the untreated and treated test sites were later evaluated for any observable skin reactions at 5 minutes, 3 hours, and 24 hours after irradiation. Results indicated that all samples induced mild cutaneous responses at the 24-hour time period in several subjects. The authors of the study reported that the minimal erythema responses were considered to represent irritation to the test material, to the test procedure of tape stripping, or to the procedure of covering the sites between evaluation. The agency believes that additional subjects should have been tested in order to assess phototoxicity potential in this study.

Photocontact allergy testing showed that the second and third products reacted at the 48-hour reading of the irradiated challenge sites with mild erythema. The study report concluded that there was no clinically identifiable evidence of photocontact allergic responses to any of the materials tested,

although mild erythema reactions were reported with two products at the 48-hour readings.

Two randomized, parallel-group, evaluator-blind, noncontrolled in-use studies (Ref. 8) evaluated the irritation potential of 2 sunscreen formulations in 20 children and 20 adults. Each product contained 3 percent avobenzone, 8.5 percent octyl methoxycinnamate, 6 percent octyl salicylate, and 6 percent oxybenzone (each in a different vehicle). The subjects applied the assigned product to their face/neck, arms, and legs at least twice a day for 2 weeks. A nine-point scale was used to grade the signs and symptoms of irritation at weeks 0 (before and after the first test product application), 1, and 2. Adverse events included itching and facial erythema. No serious treatment-related events were reported. Although these studies provided useful information concerning adverse events experienced during short-term actual use, the agency believes that additional subjects should have been tested in order to assess the in-use irritation potential of the test products.

The primary irritation potential of a test product containing 2 percent avobenzone, 8.5 percent octyl methoxycinnamate, and 2.2 percent phenylbenzimidazole sulfonic acid was evaluated in 15 adult subjects (Ref. 8). Negative (saline solution), mild positive (1 percent sodium lauryl sulfate in saline), and vehicle controls were included. Each subject received a single, approximately 24-hour contact application of each test material to the upper back area. Only 2 of the 15 subjects were reactive to the positive control. No clinically identifiable skin reactions were reported for the test product or vehicle. Another small study of primary irritation potential (Ref. 8) on 10 subjects tested a product containing 2 percent avobenzone, 7.5 percent octyl methoxycinnamate, and 4.5 percent oxybenzone and reported no primary irritant effect on the skin. The agency believes additional subjects should have been tested in these studies in order to assess the primary irritation potential of the test products.

A well-controlled occlusive patch study of 106 adults (Ref. 8) assessed the primary irritation potential (contact sensitization) and allergenic sensitization potential of the following test and control products: (1) 3 percent avobenzone in combination with 7.5 percent octyl methoxycinnamate, (2) 3 percent avobenzone, (3) 7.5 percent octyl methoxycinnamate, and (4) cream vehicle for 3 percent avobenzone. The data indicated that no subjects experienced primary irritation or

allergenic sensitization to any of the test products. The agency considers this study as supportive of the safety of the sunscreen formulation containing 3 percent avobenzone in combination with 7.5 percent octyl methoxycinnamate.

Three studies (Ref. 8) assessed the protective effect of sunscreen drug products containing 1 percent avobenzone in patients diagnosed with atopic dermatitis and in patients receiving photochemotherapy for psoriasis. Without a concurrent vehicle control, it is unclear whether protection and/or improvement of the disease was related to sunscreen ingredients. Further, isolated use of steroids and salicylic acid-containing topical products may have interfered with the photocontact potential of the sunscreen formulation tested in the patients receiving photochemotherapy for psoriasis.

Three clinical studies (Ref. 8) evaluated the allergic contact dermatitis potential, contact irritancy potential, or phototoxicity/photoallergenicity potential, respectively, of test products containing 1 to 3 percent avobenzone. The agency does not find these studies useful. The first two studies did not adhere to standard contact irritancy and allergenicity protocol as occlusive applications were not made on a daily basis. The third study did not adhere to the standard photomaximization test protocol as application of the test material was followed by exposure to non-erythemogenic UV radiation of 10 Joules per square centimeter (J/cm²) (instead of 3 MED's), and 24-hour skin patching of the test material followed rather than preceded irradiation.

The photosensitization potential of 2 percent avobenzone alone and in combination with 7.5 percent octyl methoxycinnamate was assessed in a panel of 25 adult subjects (Ref. 8). Dimethylsulfoxide (DMSO) was incorporated in both test formulations. As it is not clear what effect DMSO may have had on the study results, the agency has not considered these data in assessing the safety of avobenzone.

Data and other information submitted by another comment (Refs. 16 and 17) consisted of summaries of preclinical safety studies, reports from clinical safety studies of various formulations containing avobenzone, adverse drug experience data, and photostability information. The reports included six clinical safety studies from an approved NDA for a sunscreen lotion that contains 3 percent avobenzone, 3 percent oxybenzone, and 7.5 percent octyl methoxycinnamate. Four of the studies evaluated irritation/

sensitization, photoallergenicity, and phototoxicity potential. The other two studies were outdoor use tests. These data support the safety of 3 percent avobenzone alone and in combination with Category I cinnamates and benzophenones.

The comment (Ref. 17) also included reports from six clinical safety studies concerning a prior formulation that contained 2 percent avobenzone, 2 percent oxybenzone, and 7.5 percent octyl methoxycinnamate. One report included a repeat insult patch test (protocol HST-1-84-25) designed to evaluate the primary irritation and sensitization potential of the formulation, the lotion vehicle, 4 percent avobenzone in a petrolatum base, and 8 percent homosalate lotion. The study evaluated the test products under occlusive patch conditions during an initial 3-week induction phase, a 2-week rest (no treatment) phase, and a 1-week challenge phase. During the induction phase, occlusive patches impregnated with the test products were applied to the upper back of each subject and evaluated 24 to 48 hours after patch removal. During the challenge phase, occlusive patches were applied to the original induction phase sites and evaluated after 48 hours (patches were applied and evaluated twice during this phase). Of the 162 healthy adults enrolled in the study, 154 (mean age 39.8) completed the study (individual data were not provided). Mean irritation scores for the avobenzone formulation ranged from 0.05 to 0.24 during the nine induction phase observations and were 0.10 and 0.18 during the two challenge phase observations. One subject exhibited a possible allergic reaction to the tape and all four test products. Application of the avobenzone formulation and a control product under home use conditions by this subject resulted in no reported adverse reactions. The investigator noted that this subject experienced "non-specific, multiple reactions, including to test tape."

Another report (Ref. 17) included a clinical study (protocol HST-5-84-33) designed to evaluate the photoallergenicity potential of the 2 percent avobenzone formulation, its lotion vehicle, and a product containing 3 percent oxybenzone plus 7 percent Padimate O. The study consisted of the determination of each subject's MED, a 3-week induction phase, a 10-day rest (no treatment) phase, and a 4-day elicitation phase. During the induction phase, two test sites for each product were outlined on the subject's back, the products were applied, and the sites remained under occlusive patches for 24

hours. After the 24-hour period, the patches were removed and the sites were irradiated with three MED's of UVA/UVB radiation. The sites were evaluated 48 hours later for reactions on an increasing severity scale of 0 to 3+. This process was repeated twice weekly for a total of six exposures. During the elicitation phase, test materials were applied to two sites adjacent to the induction sites and occluded for 24 hours. After 24 hours, one of each set of elicitation test sites (the corresponding site in each set was shielded) and an untreated control site received 4 J/cm² of UVA radiation. All sites were evaluated at 48 and 72 hours after irradiation.

Six male and 19 female adults (all Caucasian and in good health) between 20 and 39 years of age (mean age 29.2) enrolled in and completed the study. No positive responses were reported at either 48 or 72 hours. The investigator concluded that no detectable contact photosensitization potential was associated with any of the test materials. The agency considers this study as supportive of the safety of 2 percent avobenzone in combination with oxybenzone and octyl methoxycinnamate.

Another report (Ref. 17) included a clinical study (protocol HST-7-84-32) designed to evaluate the phototoxicity potential of the 2 percent avobenzone formulation and 4 percent avobenzone in petrolatum. Seven female and three male adults (all Caucasian and in good health) between 18 and 63 years of age (mean age 29) enrolled in and completed the study. After the determination of each subject's MED, each test product was applied to two test sites on each subject's back, occluded for 24 hours, and then reapplied. Within 5 minutes after reapplication, one site for each product was shielded, and the other sites were irradiated with 1 MED of UVA/UVB radiation followed by 12 minutes of UVA radiation. One additional untreated test site was irradiated to serve as a control. Test sites were evaluated at 15 minutes, 24 hours, and 48 hours after irradiation on an increasing severity scale of 0 to +++. No positive reactions were reported for either test product. The agency considers this study as supportive of the safety of 2 percent avobenzone in combination with oxybenzone and octyl methoxycinnamate.

Three clinical studies (protocols 92-8, 92-7, and 92-45) (Ref. 17) evaluated the safety of a formulation identified as H03-146, which contained a combination of 4 percent avobenzone, 5 percent oxybenzone, 5 percent octyl

salicylate, and 10 percent octocrylene in a lotion vehicle. Each study included other unidentified sunscreen products as comparative controls.

Protocol 92-8 evaluated the irritation and sensitization potential of H03-146 in a modified Draize human repeat insult patch test (Ref. 12). The 6-week study involved induction and challenge phases separated by a 14-day rest (notreatment) period. During the 3-week induction phase, an occlusive patch impregnated with H03-146 was applied to the upper back of subjects on each Monday, Wednesday, and Friday (a total of nine applications). The patches were removed by the subjects 24 hours after application and evaluated 24-48 hours after patch removal. Responses were evaluated on a scale of 0 to 4 (increasing severity). After a 14-day period in which no patches were applied, a patch was then applied for 48 hours to a site adjacent to the original induction site on each subject and then evaluated. Although the protocol called for only one challenge patch, the procedure was repeated with an additional 48-hour patch.

Of the 217 subjects who began the study, 205 (90 percent female and 10 percent male) completed the study. Subjects were between 18 and 65 years of age with 83 percent between 18 and 49 years of age. Irritation scores of 1 (macular, faint erythema involving at least 25 percent of the test area) were reported for 1 to 5 subjects after the second through ninth induction applications and for one subject after the first challenge application only. No test formulation-induced allergies or irritation scores above 1 were reported. The investigator concluded that the test formulation had very low irritation potential and induced no allergies. The comment's statistical analysis of results from the four lotions used in the study (using Friedman tests) noted that no significant differences were found between the lotions in regard to irritation at any time point. The agency considers this study as supportive of the safety of 4 percent avobenzone in combination with oxybenzone, octyl salicylate, and octocrylene.

Protocol 92-7 evaluated the photoallergenicity potential of H03-146 using a four-phase protocol. During the first phase, the MED was determined by administering a series of five doses of UV radiation, using a xenon arc solar simulator, to determine the lowest UV radiation dose that produced minimally perceivable erythema 16 to 24 hours later. During the induction phase, occlusive patches were applied to each subject for 24 hours followed by three times the MED in irradiation (UVA plus

UVB). This procedure was repeated twice weekly for 3 weeks, followed by a 10-day rest (notreatment) phase. The fourth phase consisted of a challenge phase involving the application of duplicate 24-hour occlusive patches to a different site followed by 4 J/cm² UVA irradiation to one of the patched sites (the other served as an unirradiated control) plus an untreated site (an irradiated control). Responses were scored 48 and 72 hours later using a scale of 0 to 3 (increasing severity).

Of the 27 subjects who began the study, 26 (69 percent male and 31 percent female) completed the study. Subjects were between 18 and 37 years of age with 96 percent between 18 and 29 years of age. One out of the 26 subjects received a score of 1 (mainly erythema with little or no edema) during the challenge phase (no other reactions were reported). The reactive subject was rechallenged (with scores of 1 at 48 hours and 2 at 72 hours) and subsequently patched to the test formulation vehicle and the vehicle plus each (singly) of the active ingredients in common with the two products tested in this study (avobenzone, oxybenzone, and octyl salicylate). Octocrylene (present in only one of the formulations) was not individually tested. Although no reactions were reported with any of the components, rechallenge with the original test products again elicited a reaction in this subject in both irradiated and control sites. The observed response in this subject was reported to be an allergic contact dermatitis and not a photocontact allergy. The investigator concluded that the test formulation was not photoallergenic. The agency considers the photoallergenicity data in this study as supportive of the safety of 4 percent avobenzone in combination with oxybenzone, octyl salicylate, and octocrylene.

Protocol 92-45 evaluated the photoirritation/phototoxicity potential of H03-146. The test formulation was applied to duplicate sites on the lower or mid-back of subjects, allowed to dry, and covered with an occlusive dressing (an adjacent control site was occluded without any application). After 24 hours, one test formulation patch and the untreated control patch (the

irradiated control) were removed and immediately exposed to 20 J/cm² of UVA irradiation. The other test formulation patch served as an unirradiated control. The presence of a wheal-and-flare response or erythema 5 to 10 minutes after irradiation was recorded. Delayed erythema and edema were evaluated 24 and 48 hours after irradiation using a scale of 0 to 4 (increasing severity).

Six male and 14 female subjects began and completed the study. Subjects ranged from 18 to 48 years of age with 95 percent between 18 and 29 years of age. No immediate or delayed reactions suggestive of phototoxicity were reported. The investigator concluded that, under the conditions of the study, the test formulation did not possess a detectable phototoxicity potential in humans. The agency considers this study as supportive of the safety of 4 percent avobenzone in combination with oxybenzone, octyl salicylate, and octocrylene.

Preclinical tests (Ref. 16) on a 3 percent avobenzone formulation included studies of skin and eye irritation in the rabbit, oral and subcutaneous acute toxicity in the mouse and rat, skin penetration in the pig, mutagenicity (Ames test), and photocarcinogenicity in the mouse. Preclinical tests on avobenzone (in the rabbit, rat, mouse, guinea pig, excised human skin, bacteria, or yeast) included five acute toxicity studies, three subchronic toxicity studies, three sensitization studies, six skin penetration studies, three mutagenicity studies, a phototoxicity study, a photoallergy study, and a teratology study. The preclinical data report concluded that no adverse effects were observed other than slight to moderate species specific dermal irritations. The citizen petition (Ref. 2) also included several preclinical studies previously reviewed by the agency, an additional mutagenicity study involving chromosome analysis of human peripheral blood lymphocytes, and two photomutagenicity studies. The agency considers the preclinical safety data for avobenzone to be adequate.

The agency considers the safety data as providing sufficient evidence to demonstrate the low irritation,

allergenic sensitization, photoallergenic, and phototoxic potential of 2 to 3 percent avobenzone alone and in combination with the proposed monograph cinnamate, benzophenone, salicylate, and/or diphenylacrylate sunscreen ingredients. However, the agency does not consider the data adequate to allow avobenzone to be combined with any and all proposed monograph sunscreen ingredients without similar supportive data.

4. The petition maintained that avobenzone has extensive marketing experience in the United States based on the products marketed under approved NDA's. The petition also noted that avobenzone has been marketed "as a safe and effective UV-A sunscreen filter" throughout the world since 1981.

The comment (Refs. 16 and 17) provided a summary of adverse drug experience (ADE) data for its 3 percent avobenzone product covering the period from January 1993 through December 31, 1995. The comment estimated a total complaint rate of 0.0067 percent for this period (based on reported sales of "more than one million packages"). Annual percentages of the total ADE reports received during this period were reported as 44, 29, and 27 percent for the years 1993, 1994, and 1995, respectively. The majority of these complaints were typical of a topical sunscreen drug product. The highest "percent of total complaints" was reported in the categories of "lack of efficacy" (24 percent), "dermatitis/erythema/pruritus/edema" (19 percent), and "rash" (18 percent). "Urticaria" and "allergic reaction" accounted for 6.6 percent, and "all other" accounted for 22 percent. None of the reported ADE's was deemed serious in nature or confirmed as a causal relationship following complaint investigation. The actual number of complaints and an explanation of the "all other" category were not provided.

The agency's Spontaneous Reporting System (SRS) has 59 reports of ADE's associated with this 3 percent avobenzone product from 1993 through March 8, 1996 (all from domestic sources) (Ref. 18). These 59 reports represented the following 107 reactions (more than one reaction per report):

TABLE 1.—ADVERSE DRUG EXPERIENCE REPORTS

Reaction	Total	Reaction	Total
Rash	26	Eye pain	2
No drug effect	19	Vesicles, bullae	2
Application site reaction	10	Abnormal vision	2
Pruritus	8	Acne	1
		Arthrosis	1

TABLE 1.—ADVERSE DRUG EXPERIENCE REPORTS—Continued

Reaction	Total	Reaction	Total
Paresthesia	5	Chloasma	1
Skin discoloration	4	Conjunctivitis	1
Allergic reaction	3	Maculopapular rash	1
Facial edema	3	Peripheral edema	1
Pain	3	Lacrimation	1
Photosensitivity	3	Lymphadenopathy	1
Urticaria	3	Vasodilation	1
Contact dermatitis	2	Exfoliative dermatitis	1
Hyperesthesia	2		

The agency finds that these ADE reports do not signal any alarming trend in numbers or types of reactions. No serious outcomes were reported.

As discussed in section A., comment 1, of this document, avobenzone has been continuously marketed in the United States under NDA's for approximately 8 years. Although ADE incidence rates or drug safety comparisons cannot be made using SRS data alone, the agency believes the reports covering these approximately 8

years of OTC use support general recognition of the safety of avobenzone.

5. The comment contended that the studies of effectiveness, phototoxicity, and photosensitization contained in its approved NDA show that its 3 percent avobenzone product remains effective and safe after exposure to UVA/UVB radiation and/or UVA radiation alone. The comment stated that clinical testing demonstrated that neither avobenzone nor any potential photodegradation products exhibited any phototoxic or photosensitization potential. The

comment concluded that no performance or safety issues were identified relative to potential negative effects of photodegradation and that outdoor tests further confirm that performance was maintained despite any minor potential photodegradation or photolability.

The comment included the results from an in vitro assessment of the photostability of four avobenzone-containing formulations (Table 2) (Ref. 17).

TABLE 2.—AVOBENZONE FORMULATIONS

Ingredient	H03-084	H03-087	H03-088	H03-089
Avobenzone	4.0%	4.0%	4.0%	4.0%
Octocrylene	0.0%	5.0%	3.0%	3.0%
Octyl methoxycinnamate	7.5%	7.5%	7.5%	7.5%
Octylsalicylate	5.0%	5.0%	5.0%	5.0%
Oxybenzone	5.0%	4.0%	4.0%	4.0%

The assessment evaluated the amount of absorbance retained at three wavelengths (305 nm, 335 nm, and 355 nm) in thin films of each test formulation after exposure to direct sunlight in Memphis, TN, from approximately 10 am to 3 pm during the month of March. Measurements were made after 0, 1, 2.5, and 5 hours of exposure. After 5 hours of exposure, the following amounts of absorbance (percent recovered) were reported (Table 3):

TABLE 3.—PERCENT ABSORBANCE RECOVERED

Formula	308nm	335nm	355nm
H03-084	63.1	56.0	40.8
H03-087	70.4	61.3	44.0
H03-088	68.5	60.8	44.9
H03-089	68.0	60.0	43.8

The photostability assessment report concluded that combinations of these five ingredients are sufficiently stable during sunlight exposure so that, even after 5 hours of exposure, the majority

of the total original absorbance (and sunscreen effectiveness) is maintained. The report also noted that appropriate formulation techniques using monograph sunscreen ingredients can result in photostable formulations.

As with other sunscreen ingredients, the agency has concerns related to the photostability of avobenzone alone and in combinations, the safety of photodegradation products, and the effect of photodegradation on product effectiveness (Refs. 12 and 15). FDA believes that the in vitro photostability assessment (which did not utilize the marketed formulation) may indicate a significant amount of photodegradation in the test formulations after 5 hours. No information was provided concerning the nature of the photodegradation products or their specific short-term or long-term safety profiles. Although these questions remain, the agency is presently not aware of any safety or effectiveness problems associated with the photostability of avobenzone alone or in combinations with the proposed monograph cinnamate, benzophenone, salicylate, or diphenylacrylate

sunscreen ingredients. The agency intends to address the issue of photostability of all OTC sunscreen active ingredients in a future issue of the Federal Register.

C. Effectiveness of Avobenzone

6. The petition asserted that avobenzone is generally recognized as an effective UVA radiation sunscreen ingredient, both alone and in combination with other UVA and UVB radiation sunscreen ingredients, based on published and unpublished studies and marketing experience with NDA-approved avobenzone-containing sunscreen drug products. The petitioner provided published studies in support of the effectiveness of avobenzone (Refs. 2 and 3).

J. M. Menter (Ref. 19) stated that avobenzone has good blocking throughout the UVA region, with maximum absorbance at 340 to 350 nm. Gange, et al. (Ref. 20) and Lowe, et al. (Ref. 21), assessed the UVA radiation protection provided by a combination of 3 percent avobenzone plus 7 percent padimate O in humans photosensitized

with 8-methoxsalen (8-MOP). Both studies demonstrated that the combination was effective in providing protection against UVA radiation and provided significantly greater UVA radiation protection than either avobenzone alone or the other tested sunscreen formulations that did not contain avobenzone. Kaidbey and Barnes (Ref. 22) assessed the UVA radiation protection provided by various sunscreen formulations by evaluating immediate pigment darkening in humans. Products tested included a combination of avobenzone and oxybenzone and a combination of avobenzone, octyl salicylate, oxybenzone, and octocrylene (ingredient concentrations were not given). The study demonstrated that test formulations containing avobenzone plus oxybenzone provided more effective UVA radiation protection than the formulations without avobenzone, and that the multi-ingredient avobenzone-containing combination product appeared to be significantly more effective than the tested marketed products.

Urbach (Ref. 23) and Lowe (Ref. 24) assessed the UVA radiation protection of 3 percent avobenzone alone and in combination with 7.5 percent octyl methoxycinnamate in humans photosensitized with 8-MOP. Urbach also tested 2 percent avobenzone alone and in combination with 7.5 percent octyl methoxycinnamate. The studies demonstrated that 2 to 3 percent avobenzone (alone and in combination with octyl methoxycinnamate) was effective in providing protection against UVA radiation and that the combination product was significantly more effective than octyl methoxycinnamate alone in reducing UVA erythema. The petition also noted the agency's previous approval of NDA's for a sunscreen product containing 3 percent avobenzone and 7 percent padimate O, and a sunscreen product containing 3 percent avobenzone, 3 percent oxybenzone, and 7.5 percent octyl methoxycinnamate.

In the notice of proposed rulemaking for OTC sunscreen drug products, the agency proposed that an OTC sunscreen ingredient must have an absorption spectrum extending to 360 nm or above in order for a product containing that ingredient to display UVA radiation protection claims in its labeling (58 FR 28194 at 28233). The agency also stated that the product would have to demonstrate meaningful UVA radiation protection by satisfying "yet to be established" UVA radiation testing procedures that would be included in the monograph. The agency described

suggested interim UVA radiation test procedures in the proposed rule (58 FR 28194 at 28248 to 28250) and in a notice of public meeting (59 FR 16042) to discuss such testing procedures.

Although the agency continues to evaluate data and information relative to a monograph method for determining UVA radiation protection, it finds that the submitted studies provide sufficient evidence of the effectiveness of 2 to 3 percent avobenzone in protecting against UVA radiation. The agency also finds that the studies demonstrate that 2 to 3 percent avobenzone in combination with appropriate proposed monograph sunscreen ingredients can provide "broad spectrum" protection (58 FR 28194 at 28232 and 28233). Any avobenzone-containing sunscreen drug product bearing this claim requires both UVA radiation protection testing and SPF testing of the finished product. The agency plans to propose a monograph method for determining UVA radiation protection (both without and following water immersion or perspiration) in a future issue of the Federal Register. Until the agency proposes a monograph UVA radiation testing method, the agency considers testing procedures similar to those described by R. W. Gange, et al. (Ref. 20) and N. J. Lowe, et al. (Ref. 21) as adequate for determining the UVA radiation protection potential of a finished OTC sunscreen drug product.

D. Conclusions

The agency considers the safety studies discussed in section B., comment 3 of this document as providing sufficient evidence to demonstrate the low irritation, allergenic sensitization, photoallergenic, and phototoxic potential of 2 to 3 percent avobenzone alone and in combination with the proposed Category I cinnamate, benzophenone, diphenylacrylate, and/or salicylate sunscreen ingredients. ADE data have not revealed any alarming trends in the numbers or types of reactions nor any serious outcomes with this combination of sunscreen ingredients. The agency considers the warning statements proposed in § 352.52(c)(1) as adequate for OTC sunscreen drug products that contain avobenzone (e.g., "Discontinue use if signs of irritation or rash appear. If irritation or rash persists, consult a doctor."). In addition, adequate and well-controlled studies using currently accepted methods demonstrated the effectiveness of 2 to 3 percent avobenzone (alone and in combination with some proposed monograph sunscreen ingredients) in providing protection against UVA radiation. The

agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 12).

FDA recognizes that the photostability of any topical product, particularly a sunscreen drug product, is an important safety and effectiveness consideration. Although more information will ultimately be required before the nature and safety profiles of avobenzone photodegradation products can be thoroughly assessed, the agency is presently neither aware of any known toxic breakdown product(s) for avobenzone formulations combined with proposed monograph sunscreen ingredients, nor is the agency aware of any systemic toxicity for avobenzone from a photodegradation product. FDA intends to further address the issue of photostability (and other aspects of final formulation safety testing) of all OTC sunscreen active ingredients in a future issue of the Federal Register.

In the notice of proposed rulemaking for OTC sunscreen drug products, the agency discussed minimum concentration requirements for OTC sunscreen ingredients (58 FR 28194 at 28214). The agency concluded that effectiveness requirements (i.e., final product testing) make the use of minimum concentration requirements unnecessary for single ingredient products. However, because of its concern that each ingredient in a combination drug product contributes to the overall effectiveness of the product, the agency concluded that minimum concentration requirements are necessary for combination sunscreen products (i.e., until a method is developed that can demonstrate the contribution of each OTC sunscreen ingredient in a combination product).

Thus, the agency considers the data submitted by the petition and the comment as supportive of the safety and effectiveness of up to 3 percent avobenzone alone (if the finished product provides at least an SPF 2) and 2 to 3 percent avobenzone in combination with cinoxate, diethanolamine methoxycinnamate, dioxybenzone, homosalate, octocrylene, octyl methoxycinnamate, octyl salicylate, oxybenzone, sulisobenzene, and/or trolamine salicylate (at concentrations for permitted combinations of sunscreen active ingredients in § 352.20 of the proposed rule for OTC sunscreen drug products). Accordingly, the agency is proposing to amend the proposed rule for OTC sunscreen drug products to include avobenzone in §§ 352.10 and 352.20.

E. Enforcement Status

No OTC drug advisory review panel considered avobenzone or avobenzone-containing combination drug products. In accordance with the agency's Compliance Policy Guide 7132b.16 (which describes the agency's enforcement policy regarding the marketing of OTC combination drug products not reviewed by an OTC drug advisory review panel) (Ref. 25), these combinations may not be marketed until the agency states by notice in the Federal Register that the combinations have been tentatively determined to be generally recognized as safe and effective and that OTC marketing of the combinations will be permitted under specified conditions. Before marketing may begin, the comment period for this proposal must end and then another Federal Register notice must be published setting forth the agency's determination concerning interim marketing before publication of the final rule. Any such interim marketing that might be allowed, pending issuance of the final monograph, is subject to the risk that the agency may adopt a different position in the final monograph that could require relabeling, recall, or other regulatory action.

One comment maintained that there is a real and significant public health need for widely available avobenzone-containing sunscreen products that provide protection against the hazards associated with UVA and UVB radiation. To provide manufacturers with the extensive lead time necessary to make avobenzone-containing sunscreen products available by the 1997 summer season, the comment requested that the agency complete its determination concerning interim marketing no later than October 1, 1996.

The agency considers it in the public interest to proceed with a determination of the marketing status of avobenzone as soon as possible because the addition of this ingredient to the proposed monograph would provide for wide availability of new combination sunscreen products that will provide consumers with broad spectrum protection. Accordingly, the agency is requesting comments regarding this proposed amendment in a period of 30 days (shorter than the normal 90 days) so that the marketing status of OTC avobenzone-containing sunscreen drug products can be determined in an expeditious manner.

F. Labeling

The petition recommended using approved NDA labeling, which

addresses both the UVA and UVB protection of the product, as appropriate for OTC sunscreen drug products containing avobenzone. Accordingly, in addition to applicable labeling proposed in §§ 352.50 through 352.60 (58 FR 28194 at 28296 to 28298), the agency is proposing that the labeling for sunscreen drug products containing avobenzone may include under "Indications" any of the following phrases: (1) "Broad spectrum sunscreen," (2) "Provides (select one of the following: "UVB and UVA," or "broad spectrum") protection," (3) "Protects from UVB and UVA (select one of the following: "Rays" or "radiation")," (4) (Select one of the following: "Absorbs," "Protects," "Screens," or "Shields") "throughout the UVA spectrum," (5) "Provides protection from the UVA rays that may contribute to skin damage and premature aging of the skin."

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

- (1) Comment No. CP4, Docket No. 78N-0038, Dockets Management Branch.
- (2) Comment No. CP5, Docket No. 78N-0038, Dockets Management Branch.
- (3) Comment No. C234, Docket No. 78N-0038, Dockets Management Branch.
- (4) Comment No. LET96, Docket No. 78N-0038, Dockets Management Branch.
- (5) Comment No. LET101, Docket No. 78N-0038, Dockets Management Branch.
- (6) Comment No. LET127, Docket No. 78N-0038, Dockets Management Branch.
- (7) Comment No. LET130, Docket No. 78N-0038, Dockets Management Branch.
- (8) Comment No. SUP18, Docket No. 78N-0038, Dockets Management Branch.
- (9) Comment No. LET95, Docket No. 78N-0038, Dockets Management Branch.
- (10) Comment No. LET105, Docket No. 78N-0038, Dockets Management Branch.
- (11) Comment No. LET118, Docket No. 78N-0038, Dockets Management Branch.
- (12) Comment No. LET141, Docket No. 78N-0038, Dockets Management Branch.
- (13) Comment No. MM11, Docket No. 78N-0038, Dockets Management Branch.
- (14) Comment No. MM12, Docket No. 78N-0038, Dockets Management Branch.
- (15) Comment No. MM13, Docket No. 78N-0038, Dockets Management Branch.
- (16) Comment No. LET138, Docket No. 78N-0038, Dockets Management Branch.
- (17) Comment No. SUP20, Docket No. 78N-0038, Dockets Management Branch.
- (18) Food and Drug Administration, Center for Drug Evaluation and Research, Adverse Drug Event Line Listing for Shade UVAGuard® SPF 15 Lotion for the years 1993 through March 1996, Docket No. 78N-0038, Dockets Management Branch.

(19) Menter, J. M., "Recent Developments in UVA Photoprotection," *International Journal of Dermatology*, 29:389-394, 1990.

(20) Gange, R. W., et al., "Efficacy of a Sunscreen Containing Butyl Methoxydibenzoylmethane Against Ultraviolet A Radiation in Photosensitized Subjects," *Journal of the American Academy of Dermatology*, 15:494-499, 1986.

(21) Lowe, N. J., et al., "Indoor and Outdoor Efficacy Testing of a Broad Spectrum Sunscreen Against Ultraviolet A Radiation in Psoralen-sensitized Subjects," *Journal of the American Academy of Dermatology*, 17:224-230, 1987.

(22) Kaidbey, K. H., and A. Barnes, "Determination of UVA Protection Factors by Means of Immediate Pigment Darkening in Normal Skin," *Journal of the American Academy of Dermatology*, 25:262-266, 1991.

(23) Urbach, F. D., "Protocol #HPT-670," unpublished report in C234, Docket No. 78N-0038, Dockets Management Branch.

(24) Lowe, N. J., "Protocol #GL/87-1," unpublished report in C234, Docket No. 78N-0038, Dockets Management Branch.

(25) "Food and Drug Administration Compliance Policy Guide 7132b.16," in OTC vol. 06ATFM, Docket No. 78N-0038, Dockets Management Branch.

IV. Effective Date

The agency advises that any final rule for OTC sunscreen drug products resulting from this proposed rule will be effective 12 months after its date of publication in the Federal Register. Any notice of enforcement policy allowing interim marketing will state its effective date. On or after the stated dates, any OTC drug product that is not in compliance with the notice of enforcement policy or the final rule may not be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved application. Further, any OTC drug product subject to the final rule that is repackaged or relabeled after the effective date of the rule must be in compliance with the rule regardless of the date that the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the final rule at the earliest possible date.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive

impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and, thus, is not subject to review under the Executive Order.

Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of a rule on small entities. This proposed rule would allow manufacturers to market avobenzone-containing sunscreen drug products without having to obtain an approved NDA, as is currently required, and thus would be beneficial to small entities. The proposed rule would also have a positive impact on the availability and marketing of broad spectrum OTC sunscreen drug products by allowing additional products to be marketed. Thus, this proposed rule will not impose a significant economic burden on affected entities. Therefore, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commissioner of Food and Drugs certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on manufacturers of OTC sunscreen drug products. Comments regarding the impact of this rulemaking on such manufacturers should be accompanied by appropriate documentation. The agency is providing a period of 30 days from the date of publication of this proposed rulemaking in the Federal Register for comments to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

VI. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed amendment to the tentative final monograph for OTC sunscreen drug products is a "public disclosure of information originally supplied by the federal government to the recipient for

the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Public Comment

Interested persons may, on or before October 16, 1996, submit written comments to the Dockets Management Branch (address above). Desk copies of these written comments should be submitted to Debra L. Bowen, Center for Drug Evaluation and Research (HFD-560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Written comments on the agency's economic impact determination may be submitted on or before October 16, 1996. Three copies of all comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects 21 CFR Part 352

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 352 (proposed in the Federal Register of May 12, 1993, 58 FR 28194) be amended as follows:

PART 352—SUNSCREEN DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 352 continues to read as follows:

Authority: Secs. 201, 501, 502, 503, 505, 510, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 353, 355, 360, 371).

2. Section 352.10 is amended by redesignating paragraphs (b) through (t) as paragraphs (c) through (u) and by adding new paragraph (b) to read as follows:

§ 352.10 Sunscreen active ingredients.

* * * * *

(b) Avobenzone up to 3 percent.

* * * * *

3. Section 352.20 is amended by revising paragraphs (a) and (b) to read as follows:

§ 352.20 Permitted combinations of active ingredients.

(a) Combinations of sunscreen active ingredients.

(1) Two or more sunscreen active ingredients identified in § 352.10(a), and (c) through (u) may be combined when used in the concentrations established for each ingredient in paragraph (a)(3) of this section and the finished product has a minimum sun protection factor value of not less than 2 as measured by the testing procedures established in subpart D of this part.

(2) Two or more sunscreen active ingredients identified in § 352.10(b), (c), (f), (i), (k), (l), (m), (n), (o), (s), and (u) may be combined when used in the concentrations established for each ingredient in paragraph (a)(3) of this section and the finished product has a minimum sun protection factor value of not less than 2 as measured by the testing procedures established in subpart D of this part.

(3) Sunscreen active ingredients shall be used within the following concentrations when used in combination with another sunscreen or when the combination is used with any other permitted active ingredient:

- (i) [Reserved].
- (ii) Avobenzone 2 to 3 percent.
- (iii) Diethanolamine methoxycinnamate 8 to 10 percent.
- (iv) Digalloyl trioleate 2 to 5 percent.
- (v) Dioxybenzone 3 percent.
- (vi) Ethyl .4-[bis(hydroxypropyl)] aminobenzoate 1 to 5 percent.
- (vii) Glyceryl aminobenzoate 2 to 3 percent.
- (viii) Homosalate 4 to 15 percent.
- (ix) Lawsons 0.25 percent with dihydroxyacetone 3 percent.
- (x) Menthyl anthranilate 3.5 to 5 percent.
- (xi) Octocrylene 7 to 10 percent.
- (xii) Octyl methoxycinnamate 2.0 to 7.5 percent.
- (xiii) Octyl salicylate 3 to 5 percent.
- (xiv) Oxybenzone 2 to 6 percent.
- (xv) Padimate 0 1.4 to 8 percent.
- (xvi) Phenylbenzimidazole sulfonic acid 1 to 4 percent.
- (xvii) Red petrolatum 30 to 100 percent.
- (xviii) Sulisobenzene 5 to 10 percent.
- (xix) Titanium dioxide 2 to 25 percent.
- (xx) Trolamine salicylate 5 to 12 percent.
- (b) Sunscreen and skin protectant combinations.
- (1) Any single sunscreen active ingredient when used in the

concentration established in § 347.10 may be combined with one or more skin protectant active ingredients identified in § 347.10(a), (d), (e), (f), (h), (i), and (j) of this chapter, provided the finished product has a minimum SPF value of not less than 2 as measured by the testing procedures established in subpart D of this part and provided the product is labeled according to § 352.60.

(2) Two or more sunscreen active ingredients when used in the concentrations established in § 352.20(a)(3) may be combined with one or more skin protectant active ingredients identified in § 347.10(a), (d), (e), (f), (h), (i), and (j) of this chapter, provided the finished product has a minimum SPF value of not less than 2 as measured by the testing procedures established in subpart D of this part and provided the product is labeled according to § 352.60.

4. Section 352.52 is amended by adding a new paragraph (b)(2)(vi) and by revising the headings of paragraphs (b)(3), (c)(2), (d)(3) and (e)(5) to read as follows:

§ 352.52 Labeling of sunscreen drug products.

* * * * *

(b) * * *

(2) * * *

(vi) *For products containing the active ingredient identified in § 352.10(b), the following labeling statements may be used—*(A) “Broad spectrum sunscreen.”

(B) “Provides” (select one of the following: “UVB and UVA” or “broad spectrum”) “protection.”

(C) “Protects from UVB and UVA” (select one of the following: “Rays” or “radiation”).

(D) (Select one of the following: “Absorbs,” “Protects,” “Screens,” or “Shields”) “throughout the UVA spectrum.”

(E) “Provides protection from the UVA rays that may contribute to skin damage and premature aging of the skin.”

(3) *For products containing the active ingredient identified in § 352.10(t) that provide an SPF of 12 to 30, the following labeling statement may be used.* * * *

(c) * * *

(2) *For products containing the ingredient identified in § 352.10(j)—* * *

* * * * *

(d) * * *

(3) *For products containing the ingredient identified in § 352.10(j).* * * *

* * * * *

(e) * * *

(5) *For products containing the active ingredient identified in § 352.10(t) that*

provide an SPF of 12 to 30, the following labeling statement may be used. * * *

* * * * *

Dated: September 5, 1995.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96-23547 Filed 9-13-96; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA-152P]

Schedules of Controlled Substances: Proposed Placement of Remifentanyl into Schedule II

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the deputy Administrator of the Drug Enforcement Administration (DEA) to place the narcotic drug, remifentanyl and salts thereof, into Schedule II of the Controlled Substances Act (CSA). The Deputy Administrator has received a recommendation from the Assistant Secretary for Health of the Department of Health and Human Services (DHHS) that remifentanyl, and salts thereof, be added to Schedule II. This rule, if finalized, would require that the manufacture, distribution, dispensing, security, registration, record keeping, inventory, exportation and importation of remifentanyl, and salts thereof, be subject to the CSA regulatory control mechanisms and criminal sanctions applicable to Schedule II narcotic substances.

DATES: Comments, objections and requests for a hearing must be submitted on or before October 16, 1996.

ADDRESSES: Comments, objections and requests for a hearing should be submitted in quintuplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, DC 20537; Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Acting Chief, Drug and Chemical Evaluation Section, 202-307-7183.

SUPPLEMENTARY INFORMATION: The Deputy Administrator of the DEA received a letter dated August 23, 1996, from the Assistant Secretary for Health, on behalf of the Secretary of the DHHS, recommending that the substance,

remifentanyl, and salts thereof, be placed into Schedule II of the CSA (21 U.S.C. 801 et seq.). Remifentanyl hydrochloride, a short-acting, potent μ -opioid, was approved recently by the Food and Drug Administration (FDA) for marketing as an intravenous analgesic agent for use during the induction and maintenance of general anesthesia and monitored anesthesia care.

Enclosed with the letter from the Assistant Secretary was a document prepared by the FDA entitled “Basis for the Recommendation for Controlling Remifentanyl and its Salts in Schedule II of the Controlled Substances Act.” The document contained a review of the factors which the CSA requires the Secretary to consider [21 U.S.C. 811(b)] and the summarized recommendations regarding the placement of remifentanyl into Schedule II of the CSA.

The factors considered by the Assistant Secretary for Health with respect to the drug remifentanyl were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effect;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under the CSA.

Relying on the scientific and medical evaluation and the recommendation of the Assistant Secretary of Health, received in accordance with section 201(f) of the Act [21 U.S.C. 811(f)], the Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act [21 U.S.C. 811(a) and 811(b)], finds that:

(1) Based on information now available, remifentanyl has a high potential for abuse;

(2) Remifentanyl has a currently accepted medical use in treatment in the United States; and

(3) Abuse of remifentanyl may lead to severe psychological or physical dependence.

Interested persons are invited to submit their comments, objections or requests for a hearing, in writing, with regard to this proposal. Requests for a hearing should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be

submitted to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537. Attention: DEA Federal Register Representative. In the that comments, objections, or requests for a hearing raise one or more issues which the Deputy Administrator finds warrants a hearing, the Deputy Administrator shall order a public hearing by notice in the Federal Register, summarizing the issues to be heard and setting the time for the hearing.

In accordance with the provisions of the CSA [21 U.S.C. 811(a)], this action is a formal rule making "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, section 3(d)(1).

The Deputy Administrator, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small-business entities. Remifentanyl is a new drug in the United States; recent approval of the product and its labeling by the FDA will allow it to be marketed once it is placed into Schedule II of the CSA. Remifentanyl, a potent opioid drug, can produce drug dependence of the morphine type. This drug is likely to be diverted and abused if access to it is not closely monitored. The labeled indication for use of remifentanyl is to provide analgesia during the induction and maintenance of general anesthesia. It is to be administered by trained professionals in monitored anesthesia care settings. Schedule II narcotic control will provide the necessary drug monitoring. Small-business entities which are likely to handle this drug maintain a Schedule II narcotic registration with the DEA. This proposed rule, if finalized, will allow these entities to have access to a new pharmaceutical product.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule, if finalized, does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, drug traffic control, narcotics, prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100) and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

§ 1308.12 [Amended]

2. Section 1308.12 would be amended by redesignating the existing paragraph (c)(26) as (c)(27) and adding a new paragraph (c)(26) to read as follows:

§ 1308.12 Schedule II.

* * * * *

(c) * * *

(26) Remifentanyl 9739

* * * * *

Dated: September 9, 1996.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 96-23557 Filed 9-13-96; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-29-95]

RIN 1545-AT60

Available Unit Rule; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations concerning the low-income housing credit.

DATES: The public hearing originally scheduled for September 17, 1996, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Christina Vasquez of the Regulations

Unit, Assistant Chief Counsel (Corporate), (202) 622-6808 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 42 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the Federal Register for Thursday, May 30, 1996 (61 FR 27036), announced that a public hearing on the proposed regulations would be held on Tuesday, September 17, 1996, beginning at 10:00 a.m., room 2615, 1111 Constitution Avenue NW. Washington, DC.

The public hearing scheduled for Tuesday, September 17, 1996, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 96-23569 Filed 9-11-96; 4:54 pm]

BILLING CODE 4830-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA041-5005b; FRL-5603-6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia for the purpose of establishing 1990 ozone base year emission inventories for the Virginia ozone nonattainment areas. In the Final Rules section of this Federal Register, EPA is approving the Commonwealth's SIP revisions as a direct final rule without prior proposal because the Agency views them as noncontroversial SIP revisions 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 this proposed rule, no further activity is contemplated in relation to this rule. If EPA 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. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 16, 1996.

ADDRESSES: Comments may be mailed to David Arnold, Section Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566-2182, at the EPA Region III office, or via e-mail at quinto.rose@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title (Virginia Emission Inventory) which is located in the Rules and Regulations section of this Federal Register.

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

Dated: August 21, 1996.

W. Michael McCabe,
Regional Administrator, Region III.

[FR Doc. 96-23263 Filed 9-13-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[VA016-5917b; FRL-5603-4]

Approval and Promulgation of Air Quality Implementation Plans; Virginia Emission Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the Commonwealth of Virginia for the purpose of establishing 1990 ozone base year emission inventories for the Virginia ozone nonattainment areas. In the Final Rules section of this Federal Register, EPA is approving the Commonwealth's SIP revisions as a direct final rule without prior proposal because the Agency views them as noncontroversial SIP revisions 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 this proposed rule, no further activity is contemplated in relation to this rule. If EPA 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. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 16, 1996.

ADDRESSES: Comments may be mailed to David Arnold, Section Chief, Ozone/CO & Mobile Sources Section, Mailcode 3AT21, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the EPA office listed above; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 566-2182, at the EPA Region III office, or via e-mail at quinto.rose@epamail.epa.gov. While information may be requested via e-mail, comments must be submitted in writing to the above Region III address.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title (Virginia Emission Inventory) which is located in the Rules and Regulations section of this Federal Register.

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

Dated: August 21, 1996.

W. Michael McCabe,
Regional Administrator, Region III.

[FR Doc. 96-23261 Filed 9-13-96; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 300

[FRL-5608-3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of Intent to Delete the Twin Cities Air Force Reserve Base, Small Arms Range Landfill, Minneapolis-St. Paul International Airport Site, from the National Priorities List.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA), Region 5, announces its intent to delete the Twin Cities Air Force Reserve Base, Small Arms Range Landfill, Minneapolis-St. Paul International Airport Site (SARL), from the National Priorities List (NPL) and requests public

comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. U.S. EPA and the State of Minnesota Pollution Control Agency (MPCA) have determined that the SARL poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning the proposed deletion of the SARL from the NPL must be submitted on or before October 16, 1996.

ADDRESSES: Comments may be mailed to: Thomas Bloom, U.S. Environmental Protection Agency, Region 5, Mail Code SR-6J, 77 West Jackson Boulevard, Chicago, IL 60604. Comprehensive information on the SARL is available for viewing through the site information repositories at the following locations: Southdale Public Library, 7001 York Avenue South, Edina, MN 55435 934th Air Wing/Public Affairs Office, 760 Military Highway, Minneapolis-St. Paul IAP Air Reserve Station, MN 55450-2000

FOR FURTHER INFORMATION CONTACT: Thomas Bloom, U.S. Environmental Protection Agency, Region 5, Mail Code SR-6J, 77 West Jackson Boulevard, Chicago, IL 60604, (312) 886-1967

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. NPL Deletion Criteria
- III. Deletion Procedures
- IV. Basis for Intended Site Deletion
- V. Conclusion

I. Introduction

The U.S. EPA, Region 5 announces its intent to delete the Twin Cities Air Force Reserve Base, Small Arms Range Landfill (SARL) from the National Priorities List (NPL), Appendix B of National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, and requests comments on this deletion. U.S. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. As described in Sec. 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

The U.S. EPA will accept comments on the proposal to delete the SARL for thirty days after publication of this document in the Federal Register.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. U.S. EPA, in consultation with the State of Minnesota, has concluded that the Site meets the following criteria for site deletion:

- (i) Responsible parties or other parties have implemented all appropriate response actions required; and
- (ii) All appropriate response under CERCLA has been implemented, and no further action by responsible parties is appropriate.

Even if a site is deleted from the NPL, where hazardous substances remain at the site above levels that allow for unlimited use and unrestricted exposure, U.S. EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site. If new information becomes available which indicates a need for further action, U.S. EPA may initiate remedial actions. Whenever there is significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazardous Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of the SARL: (1) U.S. EPA, Region 5 issued a Record Of Decision (ROD) which addressed the site conditions, quality assurance and control during construction, and technical criteria for satisfying the completion requirements; (2) a notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials announcing the commencement of a 30-day public comment period on U.S. EPA's Notice of Intent to Delete; (3) All relevant documents have been made available for public review in the local site information repositories; and MPCA has concurred with the proposed deletion decision.

Deletion of the SARL from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for information purposes and to assist Agency management. As mentioned in Section VI of this document, Sec. 300.425(e)(3) of the NCP states that deletion of a site from the NPL does not preclude eligibility for future response actions.

For deletion of the SARL, U.S. EPA's Regional Office will accept and evaluate public comments of U.S. EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final action in the Federal Register. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional office.

IV. Basis for Intended Site Deletion

The following site summary is the Agency's rationale for the proposal to delete Twin Cities Air Force Reserve Base, SARL, from the NPL.

The SARL is a 2 acre landfill located southeast of the Minneapolis-St. Paul International Airport in Hennepin County, Minneapolis, MN. The SARL is bounded on the south by Interstate Highway 494, on the south and east by the Minnesota River and Fort Snelling State Park, and on the west and north by Minnesota Highway 5, Fort Snelling Military Reservation, and the airport.

There are no residential areas within one mile of the SARL. The SARL is within the 100-year flood plain of the Minnesota River. The last flooding event occurred in 1993.

The SARL was used as a landfill by the USAFR from 1963 to 1972. General base refuse and industrial wastes formed the majority of the material disposed of in the landfill. Industrial wastes included approximately 100 gallons of painting waste sludge, 800 pounds of paint filters, and 100 to 200 gallons of sludge from leaded aviation gasoline (AVGAS). The SARL was closed in 1972 and covered with approximately six inches to one foot of native soil. In 1983, the Minnesota Department of Transportation (MNDOT) completed construction of a stormwater retention and settling pond in the area immediately east of the landfill. The SARL was placed on the National Priorities List (NPL) in 1987.

The Twin Cities Air Force Reserve Base, Minneapolis-St. Paul International Airport, was listed on the Minnesota Permanent List of Priorities (PLP) in November 1986. The SARL is one of fourteen areas of concern on the Twin Cities Air Force Reserve Base. Currently, response actions have been completed at ten of the fourteen areas of concern. Although MPCA concurs with the U.S. EPA's decision to delete the SARL from the NPL, MPCA does not intend to delete the Twin Cities Air Force Reserve

Base from the PLP, until environmental concerns in the three remaining areas of concern are addressed.

The SARL was first identified as a possible hazardous waste site after the Phase I Installation Restoration Program (IRP) investigations were conducted in 1983. Results of preliminary investigations conducted in 1986, indicated that contaminated groundwater was present and possibly migrating from the SARL. The SARL was placed on the NPL because of a suspected release to the groundwater based on the preliminary investigations.

In 1988 and 1989, a Remedial Investigation (RI) was conducted to confirm the suspected release, further characterize the site, preform a baseline risk assessment and obtain data necessary for evaluation of remedial alternatives. Results concluded that inorganic contaminants (arsenic, beryllium, cadmium, lead, nickel, selenium, and vanadium) were present in groundwater at levels exceeding the Safe Drinking Water Act (SDWA), Maximum Contaminant Levels (MCLs), and State of Minnesota groundwater standards.

Under the current risk scenario, human health risks due to carcinogenic and non-carcinogenic contaminants were found to exist in the range considered acceptable to the U.S. EPA and MPCA. Under the future use risk scenario elevated carcinogenic risk and an increased non-carcinogenic risk from ingestion of soil and groundwater was indicated. However, because groundwater is not a current source of drinking water and is not expected to be in the future, potential future risks are considered to be acceptable.

Investigation results of surface water and stormwater runoff indicate that surface water and stormwater are not being effected by site conditions. Therefore, there is no risk to human health and the environment due to surface water and stormwater runoff.

A Feasibility Study (FS) was completed June 1991. An array of remedial alternatives which addressed the two remedial objectives were developed. The remedial objectives are to prevent risks to humans and environmental receptors through contact with landfill components; and to prevent risks to humans and environmental receptors from contaminants in groundwater. Remedial alternatives were evaluated based nine criteria: effectiveness in protecting human health and the environment; compliance with federal and state environmental regulations; short and long-term effectiveness; permanence; reduction of toxicity, mobility, and

volume; implementability; cost; State and community acceptance.

A Record of Decision (ROD) was signed on March 31, 1992, by U.S. EPA Regional Administrator, which selected Natural Attenuation, Maintenance, Site Access Restrictions, and Groundwater and Surface Water Monitoring. The MPCA concurred with the remedy selected in the ROD. The ROD concluded that due to site environmental characteristics, natural attenuation of low level contamination would occur through adsorption, biodegradation, physical/chemical degradation and dispersion. Groundwater and surface water monitoring were necessary to assess the quality of groundwater and surface water immediately downgradient from the landfill and evaluate the effectiveness of natural attenuation. Access restrictions and site maintenance were included to achieve the remedial objective of protecting human health and the environment from contact with landfill components.

Construction of the fence was completed on September 21, 1992. The Sampling and Analysis Plan (SAP) for monitoring the SARL groundwater and surface water and installation of one monitoring well were completed by September 1992.

Groundwater and surface water monitoring was conducted every two months during 1993. A revised monitoring schedule of quarterly monitoring was approved and implemented in 1994. Groundwater and surface water monitoring results, and a review of all data collected during the history of the SARL, confirm that natural attenuation has proven to be an effective remedial action at the site. Site access restrictions (fence) and site maintenance have proven effective in protecting human health and the environment from contact with landfill components.

The RI report was presented to the community in July 1990. The FS report and Proposed Plan were presented to the community in August 1991. These documents were available for public comment through the administrative record in two information repositories. The information repositories are maintained at the Southdale Public Library, Edina, MN, and at the Public Affairs Office located at the Minneapolis-St. Paul IAP Air Reserve Station.

A public meeting to explain the proposed remedial action was held on September 5, 1991. Representatives from the USAFR, U.S. EPA and MPCA answered questions about remedial activities at the site. One member of the

community attended. One comment was received from the MPCA public affairs officer regarding improvement of the USAFR community relations program. A Responsiveness Summary addressing the comment is attached to the ROD.

In 1994, USAFR re-initiated community relation activities for the purpose of forming a Restoration Advisory Board (RAB). The RAB was to consist of USAFR, U.S. EPA, MPCA, Technical Review Committee (TRC) members and the surrounding community. The purpose of the RAB is to enhance community relations at Department of Defense sites.

Notice of formation of the RAB was placed in local newspapers and flyers were sent out to the local community inviting community participation. At that time, there was no response from the community. Newspaper notices inviting community participation have been issued annually. Presently, there has been no response from the community.

How Twin Cities Reserve Air Force Base—SARL Meets NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. U.S. EPA, in consultation with the State of Minnesota, has concluded that the Twin Cities Air Force Reserve Base, Small Arms Range Landfill, meets the following criteria for site deletion:

- (i) Responsible parties or other parties have implemented all appropriate response actions required; and
- (ii) All appropriate response under CERCLA has been implemented, and no further action by responsible parties is appropriate.

State Concurrence To Delete Twin Cities Reserve Air Force Base—SARL

The State of Minnesota concurred with the deletion of the SARL by letter dated August 28, 1996. U.S. EPA, in consultation with the State of Minnesota, has concluded that the SARL meets the following criteria for site deletion: (1) U.S. EPA and the State of Minnesota have implemented all appropriate response actions required; (2) All appropriate response under CERCLA has been implemented; and (3) the confirmation sampling conducted as follow up to the recommendations in the SARL 1994 Annual Report, verifies that the SARL poses no significant threat to public health or the environment and, therefore, taking of further remedial measures is not appropriate. U.S. EPA and the State of

Minnesota believe that the above listed criteria for deletion have been met.

Subsequently, U.S. EPA is proposing deletion of the Twin Cities Reserve Air Force Base—SARL from the NPL. Documents supporting this action are available at the local information repositories.

V. Conclusion

U.S. EPA has determined that all appropriate Fund-financed responses under CERCLA at the Twin Cities Air Force Reserve Base, Small Arms Range Landfill, Minneapolis-St. Paul International Airport site have been completed, and no further Superfund response is appropriate in order to provide protection of human health and the environment. Therefore, it is proposed that the SARL be deleted from the NPL.

Dated: August 29, 1996.

Jo Lynn Traub,

Acting Regional Administrator, U.S. EPA, Region V.

[FR Doc. 96-23518 Filed 9-13-96; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96-180; RM-8863]

Radio Broadcasting Services; Amargosa Valley, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Amargosa Valley Broadcasters seeking the allotment of Channel 266A to Amargosa Valley, NV, as its first local aural transmission service. Channel 266A can be allotted to Amargosa Valley in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 36-38-38 NL; 116-23-58 WL.

DATES: Comments must be filed on or before October 28, 1996, and reply comments on or before November 12, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Eric S. Kravetz, Esq., Brown Nietert & Kaufman, Chartered, 1920 N Street, NW., Suite 660, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT:

Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96-180, adopted August 30, 1996, and released September 6, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96-23622 Filed 9-13-96; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 96-178; RM-8865]

Radio Broadcasting Services; Hollis, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by The Hollis Group to allot Channel 267C3 to Hollis, OK, as the community's first local aural transmission service. Channel 267C3 can be allotted to Hollis in compliance with the Commission's minimum distance separation requirements with a site restriction of 17.0 kilometers (10.5 miles) west, at coordinates 34-41-25 NL; 100-06-00 WL, to avoid a short-spacing to Station

KLAW, Channel 268C1, Lawton, OK. The Commission also proposes to delete vacant and unapplied-for Channel 223A from Hollis unless an expression of interest in use of the channel is submitted during the initial comment period in this proceeding.

DATES: Comments must be filed on or before October 28, 1996, and reply comments on or before November 12, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee J. Peltzman, Esq., Shainis & Peltzman, Chartered, 1901 L Street, NW., Suite 290, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT:

Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96-178, adopted August 30, 1996, and released September 6, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96-23619 Filed 9-13-96; 8:45 am]

BILLING CODE 6712-01-F

47 CFR Part 73

[MM Docket No. 96-179, RM-8859]

Radio Broadcasting Services; Sunburg, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lac Qui Parle Broadcasting Company, Inc., proposing the allotment of Channel 293A to Sunburg, Minnesota, as that community's first local service. Channel 293A can be allotted to Sunburg without a site restriction at coordinates 45-20-54 and 95-14-12.

DATES: Comments must be filed on or before October 28, 1996, and reply comments on or before November 12, 1996.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Maynard R. Myer, Vice President, Lac Qui Parle Broadcasting Co., Inc., 623 W. 3rd Street, P.O. Box 70, Madison, Minnesota 56256.

FOR FURTHER INFORMATION CONTACT:

Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, MM Docket No. 96-179, adopted August 30, 1996, and released September 12, 1996. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission'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 Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 96-23618 Filed 9-13-96; 8:45 am]

BILLING CODE 6712-01-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 285 and 630

[I.D. 082996A]

Atlantic Tuna Fisheries and Atlantic Swordfish Fishery; Offshore Resource Management Corporation Petition

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Denial of petition for rulemaking.

SUMMARY: NMFS hereby announces denial of the petition for rulemaking submitted by the Offshore Resource Management Corporation (ORMC). ORMC petitioned NMFS to amend the tuna regulations to make pair trawling an authorized gear type for non-bluefin tunas and amend the swordfish regulations to increase the swordfish bycatch limit for the pair trawl fishery.

ADDRESSES: Copies of the ORMC petition for rulemaking are available upon request from William Hogarth, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF), NMFS, 1315 East-West Highway, Silver Spring, MD 20910-3282.

FOR FURTHER INFORMATION CONTACT: William Hogarth, 301-713-2347.

SUPPLEMENTARY INFORMATION:

Background

Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*) governing the harvest of Atlantic tunas by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285. The Atlantic swordfish fishery is managed under the Fisheries Management Plan for Atlantic Swordfish (FMP) and its implementing regulations at 50 CFR part 630 issued under the authority of the Magnuson Fisheries Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and ATCA. Regulations issued under the authority of ATCA carry out the recommendations

of the International Commission for the Conservation of Atlantic Tunas (ICCAT).

On March 1, 1996, ORMC submitted a petition to NMFS to undertake rulemaking to permanently authorize pair trawling in the non-bluefin Atlantic tuna fisheries and increase the swordfish bycatch limit for the pair trawl fishery. In the preamble to the 1996 proposed rule for Atlantic tunas (61 FR 18366, April 25, 1996), NMFS requested comments on the petition as part of the rulemaking process.

NMFS Response to the ORMC Petition

NMFS has evaluated all relevant information, including comments from the public, and has determined that authorizing the use of pair trawls for catching Atlantic tunas is not consistent with the current agency approach to resolving the longterm issue of overcapacity and effort in the Atlantic tunas fishery. The reason for this position is that these stocks are all either fully- or over-exploited, and to increase capacity in these fisheries is inconsistent with NMFS' ongoing efforts to deal comprehensively with total fishing capacity. After initiation of the experimental fishery, ICCAT, at its November 1993 meeting, recommended that member countries limit "the effective fishing effort exerted on Atlantic yellowfin tuna to 1992 levels." The recommendation, as well as earlier concern about the tunas stocks, prompted NMFS to begin its comprehensive review. Action to date includes publication of a control date for tunas, permitting requirements for tunas, sharks, and swordfish, and data collection. In November 1995, NMFS initiated a series of public Limited Access Workshops. Additional scoping meetings for addressing capacity in the tunas fisheries will be held after the fall ICCAT meeting, at which NMFS will obtain further information on the status of the tuna stocks.

The Division of Highly Migratory Species Management has already issued for preliminary review a proposal to implement limited access in the shark and swordfish fisheries. In addition, the bycatch of swordfish is of great concern to NMFS, particularly in view of the overfished status of the swordfish stock. The agency's limited access proposal begins to address these concerns.

Further, as stated in the 1995 Environmental Assessment for the experimental fishery, NMFS' intent at the completion of the experiment and analysis of data was to release the data on the fishery and ask for public comment relative to the long-term status of this fishery. Following this strategy, in conjunction with the comprehensive

review, is preferable to accepting this petition. All data will be released to the public.

Data from the experimental pair trawl fishery show considerable incidental take of marine mammals. Allowing this additional gear into the open-access yellowfin tuna fishery, which already interacts with marine mammals, could result in increased marine mammal mortality. Authorizing such a new gear type in these circumstances would be inimical to the overarching purpose of the MMPA amendments that commercial fisheries reduce incidental mortality to insignificant levels approaching a zero mortality and serious injury rate.

Public Comments

Numerous comments were received via letter, telephone, and at the public hearings held on the proposed rule. Those commenters who supported ORMC's petition stated that the pair trawl fishery is highly selective in terms of species and size, and results in very few interactions with marine mammals. Supporters felt that NMFS should reward the efforts and investments of pair trawl fishermen, who seek to improve harvest methods and reduce damage to fisheries resources. Some stated that pair trawling is an efficient means of harvesting albacore, bigeye, and yellowfin tuna and has no detrimental effect on traditional fisheries. Others noted that pair trawlers supply quality non-bluefin tuna to the Japanese market.

Commenters who opposed ORMC's petition wrote that authorization of pair trawling would allow increased effort in an already fully- or over-exploited fishery. Some felt that the increased fishing effort could be construed as a withdrawal of the U.S. commitment to conservation as espoused through ICCAT agreements. NMFS also received comments expressing concern about gear conflicts and the hazards of pair trawl practices to other vessels and crew. A few individuals commented that any negative economic impact on local communities, resulting from pair trawl authorization, would far outweigh the benefits to a small number of commercial fishermen. Others expressed concern that the operation of pair trawls is hazardous to other vessels and vessel operators.

Decision

In summary, the petition requests that NMFS allow a new and non-traditional gear type to enter the Atlantic tuna fisheries. NMFS has determined that the Atlantic tuna fisheries are fully exploited or overexploited and ongoing

comprehensive capacity controls measures must be completed. Thus, NMFS, as stated above, has determined that proceeding with rulemaking to authorize pair trawl gear is not appropriate and the petition should be denied.

Authority: 16 U.S.C. 971 *et seq.*, 16 U.S.C. 1801 *et seq.*

Dated: September 10, 1996.

Charles Karnella,

Acting Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 96-23585 Filed 9-11-96; 10:49 am]

BILLING CODE 3510-22-F

Notices

Federal Register

Vol. 61, No. 180

Monday, September 16, 1996

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. 96-024-2]

Cornell University and University of Hawaii; Availability of Determination of Nonregulated Status for Papaya Lines Genetically Engineered for Virus Resistance

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our determination that certain papaya lines developed by Cornell University and the University of Hawaii that have been genetically engineered for virus resistance are no longer considered regulated articles under our regulations governing the introduction of certain genetically engineered organisms. Our determination is based on our evaluation of data submitted by Cornell University and the University of Hawaii in their petition for a determination of nonregulated status, an analysis of other scientific data, and our review of comments received from the public in response to a previous notice announcing our receipt of the Cornell University and University of Hawaii petition. This notice also announces the availability of our written determination document and its associated environmental assessment and finding of no significant impact.

EFFECTIVE DATE: September 5, 1996.

ADDRESSES: The determination, an environmental assessment and finding of no significant impact, the petition, and all written comments received regarding the petition may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to

inspect those documents are asked to call in advance of visiting at (202) 690-2817.

FOR FURTHER INFORMATION CONTACT: Dr. David Heron, Biotechnology Permits, BBEP, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737-1237; (301) 734-7612. To obtain a copy of the determination or the environmental assessment and finding of no significant impact, contact Ms. Kay Peterson at (301) 734-7612; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 20, 1996, the Animal and Plant Health Inspection Service (APHIS) received a petition (APHIS Petition No. 96-051-01p) from Cornell University, Geneva, NY, and the University of Hawaii, Honolulu, HI, (Cornell/Hawaii) seeking a determination that papaya lines designated as 55-1 and 63-1 that have been genetically engineered to contain genes that confer virus resistance do not present a plant pest risk and, therefore, are not regulated articles under APHIS' regulations in 7 CFR part 340.

On May 3, 1996, APHIS published a notice in the Federal Register (61 FR 19904-19905, Docket No. 96-024-1) announcing that the Cornell/Hawaii petition had been received and was available for public review. The notice also discussed the role of APHIS and the Food and Drug Administration in regulating the subject papaya lines and food products derived from them. In the notice, APHIS solicited written comments from the public as to whether these papaya lines pose a plant pest risk. The comments were to have been received by APHIS on or before July 2, 1996. During the designated 60-day comment period, APHIS received 18 comments on the subject petition from universities; papaya growers, processors, and shippers; a State agricultural experiment station; a papaya industry association; an office of the cooperative extension service; and a State department of agriculture. All of the comments were favorable to the petition.

Analysis

Papaya lines 55-1 and 63-1 have been genetically engineered to express the coat protein gene from papaya ringspot virus (PRV), strain HA 5-1, which

confers resistance to PRV. Both the subject papaya lines contain the *nptII* selectable marker gene, and line 55-1 also contains the *gus* selectable marker gene. Expression of the added genes is controlled by the nopaline synthase promoter from *Agrobacterium tumefaciens* and by the 35S promoter and terminator from the plant pathogen cauliflower mosaic virus. The genes used to develop lines 55-1 and 63-1 were transferred into the parental cultivar Sunset through use of the microprojectile process.

The subject papaya lines have been considered regulated articles under APHIS' regulations in 7 CFR part 340 because they contain gene sequences derived from plant pathogens. However, contained field trials of papaya lines 55-1 and 63-1 conducted under APHIS permits indicate that there were no deleterious effects on plants, nontarget organisms, or the environment as a result of the field testing of these papaya lines.

Determination

Based on its analysis of the data submitted by Cornell/Hawaii and a review of other scientific data, comments received, and field tests of the subject papaya lines, APHIS has determined that papaya lines 55-1 and 63-1: (1) Exhibit no plant pathogenic properties; (2) will not increase the likelihood of the emergence of new plant viruses; (3) are no more likely to become weeds than papaya developed by traditional breeding techniques; (4) will not increase the weediness potential for any other cultivated or wild species with which they can interbreed; (5) will not harm threatened or endangered species or other organisms, such as bees, that are beneficial to agriculture; and (6) will not cause damage to processed agricultural commodities. Therefore, APHIS has concluded that the subject papaya lines and any progeny derived from hybrid crosses with other nontransformed papaya varieties will be as safe to grow as papaya in traditional breeding programs that are not subject to regulation under 7 CFR part 340.

The effect of this determination is that Cornell/Hawaii's papaya lines 55-1 and 63-1 are no longer considered regulated articles under APHIS' regulations in 7 CFR part 340. Therefore, the requirements pertaining to regulated

articles under those regulations no longer apply to the field testing, importation, or interstate movement of the subject papaya lines or their progeny. However, importation of the subject papaya lines or seeds capable of propagation are still subject to the restrictions found in APHIS' foreign quarantine notices in 7 CFR part 319.

National Environmental Policy Act

An environmental assessment (EA) has been prepared to examine the potential environmental impacts associated with this determination. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (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). Based on that EA, APHIS has reached a finding of no significant impact (FONSI) with regard to its determination that Cornell/Hawaii's papaya lines 55–1 and 63–1 and lines developed from them are no longer regulated articles under its regulations in 7 CFR part 340. Copies of the EA and the FONSI are available upon request from the individual listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 11th day of September 1996.

A. Strating,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 96–23663 Filed 9–13–96; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

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

Agency: Bureau of the Census.

Title: Current Industrial Reports Program – Wave III (Voluntary).

Form Number(s): M33D, MA20D, MA35U.

Agency Approval Number: 0607–0776.

Type of Request: Revision of a currently approved collection.

Burden: 2,990 hours.

Number of Respondents: 925.

Avg Hours Per Response: 3.23 hours.

Needs and Uses: The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of its Current Industrial Reports (CIR) program. The CIR surveys deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. The CIR program includes both mandatory and voluntary surveys. Typically the monthly and quarterly surveys are conducted on a voluntary basis. Those companies that choose not to respond to the voluntary surveys are required to submit a mandatory annual counterpart. The annual counterpart collects annual data from those firms not participating in the more frequent collection. Due to the large number of surveys in the CIR program, for clearance purposes we group the surveys into three Waves. The mandatory and voluntary surveys in each Wave are separately submitted. Thus, a total of six clearances cover all of the surveys in the CIR program. One Wave is submitted for reclearance each year. The information collected in the CIR program provides continuing and timely national statistical data on manufacturing. The results of these surveys are used extensively by individual firms, trade associations, and market analysts in planning or recommending marketing and legislative strategies.

Affected Public: Business or other for-profit institutions.

Frequency: Monthly and Annually.

Respondent's Obligation: Monthly reports are Voluntary, Annual counterpart reports are Mandatory.

Legal Authority: Title 13 USC, Sections 131, 182, 224, and 225.

OMB Desk Officer: Jerry Coffey, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 10, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96–23581 Filed 9–13–96; 8:45 am]

BILLING CODE 3510–07–F

Submission For OMB Review; Comment Request

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

Agency: Bureau of the Census.

Title: Current Industrial Reports Program – Wave III (Mandatory).

Form Number(s): MA23D, MA32E, MA35D, MA35F, MA35J, MA35M, MQ22T.

Agency Approval Number: 0607–0476.

Type of Request: Revision of a currently approved collection.

Burden: 2,640 hours.

Number of Respondents: 1,917.

Avg Hours Per Response: 1.38 hours.

Needs and Uses: The Census Bureau conducts a series of monthly, quarterly, and annual surveys as part of its Current Industrial Reports (CIR) program. The CIR surveys deal mainly with the quantity and value of shipments of particular products and occasionally with data on production and inventories; unfilled orders, receipts, stocks and consumption; and comparative data on domestic production, exports, and imports of the products they cover. The CIR program includes both mandatory and voluntary surveys. Typically the monthly and quarterly surveys are conducted on a voluntary basis. Those companies that choose not to respond to the voluntary surveys are required to submit a mandatory annual counterpart. The annual counterpart collects annual data from those firms not participating in the more frequent collection. Due to the large number of surveys in the CIR program, for clearance purposes we group the surveys into three Waves. The mandatory and voluntary surveys in each Wave are separately submitted. Thus, a total of six clearances cover all of the surveys in the CIR program. One Wave is submitted for reclearance each year. The information collected in the CIR program provides continuing and timely national statistical data on manufacturing. The results of these surveys are used extensively by individual firms, trade associations, and

market analysts in planning or recommending marketing and legislative strategies.

Affected Public: Business or other for-profit institutions.

Frequency: Quarterly and Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Sections 81, 131, 182, 224, and 225.

OMB Desk Officer: Jerry Coffey, (202) 395-7314.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Acting DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jerry Coffey, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 10, 1996.

Linda Engelmeier,

Acting Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 96-23582 Filed 9-13-96; 8:45 am]

BILLING CODE 3510-07-F

Foreign-Trade Zones Board

[Order No. 844]

Expansion of Foreign-Trade Zone 73 Baltimore, Maryland, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Maryland Department of Transportation/Maryland Aviation Administration, grantee of Foreign-Trade Zone 73, for authority to expand its general-purpose zone at a site in Baltimore, Maryland, was filed by the Board on September 27, 1995 (FTZ Docket 57-95, 60 FR 52149, 10/5/95); and,

Whereas, notice inviting public comment was given in Federal Register and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders: The application to expand FTZ 73 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 5th day of September 1996.

Robert S. LaRussa,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96-23650 Filed 9-13-96; 8:45 am]

BILLING CODE 3510-DS-P

[Docket 68-96]

Foreign-Trade Zone 121—Albany, New York Area Application for Expansion and Request for Manufacturing Authority (Eyeglass Frames)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Capital District Regional Planning Commission, grantee of Foreign-Trade Zone 121, requesting authority to expand FTZ 121 to include a site at the Crossroads Industrial Park and requesting, on behalf of Liberty Optical Manufacturing Company, authority to manufacture eyeglass frames under zone procedures within FTZ 121, in the Albany, New York area, within the Albany Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 3, 1996.

FTZ 121 was approved on July 18, 1985 (Board Order 307, 50 FR 30986, 7/31/85). The zone project currently consists of the following three sites in the Albany, New York area: *Site 1*: (20 acres, 540,000 sq. ft.)—within the 551-acre Northeastern Industrial Park, Town of Guilderland (Albany County); *Site 2*: (271,000 sq. ft.)—within the 235-acre Rotterdam Industrial Park, Rotterdam (Schenectady County); and, *Site 3*: (35 acres, 43,000 sq. ft.)—within the 236-acre Port of Albany, Rensselaer.

The applicant is now requesting authority to expand the general-purpose zone to include a site (Proposed *Site 4*—12 acres)—located within the 50-acre Crossroads Industrial Park (Lots 4 and 5) in the City of Gloversville (Fulton County), New York, on State Route 29, seven miles from the New York State Thruway. The industrial park is owned by the Fulton County Industrial Development Agency and is part of the Gloversville Economic Development

Zone, which provides companies with savings on taxes, jobs, and utilities. The zone will consist of a 41,475 sq. ft. industrial warehouse facility, a 36,000 sq. ft. trailer container storage yard and a 17,015 sq. ft. manufacturing facility operated by the Liberty Optical Manufacturing Company.

The application also requests authority on behalf of Liberty Optical Manufacturing Company to manufacture eyeglass frames under zone procedures within FTZ 121. Liberty Optical's facility (25 employees) within Crossroads Industrial Park is used to assemble frames, grind lens blanks and sun protective lenses. Finished products primarily involve sports and protective/safety eyeglass frames. Materials and components purchased from abroad include temples, fronts, eye frame parts, plastic frames, metal frames, acetate material, polycarbonate shields, hardware (hinges, screws, tips & pads), lenses and eyeglass pouches.

Zone procedures will exempt Liberty Optical from Customs duty payments on the foreign components used in production for export. On domestic sales, the company would be able to choose the duty rate applicable to finished eyeglass frames (4.3%–5.3%) rather than the duty rate (5.3%) that would otherwise be applicable to materials and components. The company is also seeking an exemption from Customs duties on materials that become scrap in the production process (3%). The application indicates that the use of FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 15, 1996. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to December 2, 1996).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 445 Broadway, James T. Foley Courthouse Building, Room 216, Albany, New York 12207
Office of the Executive Secretary, Foreign-Trade Zones Board, Room

3716, U.S. Department of Commerce,
14th & Pennsylvania Avenue, NW.,
Washington, DC 20230

Dated: September 6, 1996.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 96-23649 Filed 9-13-96; 8:45 am]

BILLING CODE 3510-DS-P

COMMODITY FUTURES TRADING

Sunshine Act Meeting

AGENCY HOLDING THE MEETING:

Commodity Futures Trading
Commission.

TIME AND DATE: 2:00 p.m., Tuesday,
September 24, 1996.

PLACE: 1155 21st St. NW., Washington,
DC, 9th Floor, Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION:

Jean A. Webb, 202-418-5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 96-23823 Filed 9-12-96; 3:20 pm]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center; Notice of Inventions Available for Licensing

AGENCY: Department of Energy (DOE),
Morgantown Energy Technology Center
(METC).

ACTION: Notice.

SUMMARY: The United States Department of Energy, Morgantown Energy Technology Center hereby announces that the inventions listed below are available for licensing in accordance with 35 U.S.C. 207-209 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents rights have been retained on selected inventions to extend market coverage

and may also be available for licensing. A copy of issued patents may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

ADDRESSES: Office of Institutional Development, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26505.

FOR FURTHER INFORMATION: Lisa A. Jarr, Office of Institutional Development, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, Morgantown, WV 26505; Telephone (304) 285-4555; E-mail: LJARR@METC.DOE.GOV.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR Part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for licensing has been announced in the Federal Register.

ISSUED PATENTS

Number	Title
4,447,297	Combined Fluidized Bed Retort and Combustor.
4,451,826	Single Transmission Line Data Acquisition System.
4,465,135	Fire Flood Method for Recovering Petroleum From Oil Reservoirs of Low Permeability and Temperature.
4,466,360	Loop-Bed Combustion Apparatus.
4,466,747	Ash Level Meter for a Fixed-Bed Coal Gasifier.
4,475,884	Reversed Flow Fluidized-Bed Combustion Apparatus.
4,523,465	Wireless Remote Liquid Level Detector and Indicator for Well Testing.
4,524,796	Sliding-Gate Valve for Use With Abrasive Materials.
4,667,097	Compensated Vibrating Optical Fiber Pressure Measuring Device.
4,680,585	Pulse-Excited, Auto-Zeroing Multiple Channel Data Transmission System.
4,696,680	Method and Apparatus for the Selective Separation of Gaseous Coal Gasification Products by Pressure Swing Adsorption.
4,769,045	Method for the Desulfurization of Hot Product Gases From Coal Gasifier.
4,832,704	Method for Enhancing the Desulfurization of Hot Coal Gas in a Fluid-Bed Gasifier.
4,840,931	Method of Inducing Surface Ensembles on a Metal Catalyst.
4,867,079	Combustor with Multistage Internal Vortices.
4,876,080	Hydrogen Production with Coal Using a Pulverization Device.
4,880,528	Method and Apparatus for Hydrocarbon Recovery from Tar Sands.
4,886,521	Decaking of Coal or Oil Shale During Pyrolysis in the Presence of Iron Oxides.
4,896,965	Real-Time Alkali Monitoring System.
4,921,765	Combined Coal Gasifier and Fuel Cell System and Method.
4,926,112	3-D Capacitance Density Imaging System.
4,939,376	Light Collection Device for Flame Emission Detectors.
4,955,942	An In-Bed Tube Bank for a Fluidized-Bed Combustor.
4,976,549	Apparatus and Method for Direct Measurement of Coal Ash Sintering and Fusion Properties at Elevated Temperatures and Pressures.
4,976,940	Method of Producing H ₂ Using a Rotating Drum Reactor With a Pulse Jet Heat Source.
4,996,483	Spinning Angle Optical Calibration Apparatus.
5,008,005	Integrated Coke, Asphalt and Jet Fuel Production Process and Apparatus.
5,052,426	System for Pressure Letdown of Abrasive Slurries.
5,067,317	Process for Generating Electricity in a Pressurized Fluidized-Bed Combustor System.
5,069,685	Two-Stage Coal Gasification and Desulfurization Apparatus.
5,123,835	Pulse Combustor With Controllable Oscillations.
5,126,676	Gas Amplified Ionization Detector for Gas Chromatography.
5,130,097	Method and Apparatus for Hot-Gas Desulfurization of Fuel Gases.
5,139,535	Two-Stage Fixed-Bed Gasifier With Selectable Middle Gas Off-Take Point.
5,144,251	Three-Axis Particle Impact Probe.
5,163,385	Coal-Water Slurry Fuel Internal Combustion Engine and Method for Operating Same.

ISSUED PATENTS—Continued

Number	Title
5,163,754	Isolated Thermocouple Amplifier System for Stirred Fixed-Bed Gasifier.
5,165,239	Water Augmented Indirectly-Fired Gas Turbine Systems and Method.
5,170,670	Three Axis Velocity Probe System.
5,177,294	Catalysts for Conversion of Methane to Higher Hydrocarbons.
5,198,002	Gas Stream Clean-Up Filter and Method for Forming Same.
5,217,510	Apparatus for Preventing Particle Deposition From Process Streams on Optical Access Windows.
5,227,351	Sorbent for Use in Hot Gas Desulfurization.
5,230,716	Grate Assembly for Fixed-Bed Coal Gasifier.
5,232,673	Shielded Fluid Stream Injector for Particle Bed Reactor.
5,325,797	Staged Fluidized-Bed Combustion and Filter System.
5,337,289	Phased-Array Ultrasonic Surface Contour Mapping System and Method For Solids Hoppers and the Like.
5,348,921	Method For Reducing Sulfate Formation During Regeneration of Hot-Gas Desulfurization Sorbents.
5,413,878	An Improved System and Method For Networking Electrochemical Devices.
5,449,568	Indirect-Fired Gas Turbine Bottomed With Fuel Cell.
5,456,066	Fuel Supply System and Method For Coal-Fired Prime Mover.
5,494,880	Durable Zinc Oxide-Containing Sorbents For Coal Gas Desulfurization.
5,541,014	Indirect-Fired Gas Turbine Dual Fuel Cell Power Cycle.

Patent Applications Filed

Down-Flow Moving-Bed Gasifier With Catalyst Recycle and Method
Durable Regenerable Sorbent Pellets For Removal of Hydrogen Sulfide From Coal Gas
Removal of Oxides of Nitrogen From Gases In Multi-Stage Coal Combustion Combustor Oscillating Pressure Stabilization and Method
Reduction of Spalling In Mixed Metal Oxide Desulfurization Sorbents By Addition of a Large Promoter Metal Oxide

Issued: September 3, 1996.

Thomas F. Bechtel,
Director, METC.

[FR Doc. 96-23625 Filed 9-13-96; 8:45 am]

BILLING CODE 6450-01-P

Certification of the Radiological Condition of the Associate Aircraft Site in Fairfield, OH

AGENCY: Department of Energy.

ACTION: Notice of certification.

SUMMARY: The Department of Energy (DOE) has completed remedial actions to decontaminate a property in Fairfield, Ohio. Formerly, the property was found to contain quantities of residual radioactive material resulting from activities conducted by DOE's predecessors at the former Associate Aircraft Tool and Manufacturing Company. Radiological surveys show that the property now meets applicable requirements for radiologically unrestricted use.

ADDRESSES: The certification docket is available at the following locations:
Public Reading Room, Room 1E-190, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Public Document Room, Oak Ridge Operations Office, U.S. Department of Energy, 200 Administration Road, Oak Ridge, Tennessee 37831.
Lane Public Library, Fairfield Branch, 701 Wessel Drive, Fairfield, Ohio 45014.

FOR FURTHER INFORMATION CONTACT: John C. Lehr, Acting Director, Office of Eastern Area Programs, Office of Environmental Management (EM-42), U.S. Department of Energy, Washington, D.C. 20585, (301) 903-2328 Fax: (301) 903-2385.

SUPPLEMENTARY INFORMATION: The Department of Energy, Office of Environmental Management, has conducted remedial action at the Associate Aircraft site in Fairfield, Ohio, under the Formerly Utilized Sites Remedial Action Program (FUSRAP). The objective of the program is to identify and remediate or otherwise control sites where residual radioactive contamination remains from activities carried out under contract to the Manhattan Engineer District/Atomic Energy Commission (MED/AEC) during the early years of the nation's atomic energy program. The Associate Aircraft site was designated for cleanup under FUSRAP in April 1993.

From February to September 1956, the Associate Aircraft Tool and Manufacturing Company, under subcontract to National Lead of Ohio (NLO), a primary contractor for the AEC, provided a variety of machine shop services on natural uranium metal (i.e., uranium metal that was neither enriched nor depleted in the U-235 isotope but that contained U-235 in natural abundance). Operations at the site consisted of hollow drilling and turning of uranium metal slugs. After production was discontinued in September 1956, Associate Aircraft

personnel decontaminated the building and equipment in accordance with the NLO Industrial Hygiene Department's specifications.

In June and September 1992, Oak Ridge National Laboratory conducted radiological surveys in and around the former Associate Aircraft building. Radioactive contamination exceeding current DOE health-based guidelines for release of properties for radiologically unrestricted use was identified inside the building and in two small isolated areas outside. The property was included in FUSRAP in April 1993 and was remediated from December 1994 to June 1995.

Post-remedial action surveys have demonstrated and DOE has certified that the subject property is in compliance with the Department's radiological decontamination criteria and standards. The standards are established to protect members of the general public and occupants of the properties and to ensure that future use of the properties will result in no radiological exposure above applicable health-based guidelines.

These findings are supported by the Department's Certification Docket for the Remedial Action Performed at the Associate Aircraft Tool and Manufacturing Company Site in Fairfield, Ohio, December 1995. Accordingly, this property is released from FUSRAP.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays) in the Department's Public Reading Room, located in Room 1E-190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Copies of the certification docket will also be available in the DOE Public Document

Room, U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge, Tennessee 37831 and at the Lane Public Library, Fairfield Branch, 701 Wessel Drive, Fairfield, Ohio 45014.

DOE, through the Oak Ridge Operations Office, Former Sites Restoration Division, has issued the following statement:

Statement of Certification: Associate Aircraft Tool and Manufacturing Company Site, Fairfield, Ohio

DOE, Oak Ridge Operations Office, Former Sites Restoration Division, has reviewed and analyzed the radiological data obtained following remedial action at the Associate Aircraft site (3660 Dixie Highway, Fairfield, Ohio; Parcel No. 40 filed in Deed Book 1625, Page 139 in the land records of Butler County, Ohio). Based on analysis of all data collected, including post-remedial action surveys, DOE certifies that any residual contamination which remains onsite falls within current guidelines for use without radiological restrictions. This certification of compliance provides assurance that reasonably foreseeable future use of the property will result in no radiological exposure above current radiological guidelines established to protect members of the general public as well as occupants of the site.

Property owned by Lester J. Besl and James L. Besl Partnership: 3660 Dixie Highway, Fairfield, Ohio 45014.

Issued in Washington, D.C. on September 4, 1996.

James M. Owendoff,

Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 96-23626 Filed 9-13-96; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. RP92-237-029]

Alabama-Tennessee Natural Gas Company; Notice of Compliance Filing

September 10, 1996.

Take notice that September 5, 1996, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet with a proposed effective date of September 1, 1996:

Twelfth Revised Sheet No. 4

Alabama-Tennessee states that the purpose of the filing is to implement a 6% reduction in its transportation rates

in compliance with the letter order issued in Docket No. RP92-237-028 on August 29, 1996.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96-23598 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-1-000]

Alabama/Tennessee Natural Gas Company; Notice of ACA Filing

September 10, 1996.

Take notice that on September 5, 1996, Alabama-Tennessee Natural Gas Company (Alabama/Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet with a proposed effective date of October 1, 1996:

Thirteenth Revised Sheet No. 4

Alabama/Tennessee states that the purpose of this filing is to reflect a \$0.0002 per dekatherm decrease in Alabama-Tennessee's rates under its Annual Charge Adjustment ("ACA") clause that results from a corresponding decrease in the annual charge asserted Alabama-Tennessee by the Commission.

Alabama-Tennessee requests any waiver that may be required in order to accept and approve this filing as submitted, including waiver of the notice requirement of Section 154.22.

Alabama-Tennessee states that copies of the tariff filing have been served upon the Company's affected customers and interested public bodies.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed as provided in

Section 154.210 of the Commission's Regulations. 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 to the proceeding 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. 96-23604 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-84-000]

Caprock Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 10, 1996.

Take notice that on September 5, 1996, Caprock Pipeline Company (Caprock) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets, to be effective October 1, 1996:

Fourth Revised Sheet No. 4

Fourth Revised Sheet No. 5

Caprock states that these revised tariff sheets are filed to revise Caprock's tariff to reflect the Commission approved Annual Charge Adjustment (ACA) factor to be effective on October 1, 1996. The effect of this change is to reduce the applicable ACA surcharge to \$.0020.

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, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rule of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96-23612 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-97-001]**Chandeleur Pipe Line Company;
Notice of Proposed Changes in FERC
Gas Tariff**

September 10, 1996.

Take notice that on September 5, 1996, Chandeleur Pipe Line Company (Chandeleur) submits for refiling the following tariff sheets to become effective October 1, 1996:

Substitute Fourth Revised Sheet No. 5

Chandeleur proposes to adjust its rates to reflect the Federal Energy Regulatory Commission's FY 1996 annual charge for natural gas pipeline companies of \$0.0020 per MMBTu.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23613 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-269-000]**East Tennessee Natural Gas Company;
Notice of Motion To Place Tariff Sheets
Into Effect on Systemwide Basis**

September 10, 1996.

Take notice that on September 4, 1996, East Tennessee Natural Gas Company (East Tennessee) filed a motion to place the following tariff sheets into effect on a systemwide basis effective September 1, 1996:

First Revised Sheet No. 50
First Revised Sheet No. 51
Second Revised Sheet No. 52
First Revised Sheet No. 52A
Second Revised Sheet No. 53
Second Revised Sheet No. 55
Substitute Original Sheet No. 55A
Substitute Original Sheet No. 55B

East Tennessee states that the foregoing tariff sheets implement the Swing Storage Option (SSO) on a permanent basis. East Tennessee states that the SSO allows East Tennessee's customers to use their firm storage entitlements with Tennessee Gas

Pipeline Company to manage the difference between scheduled and actual flows on a daily basis at East Tennessee's deliver points.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23600 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-2-001]**East Tennessee Natural Gas Company;
Notice of Revised Filing**

September 10, 1996.

Take notice that on September 5, 1996, East Tennessee Natural Gas Company (East Tennessee) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1 Seventh Revised Sheet No. 4.

East Tennessee states the purpose of the filing is to reflect a \$.0003 decrease to its currently effective Annual Charge Adjustment (ACA) surcharge resulting in an ACA surcharge of \$.0019 to its commodity rates for the period October 1, 1996 through September 30, 1997. East Tennessee requests an effective date of October 1, 1996.

East Tennessee further states that on August 30, 1996 it submitted for filing its ACA surcharge. In that filing, East Tennessee indicated no change in the currently effective ACA surcharge was required. East Tennessee has subsequently learned it inadvertently used the FERC unit charge factor for fiscal year 1996 of \$.00231 instead of the unit charge factor for fiscal year 1997 of \$.00203. East Tennessee's proposed ACA surcharge of \$.0019 gives effect of the Commission's prior year adjustment of (\$2,415) and a Btu conversion factor of 1.03558 applied to the 1997 unit charge factor of \$.00203.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 385.211 of

the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23605 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP96-380-000, CP96-139-001, and CP96-217-001]**Florida Gas Transmission Company;
Notice of Proposed Changes in FERC
Gas Tariff**

September 10, 1996.

Take notice that on September 4, 1996, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective October 4, 1996.

1st Revised Second Revised Sheet No. 189
First Revised Sheet No. 190

FGT states that in an Order issued August 5, 1996 in Docket Nos. CP96-139 and CP96-217, the Commission concluded that language in section 21.D of FGT's current Tariff allows FGT to deviate, by written agreement, from the provisions of sections 21.D.1 and D.2 of its Tariff generally providing that, where construction of facilities is necessary to provide certain firm service: (1) FGT shall construct, own, and operate such facilities, and (2) shipper shall bear all costs of construction. The Commission, however, ordered FGT, inter alia, to show cause why the Commission should not exercise its authority under Section 5 of the NGA and order FGT to revise its Tariff to provide: (1) A standard for the non-discriminatory availability of the construction subsidy, and (2) a procedure in the Tariff to notify FGT's other customers that it has agreed to terms made in writing other than those stipulated in Sections 21.D.1 and D.2 of FGT's Tariff. FGT is filing herein to make such revisions to its Tariff.

FGT also states that the proposed Tariff changes clarify the standards that FGT will use to evaluate, on a not unduly discriminatory basis, whether subsidization of facilities to provide any requested transportation service should be economically justified. In addition,

FGT will notify its customers of any such subsidization by a posting on its Electronic Bulletin Board (EBB). FGT is also amending the Tariff language to clarify that FGT is not required to modify existing facilities, nor construct new facilities. Because FGT is filing to revise its Tariff in accordance with the Commission's August 5 Order, FGT states there is no reason for the Commission to exercise its NGA Section 5 authority to require FGT to do so.

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, 888 First Street, NE, Washington, DC, 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23601 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-221-064]

Frontier Gas Storage Company; Notice of Sale Pursuant to Settlement Agreement

September 10, 1996.

Take notice that on August 30, 1996, Frontier Gas Storage Company (Frontier), c/o Reid & Priest, Market Square, 701 Pennsylvania Ave., N.W., Suite 800, Washington, D.C. 20004, in compliance with provisions of the Commission's February 13, 1985, Order in Docket No. CP82-487-000, *et al.*, submitted an executed Service Agreement under Rate Schedule LVS-1 providing for the possible sale of up to a daily quantity of 50,000 MMBtu, not to exceed 5 Bcf of Frontier's gas storage inventory on an "as metered" basis to WBI Gas Services Company, for term ending September 30, 1997.

Under Subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985, Order, Frontier is "authorized to commence the sale of its inventory under such an executed service agreement fourteen days after filing the agreement with the Commission, and may continue making

such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Any person desiring to be heard or to make a protest with reference to said filing should, within 10 days of the publication of such notice in the Federal Register, file with the Federal Energy Regulatory Commission (888 1st Street N.E., Washington, D.C. 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. 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. 96-23594 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP91-143-037]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

September 10, 1996.

Take notice that on September 5, 1996, Great Lakes Gas Transmission Limited Partnership (Great Lakes) submits for consideration as part of its FERC Gas Tariffs, Second Revised Volume No. 1 and Original Volume Number 2, the following pro forma tariff sheets, with distinctive tariff sheets for each of three cases A, B and C.

Second Revised Volume Number 1

Pro Forma Sheet No. 4
Pro Forma Sheet No. 4A
Pro Forma Sheet No. 5

Original Volume Number 2

Pro Forma Sheet No. 151
Pro Forma Sheet No. 223
Pro Forma Sheet No. 245
Pro Forma Sheet No. 269
Pro Forma Sheet No. 294
Pro Forma Sheet No. 603
Pro Forma Sheet No. 604

Great Lakes states that it submits the above-referenced pro forma tariff sheets to reflect three alternative methods for implementing the Commission's requirement that certain costs on Great Lakes' pipeline system be allocated on a volume, as opposed to the current volume-distance, basis.

Any person desiring to protest said filing should file a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20406, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 in the Commission's Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96-23597 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-65-001]

Jupiter Energy Corporation; Notice of Amendment to Filing

September 10, 1996.

Take notice on September 5, 1996, Jupiter Energy Corporation (Jupiter Energy) tendered for filing an amendment to its August 28, 1996 filing herein. The amendment consists of the following tendered tariff sheets to Jupiter Energy's FERC Gas Tariff, Original Volume No. 1:

Substitute Tenth Revised Sheet No. 4A
Substitute Tenth Revised Sheet No. 5A
Substitute Tenth Revised Sheet No. 6A

Jupiter Energy states that the amendment is submitted to correct the proposed Annual Charge Adjustment (ACA) surcharge of 0.23¢ per Mcf that was proposed in Jupiter Energy's original filing in this docket. The amendment proposes a surcharge rate of 0.20¢ per Mcf.

Jupiter Energy proposes an effective date of October 1, 1996. Jupiter Energy requests a waiver of the 30-day notice period to waive in effect as of October 31, 1996 the tariff sheets tendered by the amendment.

Jupiter Energy states that copies of the filing have been served on the Company's jurisdictional customers.

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. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 Jupiter Energy's filing are on

file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23610 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-53-000]

KN Interstate Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 10, 1996.

Take notice that on September 5, 1996, KN Interstate Gas Transmission Company (KNI) tendered for filing to become part of its FERC Gas Tariff, the following revised tariff sheets, to be effective October 1, 1996:

Third Revised Volume No. 1A

First Revised Sheet No. 4-D

Second Revised Volume No. 1C

Sixth Revised Sheet No. 4

KNI states that these revised tariff sheets are filed to revise KNI's tariff to reflect the Commission approval Annual Charge Adjustment (ACA) factor to be effective on October 1, 1996. The effect of this change is to reduce the applicable ACA surcharge to \$.0020.

Any person desiring to be heard or protest the proposed tariff sheets 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 214 and 211 of the Commission's Rule of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96-23609 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-117-000]

KN Wattenberg Limited Liability Company; Notice of Proposed Changes in FERC Gas Tariff

September 10, 1996.

Take notice that on September 5, 1996, KN Wattenberg Transmission

Limited Liability Company (KN Wattenberg) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets, to be effective October 1, 1996:

Fifth Revised Sheet No. 6

KN Wattenberg states that these revised tariff sheets are filed to revise KN Wattenberg's tariff to reflect the Commission approved Annual Charge Adjustment (ACA) factor to be effective on October 1, 1996. The effect of this change is to reduce the applicable ACA surcharge to \$.0020.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rule of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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. 96-23614 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-5-001]

Midwestern Gas Transmission Company; Notice of Revised Filing

September 10, 1996.

Take notice that on September 5, 1996, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1 Substitute Sixth Revised Sheet No. 5.

Midwestern states the purpose of the filing is to reflect a \$.0004 decrease to its currently effective Annual Charge Adjustment (ACA) surcharge resulting in an ACA surcharge of \$.0019 to its commodity rates for the period October 1, 1996 through September 30, 1997. Midwestern requests an effective date of October 1, 1996.

Midwestern further states that on August 30, 1996 it submitted for filing its ACA surcharge. In that filing, Midwestern reported a \$.0001 per Dth decrease in the ACA surcharge, resulting in an ACA surcharge of

\$.0022/Dth. Midwestern has subsequently learned it inadvertently used the FERC unit charge factor for fiscal year 1996 of \$.00231 instead of the unit charge factor for fiscal year 1997 of \$.00203. Substitute Sixth Revised Sheet No. 5 reflects a revised ACA surcharge of \$.0019/Dth which is a \$.0003/Dth decrease to the surcharge filed August 30. The \$.0019 gives effect of the Commission's prior year adjustment of (\$3,234) and a Btu conversion factor of 1.03351 applied to the 1997 unit charge factor of \$.00203.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23606 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-47-001]

MIGC, Inc.; Notice of Revised Filing

September 10, 1996.

Take notice that on September 5, 1996, MIGC, Inc. (MIGC) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 4. This tariff sheet is proposed to become effective October 1, 1996.

MIGC states that the instant filing is being submitted to reflect Annual Charge Adjustment unit charges applicable to transportation services during the fiscal year commencing October 1, 1996.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are

on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23608 Filed 9-13-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM97-1-25-001]

Mississippi River Transmission Corporation; Notice of 1996 ACA Rate

September 10, 1996.

Take notice that on September 5, 1996, Mississippi River Transmission Corporation (MRT), tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Ninth Revised Sheet No. 10, with a proposed effective date of October 1, 1996.

MRT states that the purpose of the instant filing is to report the currently effective ACA charge in MRT's rates based on the new FERC approved surcharge of \$0.00203 per Mcf effective October 1, 1996 in accordance with Section 23 of MRT's FERC Gas Tariff. The Mcf rate of \$0.00203 divided by MRT's system Btu factor for the 12 months ended December 31, 1995 of 1.029 converts to a MMBtu rate of \$0.0020.

Any person desiring to protest the subject filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. 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 available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23607 Filed 9-13-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM96-8-16-000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

September 6, 1996.

Take notice that on August 30, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Eleventh Revised Sheet No. 5A, with a proposed effective date of September 1, 1996.

National states that under Article II, Section 2, of the approved settlement in the above-captioned proceedings, National is required to recalculate monthly the maximum Interruptible Gathering (IG) rate and charge that rate on the first day of the following month if the result is an IG rate 2 cents above or below the IG rate. The recalculation produced an IG rate of 12 cents per dth.

National further states that pursuant to Article II, Section 4, National is required to file a revised tariff sheet in a Compliance Filing each time the effective IG rate is revised within 30 days of the effective date of the revised IG rate.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23603 Filed 9-13-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RM95-9-000]

Open Access Same-time Information System (OASIS): Notice Shortening Answer Period

September 9, 1996.

On September 9, 1996, the How Working Group on the Open Access Same-time Information System (OASIS) filed a letter in this proceeding. In that letter, the How Working Group, on behalf of the electric industry, requests an extension of the November 1, 1996 deadline for implementation of Phase I OASIS systems. See Open Access Same-Time Information System and Standards of Conduct, Final Rule, Order No. 889, FERC Stats. & Regs. ¶ 31,037, 61 FR 21737 (May 10, 1996). Specifically, the How Working Group requests that an extension of time be implemented in two steps: (1) By December 1, 1996, all OASIS nodes required by Order No. 889 will be operational and available for

public access on a test basis only; and (2) By January 3, 1997, all OASIS nodes will begin full commercial operation.

Any person that intends to respond to the How Working Group's request for an extension of time should file an answer in this proceeding no later than September 16, 1996, in accordance with Rule 213 of the Commission's Rules of Practice and Procedure, 18 CFR 385.213.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23565 Filed 9-13-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM97-1-79-001]

Sabine Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

September 10, 1996.

Take notice that on September 3, 1996, Sabine Pipe Line Company (Sabine) tendered for filing the following proposed change to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective October 1, 1996:

Substitute Third Revised Sheet No. 20

Sabine states that the Commission has specified the Annual Charge Adjustment (ACA) unit charge of \$.0020316300/Mcf to be applied to rates for the annual period commencing October 1, 1996. The ACA unit rate of \$.0020316300/Mcf converts to \$.0020/MMBtu under Sabine's basis for billing.

Sabine states that copies of the filing were served upon Sabine's customers, the State of Louisiana, Department of Natural Resources, Office of Conservation and the Railroad Commission of Texas.

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 18 CFR, Section 385.211 of the Commission's Rules and Regulations. All such protest must be filed as provided in Section 154.210 of the Commission's Regulations. 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 in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23611 Filed 9-13-96; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP96-268-000]**Tennessee Gas Pipeline Company;
Notice of Motion to Place Tariff Sheets
Into Effect on Systemwide Basis**

September 10, 1996.

Take notice that on September 4, 1996, Tennessee Gas Pipeline Company (Tennessee) filed a motion to place the following tariff sheets into effect on a systemwide basis effective September 1, 1996:

Second Revised Sheet No. 209E
First Revised Sheet No. 209F
First Revised Sheet No. 209G
First Revised Sheet No. 209H
Original Sheet No. 209I
Original Sheet No. 593A
Original Sheet No. 593B

Tennessee states that the foregoing tariff sheets implement a Downstream Swing Storage Option (DSSO) on a systemwide basis. The DSSO allows customers connected to downstream pipelines to use their firm storage entitlements with Tennessee to manage the difference between scheduled and actual flows on a daily basis at the downstream delivery points.

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 Section 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Copies of this filing are on file and available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23599 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP96-381-000]**Tennessee Gas Pipeline Company;
Notice of Interruptible Services
Revenue Report Filed**

September 10, 1996.

Take notice that on September 4, 1996, Tennessee Gas Pipeline Company (Tennessee) tendered for filing its second annual interruptible services revenue report for the September 1994 through August 1995 period.

Tennessee states that the report indicates that Tennessee has underrecovered \$3.358 million of Gas Supply Realignment costs and \$4.059

million of its cost of service allocated to interruptible services for the annual period. Of the \$4.059 million cost of service underrecovery, \$3.216 million is correlated to the revenue attribution methodology announced in *Tennessee Gas Pipeline Company*, 69 FERC § 61,094 (1994). Accordingly, Tennessee will roll forward \$6.574 million for collection from its interruptible service customers in future periods.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 17, 1996. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23602 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM97-1-121-000]**WestGas Interstate, Inc., Notice of
Proposed Changes in FERC Gas Tariff**

September 10, 1996.

Take notice that on September 5, 1996, WestGas Interstate, Inc. (WGI) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 5. The proposed effective date of the tariff sheet is October 1, 1996.

WGI states that, pursuant to section 154.402 of the Commission's regulations and Section 21 of the General Terms and Conditions of its tariff, WGI is making its Annual Charge Adjustment (ACA) filing to reflect a decrease of \$.0003 per Dth (from \$.0022 to \$.0019 per Dth) in its ACA surcharge.

WGI states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing 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 18 CFR 385.214 and 385.211 of the

Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.
Lois D. Cashell,

Secretary.

[FR Doc. 96-23615 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR96-18-000]**Williams Pipe Line Company; Notice of
Declaratory Order**

September 10, 1996.

Take notice that on August 23, 1996, Williams Pipe Line Company (WPL), pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure, 18 CFR 387.207(a)(2), tendered for filing a request for declaratory order.

WPL states that the matter concerns odorized propane delivered by WPL to one of its shippers, Empire Gas Corporation (Empire), which was trucked by Empire and delivered into a propane storage tank attached to a mobile home. WPL states that when the propane subsequently leaked into the mobile home, an explosion occurred, injuring the two occupants. Following settlement and payment of the claims, WPL sued Empire for indemnification, pursuant to the provisions of its FERC tariff. A District Court found that the tariff's indemnification clause was contrary to public policy and WPL appealed to the United States Court of Appeals for the Tenth Circuit. WPL states that invoking the doctrine of primary jurisdiction, the Tenth Circuit held that the Commission should, in the first instance, be entitled to rule on the scope and enforceability of the indemnification clause of WPL's tariff.

WPL further states that the Tenth Circuit determined that FERC's expertise should be sought on whether the indemnification provision violated FERC policy per se and, secondly, whether in light of the parties' stipulation on the absence of negligence on WPL's part, the Commission would require indemnification on the instant facts, notwithstanding that the tariff language itself might be found to be overly broad or otherwise invalid in whole or part. WPL asks that the

Commission find that WPL's tariff indemnity provision in effect at the time of the propane delivery in question was valid and enforceable against Empire.

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, 888 First Street, NE., Washington DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Regulations. All such motions or protests must be filed on or before October 3, 1996. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestants a party 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 inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23595 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8278-015, 8278-016 and 8278-017]

Crystal Springs Hydroelectric Limited Partnership; Notice of Availability of Environmental Assessment

September 10, 1996.

An environmental assessment (EA) is available for public review. The DEA reviews an application to amend the license for the Cedar Draw Creek Project located on Cedar Draw Creek in Twin Falls County, Idaho. The license would be amended to: (1) allow the replacement of Unit No. 3 turbine with a new turbine which would reduce the project's total installed capacity from 2,914 kW to 2,878 kW; (2) reduce the minimum flow requirement from 25 cubic feet per second (cfs) to 10 cfs; and (3) replace 1/4 inch screens with 3/8 inch screens. The EA concluded that approving the installation of the variable flow turbine, reduction of the minimum flow requirement and increasing the mesh size of the fish screens would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be obtained by calling the Commission's Public Reference Room at (202) 208-1371.

Lois D. Cashell,
Secretary.

[FR Doc. 96-23596 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

Notice of Public Meeting

September 10, 1996.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. Type of Notice: Notice of Public Meeting.
- b. Project No: 10813-011.
- c. Applicant: Town of Summersville.
- d. Name of Project: Summersville.
- e. Location of Project: On the Gauley River in Nicholas and Fayette Counties, West Virginia, and would use surplus water from the U.S. Army Corps of Engineers' Summersville Dam.
- f. Applicant Contact: James B. Price, President, Noah Corporation, 120 Calumet Court, Aiken, SC 29803, (803) 642-29803, (803) 642-2749.
- g. FERC Contact: Mohamad Fayyad, (202) 219-2665.
- h. Description: The Federal Energy Regulatory Commission (FERC) will hold a public meeting regarding an amendment of license for the Summersville Hydroelectric Project. The licensee is proposing the following design changes: (1) installing two instead of the authorized four generating units, but with the same total capacity of 8 MW, and (2) re-routing the project's transmission line. The proposed transmission line alignment will extend about 9.9 miles from project's switchyard in a southerly direction and connect to an Appalachian Power Company substation in Fayette County, WV. This proposed alignment would require the clearing of about 75 acres of woods.

The amendment application, which was filed on September 25, 1995, was public noticed on November 2, 1995, with December 4, 1995, as the last date to file comments, motions to intervene, or protests. Nothing was filed in response to that public notice. On April 29, 1996, we issued a Draft Environmental Assessment with a comment date of May 28, 1996. We received two comments in timely fashion. After the comment period, however the FERC received a numerous number of petitions from area residents and property owners commenting on the proposed transmission line route.

A public meeting will be held on September 19, 1996, to give the public another opportunity to comment on the amendment application. The meeting will be held at the Summersville Municipal Building, 400 N. Broad Street, Summersville, WV. The meeting will begin at 7:00 pm and is expected to last until approximately 10:00 pm. Persons unable to attend the meeting, or persons choosing not to speak at the

meeting, may submit statements to Secretary, Federal Energy Regulatory Commission, 888 North Capitol Street, NE., Washington, DC 20426, no later than September 20, 1996. All correspondence should clearly show the following caption on the first page—Summersville Project No. 10813. For further information, please contact Moe Fayyad at (202) 219-2665.

Lois D. Cashell,

Secretary.

[FR Doc. 96-23566 Filed 9-13-96; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders; Week of June 26 Through June 30, 1995

During the week of June 26 through June 30, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at <http://www.ooha.doe.gov>.

Dated: August 30, 1996.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Appeals

Richard W. Miller, 6/30/95, VFA-0046; VFA-0049

Richard W. Miller filed an Appeal from three determinations issued by the Strategic Petroleum Reserve Project Management Office (SPRO) of the Department of Energy in response to a request from Mr. Miller under the Freedom of Information Act (FOIA). Mr. Miller sought documents related to three DOE contracts. In considering the Appeal, the Office of Hearings and Appeals found that SPRO had not adequately justified the withholding of the documents under FOIA Exemption

5. Accordingly, the Appeal was remanded to SPRO to either release the documents or issue a new Determination.

Sangre De Cristo Animal Protection, Inc., 6/30/95, VFA-0047

SDCAP filed an Appeal from a denial by the Albuquerque Operations Office of a Request for Information which they had submitted under the Freedom of Information Act. In considering the appeal, the DOE found that DOE-owned contractor records, which were not in the possession of the DOE at the time of the request, were not subject to the FOIA under 10 C.F.R. § 1004.3(e) because the contractor claimed the "critical self-evaluative privilege" that was found by the DOE to be recognized under federal or state law. The DOE found that the names and faces of contractor employees were properly redacted from responsive records and photographs under Exemption 6. The DOE also found that Albuquerque's search for responsive documents was adequate.

Wilbert L. Townsend, 6/28/95, VFA-0044

Wilbert L. Townsend filed an Appeal from a denial by the Nevada Operations Office of a request for information that he filed under the Freedom of Information Act (FOIA). In considering the information that was withheld, the DOE determined that all of previously withheld material, which concerned personal information submitted by the top three candidates for an industrial hygienist position, had been properly withheld pursuant to Exemption 6 of the FOIA. Accordingly, the Appeal was denied.

Personnel Security Hearing

Office of Security Affairs, 6/28/95, VSA-0011

The DOE Office of Security of Affairs (OSA) filed a Request for Review, 10 C.F.R. § 710.28(a), of an Opinion issued by a Hearing Officer on March 22, 1995, concerning the eligibility of an individual to hold a level "Q" access authorization under regulations set forth at 10 C.F.R. Part 710. In the Opinion, the Hearing Officer considered the determination of DOE Albuquerque Operations Office to suspend the individual's access authorization based upon criterion set forth in 10 C.F.R.

§ 710.8(h), i.e. that the individual has a mental condition of a nature that in the opinion of a board-certified psychiatrist causes, or may cause, a significant defect in her judgment or reliability. The Hearing Officer determined in the Opinion that based upon the weight of the psychiatric testimony and other evidence presented in the proceeding, the individual's access authorization should be restored. In considering OSA's Request for Review, the reviewing official appointed by the Director of the Office of Hearings and Appeals determined that two matters raised by OSA concerning the testimony of the individual's psychiatrist and supervisor were satisfactorily resolved by evidence presented in the record. The reviewing official further determined that restoring the individual's access authorization will not endanger the common defense and security and will be clearly consistent with the national defense. Accordingly, the reviewing official concurred in the Opinion of the Hearing Officer.

Request for Exception

Kyle's Friendly Service, 6/28/95, VEE-0003

Kyle's Friendly Service filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA-782B, the "Resellers/Retailers' Monthly Petroleum Product Sales Report." In considering this request, the DOE found that the firm was suffering a variety of hardships. Accordingly, the DOE issued a Decision and Order granting the firm temporary relief of six months, effective immediately.

Refund Applications

Atlantic Richfield Company/Seago Enterprises, Inc., 6/30/95, RF304-13736

The DOE granted in part an Application for Refund filed by Seago Enterprises, Inc., in the ARCO special refund proceeding. The firm had applied for a refund based upon product purchased during 1973, and 1974, part of which was resold to ARCO. Seago's 1973 ARCO purchases were subject to a fixed-price contract based upon January 1973 prices. Seago's purchases during the refund period were therefore at prices significantly below prevailing market prices, and the DOE found that

Seago was not injured with respect to these purchases. With respect to the product that was resold to ARCO, because the contracts guaranteed Seago a fixed profit margin, the firm was also not injured with respect to these purchases. Therefore, the DOE determined that Seago was entitled to a refund only for its 1974 purchases that were not resold to ARCO.

Interstate Power Company, 6/28/95, RF272-92278

The DOE issued a Decision and Order concerning an Application for Refund filed in the Subpart V crude oil overcharge refund proceeding by Interstate Power Company. The DOE determined that Interstate Power Company was not entitled to a refund since it had filed a Utilities Escrow Settlement Claim Form and Waiver, thereby waiving its right to a Subpart V crude oil refund. Accordingly, the Application for Refund was denied.

Texaco Inc./Major Brands, 6/28/95, RR321-179

Two owners of Major Brands filed a Motion for Reconsideration of a Decision and Order that had previously been issued to Major Brands. In that Decision, the DOE had granted a refund to Major Brands, but determined that only the owner that signed the Application for Refund was entitled to receive a share of the refund. The other two owners stated in their motion that they were under the assumption that Major Brands' original Application for Refund was intended to represent all of the eligible owners of the firm since the Application was filed in the name of the firm. These co-owners further stated that the original Application failed to acknowledge them as partners in Major Brands. In considering this request, the DOE found that the Motion for Reconsideration should be granted. Therefore, the DOE issued a Decision and Order granting refunds to the two owners that submitted the Motion.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

BRICK & TILE ET AL	RF272-77213	06/28/95
CITY OF NORTH MIAMI ET AL	RF272-95506	06/28/95
CRUDE OIL SUPPLE REF DIST	RB272-6	06/28/95
GULF OIL CORPORATION/PANCALLO GULF	RF300-21829	06/28/95
PATRICIA JOHNSON ET AL	RK272-2	06/28/95
TEXACO INC./G & G TEXACO	RF321-21075	06/28/95
TEXACO INC./LES TEXACO SERVICE ET AL	RF321-20267	06/28/95

TEXACO INC./RICHARD SHORT OIL CO., INC	RF321-7365	06/28/95
CHARLES F. WEAVER TEXACO	RF321-19727	

Dismissals

The following submissions were dismissed:

Name	Case No.
ABB POWER T&D COMPANY, INC	RF272-92406
ALAN CORP	RF321-20679
AVERITT EXPRESS	RF272-95135
BO JACKSON'S TEXACO SERVICE STATION	RF321-20191
BUCKEYE COUNTRYMARK, INC	RG272-14
CANTON'S TEXACO	RF321-20779
EAST PROVIDENCE FUEL OIL CO., INC	RF321-20696
FARMERS COOPERATIVE CO	RG272-255
FARMERS UNION OIL COMPANY	RG272-264
GURRAN OIL CO., INC	RF321-20553
HOLT BROTHERS	RF272-99106
JIM DEWEIN'S TEXACO	RF321-20225
KLOSTER CRUISE LIMITED	RF321-20756
LEWISVILLE TEXACO	RF321-19856
M.A. MALIK	VFA-0048
MUNIR A. MALIK	VFA-0053
NORCO FUEL SERVICE, INC	RF321-20180
PANCO OIL COMPANY	RF321-20587
RAMOS' TEXACO	RF321-20489
ST. JOSEPH'S CHURCH	RF272-99104
WEST DAVIE TEXACO	RF321-20735
WINFORD COMPANY, INC	RF321-20663

[FR Doc. 96-23627 Filed 9-13-96; 8:45 am]
BILLING CODE 6450-01-P

Notice of Issuance of Decisions and Orders; Week of June 12 Through June 16, 1995

During the week of June 12 through June 16, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: August 28, 1996.

Thomas O. Mann,
Acting Director, Office of Hearings and Appeals.

Personnel Security Hearing

*Albuquerque Operations Office,
6/16/95, VSA-0005*

An individual whose access authorization had been suspended filed a request for review of a DOE Hearing Officer's recommendation against its restoration. The individual's access authorization had been suspended by the Department of Energy's (DOE) Albuquerque Operations Office (Albuquerque) upon its receipt of derogatory information indicating that the individual was a habitual user of alcohol to excess, used illegal drugs and had deliberately provided DOE security officials with false or misleading information.

Upon review, the individual claimed that she had been rehabilitated, and in the alternative, requested that the Director of the Office of Hearings and Appeals (the Director) stay her security proceeding in order to provide her with a sufficient time period to complete her rehabilitation. The Director found that she had not established her rehabilitation, and that her request for a stay of the proceeding should not be granted.

Implementation of Special Refund Proceedings

*Mockabee Gas & Fuel Oil Co., 6/12/95,
VEF-0001*

The OHA issued a Decision and Order announcing procedures for disbursement of \$75,638 plus accrued interest, in overcharges on No. 2 fuel oil and kerosene that were remitted to the DOE by Mockabee Gas & Fuel Oil Co. under a Modified Remedial Order issued to the firm in 1985. Under the procedures established in the Decision, end-users who purchased those products from Mockabee during the period November 1, 1973 through December 31, 1975, may apply for refunds. Successful applicants will receive refunds of \$.0612 per gallon. The deadline for filing Mockabee refund applications is September 29, 1995.

Murphy Oil Corp., Murphy Oil USA, Inc., Murphy Exploration & Production Co., 6/15/95, VEF-0003

The OHA issued a Decision and Order announcing procedures for disbursement of \$10,700,00 plus accrued interest, in alleged crude oil overcharges obtained by the DOE under a Settlement Agreement with Murphy Oil Corp., Murphy Oil USA, Inc., and Murphy Exploration & Production Co. The Murphy funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy in

Crude Oil Cases, 51 F.R. 27899 (August 4, 1986). Under this policy, 40 percent will be given to the federal government and 40 percent to the states for indirect restitution, and 20 percent will be reserved for direct restitution to injured purchasers of refined petroleum products during the controls period (August 1973 through January 27, 1981). The Decision states that while the deadline for filing crude oil refund applications is June 30, 1995, any party who has previously filed a refund application will receive a share of the Murphy funds without filing a new claim.

Refund Applications

Gulf Oil Corp./Calhoun & Williams Gulf et al., 6/12/95, RF300-16725 et al.

The DOE granted 10 applications for refund in the Gulf Oil Corporation

special refund proceeding. Each applicant applied for a refund based on the small claims presumption of injury. The refunds granted in this Decision and Order totalled \$9,713.

Enron Corporation/MFA Oil Company, et al., 6/12/95, RF340-154 thru RF340-159

MFA Oil Company and five other cooperative owners of Energy Cooperative, Inc. (ECI) submitted applications for refund in the Enron Corporation refund proceeding. The DOE determined that these cooperative owners of ECI were entitled to refunds under the presumption of injury for cooperatives for Enron product purchased by ECI and resold to the cooperative owners for distribution to their member customers. These refunds were made subject to reporting requirements and a dollar for dollar

passthrough. With respect to Enron product that the cooperatives purchased from ECI and resold to non-member customers, the DOE found that the presumption of injury for cooperatives did not apply. However, the DOE found that the cooperatives were entitled to refunds for these Enron purchases under the applicable presumptions of injury for resellers. Accordingly, the total refund granted to the cooperative owners of ECI was \$369,406.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

CENTRAL RIVERS COOPERATIVE ET AL	RF272-97102	06/15/95
CRUDE OIL SUPPLEMENTAL REFUND DISTRIBUTION	RB272-00005	06/15/95
GULF OIL CORPORATION/ COAN & FORD	RF300-20911	06/12/95
COAN & FORD	RF300-21796	
GULF OIL CORPORATION/ J.F. TOLLISON FERTILIZER	RF300-15138	06/12/95
J.F. TOLLISON	RF300-19577	
J.F. TOLLISON FERTILIZER	RR272-201	
GULF OIL CORPORATION/MIDSTATES EQUIPMENT CO., INC	RF300-21830	06/12/95
GULF OIL CORPORATION/PCL/MIRACLE MILE GULF ET AL	RF300-18304	06/12/95
LOGSDON TUG SERVICE	RF272-79103	06/15/95
N. MONTEREY COUNTY UNIFIED SCHOOL DISTRICT ET AL	RF272-86337	06/15/95
NORTH CAPE MAY CITGO	RF272-97557	06/12/95
SHELL OIL COMPANY/COAST GAS, INC	RF315-5911	06/15/95
TEXACO INC./BOB GRUNER'S TEXACO	RF321-20536	06/12/95
TEXACO INC./DOUG'S TEXACO	RR321-181	06/15/95
TEXACO INC./NOLAN TEXACO	RF321-20744	06/12/95
CUTLER'S TEXACO	RF321-20778	
TEXACO INC./VILLAGE SERVICE CENTER ET AL	RF321-18006	06/12/95

Dismissals

The following submissions were dismissed:

Name	Case No.
A. VICTORIAN	VFA-0045
CROCK TEXACO	RF321-19894
CROCK TEXACO SERVICE	RF321-19895
DOUG'S TEXACO	RF321-19903
PETER DURAN	VWA-0002
PETER DURAN	VWA-0003
TEXACO SERVICE CENTER	RF321-19896

[FR Doc. 96-23628 Filed 9-13-96; 8:45 am]
BILLING CODE 6450-01-P

Notice of Issuance of Decisions and Orders Week of May 1 through May 5, 1995

During the week of May 1 through May 5, 1995, the decisions and orders summarized below were issued with respect to appeals, applications,

petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence

Avenue, S.W., Washington, D.C. 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of

Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: August 28, 1996.

Thomas O. Mann,
Acting Director, Office of Hearings and Appeals.

Refund Applications

Aluminum Company of America, 5/4/95, RR272-197

The Aluminum Company of America (Alcoa) applied for a crude oil overcharge refund based on its purchases of calcined petroleum coke from non-refiners. The DOE pointed out that in order to be eligible for a refund, petroleum products must be either covered by regulations promulgated pursuant to the EPAA, purchased from a refiner, or from a reseller that has not substantially changed the product. Since calcined petroleum coke was not a product covered by EPAA regulations, and Alcoa did not purchase it from a refiner, the product did not meet either of the first two tests. The DOE then found that turning green coke into calcined coke substantially changes green petroleum coke. Accordingly, the DOE found that the calcined coke that Alcoa purchased did not meet the third test. The DOE concluded that Alcoa's calcined petroleum coke purchased from non-refiners did not constitute a product eligible for a refund in the crude oil overcharge refund proceeding. The application was therefore denied.

Atlantic Richfield Company/ Ford Motor Company, Ford Tractor Operations, 5/5/95, RF304-14123; RF304-12217

Applications were filed in the ARCO special refund proceeding by Ford Motor Company and Ford Tractor Operations for purchases made under the name Ford Tractor Operations. The DOE found that Ford Tractor Operations was an unincorporated subdivision of Ford Motor Company at the time it was sold and that the sale did not transfer the right to the ARCO refund to the new owner. Accordingly, the application filed by Ford Motor Company was

granted and that filed by Ford Tractor Operations was denied.

Crude Oil Supplemental Refund Distribution, 5/5/95, RB272-00001

The DOE issued the first Decision and Order in connection with the second supplemental refund distribution of a portion of the DOE's crude oil funds. In that Decision and Order, the DOE granted 20 crude oil supplemental refunds at a per gallon volumetric rate of \$0.0008.

Fryman's Gas Sales & Service, et al., 5/4/95, RF272-62414, et al.

The DOE issued a Decision and Order concerning eight Applications for Refund submitted in the Subpart V crude oil refund proceeding by eight propane resellers. In an attempt to prove injury, the applicants submitted their "banks" of unrecovered product costs, testimony by Dr. Peter Linneman given at the Stripper Well hearing, a report by Dr. Linneman concerning the absorption of crude oil cost increases in the liquid propane gas industry, and another report by Dr. Linneman concerning the Texas and Oklahoma regional propane prices related to crude oil price increases. The DOE determined that these submissions did not demonstrate that the applicants were injured by crude oil overcharges. Accordingly, the DOE denied these eight applicants.

National Helium Corp./Oregon, Time Oil Company/Oregon, Coline Gasoline Corp./Oregon, Belridge Oil Company/Oregon, Perry Gas Processors/Oregon, Palo Pinto Oil and Gas/Oregon, 5/5/95, RQ3-591; RQ334-592; RQ2-593; RQ8-594; RQ183-595; RQ5-596

The DOE issued a Decision and Order granting a second-stage refund application filed by the State of Oregon and modifying the standard that will be used to evaluate future second-stage refund applications. Under the new standard adopted in this Decision, the DOE will evaluate applications for second-stage funds according to the

same criteria that govern the use of Stripper Well and other crude oil overcharge monies. Those criteria are set forth in the Stripper Well Settlement Agreement and DOE's Modified Statement of Restitutionary Policy in Crude Oil Cases. Oregon requested a total of \$1,618,480 in principal and interest allocated to it in the National Helium Corp., Time Oil Company, Coline Gasoline Corp., Belridge Oil Company, Perry Gas Processors, and Palo Pinto Oil and Gas special refund proceedings to fund three energy conservation programs. The first program will use \$500,000 to implement telecommuting programs in one densely populated region in Oregon and to encourage the expansion of telecommuting state-wide. The second program will allocate \$578,184 to provide weatherization assistance and other energy-conservation measures for low-income homes. The DOE found that the telecommuting and weatherization assistance programs would provide timely restitutionary benefits to injured consumers of refined petroleum products. In accordance with prior Decisions approving similar second-stage proposals, the DOE approved both programs. Oregon's third proposal will use \$540,296 to fund energy-saving measures in public buildings. Although this type of program has previously been rejected in second-stage proceedings, the DOE found that Oregon's Public Buildings Energy Savings Program was acceptable under the new standard. Accordingly, Oregon's second-stage refund applications were granted.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

ATLANTIC RICHFIELD COMPANY/AL'S AUTO SUPPLY ET AL	RF304-13340	05/03/95
FCS INDUSTRIES, INC	RF272-89010	05/03/95
FREIGHT CONSOLIDATED SERVICE	RF272-97246	
GULF OIL CORPORATION/AVANTI GULF	RF300-18749	05/04/95
GULF OIL CORPORATION/DOW BADISCHE COMPANY	RF300-20049	05/05/95
BASF WYANDOTTE CHEMICALS	RF300-20302	
TEXACO INC./D & R TEXACO, INC. ET AL	RF321-17187	05/04/95
TEXACO INC./MIKE'S TEXACO ET AL	RF321-12639	05/03/95

Dismissals

The following submissions were dismissed:

Name	Case No.
A.G. HOLLEY STATE HOSPITAL	RF272-88875
ALBANY CITY UNIFIED SCHOOL DISTRICT	RF272-88843

Name	Case No.
ALLING & CORY PAPER	RF272-92101
BEST CANDLES OF FLORIDA	RF321-20326
BROKEN BOW TEXACO	RF321-20733
CITY OF BOLIVAR	RF272-88844
CITY OF CHICO	RF272-88545
CITY OF GULFPORT	RF272-88880
CITY OF RUSSELLVILLE	RF272-88058
CLAY CENTER PUBLIC SCHOOLS	RF272-88190
D&T TEXACO	RF321-17158
EDGEFIELD COUNTY	RF272-88929
EMBRY HILLS TEXACO	RF321-20118
FLORIDA CITY	RF272-88845
FLORIDA HOSPITAL	RF272-88662
FLORIDA STATE HOSPITAL	RF272-88717
G. PIERCE WOOD MEMORIAL HOSPITAL	RF272-88663
K & E WHISTLE STOP	RF304-14188
LOCKHEED ENVIRONMENTAL SYSTEMS AND TECHNOLOGIES COMPANY	VWA-0001
NORTHEAST FLORIDA STATE HOSPITAL	RF272-88652
PAUL ROYBAL TEXACO	RF321-20626
RALPH WATSON OIL COMPANY	RF304-14990
SIKESTON R VI	RF272-88735
SOUTH FLORIDA STATE HOSPITAL	RF272-88674
SPRINGFIELD TWP SCHOOL DISTRICT	RF272-88852
Yah Ta Hey Texaco	RF321-18009
Yellowstone Motel & Texaco	RF321-20077

[FR Doc. 96-23629 Filed 9-13-96; 8:45 am]

BILLING CODE 6450-01-P

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders During the Week of November 20 Through November 24, 1995

During the week of November 20 through November 24, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585-0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: August 30, 1996.

Richard W. Dugan,
Acting Director, Office of Hearings and Appeals.

Personnel Security Hearings

*Oakland Operations Office, 11/22/95,
VSO-0039*

An Office of Hearings and Appeals Hearing Officer issued an opinion concerning the continued eligibility of an individual for access authorization under 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." After holding a hearing and carefully considering all the evidence in the record in view of the standards set forth in Part 710, the Hearing Officer found that the individual had not intentionally overcharged the government for lodging expenses in connection with his official travel to Washington, DC from the Lawrence Livermore National Laboratory (LLNL). Rather, the Hearing Officer found that while the individual may not have complied with the LLNL travel regulations in his vouchering of the Washington apartment, his actions were the result of mistake or misunderstanding. In addition, the individual had approval from his supervisor to recover the full cost of the apartment even though it was not used for some portions of most months. Thus, the Hearing Officer concluded that the individual had not "[e]ngaged in unusual conduct * * * which tend to show that the individual is not honest, reliable or trustworthy, or * * * may be

subject to pressure, coercion or duress which may cause the individual to act contrary to the best interest of the national security." 10 C.F.R. § 710.8(l). In addition, the Hearing Officer could not find that the individual had forged or altered documents in support of his travel claims because the DOE Counsel was unable to produce the originals of those documents at the hearing. However, the Hearing Officer noted that such information that was in the record on the subject strongly indicated that the individual had not altered or forged documents. Finally, the Hearing Officer found that the individual had not knowingly submitted invalid documents in support of his lodging costs. Thus, the Hearing Officer again found that the individual's actions were not contrary to the standard of 10 C.F.R. § 710.8(l). Accordingly, the Hearing Officer found that restoration of the access authorization would not be contrary to the national interest or endanger the common defense and security and recommended restoration of the access authorization.

*Richland Operations Office, 11/20/95,
VSO-0037*

An OHA Hearing Officer issued an opinion on a request for review from an individual employed by a Hanford contractor whose DOE security clearance had been suspended. The individual's "Q" access authorization was suspended after Richland security officials concluded that she had provided false or misleading information to the DOE about her arrest for driving while intoxicated (DWI) in

September 1993. At the hearing which was held in this case, the individual conceded that she failed to report her September 1993 DWI arrest to DOE security officials within the time required. However, the individual submitted evidence of unusual circumstances, which she contended mitigated the seriousness of her delay in reporting the arrest to Richland security personnel. She also showed that she had remembered to report it before DOE learned about the arrest from another source. In addition, the individual introduced evidence which showed that she had not given DOE security officials a false or misleading account of her arrest, even though her version of events differed in some minor respects from that given in the arresting police officer's report. After considering the record in this case, the Hearing Officer concluded that the individual had met her burden of coming forward with evidence to show that restoring her access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, the Hearing Officer recommended that the individual's access authorization should be restored.

Richland Operations Office, 11/22/95, VSO-0044

A Hearing Officer issued an Opinion regarding the eligibility of an individual to maintain a level "L" access authorization under the provisions of 10 C.F.R. Part 710. The DOE Personnel Security Division alleged that the individual "[d]eliberately misrepresented, falsified, or omitted significant information" from a Personnel Security Questionnaire, a Questionnaire for Sensitive Positions and a Personnel Security Interview. Furthermore, the DOE Personnel Security Division alleged that the

individual "[e]ngaged in * * * unusual conduct or is subject to * * * circumstances which tend to show that the individual is not honest, reliable, or trustworthy * * * or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." On September 20, 1995, an evidentiary hearing was convened at which twelve witnesses testified. After carefully examining the record of the proceeding, the Hearing Officer determined that the individual deliberately withheld relevant information, or provided false information to the DOE repeatedly over the course of 16 years. Furthermore, the Hearing Officer found that several recent and significant incidents also raised serious doubts concerning the individual's honesty and reliability. Accordingly, the Hearing Officer recommended that the individual's access authorization not be restored.

Refund Applications

Aluminum Company of America, 11/22/95, RR272-95

The Aluminum Company of America (Alcoa) applied for a crude oil overcharge refund based on purchases of 181,799,790 gallons of green petroleum coke from crude oil refineries and 104,157,498 gallons of calcined petroleum coke. The DOE denied Alcoa's request for refunds of calcined petroleum coke purchased from crude oil refineries. The DOE found that the refiners who calcined green petroleum coke were the end-users of the green petroleum coke. The DOE therefore concluded that Alcoa was not injured by its purchases of calcined petroleum coke from crude oil refineries. However, the DOE granted the firm's request for a refund based on its purchases of green

petroleum coke, finding that this was an eligible product because Alcoa purchased this coke from crude oil refineries. Accordingly, the firm was granted a refund of \$290,880 based on those purchases.

Amerbelle Corporation, 11/22/95, RR272-00194

The DOE issued a Decision and Order concerning a Motion for Reconsideration submitted in the Subpart V crude oil refund proceeding by the Amerbelle Corporation. Amerbelle Corporation claimed that it did not receive the check issued to it in the *Crude Oil Supplemental Refund Distribution* 18 DOE ¶ 85,878 (1989). Amerbelle requested that the DOE reissue the check. Because the period during which Treasury maintains records and is able to trace the check had expired, we could not determine whether the check was cashed. Without a factual basis to believe that a check was not cashed, the DOE has determined that it will not reissue a check. Accordingly, the DOE denied Amerbelle's Motion for Reconsideration.

State Escrow Distribution, 11/22/95, RF302-17

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute \$15,400,000 to the State Governments. The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

CRUDE OIL SUPPLE. REFUND DIST	RB272-58	11/20/95
EMPIRE MENHADEN COMPANY, INC. ET AL	RF272-77233	11/20/95
HAWKS NURSERY CO. ET AL	RK272-1305	11/20/95
JUNE STEPHENITCH ET AL	RK272-594	11/20/95
ROY FIGI ET AL	RK272-1432	11/20/95
SOUTH TOMS RIVER BOROUGH HALL ET AL	RK272-2465	11/20/95
SUNRISE TRANSPORTATION, INC	RF272-83153	11/22/95
TRIMOUNT BITUMINOUS PRODUCTS	RF272-77605	11/20/95
WAYNE WARD ET AL	RK272-42	11/20/95
WEATHERBEE FARMS, INC. ET AL	RK272-76	11/20/95

Dismissals

The following submissions were dismissed:

Name	Case No.
MINUTEMAN AVIATION	RF272-98013
PHILIP P. KALODNER	VSG-0002

Notice of Issuance of Decisions and Orders During the Week of October 23 Through October 27, 1995

During the week of October 23 through October 27, 1995, the decision and order summarized below was issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of this decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at <http://www.oha.doe.gov>.

Dated: August 30, 1996.

Richard W. Dugan,
Associate Director, Office of Hearings and Appeals.

Appeals

Kenneth H. Besecker, 10/24/95, VFA-0075

Kenneth H. Besecker filed an Appeal from the determination issued to him by the Director of the Office of Economic Impact and Diversity (Director) of the Department of Energy (DOE) in response to a Request for Information submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that the Director properly withheld under the "executive" privilege of Exemption 5 of the FOIA handwritten notes evaluating an EEO investigator's investigation and report. In particular, the DOE determined that

the material was both predecisional and deliberative within the meaning of the FOIA privilege. The DOE also determined that release of the document could cause a reasonably foreseeable harm to a protectable FOIA principle, as enunciated in the Memorandum to All Department Heads on the FOIA by Attorney General Janet Reno. Accordingly, the Appeal was denied.

Personnel Security Hearings

Albuquerque Operations Office, 10/26/95, VSO-0045

A Hearing Officer of the Office of Hearings and Appeals issued an opinion concerning the continued eligibility of an individual for access authorization under 10 CFR Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." After considering the records in view of the standards set forth in Part 710, the Hearing Officer found that the derogatory information presented by the Albuquerque Operations Office under 10 CFR § 710.8(l) established that the individual used marijuana on one occasion in 1994. The Hearing Officer also found that the individual presented sufficient evidence of rehabilitation and reformation to mitigate this derogatory information. Finally, the Hearing Officer found that the individual's violation of his Drug Certification was mitigated by the circumstances surrounding the execution of that certification, including the passage of time of fifteen years. Accordingly, the Hearing Officer concluded that, in his opinion, the individual's access authorization should be restored.

Pittsburgh Naval Reactors Office, 10/27/95, VSO-0041

An Office of Hearings and Appeals Hearing Officer issued an opinion under 10 CFR Part 710 concerning the continued eligibility of an individual for access authorization. After considering the testimony at the hearing convened at

the request of the individual and all other information in the record, the Hearing Officer found that the individual deliberately omitted substantial information from a Questionnaire for Sensitive Positions and that this constituted a security concern under 10 CFR § 710.8(f). The Hearing Officer also found that the individual had engaged in a pattern of financial irresponsibility and that this conduct raised a security concern under 10 CFR § 710.8(l). The Hearing Officer further found that the individual failed to present sufficient evidence of rehabilitation, reformation or other factors to mitigate the derogatory information. With respect to the individual's financial irresponsibility, the Hearing Officer specifically found that the individual's recent bankruptcy filing did not reduce the agency's security concerns or constitute evidence of rehabilitation. Accordingly, the Hearing Officer recommended that the individual's access authorization, which had been suspended, should not be restored.

Pittsburgh Naval Reactors Office, 10/27/95, VSO-0048

A Hearing Officer recommended that access authorization not be restored to an individual whose access was suspended due to evidence of his engaging in a pattern of financial irresponsibility. The Hearing Officer found the individual's defense that a substantial amount in unpaid bills and taxes was due to his misplaced generosity to his family failed to mitigate valid security concerns.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

CANADA STEAMSHIP LINES, INC. ET AL	RF272-73779	10/24/95
CARTER TRUCK LINES, INC. ET AL	RF272-98004	10/23/95
CRESTHAVEN ENTERPRISES ET AL	RK272-154	10/27/95
CRUDE OIL SUPPLE REF DIST	RB272-56	10/27/95
CRUDE OIL SUPPLEMENTAL REFUND DISTRIBUTION	RB272-55	10/26/95
DUNMYRE MOTOR LINES	RF272-97187	10/27/95
FARMERS UNION OIL CO. OF CALVALIER-NECHE	RJ272-2	10/26/95
FREMONT COUNTY SCHOOL DIST. #2 ET AL	RF272-97700	10/27/95
MANASQUAN BOARD OF EDUCATION ET AL	RF272-86513	10/23/95
PROSSER SCHOOL DISTRICT, WA ET AL	RF272-98064	10/27/95
SCA SERVICES, INC	RF272-77541	10/23/95
T.E. MERCER TRUCKING, INC. ET AL	RF272-90797	10/23/95
TEXACO INC./KIRKWOOD TEXACO	RF321-20616	10/27/95
TEXACO INC./STUCKEY STORE #1761 ET AL	RF321-5361	10/26/95
TEXACO INC./WAYNE RUDOLPH	RF321-16356	10/24/95
ARCHER DANIELS MIDLAND CO	RF321-19932	

Dismissals

The following submissions were dismissed:

Name	Case No.
CARSON CITY COUNTY, NV	RF272-96245
DCW PRODUCTION	RF272-94179
ELLIS AIR TAXI, INC.	RF272-98000
IDAHO OPERATIONS OFFICE	VSO-0050
ROSEAU COUNTY CO-OP ASSOC.	RG272-00719
UNION DISTRIBUTING COMPANY	VEE-0011

[FR Doc. 96-23631 Filed 9-13-96; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-5609-7]

Agency Information Collection Activities Scheduled for Administration; Collection of Economic and Regulatory Impact Supporting Data: Corrective Action Questionnaire Under EPA Information Collection Request (ICR) No. 1641.01

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the following information collection: Collection of Economic and Regulatory Impact Supporting Data: Corrective Action Questionnaire will be administered under the generic ICR No. 1641.01 Collection of Economic and Regulatory Support Data Under RCRA OMB Control Number 2050-0136, expiration date 10/31/97. In order to comply with the terms of clearance set forth by the Office of Management and Budget, EPA is submitting this announcement to notify the public of the specific survey that the Agency plans to undertake during this year.

DATES: For further information or a copy call: Paul Balserak at EPA, (703) 308-0486, and refer to EPA ICR No. 1641.01.

SUPPLEMENTARY INFORMATION:

Title: Collection of Economic and Regulatory Impact Supporting Data: Corrective Action Questionnaire EPA Information Collection Request (ICR) No. 1641.01. (OMB Control No. 2050-0136; EPA ICR No. 1641.01) expiring 10/31/97. This is a new collection under the approved generic information collection request (ICR) number 1641.01.

Abstract: EPA's Office of Solid Waste is conducting the Corrective Action Questionnaire which is a voluntary survey designed to collect information on the type and extent of contamination, remedial alternatives selected, and the corrective action implementation process at corrective action sites which have a stabilization or a final remedy in place. As the sites in this universe are divided between state-lead and region-lead sites, the sample of sites randomly selected for this survey will include both; this ICR is required only for surveying the states. The survey respondents, the State and EPA Regional RCRA Corrective Action regulators, are asked only to gather available data from their files to complete the survey. The data collected through this survey will provide valuable information for future Resource Conservation and Recovery Act (RCRA) regulatory initiatives, such as Subpart S Initiative rulemaking, guidance, and training.

RCRA as amended by the Hazardous and Solid Waste Amendments (HSWA) requires EPA to establish a national regulatory program to ensure that hazardous waste is managed in a manner protective of human health and the environment. EPA is authorized under section 2002 and 3007 of RCRA to collect information from industry and other parties when necessary to carry out its regulatory responsibilities. Executive Order No. 12866 requires that all administrative decisions be based on adequate information concerning the need for and consequences of proposed government action. Executive Order 12866 requires the preparation and evaluation of an Assessment of Costs and Benefits for all proposed regulatory action determined to be significant. An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number (this applies only to the state respondents in this information collection). The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The

Federal Register Notice required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 6/17/94 (59 FR 31238); 0 comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average (4) hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The total burden hours calculated for this ICR are based upon surveying 100 respondents. For purposes of this calculation it was assumed that all 100 sites would be state-lead, rather than region-lead, sites. Due to this fact, the burden hours presented below represent an overestimate of the actual burden of this survey.

Respondents/Affected Entities: EPA Regional and State RCRA Corrective Action regulators.

Estimated Number of Respondents: 100.

Frequency of Response: 1.

Estimated Total Annual Hour Burden: 400 hours.

Dated: August 22, 1996.

Elizabeth A. Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 96-23654 Filed 9-13-96; 8:45 am]

BILLING CODE 6560-50-P

[FRL-5609-6]

Underground Injection Control Program Hazardous Waste Injection Restrictions; Petition for Exemption—Class I Hazardous Waste Injection; American Ecology Environmental Services Corporation (AEESC)**AGENCY:** Environmental Protection Agency.**ACTION:** Notice of final decision on petition modification.

SUMMARY: Notice is hereby given that modification of an exemption to the land disposal restrictions under the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act has been granted to AEESC, for the Class I injection wells located at Winona, Texas. As required by 40 Part CFR 148, the company has adequately demonstrated to the satisfaction of the Environmental Protection Agency by petition and supporting documentation that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for as long as the waste remains hazardous. This final decision allows the underground injection by AEESC, of the specific restricted hazardous waste identified in the exemption modification, into the Class I hazardous waste injection wells at the Winona, Texas facility specifically identified in the modified exemption, for as long as the basis for granting an approval of this exemption remains valid, under provisions of 40 CFR 148.24. As required by 40 CFR 124.10, a public notice was issued June 12, 1996. The public comment period closed on July 29, 1996. This decision constitutes final Agency action and there is no Administrative appeal.

DATES: This action is effective as of August 30, 1996.**ADDRESSES:** Copies of the modified petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region 6, Water Quality Protection Division, Source Water Protection Branch (6WQ-S), 1445 Ross Avenue, Dallas, Texas 75202-2733.**FOR FURTHER INFORMATION CONTACT:** Ken Williams, Acting Chief, Ground Water/UIC Section, EPA—Region 6, telephone (214) 665-7165.William B. Hathaway,
Director, Water Quality Protection Division (6WQ).

[FR Doc. 96-23655 Filed 9-13-96; 8:45 am]

BILLING CODE 6565-50-P

[FRL-5550-7; Region 8]

South Dakota; Final Determination of Adequacy of State's Municipal Solid Waste Permit Program Over Non-Indian Lands for the Former Lands of the Yankton Sioux, Lake Traverse (Sisseton-Wahpeton) and Parts of the Rosebud Indian Reservation**AGENCY:** Environmental Protection Agency.**ACTION:** Notice of final determination on application of the State of South Dakota for program adequacy determination.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribe permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill Criteria will apply to all permitted and unpermitted MSWLFs.

The State of South Dakota applied for a determination of adequacy under Section 4005 of RCRA for jurisdiction over non-Indian lands for the Yankton Sioux Reservation, Lake Traverse (Sisseton-Wahpeton) Reservation and parts of the Rosebud Indian Reservation lying within Gregory, Tripp, Lyman and Mellette Counties. EPA has reviewed South Dakota's application and has made a final determination that the South Dakota application is adequate for all lands, *other than Indian Country as defined in 18 U.S.C. Section 1151*, that were formerly within the 1867 Lake Traverse Reservation boundaries and for all lands in Gregory, Tripp, Lyman and Mellette Counties that were formerly within the 1889 Rosebud Sioux Reservation boundaries. EPA believes that the State of South Dakota has not sufficiently demonstrated that the Yankton Sioux Reservation was disestablished by Act of Congress (26 Stat. 286, 314), and thus, the lands within the exterior boundaries of the Yankton Sioux Reservation remain Indian Country.

South Dakota's application for program adequacy determination and the all comments received in regard to that application are available for public review and comment.

EFFECTIVE DATE: September 16, 1996.**ADDRESSES:** Copies of South Dakota's application for adequacy determination are available from 8:00 a.m. to 4:00 p.m. at the following addresses for inspection and copying: South Dakota Department of Environment and Natural Resources, Office of Waste Management, Foss Building, 523 East Capitol, Pierre, South Dakota, 57501; and U.S. EPA Region 8 Library, 999 18th Street, First Floor, Denver, Colorado, 80202-2466, telephone (303) 312-6312.**FOR FURTHER INFORMATION CONTACT:** Linda Walters, Mail Code 8P2-P2, Pollution Prevention Branch, U.S. EPA Region 8, 999 18th Street, Denver, Colorado, 80202-2466, telephone (303) 312-6385.**SUPPLEMENTARY INFORMATION:****A. Background**

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR Part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under Part 258. Subtitle D also requires in Section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised

Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in Section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. Procedural History of South Dakota's Application

On April 29, 1993, South Dakota submitted an application for adequacy determination for the State's municipal solid waste landfill permit program. On October 8, 1993, (58 FR 52846), EPA determined that South Dakota's application for adequacy determination met all of the statutory and regulatory requirements established by RCRA. Accordingly, South Dakota was granted a determination of adequacy for all portions of its municipal solid waste landfill permit program. However, EPA's decision to approve the South Dakota MSWLF permitting program did not extend to Indian Country, including the following "existing or former" Indian reservations in the State of South Dakota:

1. Cheyenne River
2. Crow Creek

3. Flandreau
4. Lower Brule
5. Pine Ridge
6. Rosebud
7. Sisseton
8. Standing Rock
9. Yankton

In the October 8, 1993, FR Notice, EPA stated that before EPA would be able to approve the State of South Dakota MSWLF permit program for any portion of Indian Country, the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. Furthermore, in order for a State (or Tribe) to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval.

On October 8, 1993, the State of South Dakota submitted an application amendment to EPA for approval of its solid waste permit program "for regulation of solid waste activities on non-Indian lands for the former lands of the Yankton Sioux, Sisseton and parts of the Rosebud Indian Reservations." On April 7, 1994, (59 FR 16648), EPA made a tentative determination that the South Dakota amended application was adequate under Section 4005 of RCRA for the disestablished areas within the former boundaries of Lake Traverse and Yankton Reservations and the diminished portions of Rosebud Sioux Reservation lying within Gregory, Tripp, Lyman, and Mellette Counties, excluding Indian Country presently located within these disestablished and diminished areas.

EPA requested and received numerous comments from several parties during the following 30 day comment period and the two public hearings held at the Fort Randall Casino on June 1, 1994, and at Pierre, South Dakota on June 2, 1994. The comment period was extended beyond the 30 day comment period and comments were accepted by EPA up through July 1, 1994.

C. EPA's Determination

1. Lake Traverse (Sisseton-Wahpeton) Indian Reservation

The State of South Dakota and other commenters argued that the Lake Traverse Reservation, created by an 1867 Treaty between the United States and the Sisseton and Wahpeton bands of Sioux Indians, was disestablished by Act of Congress in 1891 and that the

lands formerly part of that Reservation that are now owned in fee by non-Indians do not qualify as Indian Country pursuant to 18 U.S.C. 1151(a). In support of its assertion, the State cited the U.S. Supreme Court decision in *DeCoteau v. District County Court*, 420 U.S. 425 (1975).

Having reviewed all comments regarding the Lake Traverse Reservation and having consulted with the Department of Interior, EPA agrees with the State that the Supreme Court found in *DeCoteau* that the Lake Traverse Reservation has been disestablished. Accordingly, EPA is today approving the South Dakota MSWLF permitting program for all lands that were formerly within the 1867 Lake Traverse Reservation boundaries and do not otherwise qualify as Indian Country under 18 U.S.C. 1151. Today's approval does not extend to any trust or other lands within the former Lake Traverse Reservation that still qualify as Indian Country.

2. Rosebud Indian Reservation

The State of South Dakota argued that the Rosebud Indian Reservation, created by an 1889 Treaty between the United States and the Rosebud Sioux Tribe, was diminished by Acts of Congress in 1904, 1907, and 1910 and that the lands in Gregory, Tripp, Lyman and Mellette Counties formerly part of that Reservation that are now owned in fee by non-Indians do not qualify as Indian Country pursuant to 18 U.S.C. 1151(a). In support of its assertion, the State cited the U.S. Supreme Court decision in *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977).

Having reviewed the comments regarding the Rosebud Sioux Reservation and having consulted with the Department of Interior, EPA agrees with the State that the Supreme Court found in *Kneip* that the exterior boundaries of the Rosebud Reservation has been diminished and no longer include Gregory, Tripp, Lyman and Mellette Counties. Accordingly, EPA is today approving the South Dakota MSWLF permitting program for all lands in Gregory, Tripp, Lyman and Mellette Counties that were formerly within the 1889 Rosebud Sioux Reservation boundaries and do not otherwise qualify as Indian Country under 18 U.S.C. 1151. Today's approval does not extend to any trust or other lands in Gregory, Tripp, Lyman and Mellette Counties that still qualify as Indian Country.

3. Yankton Sioux Reservation

The State of South Dakota and other commenters argued that the Yankton

Sioux Reservation, established in the 1858 Treaty between the United States and the Yankton Sioux Tribe, had been disestablished by the United States Congress in the Act of August 15, 1884, (28 Stat. 286, 314) and that lands formerly part of the Yankton Sioux Reservation which are now owned in fee by non-Indians are no longer Indian Country. In support of its assertion, the State cited four opinions of the South Dakota Supreme Court and *Weddell v. Meierhenry*, 636 F.2d 211 (8th Cir. 1980). The Yankton Sioux Tribe and other commenters argued that Congress did not express a "plain and unambiguous statement of congressional intent" to disestablish the Yankton Sioux Reservation and that the State and Federal Court opinions cited by South Dakota on the Yankton Reservation disestablishment issue are not controlling.

The Agency has carefully reviewed and analyzed the arguments presented and has consulted with the Department of Interior as to whether Congress has disestablished the Yankton Sioux Reservation. In this analysis, the Agency was mindful that the issue of disestablishment is a matter of interpretation of Federal laws and that no Federal Court had addressed the merits of the question of the disestablishment of the Yankton Sioux Reservation until the recent opinion of the U.S. District Court in *Yankton Sioux Tribe v. Southern Missouri Waste Management District*, No. 94-4217 (D.S.D. June 14, 1995). As the Federal District Court in South Dakota has now addressed the issue on the merits, the Agency will follow that Court's finding that Congress did not, in the Act of August 15, 1894, disestablish the Yankton Sioux Reservation. Thus, in the Agency's view, the lands within the exterior boundaries of the Reservation remain Indian Country.

The Agency has stated previously, in its "Final Determination of Partial Program Adequacy" of South Dakota's municipal solid waste landfill (MSWLF) permit program, published at 58 FR 52486, 52488 (1993) that "[b]efore EPA would be able to approve the State of South Dakota's MSWLF permit program for any portion of 'Indian Country,' the State would have to provide an appropriate analysis of the State's jurisdiction to enforce in these areas. In order for a State (or Tribe) to satisfy this requirement, it must demonstrate to the EPA's satisfaction that it has authority either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law to enforce its laws against existing and potential pollution sources within

any geographical area for which it seeks program approval." As the State has failed to make such a demonstration for lands within the exterior boundaries of the Yankton Sioux Reservation, the Agency does not today approve the South Dakota MSWLF permitting program within the exterior boundaries of the Yankton Sioux Reservation.

D. Other Major Comments

Several commenters expressly or impliedly suggested that only South Dakota had the technical and legal authority to provide proper oversight of MSWLFs and protect the environment. Section 4005(c)(1)(B) of RCRA, as amended, requires both States and Tribes to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or conditionally exempt small quantity generator waste will comply with the revised MSWLF Criteria (40 CFR part 258). EPA is tasked with determining whether States or Tribes have adequate permit programs for MSWLFs. In making its determination of adequacy, EPA reviews such technical and legal criteria as location, operation, design, groundwater monitoring, corrective action, closure, post-closure, financial assurance, enforcement and intervention authorities, public participation, and compliance monitoring to ensure enforceable standards comparable to EPA's revised MSWLF criteria exist in the State or Tribal application. The agency believes that this type of review of a State or Tribal application is sufficient to ensure that proper oversight is assured. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991). Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State/Tribal enforcement program. Furthermore, should EPA not find a State or Tribal application to be adequate as described above, EPA may enforce 40 CFR Part 258 if an imminent and substantial endangerment exists.

Another commenter expressed disappointment that EPA raised the issue of jurisdiction in environmental issues such as solid waste. EPA is required by RCRA Section 4005(C) and by 40 CFR Part 258 to authorize only those regulatory programs in which the

applying State or Tribe can lawfully enforce its laws in court. The Agency believes that jurisdiction is thus appropriate and necessary to the effective enforcement and administration of regulatory programs intended to protect public health and the environment.

Another commenter argued that there should be only one central authority possessing the expertise, capability, and jurisdiction to "fully and completely administer the national solid waste policy in the State of South Dakota." The commenter further suggested that, in this case, the central authority should be the State of South Dakota. The Agency, in reaching its decision to treat Indian tribes as politically separate and distinct from the states, is following over two hundred years of well-established legal and political practice. See, e.g., *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832). Further, the State of South Dakota has, as noted above, failed to make an adequate demonstration of jurisdiction over Indian Country.

Another commenter, apparently accepting that the Supreme Court had found the Lake Traverse Reservation to be disestablished in *DeCoteau* and the Rosebud Reservation diminished in *Kneip*, argued that the Agency should specify those areas that might be Indian Country within the meaning of 18 U.S.C. 1151(b), which defines Indian Country as including "dependent Indian communities." No commenters have specified any areas that might be dependent Indian communities within the former Lake Traverse Reservation or the diminished portion of the Rosebud Reservation. Nevertheless, the Agency believes that the definition of Indian Country as set by Congress in 18 U.S.C. 1151 provides a useful and workable guideline for determining areas of state authority in this as in other areas of governance. Any controversy that may arise regarding the inclusion of specific tracts in the definition of Indian Country, such as in determining the exact geographical location of political boundaries, can be dealt with as they may arise.

Several commenters raised objections to tribal regulation of non-Indian operators of landfills and argued that non-members have no avenue for participation in tribal governments or constitutional safeguards in tribal courts. Another commenter responded that anyone can request and speak before or petition the Yankton Sioux tribal government, whether they are Indian or non-Indian and that tribal courts are open to all individuals, whether Indian or non-Indian.

EPA is very aware of the concerns of non-Indians regarding fair treatment before tribal governments, but has no reason to believe that tribal governments are either more fair or less fair than other governments. However, the Agency is today considering only the question whether the State of South Dakota has regulatory authority, not whether the tribes have or should have such authority. The question of tribal regulatory authority is addressed only when a tribe applies for program authorization, as the State of South Dakota has done here.

Several commenters discussed the design, permitting and siting of the proposed landfill at Lake Andes, making thoughtful and detailed comments both for and against the landfill, including health, safety and environmental impacts, as well as issues of environmental justice and racism. Today's decision, however, is limited to the question whether the State of South Dakota has met the requirements of Section 4005 of RCRA and 40 CFR Part 258 regarding authorization of the State's Program for the Lake Traverse and Yankton Sioux Reservations and the diminished portion of the Rosebud Sioux Reservation. Accordingly, the Agency is not required to address the merits of the Lake Andes siting, design and permitting criteria. However, all permits issued under a State or Tribal program determined by EPA to be adequate must meet minimum Federal standards, including a permit to Roberts County for a new sanitary landfill.

Compliance With Executive Order 12866

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

Certification Under the Regulatory Flexibility Act

EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. By approving State/Tribal municipal solid waste permitting programs, owners and operators of municipal solid waste landfills who are also small entities will be eligible to use the site-specific flexibility provided by Part 258 to the extent the State/Tribal permit program allows such flexibility. However, since such small entities which own and/or operate municipal solid waste landfills are already subject to the requirements in 40 CFR Parts 258 or are exempted from certain of these requirements, such as the groundwater monitoring and design provisions, this approval does

not impose any additional burdens on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities; rather this approval creates flexibility for small entities in complying with the 40 CFR Part 258 requirements. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (the Act), P.L. 104-4, which was signed into law on March 22, 1995, EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. When such a statement is required for EPA rules, under section 205 of the Act EPA must identify and consider alternatives, including the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law. Before EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the Act a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them

on compliance with the regulatory requirements.

The Agency does not believe that approval of the State's program would result in estimated costs of \$100 million or more to State, local, and tribal governments in the aggregate, or to the private sector, in any one year. This is due to the additional flexibility that the State can exercise (which will reduce, not increase, compliance costs). Thus, today's notice is not subject to the written statement requirements in sections 202 and 205 of the Act.

As to section 203 of the Act, the approval of the State program will not significantly or uniquely affect small governments other than the applicant, the State of South Dakota. As to the applicant, the State has received notice of the requirements of an approved program, has had meaningful and timely input into the development of the program requirements, and is fully informed as to compliance with the approved program. Thus, any applicable requirements of section 203 of the Act have been satisfied.

Authority: This notice is issued under the authority of Sections 2002, 4005, and 4010 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6912, 6945, and 6949(a).

Dated: June 24, 1996.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 96-23653 Filed 9-13-96; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commission announces that it intends to submit to the Office of Management and Budget (OMB) a request to extend without change the existing collection of information listed below. The Commission is seeking public comments on the proposed extension.

DATES: Written Comments on this notice must be submitted on or before November 15, 1996.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a

convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663-4114. (This is not a toll free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663-4078 (voice) or (202) 663-4074 (TDD). (These are not toll free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, Equal Employment Opportunity Commission, 1801 L Street, NW., Room 9222, Washington, DC 20507, (202) 663-4958 or (202) 663-7063 (TDD). A copy of the collection of information, EEOC Form 274, with instructions, may be obtained by contacting Mr. Neckere.

SUPPLEMENTARY INFORMATION:

Collection Title: Equal Employment Opportunity Local Union Report EEO-3.

OMB Control Number: 3046-0006.

Form Number: EEOC Form 274.

Frequency of Report: Biennial.

Type of Respondent: Referral unions with 100 or more members.

Standard Industrial Classification (SIC) Code: 863.

Description of Affected Public: Labor unions and similar labor organizations.

Responses: 3,000.

Reporting Hours: 4,500.

Federal Cost: \$43,500.00.

Number of Forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), require employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the Commission. Pursuant to 29 U.S.C. 1602.7, referral unions with 100 or more members are required to submit EEO-3 reports biennially. The EEO-3 data collection program has existed since 1967. The individual reports are confidential.

EEO-3 data are used by the Commission to investigate charges of employment discrimination against

local referral unions. Pursuant to Section 709(d) of Title VII, EEO-3 data are shared with 89 state and local fair employment practices agencies, and with other federal agencies.

Burden Statement: The respondent burden for this collection is minimal. The estimated number of respondents included in the EEO-3 survey is 3,000 local unions. The estimated number of responses per respondent union is one EEO-3 report, taking an estimated one and one half hours to complete. The total number of annual burden hours therefore is estimated to be 4,500.

This is an average burden estimate and is based on a long history (since 1985) of identical reporting experience. The burden is dependent on the size of the local union and on the number of referrals made by the union during the reporting period. Smaller unions may well take under an hour to complete the report. Over the years, the Commission has reduced the reporting and record keeping burden by eliminating all local unions with fewer than 100 members, by requiring record keeping for a two month period only, by changing the data collection instrument, and by changing the frequency of the data collection from an annual to a biennial basis. Further reductions, such as filing by diskette or magnetic tape, have been less successful as local unions appear less likely to have computerized record keeping and reporting capabilities.

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB regulation 29 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection on the respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., electronic submission of responses.

Dated: September 10, 1996.

For the Commission.
Maria Borrero,
Executive Director.
[FR Doc. 96-23648 Filed 9-13-96; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has recently approved the agencies' publication for public comment of proposed revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the proposed revisions prior to giving its final approval. The agencies will then submit the revisions to OMB for review and approval. Comments are invited on: (a) Whether the proposed revisions to the following collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility; (b) the accuracy of the agencies' estimate of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d)

ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before November 15, 1996.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: Written comments should be submitted to the Communications Division, Ninth Floor, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219; Attention: Paperwork Docket No. 1557-0081 [FAX number (202) 874-5274; Internet address: reg.comments@occ.treas.gov]. Comments will be available for inspection and photocopying at that address.

Board: Written comments should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M-P-500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8(a).

FDIC: Written comments should be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to Room F-402, 1776 F Street, N.W., Washington, D.C. 20429, on business days between 8:30 a.m. and 5:00 p.m. Comments may be sent through facsimile to: (202) 898-3838 or by the Internet to: comments@fdic.gov. Comments will be available for inspection at the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed revisions to the collections of information may be requested from any of the agency clearance officers whose names appear below.

OCC: Jessie Gates, OCC Clearance Officer, (202) 874-5090, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

Board: Mary M. McLaughlin, Board Clearance Officer, (202) 452-3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, (202) 452-3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898-3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Revise the Following Currently Approved Collections of Information

Title: Consolidated Reports of Condition and Income

Form Number: FFIEC 031, 032, 033, 034.¹

For OCC:

OMB Number: 1557-0081.

Frequency of Response: Quarterly.

Affected Public: National Banks.

Estimated Number of Respondents: 2,800 national banks.

Estimated Time per Response: 39.62 burden hours.

Estimated Total Annual Burden: 443,744 burden hours.

For Board:

OMB Number: 7100-0036.

Frequency of Response: Quarterly.

Affected Public: State Member Banks.

Estimated Number of Respondents: 1,002 state member banks.

Estimated Time per Response: 45.70 burden hours.

Estimated Total Annual Burden: 183,166 burden hours.

For FDIC:

OMB Number: 3064-0052.

Frequency of Response: Quarterly.

¹ The FFIEC 031 report form is filed by banks with domestic and foreign offices. The FFIEC 032 report form is filed by banks with domestic offices only and total assets of \$300 million or more. The FFIEC 033 report form is filed by banks with domestic offices only and total assets of \$100 million or more but less than \$300 million. The FFIEC 034 report form is filed by banks with domestic offices only and total assets of less than \$100 million.

Affected Public: Insured State Nonmember Commercial and Savings Banks.

Estimated Number of Respondents: 6,668 insured state nonmember commercial and savings banks.

Estimated Time per Response: 28.72 burden hours.

Estimated Total Annual Burden: 765,900 burden hours.

The estimated time per response varies by agency because of differences in the composition of the banks under each agency's supervision (e.g., size distribution of banks, types of activities in which they are engaged, and number of banks with foreign offices).

General Description of Report: This information collection is mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for state member banks), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). Except for select sensitive items, this information collection is not given confidential treatment. Small businesses (i.e., small banks) are affected.

Abstract: Consolidated Reports of Condition and Income are filed quarterly with the agencies for their use in monitoring the condition and performance of reporting banks and the industry as a whole. The reports are also used to calculate banks' deposit insurance assessments and for monetary policy and other public policy purposes.

Current Actions: A number of existing items would be consolidated or deleted. The Call Report instructions would be revised by eliminating instructions that differ from generally accepted accounting principles (GAAP) and a small number of new items would be added to meet supervisory data needs resulting from this move to GAAP. Other new items would be added to the Call Report that are necessary to enhance the agencies' ability to monitor interest rate risk, to identify bank usage of credit derivatives, and to support the FDIC's calculation of deposit insurance assessments.

Type of Review: Revision.

The proposed revisions to the Consolidated Reports of Condition and Income (Call Report) that are the subject of this notice have been approved for publication by the FFIEC.

Implementation of these revisions would take place as of the March 31, 1997, report date. The proposed changes to the Call Report affect several existing schedules. Unless otherwise indicated, the Call Report changes apply to all four sets of report forms (FFIEC 031, 032, 033, and 034). Nonetheless, as is customary for Call Report changes, banks are advised that, for the March 31,

1997, report date, reasonable estimates may be provided for any new or revised item for which the requested information is not readily available. The specific wording of the captions for the new or revised Call Report items discussed below should be regarded as preliminary.

The proposed revisions are summarized as follows:

Deletions and Reductions in Detail

Based on their review of the current content of the Call Report, the agencies are proposing that several deletions and reductions in detail be made to the Call Report, generally because the existing items or current levels of detail are no longer considered sufficiently useful to warrant their continued collection. These and certain related modifications to the Call Report would affect the following schedules:

(1) Schedule RC—Balance Sheet:

(a) Items 3.a and 3.b, "Federal funds sold" and "Securities purchased under agreements to resell," would be combined into a single item (item 3). In addition, on the FFIEC 031 report form, this single Schedule RC item would begin to be reported on a fully consolidated basis, rather than including only the domestic offices of the bank, the domestic offices of the bank's Edge and Agreement subsidiaries, and IBFs, and corresponding changes would be made to Schedule RC-K—Quarterly Averages, item 5, and Schedule RI—Income Statement, item 1.f.

(b) Items 14.a and 14.b, "Federal funds purchased" and "Securities sold under agreements to repurchase," would be combined into a single item (item 14). In addition, on the FFIEC 031 report form, this single Schedule RC item would begin to be reported on a fully consolidated basis, rather than including only the domestic offices of the bank, the domestic offices of the bank's Edge and Agreement subsidiaries, and IBFs, and corresponding changes would be made to Schedule RC-K—Quarterly Averages, item 13, and Schedule RI—Income Statement, item 2.b.

(c) Item 17, "Mortgage indebtedness and obligations under capitalized leases," would be combined with existing item 16, "Other borrowed money." In addition, on the FFIEC 031, 032, and 033 report forms, a corresponding change in definition would be made to Schedule RC-K—Quarterly Averages, item 14, "Other borrowed money."

(d) Item 22, "Limited-life preferred stock and related surplus," would be

combined with existing item 19, "Subordinated notes and debentures."

(2) Schedule RC—B—Securities:

(a) Items 6.a and 6.b, "Investments in mutual funds" and "Other equity securities with readily determinable fair values," would be combined into a single item (item 6.a). In addition, on the FFIEC 031 report forms, the corresponding items (items 16.a and 16.b) would be combined into a single item (item 16.a) on Schedule RC—H—Selected Balance Sheet Items for Domestic Offices.

(b) Memorandum item 4, "Held-to-maturity debt securities restructured and in compliance with modified terms," would be deleted.

(3) Schedule RC—C, Part I—Loans and Leases: Memorandum item 1, "Commercial paper included in Schedule RC—C, part I, above," (completed only by banks filing the FFIEC 031, 032, and 033 report forms) would be deleted. In addition, the instructions would be revised to indicate that commercial paper should no longer be reported as a loan in Schedule RC—C, but should be reported as a security in Call Report Schedule RC—B, normally in item 5, "Other debt securities."

(4) Schedule RC—E—Deposit Liabilities: Memorandum item 2.d, "Open-account time deposits of \$100,000 or more" (in domestic offices), would be combined with existing Memorandum item 2.c, "Time certificates of deposit of \$100,000 or more" (in domestic offices). Memorandum item 2.c would be recaptioned "Total time deposits of \$100,000 or more." As a result of this change, the coverage of the existing items for interest expense on and the quarterly averages for "Time certificates of deposit of \$100,000 or more" and "All other time deposits" in Schedules RI² and RC-K,³ respectively, would be revised by moving open-account time deposits of \$100,000 or more from the latter item to the former item in each of these schedules. The caption for the latter item in each schedule would refer to "Time deposits of less than \$100,000" and the caption for the former item would refer to "Time deposits of \$100,000 or more."

(5) Schedule RC—L—Off-Balance Sheet Items:

(a) Item 1.d, "Securities underwriting," would be combined with

existing item 1.e, "Other unused commitments."

(b) Items 10.a and 10.b, "Gross commitments to purchase" and "Gross commitments to sell" when-issued securities, would be eliminated as separate items and would begin to be reported as off-balance sheet derivative contracts in items 14 through 17. The notional amount of these commitments would be included in item 14.b, "Forward contracts," generally in column A, "Interest rate contracts," and in items 15 and 16 based on their purpose. On the FFIEC 031, 032, and 033 report forms, the fair values of these commitments would be reported in item 17. The Glossary entry for "when-issued securities transactions" would be revised accordingly.

(6) Schedule RC—M—Memoranda:

(a) Item 8.c, "Total assets of unconsolidated subsidiaries and associated companies," would be deleted.

(b) Memorandum item 1.b, "Nonreciprocal holdings of banking organizations' capital instruments," which is collected in the December report only, would be deleted.

(7) Schedule RC—R—Regulatory Capital:

(a) The separate maturity distributions for "Subordinated debt and intermediate term preferred stock" in items 2.a through 2.f, column A, and "Other Limited-Life Capital Instruments" in items 2.a through 2.f, column B, would be replaced by two single separate items (new items 2.a and 2.b) for the qualifying portion of each of these two types of capital components that is includible in Tier 2 capital.

(b) Item 4.a.(1), "Securities issued by, other claims on, and claims unconditionally guaranteed by, the U.S. Government and its agencies and other OECD central governments," and item 4.a.(2), "All other" assets assigned to the zero percent risk category," would be combined into a single revised item 4.a for all zero percent risk weight assets recorded on the balance sheet.

(c) Item 5.a.(1), "Claims conditionally guaranteed by the U.S. Government and its agencies and other OECD central governments," item 5.a.(2), "Claims collateralized by securities issued by the U.S. Government and its agencies and other OECD central governments; by securities issued by U.S. Government-sponsored agencies; and by cash on deposit," and item 5.a.(3), "All other" assets assigned to the 20 percent risk category," would be combined into a single revised item 5.a for all 20 percent risk weight assets recorded on the balance sheet.

(8) Schedule RI—Income Statement:

² Items 2.a.(1)(b)(3) and 2.a.(1)(b)(4) on the FFIEC 031 report forms; items 2.a.(2)(c) and 2.a.(2)(d) on the FFIEC 032, 033, and 034 report forms.

³ Items 11.c and 11.d on the FFIEC 031, 032, and 033 report forms; items 9.c and 9.d on the FFIEC 034 report forms.

(a) Consistent with the proposed revision to Schedule RC noted above, item 2.d, "Interest on mortgage indebtedness and obligations under capitalized leases," would be combined with existing item 2.c, "Interest on demand notes issued to the U.S., trading liabilities, and other borrowed money."

(b) On the FFIEC 031, 032, and 033 report forms, item 5.d, "Other foreign transaction gains (losses)," would be combined with existing item 5.f.(2), "All other noninterest income." If the amount of "Other foreign transaction gains (losses)" is among the three largest amounts exceeding ten percent of the amount reported in item 5.f.(2), it would be itemized and described in Schedule RI-E, item 1.

(c) Items 11.a and 11.b, "Extraordinary items and other adjustments, gross of income taxes," and "Applicable income taxes (on item 11.a)," would be deleted. Only the amount of "Extraordinary items and other adjustments, net of income taxes" (item 11.c), would continue to be reported in Schedule RI. All extraordinary items and their related tax effects would continue to be separately itemized and described in Schedule RI-E, item 3.

(9) Schedule RI-C—Applicable Income Taxes by Taxing Authority: This schedule, which is completed only for the December report, would be eliminated, except for the item for the "deferred portion" of total applicable income taxes (item 5 on the FFIEC 031, 032, and 033 report forms; item 4 on the FFIEC 034 report form). The "deferred portion" item would be moved to the Memorandum section of the income statement (Schedule RI) and would continue to be collected with the December report only.

(10) Savings Bank Supplemental Schedule RC-J—Repricing Opportunities for Selected Balance Sheet Categories: This supplemental schedule, which is completed only by FDIC-supervised savings banks, would be eliminated. Savings banks would begin to complete certain Memorandum items providing maturity and repricing data in Schedules RC-B—Securities, RC-C, part I—Loans and Leases, and RC-E—Deposit Liabilities that have previously been applicable only to insured commercial banks. (Proposed revisions to the maturity and repricing data items in these three schedules are discussed below.)

Elimination of Instructions That Differ From GAAP and Related New Items

In November 1995, the FFIEC announced that it had approved the adoption of GAAP as the reporting basis

for the balance sheet, income statement, and related schedules in the Call Report, effective with the March 1997 report date. Adopting GAAP as the reporting basis in the basic schedules of the Call Report will eliminate existing differences between bank regulatory reporting standards and GAAP, thereby producing greater consistency in the information collected in regulatory reports and general purpose financial statements and reducing reporting burden. Although Call Report instructions that depart from GAAP will be eliminated, the instructions will continue to contain and the FFIEC and the agencies will continue when necessary to issue specific reporting guidance that falls within the range of acceptable practice under GAAP. Each agency also will retain existing authority to require an institution to report a transaction in the Call Report in accordance with that agency's interpretation of GAAP. Furthermore, bank regulatory capital ratios will continue to be calculated in accordance with the agencies' capital standards (for national banks, 12 CFR 3; for state member banks, 12 CFR 208, Appendices A and B; for insured state nonmember commercial and savings banks, 12 CFR 325).

In connection with this move to GAAP, the section of the Call Report's General Instructions on "Applicability of Generally Accepted Accounting Principles to Regulatory Reporting Requirements" would be revised. The revised section would remind banks that the Call Report is prepared on a separate entity basis. In addition, changes would be made to the following Call Report instructions to bring them into conformity with GAAP:

(1) The treatment of assets sold with recourse in the Glossary entry for "Sales of Assets" and the section of the Glossary entry for "Participations in Pools of Residential Mortgages" on "Privately-issued certificates of participation in pools of residential mortgages."

(2) The treatment of excess servicing fees (as that term is used in the accounting standards that are currently in effect) in the Glossary entry for "Sales of Assets" and in the instruction to Schedule RC-F, item 3, "Excess residential mortgage servicing fees receivable." (The accounting for excess servicing fees under GAAP will change on January 1, 1997, when Financial Accounting Standards Board (FASB) Statement No. 125, "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities," takes effect.)

(3) The treatment of futures, forward, and option contracts in the Glossary entry for "Futures, Forward, and Standby Contracts."

(4) The general prohibition on the netting of assets and liabilities in the Call Report set forth in the Glossary entry for "Offsetting" and in the General Instructions.

(5) The initial valuation of foreclosed assets in the Glossary entries for "Foreclosed Assets" and "Troubled Debt Restructurings" and in the instructions to Schedule RC-M, item 8.a.(2), "All other real estate owned."

(6) The maximum amortization period for intangible assets set forth in the section of the Glossary entry for "Business Combinations" on "Purchase acquisition" and in the instructions to Schedule RC-M, item 6, "Intangible assets." Consistent with the views expressed by the Securities and Exchange Commission in Staff Accounting Bulletins, the revised instructions would indicate that amortization periods in excess of 25 years generally would not be appropriate for Call Report purposes.

(7) The prohibition on the consolidation of domestic depository institution subsidiaries of the reporting bank contained in the section of the General Instructions on "Scope of the Consolidated Bank Required to be Reported in the Submitted Reports."

(8) The treatment of third party credit card solicitation costs in the Glossary entry for "Loan Fees."

(9) The maximum interest rate for capitalizing interest on internally financed projects set forth in the Glossary entry for "Capitalization of Interest Costs."

(10) The treatment of repurchase agreements to maturity and long-term repurchase agreements in the Glossary entry for "Repurchase/Resale Agreements."

(11) The treatment of loan fees charged in connection with international loans in the Glossary entry for "Loan Fees."

(12) The treatment of reciprocal balances in the Glossary entry for "Reciprocal Balances," in the instructions to Schedule RC-A, item 2, "Balances due from depository institutions in the U.S.," for the FFIEC 031, 032, and 033 report forms, and in the instructions to Schedule RC, item 1.a, "Noninterest-bearing balances and currency and coin," for the FFIEC 034 report forms.

(13) The treatment of securities transactions with settlement periods exceeding regular way settlement time limits that have been reported as forward contracts according to the

instructions to Schedule RC-L, item 14, "Gross amounts (e.g., notional amounts) of off-balance sheet derivatives."

Banks that have engaged in any of the preceding types of transactions or activities prior to January 1, 1997, and have reported them in the Call Report in accordance with the existing instructions that differ from GAAP would be permitted to report them in accordance with GAAP beginning in 1997. The effect of this retroactive application of GAAP on the amount of a bank's undivided profits as of January 1, 1997, net of applicable income taxes, (i.e., the amount of the "catch-up" adjustment) would be reported as a direct adjustment to equity capital in Schedule RI-A, item 9, and itemized and described in Schedule RI-E, item 5.

For some of the preceding types of transactions or activities which will be affected by the elimination of Call Report instructions that differ from GAAP, the potential impact of these transactions and activities on the safety and soundness of banks is of concern to the agencies. In other cases, the instructional changes may affect the reported amount of a bank's deposits and, thereby, its assessment base for deposit insurance purposes. In order to identify the extent of bank involvement in these areas or the effect on reported deposits, the FFIEC is proposing to add certain new items to the Call Report and to modify a number of existing Call Report items, as follows:

(1) In Schedule RC-F—Other Assets, the caption to item 3, "Excess residential mortgage servicing fees receivable," would be revised in response to FASB Statement No. 125 to refer to interest-only strips receivable. This item would be renumbered as item 3.a and continue to apply only to first lien 1-to-4 family residential mortgages. A new item 3.b would be added for interest-only strips receivable on other financial assets. Consistent with Statement No. 125, these strips receivable would be measured at fair value like available-for-sale securities.

(2) In Schedule RC-L—Off-Balance Sheet Items, items 9.a through 9.c on residential mortgage loans and agricultural mortgage loans transferred with recourse in transactions that have been treated as sales for Call Report purposes would be replaced. Banks would begin to report the outstanding principal balance and the amount of retained recourse exposure on (a) first lien 1-to-4 family residential mortgages and on (b) other financial assets (excluding small business obligations) that have been transferred with recourse in transactions reported as sales. Existing item 9.d on small business

obligations transferred with recourse would be retained.

(3) New items would be added to Schedule RC-M—Memoranda (or another schedule if more appropriate) for:

(a) "Net unamortized realized deferred gains (losses) on off-balance sheet derivative contracts included in assets and liabilities reported in Schedule RC." Although available-for-sale securities are reported on the balance sheet at fair value, this item would include any deferred gains (losses) that are part of the amortized cost basis of such securities.

(b) "Amount of assets netted against nondeposit liabilities (and deposits in foreign offices other than insured branches) on the balance sheet (Schedule RC) in accordance with generally accepted accounting principles." This item would include securities purchased under agreements to resell that have been netted against securities sold under agreements to repurchase under FASB Interpretation No. 41, back-to-back loans involving deposits in foreign offices, receivables and payables arising from unsettled trades, in-substance defeasance transactions grandfathered under FASB Statement No. 125, and any other assets netted against nondeposit liabilities (and deposits in foreign offices other than insured branches) under FASB Interpretation No. 39. However, the item would exclude netted on-balance sheet amounts associated with off-balance sheet derivative contracts, deferred tax assets netted against deferred tax liabilities, and assets netted in accounting for pensions.

(4) New items would be added to Schedule RC-O—Other Data for Deposit Insurance Assessments for:

(a) "Amount of assets netted against deposit liabilities in domestic offices (and in insured branches in Puerto Rico and U.S. territories and possessions) on the balance sheet (Schedule RC) in accordance with generally accepted accounting principles." Amounts would be reported separately for assets netted against demand deposits and assets netted against time and savings deposits. These items would exclude data on net reciprocal demand balances and related adjustments reported in Schedule RC-O, item 11.

(b) A "yes"/"no" question asking whether the reporting bank has any domestic depository institution subsidiaries that have been consolidated in the Reports of Condition and Income. Any bank answering "yes" to this question would be required to report the legal title and FDIC Certificate Number of each such consolidated subsidiary.

As indicated above, the existing Call Report instructions on reciprocal balances will be revised to conform with GAAP. At present, the instructions require banks to report reciprocal demand balances with commercial banks in the U.S. on a net basis on the balance sheet (Schedule RC) and in the deposit schedule (Schedule RC-E). All other reciprocal deposit relationships are to be reported gross. Because this netting instruction differs from the reciprocal deposit netting provisions in Section 7(a)(4) of the Federal Deposit Insurance Act, the insurance assessments schedule contains three netting-related items used to adjust reported deposits so they conform with the statute (Schedule RC-O, items 11.a through 11.c). The Call Report instructions on reciprocal balances, once they are revised in accordance with GAAP, will still differ from Section 7(a)(4), but in a different manner than at present. Thus, items 11.a through 11.c of Schedule RC-O must be modified to ensure that bank assessment bases continue to be properly measured. As revised, items 11.a through 11.c would be as follows:

(a) "Amount by which demand deposits would be reduced if the reporting bank's reciprocal demand balances with the domestic offices of U.S. banks and savings associations (and insured branches in Puerto Rico and U.S. territories and possessions) that were reported on a gross basis in Schedule RC-E had been reported on a net basis."

(b) "Amount by which demand deposits would be increased if the reporting bank's reciprocal demand balances with foreign banks and foreign offices off U.S. banks (other than insured branches in Puerto Rico and U.S. territories and possessions) that were reported on a net basis in Schedule RC-E had been reported on a gross basis."

(c) "Amount by which demand deposits would be reduced if cash items in process of collection were included in the calculation of the reporting bank's net reciprocal demand balances with the domestic offices of U.S. banks and savings associations (and insured branches in Puerto Rico and U.S. territories and possessions) in Schedule RC-E."

In addition, the coverage of these items would be expanded to include adjustments to demand deposits in insured branches in Puerto Rico and U.S. territories and possessions, rather than demand deposits in domestic offices only.

Although the treatment of assets sold with recourse will be brought into

conformity with GAAP for purposes of the Call Report balance sheet and income statement, the agencies' risk-based capital standards refer to the existing Call Report instructions as the source for the definition of asset sales with recourse. The relevant Call Report instructions are the Glossary entry for "Sales of Assets" with its general rule for determining whether an asset transfer must be reported as a sale or as a financing transaction. Thus, the Call Report instructions' "Sales of Assets" general rule would remain applicable for purposes of identifying those asset sales with recourse that are not already included on the balance sheet whose credit equivalent amounts must be reported by risk weight category in Call Report Schedule RC—Regulatory Capital.

In particular, as a result of the aforementioned change, banks may be able to reflect as an asset previously nonrecognized (for Call Report purposes) excess servicing fees receivable (as the term is used in the accounting standards that are currently in effect) that act as credit enhancements for assets (typically credit card receivables) that have been transferred and securitized. Generally, these fees are used to fund so-called "spread accounts."⁴ Under the existing "Sales of Assets" general rule, because the excess servicing fees were not booked as an asset on the Call Report balance sheet, the asset transfers were considered to be "without recourse" (assuming there were no other features of the asset transfer that constituted a retention of risk of loss or obligation for payment) and qualified for sale treatment.⁵

In conjunction with the move to GAAP, asset transfers that qualify for sale treatment under GAAP, but which use excess servicing fees receivable as credit enhancements, would have to be reported as an off-balance sheet sale with recourse on Schedule RC—L because the bank has retained risk of loss. For this same reason, the bank will have to hold risk-based capital against the full amount of assets transferred

with recourse. However, such transfers may qualify for low-level recourse capital treatment which would limit the amount of capital required to the amount of excess servicing fees receivable net of any noncapital GAAP recourse liability account associated with the asset transfer. The Call Report instructions would be clarified to address these matters. The agencies also note that an interagency recourse working group is reviewing the risk-based capital treatment of all asset transfers, including transfers that use excess servicing fees as credit enhancements, to determine whether any changes should be proposed in the capital treatment for these transactions.

The agencies' adoption of GAAP as the reporting basis for the balance sheet, income statement, and related schedules in the Call Report in the first quarter of 1997 coincides with the first reporting period in which FASB Statement No. 125 will be in effect both for financial statements prepared in accordance with GAAP and the Call Report. Comment is requested on whether there are Call Report changes other than those described above that the FFIEC and the agencies should consider making in response to FASB Statement No. 125.

Call Report Changes To Improve the Monitoring of Interest Rate Risk Exposures

On June 26, 1996, the agencies published a Joint Agency Policy Statement on Interest Rate Risk (61 FR 33166). The agencies stated that the risk assessment approach that they use to evaluate a bank's capital adequacy for interest rate risk relies on a combination of quantitative and qualitative factors. The agencies will use various quantitative screens and filters as tools to identify banks that may have high exposures or complex risk profiles, to allocate resources, and to set examination priorities. These tools rely on Call Report data and various economic indicators and data.

The agencies have determined that the existing Call Report data that has been collected for interest rate risk analysis needs is not adequate for the quantitative screens and filters that they will use. The agencies are therefore proposing a set of revisions to the Call Report data collected for interest rate risk monitoring purposes that will improve their ability to screen for significant levels of interest rate risk. In summary, the agencies propose to:

- combine maturity and repricing data where possible,
- break out residential mortgage assets from other types of assets,

- break out mortgage derivative securities from other securities and have them reported based on their expected life,

- add two time bands for maturity/ repricing data for loans and securities,
- add one time band for time deposits of less than \$100,000 and conform time deposits of \$100,000 or more to these time bands,
- add one time band for other borrowed money, and
- add items for longer term commercial and commercial real estate loans, off-balance sheet derivatives exposed to rising interest rates, the fair value of mortgage servicing assets, residential mortgage loans serviced by others, and loans other than residential mortgages serviced for others.

Because of the combining of maturity and repricing data, some revisions also need to be made to certain short-term asset and liability items collected for liquidity analysis purposes.

The specific proposed changes are as follows:

(1) Schedule RC—Balance Sheet: Item 16.b, "Other borrowed money with a remaining maturity of more than one year," would be split into two separate items for borrowings with remaining maturities of more than one year through three years (new item 16.b) and more than three years (new item 16.c).

(2) Schedule RC—Securities:

(a) Memorandum item 2, "Maturity and repricing data for debt securities," would be revised and would begin to be completed by FDIC-supervised savings banks.

(i) Revised Memorandum items 2.a and 2.b would cover maturity and repricing data for "Non-mortgage debt securities" and "Mortgage pass-through securities," with fixed rate and floating rate instruments reported on a combined basis. Fixed rate instruments would continue to be reported based on their remaining contractual maturity. Floating rate instruments would continue to be reported based on their repricing frequency. The existing "Over one year through five years" time band would be split into two separate bands: "Over one year through three years" and "Over three years through five years." The existing "Over five years" time band would also be split into two separate bands: "Over five years through fifteen years" and "Over fifteen years."

(ii) Memorandum item 2.c would cover mortgage-backed securities other than pass-through securities, e.g., CMOs, REMICs, and stripped mortgage-backed securities. A two-way breakdown of these instruments by expected average life would be reported: those with an expected average life of

⁴ As noted earlier, the accounting for excess servicing fees under GAAP will change on January 1, 1997, when FASB Statement No. 125 takes effect. Under this new accounting standard, amounts that would be deemed excess servicing fees receivable under current accounting standards would be reported instead as either servicing assets or interest-only strips receivable, depending upon the circumstances. The discussion in this paragraph would also be applicable to these types of assets if they act as credit enhancements.

⁵ See the FFIEC's November 21, 1986, release on the bank Call Report treatment of a retained residual interest in an escrow account established to absorb losses on loans transferred without recourse.

"Three years or less" and those with an expected average life of "Over three years."

(b) Because fixed rate debt securities would no longer be reported separately by remaining maturity, Memorandum item 6, "Floating rate debt securities with a remaining life of one year or less," would be expanded to cover all debt securities, and would begin to be completed by FDIC-supervised savings banks.

(3) Schedule RC-C, Part I—Loans and Leases:

(a) The Memorandum item for "Maturity and repricing data for loans and leases" (Memorandum item 3 on the FFIEC 031, 032, and 033 report forms; Memorandum item 2 on the FFIEC 034 report forms) would be revised and would begin to be completed by FDIC-supervised savings banks. Revised subitems a. and b. would cover maturity and repricing data for "Loans secured by real estate" and "Other loans and leases," with fixed rate and floating rate instruments reported on a combined basis. Fixed rate instruments would continue to be reported based on their remaining contractual maturity. Floating rate instruments would continue to be reported based on their repricing frequency. The same changes in time bands would be made as were described above under Schedule RC-B.

(b) Because fixed rate loans and leases would no longer be reported separately by remaining maturity, the Memorandum item for "Floating rate loans with a remaining maturity of one year or less" (Memorandum item 3.d on the FFIEC 031, 032, and 033 report forms; Memorandum item 2.d on the FFIEC 034 report forms) would be expanded to cover all loans and leases, and would begin to be completed by FDIC-supervised savings banks.

(c) New Memorandum items would be added for "Commercial and industrial loans with a remaining maturity or repricing frequency of over three years" and "Loans secured by nonfarm nonresidential real estate with a remaining maturity or repricing frequency of over five years" (Memorandum items 3.e and 3.f on the FFIEC 031, 032, and 033 report forms; Memorandum items 2.e and 2.f on the FFIEC 034 report forms).

(4) Schedule RC-E—Deposit Liabilities: Memorandum items 5 and 6, "Maturity and repricing data for time deposits of less than \$100,000" and "Maturity and repricing data for time deposits of \$100,000 or more," would be revised and would begin to be completed by FDIC-supervised savings banks:

(a) Memorandum item 5.a for fixed rate deposits of less than \$100,000 and Memorandum item 5.b for floating rate deposits of less than \$100,000 would be reported on a combined basis in revised Memorandum item 5.a. Memorandum items 6.a and 6.b covering time deposits of \$100,000 or more would be combined in the same manner in revised Memorandum item 6.a. Fixed rate instruments would continue to be reported based on their remaining contractual maturity. Floating rate instruments would continue to be reported based on their repricing frequency.

(b) For time deposits of less than \$100,000 (reported in revised Memorandum item 5.a), the existing "Over one year" time band would be split into two separate time bands: "Over one year through three years" and "Over three years." For time deposits of \$100,000 or more (reported in revised Memorandum item 6.a), the existing "Over one year through five years" and "Over five years" time bands would be changed to "Over one year through three years" and "Over three years."

(c) Because fixed rate time deposits would no longer be reported separately by remaining maturity, Memorandum items 5.c and 6.c, "Floating rate time deposits of less than \$100,000 with a remaining life of one year or less" and "Floating rate time deposits of \$100,000 or more with a remaining life of one year or less," would each be expanded to cover all time deposits of that respective size.

(5) Schedule RC-L—Off-Balance Sheet Items: New items would be added for the total gross notional amount of certain interest rate contracts held for purposes other than trading. There would be separate items for "Interest rate swaps where the bank has undertaken a floating rate obligation," "Long positions in interest rate futures and forward contracts," and "Short positions in interest rate options."

(6) Schedule RC-M—Memoranda: New items would be added for the "Fair value of mortgage servicing rights," the carrying value of which is currently reported in item 6.a of this schedule, the "Outstanding principal balance of 1-to-4 family residential mortgage loans held in portfolio that are serviced by others," and the "Outstanding principal balance of loans other than 1-to-4 family residential mortgage loans that are serviced for others."

Reporting of Adjusted Attributable Deposit Amounts by Oakar Institutions

On July 3, 1996, the FDIC proposed to amend certain provisions of its assessment regulations that pertain to

so-called Oakar institutions, i.e., institutions that belong to one insurance fund (primary fund), but hold deposits that are treated as insured by the other insurance fund (secondary fund) (61 FR 34751). The FDIC currently requires all institutions that assume secondary-fund deposits in an Oakar transaction to complete and submit an FDIC-supplied Oakar transaction worksheet for the transaction. Such institutions report the total deposits acquired and the value of the Adjusted Attributable Deposit Amount (AADA) thereby generated. In addition, Oakar institutions must complete a growth adjustment worksheet to recalculate their AADA as of December 31 of each year and must report the value of their AADA on a quarterly basis in their Call Reports.

As part of the FDIC's proposal, the FDIC would relieve Oakar institutions of the burden of calculating their AADA by assuming this calculation responsibility itself. This would eliminate the annual growth adjustment worksheet entirely and Oakar institutions would no longer have to report their AADAs in their Call Reports. The FDIC would calculate AADAs during the current quarterly insurance premium payment process. To do so, however, Oakar institutions would have to report three items on a quarterly basis in their Call Reports. Oakar institutions already report two of these items as part of their annual growth adjustment worksheets: total deposits acquired during the quarter, and secondary-fund deposits acquired during the quarter. Oakar institutions would therefore have to supply one new item: total deposits sold during the quarter. These items will be zero in most quarters for most Oakar institutions. Even in quarters in which some transactions have occurred, the information requested in these items should be readily available and easy to report. Thus, Oakar institutions should see a net reduction in reporting burden from the proposed reporting changes related to AADAs.

The agencies are therefore proposing to revise Call Report Schedule RC-O—Other Data for Deposit Insurance Assessments, by deleting existing item 8, "Total 'Adjusted Attributable Deposits' of all institutions acquired under Section 5(d)(3) of the Federal Deposit Insurance Act," which must be completed only by banks with Oakar deposits, and replacing it with three new items for these same banks only. These items would be "Total deposits purchased or acquired from other FDIC-insured institutions during the quarter" (item 8.a.(1)), "Amount of purchased or acquired deposits reported in item 8.a.(1) above attributable to a secondary

fund" (item 8.a.(2)), and "Total deposits sold or transferred during the quarter" (item 8.b). These items would exclude transactions involving deposits in foreign offices.

Comment is requested on whether the elimination of the current Call Report item in which Oakar banks disclose the amount of their AADAs would present any difficulties to Call Report users, such as institutions who are considering potential acquisitions of Oakar institutions.

Credit Derivatives

Credit derivatives are off-balance sheet arrangements that allow one party, the beneficiary, to transfer the credit risk of a "reference asset" to another party, the guarantor. The market for this new type of instrument is expected to grow significantly over the next few years. In order to identify the extent of bank involvement with these instruments, both on an individual institution basis and for the industry, the agencies are proposing to add two new items to Schedule RC-L—Off-Balance Sheet Items. The first item would be for the notional amount of all credit derivatives on which the reporting bank is the guarantor. The second would be for the notional amount of all credit derivatives on which the reporting bank is the beneficiary. Banks would include the notional amounts of credit default swaps, total rate of return swaps, and other credit derivative instruments.

In addition, the Call Report instructions would explain that banks that are guarantors should report the credit equivalent amounts of these credit derivative contracts in Call Report Schedule RC-R, items 4 through 7, column B, according to the risk category of the reference asset obligor or any guarantor, whichever is lower. The notional amount of these contracts would not be reported as interest rate, foreign exchange, commodity, or equity derivative transactions in Schedule RC-R, Memorandum item 2. For banks that are beneficiaries, an asset for which credit protection has been obtained through a credit derivative should be reported in the Call Report without regard to the existence of the credit derivative, including its reporting as past due or nonaccrual in Schedule RC-N, except in Schedule RC-R where an asset that has been effectively guaranteed may be assigned to the risk category of the obligor or guarantor, whichever is lower.

Other Instructional Changes

In addition to those previously mentioned, the following changes,

which may affect how some banks report certain information in the Call Report, would be made to the instructions.

(1) Reporting of assets that are deducted when measuring regulatory capital—At present, those banks that are required to complete Schedule RC-R—Regulatory Capital, in its entirety must report as 100 percent risk-weight assets in item 7, column A, those on-balance sheet assets that are deducted from their assets and capital as part of their regulatory capital calculations. These assets include goodwill, core deposit intangibles, disallowed mortgage servicing rights, disallowed deferred tax assets, and reciprocal holdings of bank capital instruments and banks have to identify these amounts in order to report their risk-weighted assets, Tier 1 capital, and total risk-based capital which are reported in Schedule RC-R, items 3.e, 3.a, and 3.c. The agencies believe it is misleading to report these assets as if they were subject to a 100 percent risk weight and that it would be more appropriate for these assets to be reported in item 8 of the regulatory capital schedule along with the asset amounts that are excluded from the risk-based capital calculation. Furthermore, the agencies' optional regulatory capital worksheet treats these deducted assets in this manner. Therefore, the instructions for items 7 and 8 of Schedule RC-R and the caption for item 8 would be revised accordingly.

(2) Residential mortgage loan commitments—Six categories of unused commitments are currently reported in the subitems of Schedule RC-L, item 1. Banks currently report their revolving, open-end lines of credit secured by 1-to-4 family residential properties (e.g., home equity lines) in item 1.a. Because there is no separate subitem specifically designed for the reporting of other commitments secured by 1-to-4 family residential mortgages, these commitments are reportable in a catch-all category, "Other unused commitments," item 1.e. Due to questions as to where such other residential mortgage loan commitments should be reported in Schedule RC-L, the instructions to item 1.e will be clarified by stating that the item also includes commitments to extend credit (other than revolving, open-end lines) secured by 1-to-4 family residential properties for which the bank has charged a commitment fee or other consideration, or otherwise has a legally binding commitment to extend credit.

(3) Firm commitments to sell residential mortgage loans—The instructions to Schedule RC-L, item 14.b, column A, "Interest rate

forwards," direct banks to report forward contracts committing the bank to purchase or sell financial instruments and whose predominant risk characteristic is interest rate risk. Questions have been raised about whether firm commitments to sell loans secured by 1-to-4 family residential properties should be reported as interest rate forwards. The agencies believe that commitments that have a specific interest rate, delivery date, and dollar amount should be considered forward contracts and plan to revise this item instruction accordingly.

(4) Reporting the number of full-time equivalent employees and their compensation expense—Banks report the number of their full-time equivalent employees in an income statement memorandum item (Schedule RI, Memorandum item 4 on the FFIEC 031, 032, and 033; Memorandum item 5 on the FFIEC 034). At some banking organizations, some or all of the operations of each bank in the organization are conducted by persons who are ostensibly employees of the parent holding company or a holding company subsidiary rather than the bank. Because the agencies consider these persons in substance to be employees of the bank, they must be included in the determination of the number of full-time equivalent employees to be reported in the memorandum item. In addition, the salaries and employee benefits of these persons should be reported as such in Schedule RI, item 7.a. If the reporting bank does not have to pay the amount of these persons' compensation to the affiliated entity which, in form, is their employer, this in substance represents a capital contribution to the bank which must be reported in Schedule RI-A—Changes in Equity Capital, item 12 (item 13 on the FFIEC 031), "Other transactions with parent holding company." Due to ongoing questions from banks, the agencies plan to clarify these instructions to reflect their longstanding view about the reporting treatment for these employment arrangements, including removing the phrase "on the payroll of the bank" from the instructions for the memorandum item on full-time equivalent employees to eliminate ambiguity.

(5) Loans and leases held for sale—Memorandum item 5, "Loans and leases held for sale," was added to Call Report Schedule RC-C, part I—Loans and Leases, in 1991. In prior years, banks were given the option to include loans and leases held for sale either in their loan and lease portfolio or in their trading assets depending upon how they

were reported for other financial reporting purposes. When the FFIEC announced the addition of the specific memorandum item to the loan schedule for "Loans and leases held for sale" in February 1991, the announcement also indicated that this option was being eliminated. The instructions for trading assets were revised at that time to indicate that loans and leases held for sale were to be reported as part of the loan and lease portfolio. However, the General Instructions to Schedule RC-C, part I, were not also revised and continue to include a reference to this now nonexistent option. These General Instructions would now be corrected.

(6) Assets indirectly representing premises and fixed assets—The instructions to Schedule RC—Balance Sheet, item 6, "Premises and fixed assets," direct banks to include loans and advances to individuals, partnerships, and nonmajority-owned corporations for the purpose of purchasing or holding land, buildings, or fixtures occupied or used by the bank in that asset category rather than in loans. The requirement to reclassify these loans on the balance sheet would be eliminated.

Request for Comment

Comments submitted in response to this Notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: September 6, 1996.

Karen Solomon,
Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, September 4, 1996.

William W. Wiles,
Secretary of the Board.

Dated at Washington, D.C., this 10th day of September, 1996.

Federal Deposit Insurance Corporation

Jerry L. Langley,
Executive Secretary.

[FR Doc. 96-23623 Filed 9-13-96; 8:45 am]

BILLING CODE 4810-33-P; 6210-01-P; 6714-01-P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1134-DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA-1134-DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 6, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North Carolina, is hereby amended to include all Individual Assistance programs in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 6, 1996:

The counties of Bladen, Brunswick, Columbus, Cumberland, Duplin, New Hanover, Onslow, Pender, Robeson, and Sampson for all programs under Individual Assistance (already designated for Disaster Housing Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96-23640 Filed 9-13-96; 8:45 am]

BILLING CODE 6718-02-P

[FEMA-1134-DR]

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina, (FEMA-1134-DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 8, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of North

Carolina, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of North Carolina:

All counties in the State of North Carolina for direct Federal assistance for the first 72 hours following declaration at 100 percent Federal funding for eligible costs. (Bladen, Brunswick, Columbus, Cumberland, Duplin, New Hanover, Onslow, Pender, Robeson, and Sampson previously designated for this assistance.)

Alamance, Carteret, Chatham, Craven, Durham, Edgecombe, Franklin, Granville, Greene, Harnett, Hoke, Johnston, Jones, Lee, Lenior, Nash, Orange, Pamlico, Person, Vance, Wake, Warren, Wayne, and Wilson Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dennis H. Kwiatkowski,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 96-23641 Filed 9-13-96; 8:45 am]

BILLING CODE 6718-02-P

[FEMA-1135-DR]

Virginia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA-1135-DR), dated September 6, 1996, and related determinations.

EFFECTIVE DATE: September 7, 1996.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia, is hereby amended to include Individual Assistance in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 6, 1996:

The Independent Cities of Danville, Harrisonburg, Staunton and Waynesboro for Individual Assistance (already designated for Direct Federal Assistance).

The Counties of Augusta, Halifax, Madison, Pittsylvania and Rockingham for Individual Assistance (already designated for Direct Federal Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

William C. Tidball,

Associate Director, Response and Recovery Directorate.

[FR Doc. 96-23642 Filed 9-13-96; 8:45 am]

BILLING CODE 6718-02-P

FEDERAL HOUSING FINANCE BOARD

[No. 96-N-6]

Submission for OMB Review; Comment Request

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Board (Finance Board) hereby gives notice that it has submitted the information collection entitled "Advances to Nonmember Mortgagees" to the Office of Management and Budget (OMB) for review and approval of a three-year extension of the OMB control number, which is due to expire on September 30, 1996.

DATES: Interested persons may submit comments on or before October 16, 1996.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Housing Finance Board, Washington, D.C. 20503. Requests for copies of the information collection and supporting documentation should be addressed to Elaine L. Baker, Executive Secretary, (202) 408-2837, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Julie Paller, Financial Analyst, (202) 408-2842, or Janice A. Kaye, Attorney-Advisor, (202) 408-2505, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of Information Collection

Section 10b(a) of the Federal Home Loan Bank Act (Bank Act) permits the Federal Home Loan Banks (FHLBanks) to make advances under certain circumstances to qualified nonmember mortgagees. See 12 U.S.C. 1430b(a). Section 10b(b) establishes special expanded collateral requirements for advances to qualified nonmember mortgagees that are state housing finance agencies (SHFAs). *Id.* § 1430b(b). The information collection

contained in section 935.22 of the Finance Board's regulations, 12 CFR 935.22, is necessary to enable the Finance Board to determine whether a respondent satisfies the statutory and regulatory requirements to qualify initially and maintain its status as a nonmember mortgagee or a SHFA nonmember mortgagee eligible to receive FHLBank advances.

The OMB number for the information collection is 3069-0005. The OMB clearance for the information collection expires on September 30, 1996.

In order to qualify for FHLBank advances, the Finance Board or its designee must certify a respondent as an eligible nonmember mortgagee. 12 CFR 935.22(c)(1). The Finance Board uses the information collection to determine whether a respondent meets the nonmember mortgagee eligibility requirements. The information collection requires each respondent to submit documentation to the FHLBank from which it seeks advances that shows: (1) it is chartered under law and has succession; (2) it is subject, pursuant to statute or regulation, to the inspection and supervision of a federal, state, or local government agency; (3) its principal activity in the mortgage field consists of lending its own funds; (4) it is approved by the Department of Housing and Urban Development as a "mortgagee" under Title II of the National Housing Act; (5) advances may be safely made to it, as determined by the FHLBank; and (6) where applicable, it qualifies as a SHFA as defined in 12 CFR 935.1. See 12 CFR 935.22(c) (2), (3). The FHLBank then must submit the information collected along with its review of the applicant's financial condition to the Finance Board for review and approval. *Id.* § 935.22(c)(5). The Finance Board reviews the information and notifies the FHLBank of its determination regarding the applicant's eligibility to receive advances as a nonmember mortgagee. *Id.* § 935.22(c)(6).

Once certified, a nonmember mortgagee has a continuing obligation to promptly notify its FHLBank of any changes in its status as a nonmember mortgagee. *Id.* § 935.22(f)(1). In addition, from time to time a FHLBank may require a nonmember mortgagee to provide evidence that it continues to satisfy all nonmember mortgagee qualifications and requirements. *Id.* § 935.22(g).

B. Burden Estimate

The total annual average number of respondents is estimated at ten, with one response per respondent. The average hours per response is estimated

at ten hours. The total annual burden is estimated at 100 hours (10 respondents × 1 response/respondent × approximately 10 hours).

C. Comment Request

In accordance with the requirements of 5 CFR § 1320.8(d), the Finance Board published a request for public comments regarding this information collection in the Federal Register on May 30, 1996. See 61 FR 27076 (May 30, 1996). The 60-day comment period closed on July 29, 1996. The Finance Board received no public comments. Written comments are requested on: (1) whether the collection of information is necessary for the proper performance of the functions of the Finance Board, including whether the information has practical utility; (2) the accuracy of the Finance Board's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments may be submitted to OMB in writing at the address listed above.

By the Federal Housing Finance Board.

Dated: September 10, 1996.

Rita I. Fair,

Managing Director.

[FR Doc. 96-23662 Filed 9-13-96; 8:45 am]

BILLING CODE 6725-01-U

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date this notice appears in the Federal Register.

Agreement No.: 203-011476-001.

Title: Italia di Navigazione-Lloyd Triestino di Navigazione Trans-Pacific Joint Service/Evergreen Space Charter and Cooperative Working Agreement.

Parties:

Italia di Navigazione, S.P.A.
Lloyd Triestino di Navigazione, S.P.A.
Evergreen Marine Corporation
(Taiwan) Ltd.

Synopsis: The proposed modification deletes the ratemaking authority contained in Article 5.4 of the Basic Agreement.

Agreement No.: 232-011552-001.

Title: Colombia Express Cooperative Working Agreement.

Parties:

Associated Transport Line, Inc.
Smith & Johnson Carriers Inc.

Synopsis: The proposed Agreement adds provisions permitting the parties to discuss and enter into non-binding agreements on rates and other transportation terms and conditions under new Article 5(e); to exchange cost and other trade-related information under new Article 5(f); jointly to meet with shippers and enter into service contracts under new Article 5(g); and to pool cargo or revenues under new Article 5(h).

Agreement No.: 217-011554.

Title: ANZDL/Western Bulk Carriers Space Charter Agreement.

Parties:

Western Bulk Carriers K/S ("Western Bulk")
Australia-New Zealand Direct Line ("ANZDL")

Synopsis: The proposed Agreement establishes a space charter arrangement between the parties whereby ANZDL will charter vessel space from Western Bulk in the U.S./Australia and New Zealand trades.

Agreement No.: 224-200998.

Title: Jacksonville/Wallenius Lines North America Terminal Agreement.

Parties:

Jaxport Terminal Operators ("Port")
Wallenius Lines North America, Inc. ("Wallenius")

Synopsis: The proposed Agreement sets forth the cargo handling rates to be paid by Wallenius at the Port's Blount Island Terminal.

By Order of the Federal Maritime Commission.

Dated: September 10, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96-23583 Filed 9-13-96; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should

not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Pantrac Transport Corp., Brooklyn Navy Yard, Bldg. 5, Ste. 107, Flushing & Cumberland Avenue, Brooklyn, NY 11205, Officer: Benjamin Hamalian, President

Dart Express (Chi) Inc., 1450 Elmhurst Road, Elk Grove Village, IL 60007, Officer: Dennis Lai, Vice President
Southern International Cargo, Inc., 10131 S.W. 33 Street, Miami, FL 33165, Officer: Ana Gamarra, President.

Dated: September 11, 1996.

Joseph C. Polking,

Secretary.

[FR Doc. 96-23592 Filed 9-13-96; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

[File No. 961-0046]

NGC Corporation; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair or deceptive acts or practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, the Houston, Texas-based corporation to resign as operator of two Mont Belvieu, Texas natural gas fractionation plants in which it has an interest. The agreement resolves charges that NGC's acquisition of certain natural gas transportation and processing assets from Chevron Corporation would have left only two companies operating four fractionating plants and would have extended NGC's control to three of those plants. The Commission alleged that the acquisition would substantially reduce competition in violation of federal antitrust laws and, ultimately, could have led to higher fees for fractionating of natural gas liquids.

DATES: Comments must be received on or before November 15, 1996.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

George Cary, Federal Trade Commission, H-374, 6th & Pennsylvania Ave, NW, Washington, DC 20580. (202) 326-3741.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 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 § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed combination involving NGC Corporation ("NGC") and certain assets of Chevron Corporation, and it now appearing that NGC, hereinafter sometimes referred to as "proposed respondent," is willing to enter into an agreement containing an Order to divest certain assets, and to cease and desist from certain acts:

It is hereby agreed by and between proposed respondent, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Proposed respondent NGC is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 13430 Northwest Freeway, Suite 1200, Houston, Texas 77040.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint.

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;
- 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, 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 require) and decision, in disposition of the proceeding.

1. 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, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

2. 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 § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following Order to divest and to cease and desist in disposition of the proceeding and (2) make information public with respect thereto. When so entered, the Ordered to divest and 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 United States 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 right 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 the agreement may be used to vary or contradict the terms of the Order.

3. 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, as used in this Order, the following definitions shall apply:

A. "Combination" means the transactions contemplated by the Combination Agreement and Plan of Merger, dated as of May 22, 1996, among NGC Corporation, Chevron U.S.A. Inc., and Midstream Combination Corp.

B. "Commercial Operator" means the person or entity with the legal authority to enter into contracts on behalf of a Fractionation Facility to provide third parties with the service of fractionation for a fee and to set the prices offered to third parties for such service.

C. "Facility Operator" means any person or entity with the legal authority to engage in any activity involved in the routine management, supervision or operation of a Fractionation Facility, including, but not limited to: the receipt, measurement, handling and storage of raw natural gas liquids delivered to the Fractionation Facility; the maintenance, repair and operation of any equipment, machinery or other assets used in the course of the operation of the Fractionation Facility; the handling, storage and movement of Specification Products produced at the Fractionation Facility prior to receipt by a third party; the purchase and use of material and supplies in connection with the operation, maintenance and repair of the Fractionation Facility; the provision of accounting, billing and scheduling functions necessary for the processing of transactions with Fractionation customers; the provision of engineering services necessary for operation of the Fractionation Facility; preparation and submission of any necessary reports to governmental authorities; the procurement of any necessary licenses and permits on behalf of the Fractionation Facility; the purchase of services necessary for the Fractionation Facility's operation; and the supervision of the implementation of any decision to expand or modify, repair or maintain the Fractionation Facility.

D. "Fractionation" means the process of separating raw natural gas liquids into specification products.

E. "Fractionation Facility" means a facility that separates raw natural gas liquids into specification products.

F. "GCF" means Gulf Coast Fractionators, a Texas general partnership.

G. "GCF" Expansion Project" means any current or future project involving an expenditure for equipment or other

capital assets reasonably necessary to increase the capacity of the GCF Fractionation Facility beyond its effective capacity level at the time the expenditure is undertaken.

H. "GCF Fractionation Facility" means the Fractionation Facility owned by GCF located at 1.5 miles west of Highway 146 on FM 1942, Mont Belvieu, Chambers County, Texas.

I. "GCF Partnership Agreement" means the Amended and Restated Partnership Agreement between Trident NGL, Inc. and Liquid Energy Corporation and Conoco Inc., effective December 1, 1992.

J. "MB I" means Mont Belvieu I, a Fractionation Facility, originally constructed by Cities Service Company in 1970, located at 9900 FM 1942, Mont Belvieu, Chambers County, Texas.

K. "MB I Ownership Agreement" means the Agreement for the Construction, Ownership and Operation of the Mont Belvieu I Fractionation Facility between Trident NGL, Inc. and Union Pacific Fuels, Inc., dated November 17, 1993, and any subsequent amendments thereof.

L. "NGC" means NGC Corporation, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, and groups and affiliates controlled by NGC, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

M. "Property to be Divested" means NGC's interest in (1) MB I; and (2) all assets, title, properties, interest, rights and privileges, of whatever nature, tangible and intangible, and other property of whatever description and location used in the business of MB I including, without limitation:

1. All buildings, machinery, fixtures, equipment, vehicles, pipelines, storage facilities, furniture, tools, supplies, spare parts and other tangible personal property located in Mont Belvieu, Texas;

2. All rights, title and interest in and to real property located in Mont Belvieu, Texas, together with appurtenances, licenses, and permits;

3. All books, records and files;

4. All rights under warranties and guarantees for equipment, express or implied;

5. All technical information and drawings for equipment;

6. All vendor lists, catalogs, sales promotion literature, and advertising materials;

7. All inventory of finished goods, work in progress, raw materials and supplies;

8. All the option of the Acquirer all rights, title and interests in and to the contracts and leases entered into in the ordinary course of business with suppliers, measurement equipment operators, storage facility operators, transmission pipeline operators, Fractionation customers and personal property lessors and licensors, pertaining to the operation of MB I, provided that where third party consent is required to complete the transfer described in this subparagraph, NGC shall use best efforts to obtain such third party's consent.

N. "Specification products" mean ethane, propane, ethane-propane mix, iso-butane, normal-butane and natural gasoline.

II

It is further ordered That:

A. Within six (6) months after the signing of the Agreement Containing Consent Order, NGC shall divest, absolutely and in good faith, the Property to be Divested. The Property to be Divested shall be divested only to an acquirer or acquirers that receive the prior approval of the Commission, and only in a manner that receives the prior approval of the Commission. The purpose of the divestiture required by this Order is to ensure the continued operation of MB I in the Fractionation business in the same manner as conducted by MB I at the time of the proposed divestiture and to remedy the lessening of competition alleged in the Commission's complaint.

B. Upon the signing of the Agreement Containing Consent Order, NGC shall immediately give the requisite six (6) months notice under the MB I Ownership Agreement of its intent to cease serving as the Commercial and Facility Operator at MB I. Within thirty (30) days after the signing of the Agreement Containing Consent Order, NGC shall cease to serve as the Commercial Operator of MB I, provided the other party to the MB I Ownership Agreement agrees to be installed as the Commercial Operator of MB I by that date. In the event that the other party to the MB I Ownership Agreement has not elected to become the Commercial Operator within said thirty (30) day period, NGC may continue to serve as the Commercial Operator of MB I, but shall do so: (i) Under the provisions of Paragraph 3 of the Hold Separate Agreement ("Hold Separate"), attached hereto and made a part hereof as Appendix I; and (ii) only until divestiture contemplated in Paragraph II.A. of this Order is achieved, provided such divestiture occurs within the six-month period described therein. If such

divestiture does not occur within said six-month period, NGC shall cease to serve as the Commercial Operator of MB I by the date on which that six-month period expires and the provisions of Paragraph III.C. of this Order shall apply. NGC may continue to serve as Facility Operator of MB I until the divestiture contemplated in Paragraph II.A. of this Order is achieved, provided such divestiture occurs within the six-month period described therein. If such divestiture does not occur within that six-month period, NGC shall cease to serve as the Facility Operator of MB I by the date on which that six-month period expires and the provisions of Paragraph III.C. of this Order shall apply.

C. NGC shall do nothing to prevent, impede or interfere with the person or entity that succeeds NGC as either the Commercial Operator or the Facility Operator of MB I in undertaking reasonable efforts to offer employment to any NGC employee who assists in the performance of any activities that NGC engages in as the Commercial Operator or Facility Operator at MB I, respectively.

D. Pending divestiture of the Property to be Divested, NGC shall take no action impairing the validity and marketability of the Property to be Divested and shall not cause or permit the destruction, removal, or impairment of any assets or business of the Property to be Divested, except in the ordinary course of business and except for ordinary wear and tear.

E. NGC shall comply with the Agreement to Hold Separate attached to this Order and made a part thereof ("Hold Separate"). Said Hold Separate shall continue in effect until NGC has divested the Property to be Divested or until such other time as the Hold Separate provides.

III

It is further ordered That:

A. If NGC has not divested, absolutely and in good faith and with the Commission's prior approval, the Property to be Divested as required by Paragraph II of this Order within six (6) months after the signing of the Agreement Containing Consent Order, the Commission may appoint a trustee to divest the Property to be Divested. In the event the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, NGC shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the

Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by NGC to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to Paragraph III.A. of this Order, NGC shall consent to the following terms and conditions regarding the trustee's powers, authorities, duties and responsibilities:

1. The Commission shall select the trustee, subject to the consent of NGC, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If NGC has not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to NGC of the identity of any proposed trustee, NGC shall be deemed to have consented to the selection of the proposed trustee.

2. Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest the Property to be Divested.

3. Within ten (10) days after appointment of the trustee, NGC shall execute a trust agreement that, subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture required by this Order.

4. The trustee shall have twelve (12) months from the date the Commission approves the trust agreement described in Paragraph III.B.3 to accomplish the divestiture, which shall be subject to the prior approval of the Commission. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or believes that divestiture can be accomplished within a reasonable time, the divestiture period may be extended by the Commission, or in the case of a court-appointed trustee, by the court; provided, however, that the Commission may extend the divestiture period only two (2) times.

5. NGC shall provide the trustee with full and complete access to the personnel, books, records and facilities relating to the Property to be Divested, or any other relevant information, as the trustee may request. NGC shall develop such financial or other information as such trustee may request and shall cooperate with the trustee. NGC shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in

divestiture caused by NGC shall extend the time for divestiture under this Paragraph in an amount equal to the delay, as determined by the Commission or for a court-appointed trustee, the court.

6. The trustee shall make reasonable efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to NGC's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made in the manner and to the acquires or acquires as set out in Paragraph II of this Order; provided, however, if the trustee receives bona fide offers from more than one acquiring entity, and if the Commission determines to approve more than one such acquiring entity, the trustee shall divest to the acquiring entity or entities selected by NGC from among those approved by the Commission.

7. The trustee shall serve, without bond or other security, at the cost and expense of NGC, on such reasonable and customary terms and conditions as the Commission or the court may set. The trustee shall have authority to employ, at the cost and expense of NGC, such consultants, accountant, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of NGC and the trustee's power shall be terminated. The trustee's compensation shall be based at least in a significant part on a commission arrangement contingent on the trustee's divesting the Property to be Divested.

8. NGC shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner

as provided in Paragraph III.A. of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this Order.

11. The trustee shall have no obligation or authority to operate or maintain the Property to be Divested.

12. The trustee shall report in writing to NGC and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

C. If NGC has not divested, absolutely and in good faith and with the Commission's prior approval, the Property to be Divested as required by Paragraph II of this Order within six (6) months after the signing of the Agreement Containing Consent Order, NGC shall, by such date: (i) Cease to serve as the Commercial Operator of MB I (assuming NGC is then serving as Commercial Operator under the provisions of Paragraph 3 of the Hold Separate); (ii) cease to serve as the Facility Operator of MB I; and (iii) take all necessary steps under the MB I Ownership Agreement to install the other party to said Ownership Agreement as the Commercial Operator and the Facility Operator of MB I.

IV

It is further ordered That:

A. Upon the signing of the Agreement Containing Consent Order, NGC shall immediately give the requisite six (6) month notice under the GCF Partnership Agreement of its intent to cease serving as the Commercial and Facility Operator at GCF. Within thirty (30) days after the signing of the Agreement Containing Consent Order, NGC shall cease to serve as the Commercial Operator of GCF, provided a replacement agrees to be installed as the Commercial Operator of GCF by that date. Within one hundred and twenty (120) days after the signing of the Agreement Containing Consent Order, NGC shall cease to serve as the Facility Operator of GCF, provided a replacement agrees to be installed as the Facility Operator of GCF by that date. In the event that a replacement has not elected to assume the activities of the Commercial Operator of GCF within the thirty (30) day period provided or that a replacement has not elected to assume the activities of the Facility Operator of GCF within the one hundred and twenty (120) day period provided, then the provisions of Paragraph 4 of the Hold Separate shall apply, but only until six

(6) months after the signing of the Agreement Containing Consent Order. NGC shall, by the end of said six (6) month period: (i) Cease to serve as the Commercial Operator of GCF (assuming NGC is then serving as Commercial Operator under the provisions of Paragraph 4 of the Hold Separate); (ii) cease to serve as the Facility Operator of GCF; and (iii) take all necessary steps under the GCF Partnership Agreement to install one of the other parties to said Partnership Agreement as the Commercial Operator and the Facility Operator of GCF.

B. NGC shall do nothing to prevent, impede or interfere with the person or entity that succeeds NGC as either the Commercial Operator or the Facility Operator of GCF in undertaking reasonable efforts to offer employment to any NGC employees who assist in the performance of any activities that NGC engages in as the Commercial Operator or as the Facility Operator at GCF, respectively.

C. In its capacity as a GCF partner, GCF shall sponsor and support an amendment to the GCF Partnership Agreement to allow any two partners (together holding at least a 50% ownership interest in GCF) to commit GCF to undertake a GCF Expansion Project, while providing that a partner may choose to limit its participation in the costs and benefits of such Project. Until such time as the GCF Partnership Agreement is so amended, NGC shall vote in favor of any GCF Expansion Project proposed by another GCF partner, and furthermore NGC shall take no action to prevent, block, delay or impede in any way any GCF Expansion Project, but rather shall provide all reasonable cooperation necessary to facilitate any such Project sought by other GCF partner or partners; provided however, that this provision does not obligate NGC to accept any financial burden or legal responsibility with respect to such GCF Expansion Project to the extent that such burden or responsibility is out of proportion to NGC's ownership interest in GCF.

D. Except as permitted in the Hold Separate, NGC shall not participate in any matter or negotiations pertaining to fractionation fees or other terms pursuant to which customers other than NGC obtain fractionation services at GCF.

V

It is further ordered That, for a period of ten (10) years from the date this Order becomes final, NGC shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries,

partnerships, or otherwise: (i) Acquire any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged at the time of such acquisition, or within the two years preceding such acquisition, in the Fractionation business within ten (10) miles of Mont Belvieu, Texas, or (ii) become the Commercial Operator or Facility Operator of any Fractionation Facility within ten (10) miles of Mont Belvieu, Texas, other than the Fractionation Facility currently operated by Chevron U.S.A. Inc. Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that: no filing fee will be required for any such notification, notification shall be filed with the Office of the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of NGC and not of any other party to the transaction. NGC shall provide the Notification to the Commission at least thirty (30) days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, NGC shall not consummate the acquisition until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Commission's Bureau of Competition.

Provided, however, that prior notification shall not be required by this Paragraph V of this Order for:

A. The construction or development by NGC of a new Fractionation Facility or the installation of NGC as the Commercial Operator or Facility Operator of any such facility; or

B. The expansion or enhancement of an existing Fractionation Facility owned by NGC in whole or in part; or

C. Any transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

VI

It is further ordered That:

A. Within sixty (60) days after the date the Agreement Containing Consent Order is signed and every sixty (60) days thereafter until NGC has fully

complied with the provisions of Paragraphs II or III of this Order, NGC shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with Paragraphs II and III of this Order. NGC shall include in its compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of the Order, including a description of all substantive contacts or negotiations for the divestiture and the identity of all parties contacted. NGC shall include in its compliance reports, subject to any legally recognized privilege, copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations concerning divestiture.

B. One (1) year from the date this Order becomes final, annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at other times as the Commission may require, NGC shall file a verified written report with the Commission setting forth in detail the manner and form in which it has complied and is complying with Paragraphs IV and V of this Order. Such reports shall include, but not be limited to, a listing by name and location of all Fractionation Facilities in the Mont Belvieu, Texas, in which NGC has any ownership interest, including but not limited to ownership interest obtained due to default, foreclosure proceedings or purchases in foreclosure, made by NGC during the twelve (12) months preceding the date of the report.

VII

It is further ordered That, for a period of ten (10) years from the date this Order becomes final, NGC shall notify the Commission at least thirty (30) days prior to any proposed change in its organization that may affect compliance obligations under this Order, such as dissolution, assignment or sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries, or any other change that may affect compliance obligations under this Order.

VIII

It is further ordered That, for the purpose of determining or securing compliance with this Order, subject to any legally recognized privilege, upon written request with reasonable notice to NGC made to its principal officer, NGC shall permit any duly authorized representative or representatives of the Commission:

A. Access, during the office hours of NGC and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of NGC relating to any matters contained in this Order; and

B. Upon five (5) days' notice to NGC and without restraint or interference therefrom, to interview officers or employees of NGC, who may have counsel present, regarding such matters.

IX

It is further ordered That this Order shall terminate twenty (20) years from the date this Order becomes final.

Appendix I

Agreement To Hold Separate

This Agreement to Hold Separate ("Hold Separate") is by and between NGC Corporation ("NGC"), a corporation organized and existing under the laws of the state of Delaware, with its office and principal place of business located at 13430 Northwest Freeway, Suite 1200, Houston, Texas 77040, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, as amended, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Premises

Whereas, on or about May 22, 1996, NGC entered into a Combination Agreement and Plan of Merger with Chevron U.S.A. Inc., a subsidiary of Chevron Corporation ("Chevron"), and Midstream Combination Corp., which contemplates certain transactions (hereinafter, such transactions collectively referred to as "the Proposed Combination"); and

Whereas, NGC and Chevron both operate fractionation facilities in Mont Belvieu, Texas; and

Whereas, the Commission is now investigating the Proposed Combination to determine whether it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission must place the Consent Agreement on the public record for public comment for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of Section 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached preserving competition

during the period prior to the final issuance of the Consent Agreement by the Commission (after the 60-day public notice period), there may be interim competitive harm, and relief resulting from a proceeding challenging the legality of the Proposed Combination might not be possible, or might be less than an effective remedy; and

Whereas, the Commission is concerned that if the Proposed Combination is consummated, it will be necessary to preserve the Commission's ability to require the divestiture of the Properties to be Divested as described in Paragraph I of the Consent Order and the Commission's right to seek to restore the NGC and Chevron fractionation businesses at Mont Belvieu, Texas as independent, viable competitors; and

Whereas, the purpose of this Hold Separate and the Consent Agreement is to:

(i) preserve the Property to be Divested as a viable independent business pending its divestiture as a viable and ongoing enterprise;

(ii) remedy any anticompetitive effects of the Proposed Combination; and

(iii) preserve the Property to be Divested as an ongoing, competitive entity engaged in the same business in which it is presently employed until divestiture is achieved; and

Whereas, NGC's entering into this Hold Separate shall in no way be construed as an admission by NGC that the Proposed Combination constitutes a violation of any statute; and

Whereas, NGC understands that no act or transaction contemplated by this Hold Separate shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, the parties agree, upon the understanding that the Commission has not yet determined whether the Proposed Combination will be challenged, and in consideration of the Commission's agreement that, at the time it accepts the Consent Agreement for public comment it will grant early termination of the Hart-Scott-Rodino waiting periods for any transactions that are part of the Proposed Combination and are subject to any Hart-Scott-Rodino waiting period that has not yet expired, and unless the Commission determines to reject the Consent Agreement, it will not seek further relief from NGC with respect to the Proposed Combination, except that the Commission may exercise any and all rights to enforce this Hold Separate, the Consent Agreement to which it is annexed and made a part thereof, and the Order

contained therein, once it becomes final, and in the event that the required divestiture is not accomplished, to seek divestiture of the Property to be Divested, and other relief, as follows:

1. NGC agrees to execute and be bound by the Consent Agreement;

2. NGC agrees that from the date of its signing of the Consent Agreement until the earliest of the dates listed in subparagraphs 2.a–2.c, it will comply with the provisions of paragraphs 3, 4, 5 and 6 of this Hold Separate:

a. three business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of Section 2.34 of the Commission's Rules;

b. 120 days after publication in the Federal Register of the Consent Agreement, unless by that date the Commission has finally accepted such Agreement;

c. the day after the divestitures required by the Consent Agreement have been completed.

3. With respect to the Fractionation Facility located in the city of Mont Belvieu, Chambers County, Texas, partially owned by NGC and known as Mont Belvieu I ("MB I"), NGC agrees to cease serving as the Commercial Operator within thirty days (30) after signing the Consent Agreement, provided that the other party to the MB I Ownership Agreement agrees to be installed as the Commercial Operator of MB I by that date. In the event that the other party to the MB I Ownership Agreement has not elected to become the Commercial Operator within said thirty (30) day period, NGC will hold its interests in the assets and business of MB I separate and apart on the following terms and conditions;

a. NGC's rights, obligations and duties as the Commercial Operator of MB I shall be exclusively administered by David Rook. All NGC employees who are necessary to perform, or in any way assist in the performance of, any of the activities of the Commercial Operator of MB I shall report to Mr. Rook, and NGC shall provide the Commission with a list of all such employees, together with a full description of the assigned duties of each listed employee and an explanation of how such duties are necessary for the effective functioning of the Commercial Operator of MB I, which list shall be updated whenever its membership or any member's assigned duties change. NGC shall have no authority to remove Mr. Rook nor any other NGC employee thus assigned to report to him, except for cause.

b. Except as provided by this Hold Separate, neither Mr. Rook nor any employee of NGC named in the list

required in Paragraph 3.a. above shall disclose any confidential information concerning MB I to an NGC employee not named on any such list or use confidential information for any purpose other than in the performance of that employee's assigned duties enumerated in the list required in Paragraph 3.a. above. Said employees shall enter a confidentiality agreement prohibiting disclosure of confidential information. Neither Mr. Rook nor any NGC employee assigned to report to him pursuant to this Hold Separate shall participate in any business decision or attempt to influence any such decision involving any other Fractionation Facility in which NGC has an interest. Neither Mr. Rook nor any NGC employees assigned to report to him pursuant to this Hold Separate shall have access to any confidential information concerning any other Fractionation Facility in which NGC has an interest. Meetings of the MB I Management Committee during the term of this Hold Separate shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Hold Separate; and

c. NGC shall do nothing to prevent, impede or interfere with the person or entity that succeeds NGC as either the Commercial Operator or the Facility Operator of MB I in undertaking reasonable efforts to offer employment to any NGC employees who assist in the performance of any activities that NGC engages in as the Commercial Operator at MB I or as the Facility Operator at MB I, respectively.

4. With respect to the Fractionation Facility located in the city of Mont Belvieu, Chambers County, Texas, and owned by a partnership known as Gulf Coast Fractionators ("GCF") in which NGC is a partner, NGC agrees to cease serving as the Commercial Operator within thirty (30) days after signing the Consent Agreement, provided a replacement agrees to be installed as the Commercial Operator of GCF by that date. Within one hundred and twenty (120) days after the signing of the Consent Agreement, NGC shall cease to serve as the Facility Operator of GCF, provided a replacement agrees to be installed as the Facility Operator of GCF by that date. In the event that a replacement has not elected to assume the activities of the Commercial Operator of GCF within the thirty (30) day period provided or that a replacement has not elected to assume the activities of the Facility Operator of GCF within the one hundred and twenty (120) day period provided, NGC will hold its interests in the assets and

business of GCF separate and apart on the following terms and conditions:

a. NGC's rights, obligations and duties as the Commercial Operator of GCF, in the first instance, and as the Facility Operator, of GCF, in the second instance, shall be exclusively administered by an NGC designee. In either instance, all NGC employees who are necessary to perform, or in any way assist in the performance of, any of the activities being administered by said designee shall report to said NGC designee, and NGC shall provide the Commission with a list of all such employees, together with a full description of the assigned duties of each listed employee and an explanation of how such duties are necessary for the effective functioning of, in the first instance, the Commercial Operator of GCF, and in the second instance, the Facility Operator of GCF, which list shall be updated whenever its membership or any member's assigned duties changes. NGC shall have no authority to remove its designee or any other NGC employee thus assigned to report to said designee, except for cause.

b. Except as provided by this Hold Separate, neither the NGC designee to be identified pursuant to Paragraph 4.a. above nor any employee of NGC named in the list required by Paragraph 4.a. above shall disclose any confidential information concerning GCF to an NGC employee not named on any such list or use confidential information for any purpose other than in the performance of that employee's assigned duties enumerated in the list required in Paragraph 4.a. above. Said employees shall enter a confidentiality agreement prohibiting disclosure of confidential information. Neither the NGC designee nor any NGC employee assigned to report to this individual pursuant to this Hold Separate shall participate in any business decision or attempt to influence any such decision involving any other Fractionation Facility in which NGC has an interest. Neither the NGC designee nor any NGC employees assigned to report to him pursuant to this Hold Separate shall have access to any confidential information concerning any other Fractionation Facility in which NGC has an interest. Meetings of the GCF Management Committee during the term of this Hold Separate shall be stenographically transcribed and the transcripts retained for two (2) years after the termination of this Hold Separate.

5. With respect to GCF, NGC further agrees:

a. To do nothing to prevent, impede or interfere with the person or entity that succeeds NGC as either the

Commercial Operator or the Facility Operator of GCF in undertaking reasonable efforts to offer employment to any NGC employees who assist in the performance of any activities that NGC engages in as the Commercial Operator at GCF or as the Facility Operator at GCF, respectively; and

b. In its capacity as a GCF partner, NGC shall sponsor and support an amendment to the GCF Partnership Agreement to allow any two partners (together holding at least a 50% ownership interest in GCF) to commit GCF to undertake a GCF Expansion Project, while providing that a partner may choose to limit its participation in the costs and benefits of such Project. Until such time as the GCF Partnership Agreement is so amended, NGC shall vote in favor of any GCF Expansion Project proposed by another GCF partner, and furthermore NGC shall take no action to prevent, block, delay or impede in any way any GCF Expansion Project, but rather shall provide all reasonable cooperation necessary to facilitate any such Project sought by other GCF partner or partners, provided however, that this provision does not obligate NGC to accept any financial burden or legal responsibility with respect to such GCF Expansion Project to the extent that such burden or responsibility is out of proportion to NGC's ownership interest in GCF; and

c. Except as permitted in this Hold Separate, NGC shall not participate in any matter or negotiations pertaining to fractionation fees or other terms pursuant to which customers other than NGC obtain fractionation services at GCF.

6. From the date of the signing of the Consent Agreement, NGC shall take no action impairing the viability and marketability of the Property to be Divested and shall not cause or permit the destruction, removal, or impairment of any asset or business of the Property to be Divested, except in the ordinary course of business and except for ordinary wear and tear. From the date of the signing of the Consent Agreement, NGC shall take no action that would in any manner impair, impede or restrict its ability to comply with any provision of the Consent Agreement.

7. NGC waives all rights to contest the validity of this Hold Separate.

8. For the purpose of determining or securing compliance with this Hold Separate, subject to any legally recognized privilege, and upon written request with reasonable notice to NGC made to its principal office, NGC shall permit any duly authorized representative or representative of the Commission.

a. Access, during the office hours of NGC and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of NGC relating to compliance with this Hold Separate; and

b. Upon five (5) days' notice to NGC and without restraint or interference from it but in the presence of its counsel, to interview officers or employees of it regarding any such matters.

9. Should the Federal Trade Commission seek in any proceeding to compel NGC to divest itself of the Property to be Divested under the Consent Agreement, or any other assets that it may hold, or to seek any other injunctive or equitable relief, NGC shall not raise any objection based upon the expiration of the applicable Hart-Scott-Rodino Antitrust Improvements Act waiting period or the fact that the Commission has permitted the Proposed Combination. NGC also waives all rights to contest the validity of this Hold Separate.

10. This Hold Separate shall be binding upon NGC upon the signing of the Consent Agreement. NGC agrees that should it violate any of the provisions of this Hold Separate, it is subject to the payment of up to ten thousand dollars (\$10,000) for each such violation. NGC also agrees that the violation of any of the provisions of this Hold Separate may subject NGC to such other and further equitable relief as a United States district court may deem appropriate to grant.

NGC Corporation.

C.L. Watson,

President and Chief Executive Officer.

Federal Trade Commission.

Stephen Calkins,

General Counsel.

Analysis To Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission has accepted for public comment from NGC Corporation ("NGC"), an agreement containing a consent order. The agreement is designed to remedy any anticompetitive effects stemming from NGC's acquisition of certain assets from Chevron Corporation ("Chevron").

This agreement has been placed on the public record for sixty (60) days for reception of comments from 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 agreements or make final the order contained in the agreement.

The Commission's Complaint charges that on or about May 22, 1996, NGC agreed to acquire certain assets owned by Chevron's subsidiary, Chevron U.S.A. Inc. ("Chevron USA"). Among the Chevron assets that NGC agreed to acquire is the fractionation facility at Mont Belvieu, Texas operated by the Warren Petroleum Company division ("Warren") of Chevron USA. The Commission has reason to believe that the acquisition, as well as the agreement to enter into the acquisition, may have anticompetitive effects and be in violation of Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

According to the Commission's Complaint, NGC and Chevron are direct competitors in the market for the fractionation of natural gas liquids at Mont Belvieu, Texas. The Complaint alleges that this market is highly concentrated and entry is difficult or unlikely. The Commission was concerned that the acquisition may reduce competition in the Mont Belvieu fractionation market, by eliminating the direct competition between NGC and Chevron, by increasing the likelihood that NGC will unilaterally exercise market power, and by increasing the likelihood of, or facilitating, collusive or coordinated interaction among the few remaining significant competitors. Consequently, the acquisition may lead to anticompetitive increases in fractionation prices.

Typically, in the purification of natural gas (i.e., methane), a liquefied stream of certain heavier hydrocarbon compounds, called raw mix natural gas liquids, is also produced. Fractionation is the process of separating raw mix natural gas liquids into certain discrete, highly-marketable chemical commodities (i.e., ethane, propane, ethane-propane mix, iso-butane, normal-butane and natural gasoline), called natural gas liquids specification products. Natural gas liquids specification products are ultimately used in the manufacture of petrochemicals, in the refining of gasoline, and as bottled fuel, among other uses.

The Commission's investigation of this matter found potential anticompetitive problems for producers of raw mix who obtain fractionation services at Mont Belvieu, Texas. Mont Belvieu is the nation's hub for the fractionation of raw mix natural gas liquids and the subsequent sale of fractionated specification products. Producers of raw mix natural gas liquids

throughout much of Texas, New Mexico, western Wyoming and western Colorado have no good alternative to Mont Belvieu for their fractionation needs. There are only a few facilities providing fractionation services in Mont Belvieu, among them are Chevron's Warren facility and two partially owned by NGC—Mont Belvieu I ("MB I") and Gulf Coast Fractionators ("GCF").

The agreement containing consent order is designed to remedy the Commission's competitive concern about the acquisition. Under the terms of the proposed order, NGC must divest its interest in MB I within six months to a purchaser approved by the Commission. If NGC fails to complete the divestiture within the six months, the Commission may appoint a trustee to undertake the task. With respect to GCF, NGC is required to give up its management role and to refrain from participating in future decisions on pricing or capital expansion. Since NGC will be permitted to retain its minority interest in GCF, after the acquisition NGC will still own interests in two fractionation facilities. However, NGC will have little incentive to operate Warren in a less-than-competitive manner in the expectation of benefitting from higher prices at GCF. Because most of GCF's capacity is already accounted for by long-term contracts at fixed formula prices and by NGC's captive production, GCF will have little opportunity to raise its prices. The proposed divestitures of MB I and of management responsibility at GCF will actually increase from three to four the number of plant operators in this market, thus increasing the number of independent decision makers.

To minimize the possibility of competitive harm in the period prior to the divestiture, the proposed order requires that NGC terminate all its commercial and facility operator activities at both MB I and GCF within six months. In the interim, NGC must transfer all its commercial operator activities at both MB I and GCF to third parties within 30 days or assign those activities to NGC employees who would then serve under the terms of a Hold Separate Agreement designed to ensure that MB I and GCF function as independent, competitive businesses. To further ensure that MB I and GCF function independently, the proposed order requires NGC to transfer all its facility operator activities at MB I to a third party within 120 days or assign those activities to employees who would then serve under this Hold Separate Agreement.

Furthermore, the proposed order requires that NGC not prevent, impede

or interfere with efforts by the successor operators at MB I and GCF from hiring the current NGC employees who perform any of the commercial or facility operator duties at the two plants. The proposed order also requires that, NGC in its ongoing role as a partner in GCF: (i) Obtain an amendment to the GCF partnership agreement allowing any two partners (with at least 50% ownership interest in GCF) to undertake a capacity expansion of GCF; and (ii) abstain from participation in any matter involving the terms of fractionation service contracts offered to third-party customers. For a period of ten (10) years from the date that the order becomes final, the order would require prior Commission notification before NGC could acquire any interest in, or operatorship of, an existing fractionation facility within ten (10) miles of Mont Belvieu, Texas.

The purpose of this analysis is to invite public comment concerning the consent order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

Donald S. Clark,

Secretary.

[FR Doc. 96-23558 Filed 9-13-96; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Environmental Health Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Finalization of the "Interim Shipbuilding Construction Specifications for Passenger Vessels Destined to Call on U.S. Ports" (Construction Specifications) and the "Interim Recommendations to Minimize Transmission of Legionnaires' Disease from Whirlpool Spas on Cruise Ships" (Spa Guidelines). Public meeting between CDC and the cruise ship industry, private consultants, and other interested parties.

Time and Date: 9 a.m.—12 noon, September 26, 1996.

Place: Four Points Hotel, 1850 Cotillion Drive, Atlanta, Georgia 30338, telephone 770/394-5000, fax 770/394-5114. When making reservations, mention that you are attending the CDC Vessel Sanitation Program (VSP) meeting to secure the group rate.

Directions: From I-285 East, Exit 22, Chamblee-Dunwoody Road. Turn left, cross

the bridge, then turn right; the hotel is on the left. From I-285 West, Exit 22, Chamblee-Dunwoody Road, continue through the intersection; the hotel is approximately one mile on the right.

Status: Open to the public for participation, comment, or observation, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The VSP of CDC is responsible for overseeing the public health concerns on passenger cruise ships that enter the United States from foreign ports. These public health responsibilities include reviewing plans for new ships or remodeling old ships, inspecting ships while they are under construction, and monitoring the installation of facilities and equipment. The VSP is also responsible for ensuring that food service, portable water treatment, and care and maintenance of the recreational spas and pools are handled in accordance with the guidelines in the "VSP Operations Manual."

This meeting is one in a series on the "Construction Specifications" and the "Spa Guidelines." The purpose of this meeting is to introduce the completed versions of the documents for final review and comments by the cruise ship industry and other interested parties.

Matters to be Discussed: Agenda items will include the final discussion on comments and suggested changes made by the cruise ship industry and other interested parties at the June 3, 1996, public meeting.

Agenda items are subject to change as priorities dictate.

For 15 days after the meeting, through October 11, 1996, the official record of the meeting will remain open so that additional material or comments may be submitted and made a part of the record.

Contact Person for More Information:
Donald W. Turner, Chief, VSP, NCEH, CDC,
1015 North America Way, Room 107, Miami,
Florida 33132, telephone 305/536-4307.

Dated: September 10, 1996.

Nancy C. Hirsch,
*Acting Director, Management Analysis and
Services Office, Centers for Disease Control
and Prevention (CDC).*

[FR Doc. 96-23590 Filed 9-13-96; 8:45 am]

BILLING CODE 4163-18-M

Food and Drug Administration

[Docket No. 96N-0169]

Midland County Hospital District; Revocation of U.S. License No. 961

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. 961) and the product licenses issued to Midland County Hospital District, now doing business as Permian Basin Regional Center, for the

manufacture of Red Blood Cells, Plasma, and Platelets. In a letter to FDA dated November 1, 1995, the firm voluntarily requested that its establishment and product licenses be revoked.

DATES: The revocation of the establishment license (U.S. License No. 961) and the product licenses became effective March 14, 1996.

ADDRESSES: Copies of letters from FDA and Midland County Hospital District may be seen at the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:
Annette A. Ragosta, Center for Biologics Evaluation and Research (HFM-630), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852-1448, 301-594-3074.

SUPPLEMENTARY INFORMATION: FDA conducted an inspection of Midland County Hospital District, 200 Airport Plaza, Midland, TX 79711-1650, from March 14 through April 11, 1995. The inspection also involved a concurrent investigation which included interviews with individuals knowledgeable about the firm's daily operations. The inspection and concurrent investigation revealed serious noncompliance with applicable standards and Federal regulations. Serious deficiencies were reported in interviews and observed by the investigators in several areas of the firm's operations. Deviations included, but were not limited to the following: (1) Failure to collect blood by aseptic methods in a sterile system to protect against contamination (21 CFR 640.4(f)) in that it was reported to our investigators that on numerous occasions employees broke the sterility barrier of blood containers and drained blood into vacutainer tubes or biohazard containers in order to conceal overbleeds; (2) failure to follow standard operating procedures for addressing adverse donor reactions (21 CFR 606.100(b)(9)) in that it was reported to our investigators that on several occasions employees continued to bleed donors while the donors were experiencing adverse reactions; and (3) failure to maintain records concurrently with the performance of each significant step in the collection, processing, storage, and distribution of each unit of blood and blood components so that all steps can be clearly traced (§ 606.160(a)(1) (21 CFR 606.160(a)(1))) in that: (a) important donor selection information, such as vital signs, answers to medical history and high risk behavior questions, and documentation of hemoglobin checks, was not obtained and recorded concurrently with each

donor suitability determination; (b) it was reported to our investigators that on several occasions daily performance checks of equipment were not performed but the records were completed to indicate that these had been performed (§ 606.160(b)(5)(ii)); and (c) it was reported to our investigators that, on at least two occasions, maintenance records for the Cobe Spectra instrument were completed to give the appearance that maintenance had been performed, when in fact, it may not have been performed (§ 606.160(b)(7)(iv)).

FDA determined that these deviations from Federal regulations constituted a danger to public health warranting a suspension under 21 CFR 601.6(a). In a letter to Midland County Hospital District, dated April 20, 1995, FDA detailed the above-described violations and stated that the firm's management had not effectively fulfilled its responsibilities to exercise control in all matters relating to compliance and had not assured that personnel were adequately trained and had a thorough understanding of the procedures that they were to perform (21 CFR 600.10(a) and (b) and 606.20(a) and (b)). In the same letter, FDA suspended the firm's establishment and product licenses for the manufacture of Red Blood Cells, Plasma, and Platelets. In a letter dated November 1, 1995, Midland County Hospital District voluntarily requested that its licenses be revoked. The agency acknowledged the request for a voluntary revocation of the establishment and product licenses in a letter dated March 14, 1996.

The agency has placed copies of letters from FDA, dated April 20, 1995, and March 14, 1996, and a letter from Midland County Hospital District, dated November 1, 1995, on file under the docket number found in brackets in the heading of this document in the Dockets Management Branch (address above). These documents are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under section 351 of the Public Health Service Act (42 U.S.C. 262), 21 CFR 601.5, 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. 961), and the product licenses for the manufacture of Red Blood Cells, Plasma, and Platelets, issued to Midland County Hospital District, Midland, TX, now doing business as Permian Basin Regional

Center, were revoked, effective March 14, 1996.

This notice is issued and published under 21 CFR 601.8 and the redelegation at 21 CFR 5.67.

Dated: August 28, 1996.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 96-23550 Filed 9-13-96; 8:45 am]

BILLING CODE 4160-01-F

Cooperative Agreement for Shellfish and Seafood Safety Assistance Project; Intent to Supplement for Fiscal Year 1996

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition, Office of Seafood, is announcing its intention to supplement the current year of the cooperative agreement with the Interstate Shellfish Sanitation Conference (ISSC) in the amount of \$165,000. This money will provide for research of *Vibrio vulnificus* which, although not normally a threat to healthy individuals, can cause serious illness and death in individuals with certain preexisting conditions. The research is intended to provide information to establish science-based controls to protect at-risk consumers from *V. vulnificus* infection.

ADDRESSES: An application form is available from, and the completed form should be submitted to Robert L. Robins, Division of Contracts and Procurement Management (HFA-520), Food and Drug Administration, Park Bldg., 5600 Fishers Lane, rm. 3-40, Rockville, MD 20857, 301-443-6170. Applications hand-carried or commercially delivered should be addressed to the Park Bldg., 12420 Parklawn Dr., rm. 3-40, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Robert L. Robins (address above).

Regarding the programmatic aspects of this notice: Paul W. DiStefano, Office of Seafood, Center for Food Safety and Applied Nutrition (HFS-417), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-418-3177.

SUPPLEMENTARY INFORMATION: This project is authorized under section 301

of the Public Health Service Act (42 U.S.C. 241). This activity is generally described in the Catalog of Federal Domestic Assistance at 93.103. This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Program (45 CFR 100). Under this supplement, the ISSC will make funds available to State agencies, academic institutions, and private and public organizations for *V. vulnificus* research through a competitive process.

I. Restricted Eligibility

On October 20, 1995, the Commissioner of Food and Drugs, as authorized by the Public Health Service (PHS) Grants Administration Manual, Part 144.3, determined that a single source cooperative agreement could be awarded to the ISSC without competition. This supplemental application will provide for the implementation and enhancement of activities associated with *V. vulnificus* described and authorized under the original application, FD-U-000891-01 dated January 4, 1996.

II. Availability of Funds

FDA will fund this supplement to the cooperative agreement at a total level of \$165,000. The original cooperative agreement has an additional 4 years of support which are contingent upon the availability of fiscal year appropriations, continued support from other government agencies, and successful performance. FDA anticipates that this supplement to the cooperative agreement will commence on or before September 30, 1996.

III. Background

V. vulnificus is a pathogen found in the estuarine environment. *V. vulnificus* bacteria are not normally a threat to healthy individuals. However, in individuals with preexisting chronic medical conditions such as liver disease, alcoholism, and hemochromatosis, *V. vulnificus* can cause serious illness and death. Each year, between 12 and 31 cases of *V. vulnificus* illness associated with consumption of raw molluscan shellfish are reported to public health authorities in the United States.

The paucity of scientific data associated with *V. vulnificus* has hindered efforts by public health officials, including FDA, to establish science based controls to protect at-risk consumers from *V. vulnificus* infection.

IV. Purpose

This supplement to FDA's current cooperative agreement will enable the

ISSC to award, through a competitive process, *V. vulnificus* research projects. Research efforts made possible by this supplement will complement existing efforts under FDA's current cooperative agreement with the ISSC and provide public health officials with better science and an enhanced understanding of *V. vulnificus*. Innovative research efforts will contribute significantly to the ISSC's and to FDA's ability to identify scientifically defensible controls that will help to reduce the incidence of *V. vulnificus* illness.

V. Substantive Involvement by FDA

FDA will collaborate with the ISSC in the preparation of the Requests For Application and any other solicitation materials. FDA will review and comment on the methods of solicitation as proposed by the ISSC, provide technical assistance in the form of guidance and participation in the competitive review of all applications, and collaborate with the ISSC in the final selection of subgrantees.

In the event that the ISSC does not have written policies governing the objective review for awarding subgrants, the ISSC has agreed to adhere to the PHS Grant Policy Statement governing "Objective Review" to the extent that it is applicable. All decisions by the objective review panel are final and are not appealable.

VI. Review Procedure and Evaluation Criteria

A. Review Procedure

The application submitted by the ISSC will undergo a noncompetitive dual peer review. The application will be reviewed for scientific and technical merit by a panel of experts based upon applicable evaluation criteria. If the application is recommended for approval, it will then be presented to the National Advisory Environmental Health Sciences Council.

B. Evaluation Criteria

The application will be reviewed and evaluated according to the following criteria:

1. The application must clearly present an understanding of the purpose and objectives of the supplement to the cooperative agreement in conducting *V. vulnificus* research and set out the steps, with a proposed schedule for planning, implementing, and accomplishing the activities, to be carried out under this project.

2. The application must describe the ISSC's ability to perform its responsibilities under this project by providing qualified staff. The

application must also demonstrate that the ISSC has the financial and other resources required for this project.

3. The application must specify the approach that the ISSC will use to solicit proposals for *V. vulnificus* research.

4. The ISSC application must explain how the ISSC will monitor the progress of selected research projects, and how it will keep FDA informed of any significant advances in the understanding of or control of *V. vulnificus*.

In addition, FDA will determine whether the estimated cost of the project is reasonable. The application must include a detailed budget that shows: (1) Anticipated costs for personnel, travel, communications and postage, equipment, and supplies; and (2) the sources of funds to meet those needs.

VII. Reporting Requirement

All terms and conditions of the current award shall remain in full force and effect for the supplemental award.

As a result of this supplemental award, annual project progress reports must also include the following:

1. Listing of research projects funded.
2. Specific purpose of each project.
3. Cost of each project.
4. Anticipated completion and milestone dates for each project.
5. Year-to-date results/scientific findings/public health findings of each project.
6. Potential *V. vulnificus* control measures/strategies suggested by research efforts.

VIII. Mechanism of Support

Support for this project will be in the form of a supplement to FDA's cooperative agreement with the ISSC. This agreement will be subject to all policies and requirements that govern the research grant programs of the PHS, including provisions of 42 CFR part 52 and 45 CFR part 74.

Dated: September 10, 1996.

William K. Hubbard,
Associate Commissioner for Policy
Coordination.

[FR Doc. 96-23669 Filed 9-13-96; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 96N-0309]

Promotion of FDA-Regulated Medical Products on the Internet; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of a public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss issues related to the promotion of FDA-regulated medical products on the Internet. FDA is seeking participation in the public meeting and written comments from all interested parties, including, but not limited to, consumers, patient groups, information vendors, manufacturers of FDA-regulated medical products, and health care professionals. This meeting and the written comments are intended to help guide FDA in making policy decisions on the promotion of biologics, human and animal drugs, and medical devices on the Internet and the World Wide Web (the Web).

DATES: The public meeting will be held on Wednesday, October 16, 1996, from 8:30 a.m. to 5 p.m. and on Thursday, October 17, 1996, from 8:30 a.m. to 3 p.m. Registration for persons who wish to actively participate in the discussion groups is required by October 4, 1996. Registration is not required for persons who wish to be in the audience. Written comments will be accepted until December 16, 1996.

ADDRESSES: The public meeting will be held at the Quality Hotel, 8727 Colesville Rd., Silver Spring, MD. Individuals who wish to actively participate in the public meeting should mail, fax, or e-mail their registration information to Fay Fink (address below). There is no registration fee for this meeting, but registration is required for individuals who wish to actively participate in the group discussions. Seating for each discussion group is limited to 15 persons, on a first-come, first-serve basis. Information about the public meeting is also available on FDA's website at <http://www.fda.gov>. Submit written comments on the questions to the Dockets Management Branch (DMB) (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857. After the meeting, a transcript will be available at DMB (address above) between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Regarding registration: Fay Fink,
Office of Policy (HF-11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3360, FAX 301-594-6777, e-mail: FFink@bangate.fda.gov.

Regarding this notice: Ilisa B.G. Bernstein, Office of Policy (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-3380, e-mail: IBernste@bangate.fda.gov; or Melissa M. Moncavage, Center for

Drug Evaluation and Research (HFD-40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-827-2828, e-mail: moncavage@cder.fda.gov or Byron L. Tart, Center for Devices and Radiological Health (HFZ-302), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-4639, e-mail: bxt@fdadr.cdrh.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

With the recent dramatic increases in the number of users of the Internet, including the Web, companies, including manufacturers and distributors of products regulated by FDA, are looking at the Internet as a medium for disseminating information about their products. FDA is evaluating how the statutory provisions, regulations, and policies concerning advertising and labeling should be applied to product-related information on the Internet and whether any additional regulations, policies, or guidances are needed. Although the agency believes that many issues can be addressed through existing FDA regulations, special characteristics of the Internet may require the agency to provide guidance to the industry on how the regulations should be applied.

The Internet is a global network of computers. The most widely used portion of the Internet is the Web. The Web permits the display of multimedia documents and objects, such as plain text, searchable indices, images, sounds, movies, and fill-in forms. Web pages can be linked to other sites on the Web using "hypertext," which allows the user to jump to any other information page that is linked to the Web. The Web is where most promotion of FDA-regulated products is located on the Internet. In addressing promotional issues in this notice, FDA will use the broader term, Internet, which includes the Web.

Since late 1995, FDA has been gathering information about the Internet and its utility to promote FDA-regulated products. This is in an effort to facilitate the development of guidance to the industry on the promotion of regulated products on the Internet. As part of its fact finding process, FDA has been meeting with companies, third party providers, and other groups, to gain a better understanding of the nature of, and the technical aspects to, promotion on the Internet. FDA appreciates the time and effort that these individuals, companies, and associations have

invested in assisting the agency to understand the Internet.

In this notice, FDA is announcing two actions to get broader input from the public on issues related to the promotion of FDA-regulated products over the Internet. First, FDA is announcing a public meeting to discuss these issues. Second, the agency is presenting questions for public comment to assist in the policy development process. Based on discussions with the public and inquiries from regulated industry, the agency has identified several issues related to promotion on the Internet that need to be addressed. This list of issues is by no means exhaustive, and the agency is open to suggestions for additional issues to be addressed.

II. Public Meeting

The public meeting is being held to discuss issues related to the promotion of FDA-regulated products over the Internet. The objective of the meeting is for the agency to receive broad public input and to hear various points of view and opinions on Internet issues from a dialogue among interested persons. The agency believes that a discussion group format would best further this goal. Therefore, the 2-day meeting will be conducted as a consecutive series of five discussion groups, led by a moderator. (Only one discussion group will be going on at a time.) A panel of FDA officials will listen to each discussion group and ask the group participants probing questions at the end of each discussion period. The audience will then have an opportunity to ask questions and comment on the topics.

Those persons interested in actively participating in the group discussions should mail, fax, or e-mail their registration to Fay Fink (address above) including name, affiliation, address, phone number, fax number, e-mail address, and the discussion group(s) in which you would like to participate, in rank order. There is no registration fee for this meeting, but registration is required for individuals who wish to actively participate in the group discussions. Seating for each discussion group is limited to 15 persons, on a first-come, first-serve basis. FDA will attempt to balance the representation of constituents on the discussion groups and will attempt to give all interested parties an opportunity to participate in at least one group. The agency will maintain a waiting list in the event of cancellations or no-shows. The agency reserves the right to limit the number of participants from the same organization or company in a discussion group. The agency invites all other interested

persons who wish to attend the meeting to sit in the audience during these discussion sessions. Registration is not required for persons who wish to be in the audience. As discussed earlier, there will be opportunities for persons in the audience to ask questions and comment on the various topics discussed.

Prior to the meeting, the agency will distribute a list of questions that will be presented to each discussion group. The list of questions will be placed on file in the public docket (docket number found in brackets in the heading of this document) and will be available on the FDA website with the other information about this meeting.

As stated previously, each discussion group will address a particular topic. The list of topics to be discussed during the 2-day meeting are as follows: Wednesday, October 16, 1996:

Discussion Group 1—Investigational Product Information

Discussion Group 2—Chatrooms and Newsgroups

Discussion Group 3—Additional Regulatory Issues

Thursday, October 17, 1996:

Discussion Group 4—Website Links

Discussion Group 5—International Issues

Discussion Group 3 (Additional Regulatory Issues) will discuss additional issues that were not covered in the other discussion groups. If individuals have regulatory issues they would like addressed, which are not discussed in other sessions, the agency would like to include those topics in the discussion under Group 3. The agency invites interested persons to submit suggestions for discussion by this group by October 4, 1996. The agency will consider these suggestions and prepare a list of selected topics for discussion prior to the meeting. That list will be available in the public docket and on the FDA website by October 9, 1996.

III. Internet Questions

As described above, a number of questions have arisen regarding the application of the advertising and labeling provisions, regulations, and policies to promotion on the Internet. This section will briefly discuss the issues the agency has identified as most frequently raised by regulated companies and other interested parties. It should be noted that although these questions may raise a particular issue, that does not necessarily mean that the agency will issue guidance or a regulation on the particular issue.

A. Presentation of Product Information

The Federal Food, Drug, and Cosmetic Act (the act) and its implementing

regulations define the conditions under which human and animal drugs, biologics, and medical devices shall be advertised or otherwise promoted (e.g., package insert, brief summary, brief statement). For prescription human and animal drugs and biologics, full product information (approved labeling), including indications for use, dosing, warnings, adverse affects, precautions, etc., shall be included with the dissemination of any labeling, as defined in section 201(m) of the act (21 U.S.C. 321(m)). (See section 502(f)(1) of the act (21 U.S.C. 352(f)(1)) and 21 CFR 201.100(d).) For prescription human drugs, biological products, and prescription animal drugs, advertisements must contain a true statement of information in brief summary relating to side effects, contraindications, and effectiveness. (See section 502(n) of the act and 21 CFR 202.1(e).) For medical devices, any labeling as defined in section 201(m) of the act, including promotional labeling for prescription devices, must contain adequate information that includes indications for use, effects, routes, methods, and frequency of administration and any relevant hazards, contraindications, side effects, and precautions. (See 21 CFR 801.109.) Additionally, for restricted medical devices, under section 502(r) of the act, advertisements shall include a "brief statement of the intended uses of the device and relevant warnings, precautions, side effects and contraindications."

Several companies have inquired about the application of the regulations and statutory provisions described above, as they relate to product information on the Internet. Because the agency has received inquiries about this issue, FDA is interested in comments addressing the following questions:

1. How should product information be presented to ensure that Internet users will know that the product information is available and where it is available?

2. Does it matter where product information is located on the website? If so, where should it be located?

3. How can product information be clearly distinguished from other information on the Internet (e.g., disclosure statements)?

4. Under 21 CFR 202.1(e)(5)(ii), prescription drug advertisements are required to present a " * * * fair balance between information relating to side effects and contraindications and information relating to effectiveness of the drug * * *." Traditionally, the agency has interpreted this regulation such that the copy of the advertisement and the format of the information

should be "fairly balanced." How should product information be presented on the Internet to ensure that the user has access to a balanced presentation of both side effects and contraindications and information relating to effectiveness? For example, should "fair balance" be considered in the presentation of information on every screen? In every advertisement or promotional piece? Or on the entire website?

B. Direct-to-Consumer Promotion

Most product information on the Internet is written in technical language directed to health care professionals. FDA recognizes that many Internet users may not have the technical background to fully understand the language typically used in prescription drug, biological product, and medical device promotion.

In the Federal Register of May 14, 1996 (61 FR 24314), FDA published a notice seeking public comment on several issues related to direct-to-consumer promotion, including whether certain FDA-approved patient labeling, written in language easier for consumers to understand, should be considered as adequate to fulfill the brief summary requirement for consumer-directed prescription drug and biological product advertisements. FDA will use the comments received in response to the May 14, 1996, Federal Register notice, in its consideration of how product information should be presented on the Internet. Additionally, FDA has the following questions regarding Internet promotion directed to consumers:

1. Is it necessary to distinguish between promotion directed to health professionals and consumers on the Internet?
2. If yes to question 1., directly above, how should websites clearly make the distinction between professional-directed and consumer-directed promotion?

C. Links Between Websites

The Internet allows users to move easily between websites that provide information on many related topics. Websites can offer the user an opportunity to click on a topic heading (a word, word string, button, or icon) from a list of headings and be linked automatically to another location within the same website or to the website of another organization. Thus, it is possible for FDA-regulated industry sponsored websites to provide links to other sites with information about diseases, products, etc., some of which contain information about unapproved uses of approved products. Under the

act, companies are prohibited from promoting approved human and animal drugs, biological products, and medical devices for unapproved uses. FDA has the following questions regarding links between websites:

1. Should links from websites, posted or sponsored by a regulated company and containing information about FDA-regulated products be permitted? Why or why not?
2. If yes to question 1., directly above, what parameters, if any, should be established for links from such websites to other websites, without violating the act.
3. On some websites, before leaving the website to link to another website, the user is automatically presented with a screen that indicates that the user is leaving the website to go to another one. Is there any benefit to this type of information?

D. Investigational Product Information

Several companies that market FDA-regulated medical products have inquired about the extent to which information regarding investigational products or investigational uses of products can be placed on their website. Currently, FDA regulations prohibit representing " * * * in a promotional context that an investigational new drug is safe or effective for the purposes for which it is under investigation * * *" and prohibits the " * * * commercialization of the drug before it is approved for commercial distribution." (See 21 CFR 312.7(a).) A similar regulation applies to investigational devices. (See 21 CFR 812.7.) Many companies have placed on their website information intended for stockholders or potential stockholders, which often contain information about products or uses under investigation. In some cases, however, it is difficult for the Internet user to distinguish whether the presentation of this information is intended for economic or promotional purposes. The agency recognizes that information about investigational products and uses can be useful in the context of scientific exchange. FDA has the following questions regarding investigational product information:

To what extent should information about investigational products or investigational uses be presented on a sponsoring company's website? Is there a way to distinguish between the presentation of this information for economic, educational, or promotional purposes?

E. Chatrooms and Newsgroups

Chatrooms are Internet locations where users can have "real time"

conversations with other users. Newsgroups are Internet locations where users can post messages for other users to read and/or respond to other posted messages. The information discussed in chatrooms and posted in newsgroups is often focused on a specific issue or interest. FDA has the following questions on chatrooms and newsgroups:

1. Do FDA-regulated companies maintain or sponsor chatrooms or newsgroups about their products, either focussed specifically on one product or on disease states or conditions? If so, what are the reasons for doing so and what is the experience to date? If not, what are the reasons for not doing so? What is the experience to date with respect to the dissemination of false or misleading information about FDA-regulated products by noncompany users of the Internet?

2. Should parameters be established for company participation in, or sponsorship of, chatrooms or newsgroups that discuss the company's product(s)? If so, what should they be?

3. Some companies have expressed a desire to correct, what is in their belief, misconceptions or misinformation about unapproved uses of their products, which may be presented in chatrooms and newsgroups. Some of these companies have stated that they have not corrected the information in the belief that they could be considered promoting the unapproved use. Should such information be regarded as violative promotion? Are there any parameters or criteria that could be used to determine the appropriateness or scope of such corrections.

F. International Issues

FDA has heard from some multinational pharmaceutical, biologic, and device companies that wish to centralize their Internet product information dissemination from one server within the United States. Under the act and current regulations, however, companies may not advertise or otherwise promote their approved or unapproved products within the United States for uses that are not approved in this country. A company's products may be approved in other countries, but not in the United States, or may be approved in the United States, but for different uses in other countries. Consequently, companies could be considered promoting unapproved products or uses in the United States by disseminating information about products approved in foreign countries to U.S. citizens. FDA has the following questions on international issues:

1. How could promotion of products manufactured or distributed by multinational companies be presented on the Internet without violating the act and regulations?

2. What factors should FDA consider in determining whether a company is attempting to promote a product within the United States, which is approved for a use in another country, but not so approved in the United States?

3. What policies and regulations have other countries established or are considering with respect to the dissemination of information about medical products over the Internet?

FDA welcomes comments on all of the issues described above.

Dated: September 10, 1996.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 96-23616 Filed 9-13-96; 8:45 am]

BILLING CODE 4160-01-F

Indian Health Service

Submission for OMB Review; Comment Request, Indian Health Service, Hospital, Dental and Other Contract Health Service Reports

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection activity was previously published in the Federal Register (61 FR 17903) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow 30 days for public comments to be submitted to the OMB. The IHS may not conduct or sponsor, and the respondent is not required to respond to any information collection that has been extended, revised, or implemented on or

after October 1, 1995, unless it displays a currently valid OMB control number.

PROPOSED COLLECTION: *Title:* Indian Health Service Contract Health Service Reports. *Type of Information Collection Request:* A 1-year reinstatement with change of previously approved information collection 0917-0002, Indian Health Service contract Health Service Reports. *Need and Use of Information Collection:* These information collection forms are completed by IHS CHS Providers and used to certify that the health care services requested and authorized by the IHS have been performed by the CHS Provider(s), process payments for health care services performed by such providers; and serve as a legal document for health and medical care authorized by the IHS and rendered by providers under contract with the IHS. The burden estimate for this information collection activity follows:

Information collection activity	No. of respondents	Responses per respondent	Average burden per response (hours) ¹
IHS-43-1A	429	148	0.167 (10 mins).
IHS-57-1A	403	22	0.418 (25 mins).
IHS-64-1A	5,768	32	0.167 (10 mins).
New form: IHS-843-1A	6,600	41	0.05 (3 mins).
Inpatient Discharge Summary ²	63,492	1	0.05 (3 mins).

¹ Provided in decimal unit values of an hour and in actual minutes.

² The inpatient discharge summary was overlooked as an information collection activity in prior approval requests and is added accordingly. In the Federal Register notice (61 FR 17903), the number of respondents and the average burden per response for the IDS were overstated. Both have been adjusted.

REQUEST FOR COMMENTS: Written comments and suggestions from the public and affected agencies are invited on one or more of the following points: (a) Whether the information collection activity is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used to determine the estimate; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

DIRECT COMMENTS TO OMB: Written comments and suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office

of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS. To request more information on the proposed information collection activity or to obtain a copy of the data collection plan(s) and/or instrument(s), contact: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Plaza, Suite 450, Rockville, MD 20857; or call non-toll-free number (301) 443-0461; or send via facsimile to (301) 443-1522 or Internet (include your address) to: Lhodahkw@ihs.ssw.dhhs.gov.

COMMENTS DUE DATE: Comments regarding this information collection activity are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: August 28, 1996.

Michael H. Trujillo,

Assistant Surgeon General, Director.

[FR Doc. 96-23551 Filed 9-13-96; 8:45 am]

BILLING CODE 4160-16-M

Office of Inspector General

Program Exclusions: August 1996

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of August 1996, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an

Subject, City, and State	Effective date
PROGRAM-RELATED CONVICTIONS:	
ACQUAH, SABINA E., ABERDEEN, MD	09/10/96
AHDALLA, IZZELDIN, WAUPUN, WI	09/11/96
ANDO, TEODORO A., WEBSTER, NY	09/10/96
ANDO, AMYRELLIS L., WEBSTER, NY	09/10/96
ASAD, ALI, STATEN ISLAND, NY	09/05/96
ASIF, MUHAMMAD ANWAR, KEW GARDENS, NY	09/05/96
BAKER, TONYA, RIVERDALE, GA	09/11/96
BARKER, GORDON, BRIDGMAN, MI	09/11/96
BEGGS, KENNETH, PHILADELPHIA, PA	09/10/96
BOWMAN, JACQUELINE, YORKTOWN HGTS, NY ...	09/05/96
BRYAN, TIANE, EIGHT MILES, AL	09/12/96
DEHON, MYRTIS LANG, KENNER, LA	09/15/96
DEW, DEBRA C., TALLULAH, LA	09/15/96
DEW, BILLY RAY SR., TALLULAH, LA	09/15/96
ETHERIDGE, JOHN CALEB, PENSACOLA, FL	09/15/96
FELDMAN, ALAN, MERRICK, NY	09/05/96
FINKEL, RICHARD F., BOCA RATON, FL	09/11/96
GRISBA, MAY DORIS, HAZELHURST, MS	09/15/96
HAMBERG, IVAN, ELKINS PARK, PA	09/10/96
HUMPHREY, ROGER, SICILY ISLAND, LA	09/15/96
HUSSAIN, YASIN M., COLUMBIA, MD	09/10/96
IBRAHIM, GASIM, JERSEY CITY, NJ	09/11/96
ISHERWOOD, JOAN, WHITE PLAINS, NY	09/05/96
KING, KENTRINA LANETTE, TEMPLE HILLS, MD	09/10/96
KUKASH, ABIGAIL, RICHMOND, VA	09/05/96
KUKASH, MAJDI, RICHMOND, VA	09/09/96
LEDoux, JULIA, MAMOU, LA	09/15/96
LOBACHEVSKAYA, RASHIL, BROOKLYN, NY	09/05/96
LONG, JANICE, THEODORE, AL	09/12/96
MALICK, MUHAMMAD A., WOODMERE, NY	09/05/96
MARABLE, DEBRA K., PEEKSKILL, NY	09/05/96

Subject, City, and State	Effective date	Subject, City, and State	Effective date
MUNSHEY, MUNIR, YPSI-LANTI, MI	09/11/96	ALEXANDER, EARLE F., BROOKLYN, NY	09/05/96
NURSES NOW AGENCY, INC., EAST PATCHOGUE, NY	09/05/96	ALUL, MOHAMMAD, ST. CHARLES, MO	09/11/96
PROSKUROVSKAYA, GALINA, BROOKLYN, NY	09/05/96	ANCIER, STEPHEN LEE, UPPER MONTCLAIR, NJ	09/09/96
RAVAL, KANU, JERSEY CITY, NJ	09/05/96	ANDERSON, MARY ANN, MAPLEWOOD, MN	09/11/96
ROBINSON, SHIRLEY ANN, LITTLE ROCK, AR	09/15/96	ARTMAN, CARL, FARMINGTON, MO	09/11/96
ROSENBERG, MICHAEL GUTTMAN, LOS ANGELES, CA	09/10/96	BEN-AMAZ, DANIEL, CLIFTON PARK, NJ	09/05/96
ULLRICH, HARRY W., WHITE PLAINS, NY	09/05/96	BLOOM, BARRY IRVING, NEW YORK, NY	09/05/96
VAINER, RAISA, BROOKLYN, NY	09/05/96	BROWN, JAMES JOSEPH, ST. CHARLES, MO	09/11/96
VOLPE, ANGELO, MELVILLE, NY	09/05/96	BURKE, ALAN M, GENEVA, NY	09/05/96
YASIN, INC., COLUMBIA, MD	09/10/96	CARLETON DENTAL GROUP, P.C., CENTRAL ISLIP, NY	09/05/96
PATIENT ABUSE/NEGLECT CONVICTIONS:		CHACE, HENRY V., BAYSIDE, NY	09/05/96
BEARD, PATSY JEAN, JONESBORO, LA	09/15/96	FINLEY, OLIVIA I., WASHINGTON, DC	09/10/96
BUTIKOFER, GORDON RAY, MANTI, UT	09/10/96	GALINSKY, RONALD C., VOORHEES, NJ	09/09/96
CARTER, SHARON, TUCKER, AR	09/15/96	GARDNER, ELMER A., BROOKESVILLE, MD	09/10/96
DABNEY, ARTHUR JR., PINE BLUFF, AR	09/15/96	GILBERT, ROBERT DANIEL, MONROE, LA	09/15/96
DAVIS, KATHRYN A., VANCOUVER, WA	09/10/96	GUZMAN, SILVIA, MESA, AZ	09/10/96
DELGADO, JAMES, CARRIZOZO, NM	09/15/96	HINZ, MARTIN C., DULUTH, MN	09/11/96
GRIFFITHS, EMMELIN, MOUNT VERNON, NY	09/05/96	HUTCHINGS, DANNY MICHAEL, VERNON, TX	09/15/96
HUTCHEN, NATALIE V., BUFFALO, NY	09/05/96	JONES, FLORENCE, PERU, IN	09/11/96
KLEDITZ, ERICH, SCANDINAVIA, WI	09/11/96	KITE, CHARLES H., LOUDONVILLE, NY	09/05/96
LADAGA, JOSEPH H., THREE RIVERS, MI	09/11/96	LUPINACCI, ALAN, W. PATERSON, NJ	09/09/96
MOLDEN, LONDA, MOSS POINT, MS	09/15/96	MARTIN, DANIEL BRIAN, ARLINGTON, VA	09/10/96
ORTIZ, PETER J., ELMIRA, NY	09/05/96	MATZ, RODNEY S., WAYNE, NJ	09/09/96
ROBERTS, JEFFREY L., BUFFALO, NY	09/05/96	MOZULAY, MARK JOSEPH, ALEXANDRIA, VA	09/10/96
SEYMOUR, JACQUELYN D., PLAQUEMINE, LA	09/15/96	NOLAND, VICKIE LYNN, PITTSBORO, IN	09/11/96
SIEGEL, IRVING, BETHESDA, MD	09/10/96	NOVOSAD, CHARLES L. JR., POJOAQUE, NM	09/15/96
THOMPSON, LESLIE C., DETROIT, MI	09/11/96	PARKER, JONATHAN W., FAIRLAWN, NJ	09/09/96
WILLIAMS, PATRICK SHANE, INA, IL	09/11/96	POLHEMUS, JAY, ANDERSON, IN	09/11/96
WILSON, SHIRLEY, NEWTON, MS	09/15/96	PUCHTA-BROWN, KRISTINE M, MANCHESTER, TN	09/12/96
CONVICTION FOR HEALTH CARE FRAUD:		RUUD, NORMA ALMA, ATWATER, MN	09/11/96
BAPTISTE, CHERYL DICKERSON, BATON ROUGE, LA	09/15/96	SCHERMER, JOHN W., ENGLEWOOD, NJ	09/09/96
SUMMERS, JAVONDA, NEW ORLEANS, LA	09/15/96	SCHOOLER, CHRISTIAN, NEW YORK, NY	09/05/96
TORRES, VERONICA GARCIA, YUMA, AZ	09/10/96	SPARTALIS, MENICOS, BROOKLYN, NY	09/05/96
LICENSE REVOCATION/SUSPENSION/SURRENDER:		STROEMER, JOHN R., INVER GROVE, MN	09/11/96
		STUBER, STEVEN F., GRAND RAPIDS, MN	09/11/96

Subject, City, and State	Effective date	Subject, City, and State	Effective date	
UNGAR-SARGON, JULIAN, NEW YORK, NY	09/05/96	JUBERT, ANGELA K., NASHVILLE, TN	09/12/96	35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.
VANDER KOOI, PAUL, OR- ANGE, IA	09/11/96	KASHANI, MORTAZA, HILL- SIDE, IL	09/10/96	Foreign patent applications are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.
VENANZI, ENZO J., BLACK- WOOD, NJ	09/09/96	KETTERER, CYNTHIA L., PHILADELPHIA, PA	09/10/96	ADDRESSES: Licensing information and copies of the U.S. patent applications and issued patents listed below may be obtained by contacting Ken Hemby at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7735 ext 265; fax: 301/402-0220). A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.
WESSER, DAVID ROBERT, ARDSLEY, NY	09/05/96	KRATT, THOMAS WILLIAM, NACOGDOCHES, TX	05/29/96	Expression of Early Lung Cancer Detection Market P31 in Neoplastic and Non-Neoplastic Respiratory Epithelium
FEDERAL/STATE EXCLU- SION/SUSPENSION: CARLONI, EDMUND L., HARTSDALE, NY	09/11/96	LAYMAN, KEVIN WAYNE, ALMA, AR	09/15/96	JL Mulshine (NCI) Filed 02 Oct 95 Serial No. 08/538,711
CENTRAL CARE, INC., CONGERS, NY	09/09/96	LINVILLE, MICHAEL R., SOMERVILLE, MA	09/11/96	Lung cancer is the most frequent cause of cancer death in both males and females in the United States. Metastatic lung cancer is almost uniformly fatal. Methods for earlier detection of lung carcinoma may help increase survival rates by allowing earlier treatment. Recently, there have been efforts to detect antigens associated with lung carcinoma in the sputum of patients. The basis of this approach is the identification of early, potentially pre-neoplastic changes in cells shed from bronchial epithelium. This invention identifies P31 as a candidate for a lung carcinoma associated antigen which can be detected in sputum using immunological methods. This invention describes production and use of antibodies specific for P31 antigen which are highly correlated with patients having increased age and prolonged smoking history, and is selective for neoplastic tissue or tissue proximally associated with neoplasms. This invention further defines a method by which other candidate early lung cancer detection markers can be evaluated. Issuance of a patent on this invention is currently pending. (portfolio: Cancer—Diagnostics, in vitro, MAb based; Cancer—Research Reagents, MAb based)
FILIZ, GENCER, BROOK- LYN, NY	09/09/96	MEISNER, JOHN T., BOGA- LUSA, LA	09/15/96	Colon Mucosa Gene Having Down-Regulated Expression in Colon Adenomas and Adenocarcinomas
GALLARDO, ANNETTE, CONGERS, NY	09/09/96	MELTON, TERRY L., OLD HICKORY, TN	09/12/96	CW Schweinfest, TS Papas (NCI) Filed 17 Apr 95 Serial No. 08/424,567 (FWC of 08/026,045)
GOMES, GERSON, FLUSH- ING, NY	09/09/96	MILLER, KEVIN DWAYNE, EUNICE, LA	09/15/96	
JEAN-BAPTISTE, ROO- SEVELT, CHICAGO, IL	09/11/96	MIRRIONE, JOHN J., WASHINGTON TWNSHP, NJ	09/09/96	
KLIMOVA, LUBOV T., BROOKLYN, NY	09/09/96	MOINI, KIAN, FOUNTAIN VALLEY, CA	09/10/96	
RIVAS, LUIS, BRONX, NY ...	09/09/96	ODETTE, CAROLINE K., HOUSTON, TX	09/15/96	
OWNED/CONTROLLED BY CONVICTED/EXCLUDED: AMERICAN MEDICAL SERVICES, INC., VOOR- HEES, NJ	09/10/96	ONYEKAKA, EBERE N., MA- PLEWOOD, NJ	09/09/96	
DEW TRANSPORTATION, TALLULAH, LA	09/15/96	RESNANSKY, ALEXANDER, RICHFIELD SPRNG, NY ...	09/09/96	
MEDICINE SHOPPE, COLO- RADO SPRINGS, CO	09/10/96	REYNOLDS, BOB R., BA- KERSFIELD, CA	09/10/96	
SAFETY MEDICAL TRANS- PORTATION, PENSAC- OLA, FL	09/15/96	SAUNDERS, RONALD W., SAN ANTONIO, TX	09/15/96	
DEFAULT ON HEAL LOAN: ANTHONY, STEVEN M., LAKE ELSINORE, CA	09/10/96	SIGH, EDWARD R., FT. STOCKTON, TX	09/15/96	
AVER, REVA B., PORT- LAND, OR	09/10/96	SIMON, MICHELLE R., THOUSAND OAKS, CA	09/10/96	
BAKER, YVETTE KETAI, LITTLE ROCK, AR	09/15/96	SLAVIN, TIMOTHY, FLORAL PARK, NY	09/09/96	
BEAVER, BART D., EVER- GREEN PARK, IL	09/11/96	TAYLOR, ROGER A., SAN MATEO, CA	09/10/96	
BONO, JOHN E., SAN JOSE, CA	09/10/96	VERBARO, DENNIS S., CHESTER, NJ	09/09/96	
CARY, HUNSDON R., AR- LINGTON, TX	09/15/96	WATSON, PERRY F., GRANVILLE, OH	09/11/96	
CLUNES, LINDSAY C., CORVALLIS, OR	09/10/96	WILBERT, LEONARD BRIAN, VINITA TERRACE, MO	9/11/96	
CONTI, ANTHONY N., MED- FORD, NY	09/09/96			
DIBENEDETTO, MAURO V., MASSAPEQUA, NY	09/09/96			
DRABINSKY, GERALD S., LOS ANGELES, CA	09/10/96			
EARLY, GARY M., KIRKSVILLE, MO	09/11/96			
FISHKIN, WILLIAM H., SAN FRANCISCO, CA	09/10/96			
GARCIA, ROBERT WILLIAM, ODESSA, TX	09/15/96			
GERVASI, CININA M., LONG BEACH, NY	09/09/96			
HEALEY, CHRISTINE J., WINTHROP, MA	09/11/96			
HITCHCOCK, PHILIP R., DUNSMUIR, CA	09/10/96			
JAFAR, WIDAD J., WHITE- HALL, PA	09/10/96			

Dated: September 9, 1996.

William M. Libercci,

Director, Health Care Administrative
Sanctions, Office of Enforcement and
Compliance.

[FR Doc. 96-23568 Filed 9-13-96; 8:45 am]

BILLING CODE 4150-04-P

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health,
HHS.

ACTION: Notice.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with

Tumor suppressor genes that are down-regulated in colon adenomas and adenocarcinomas have been identified and isolated that may be valuable for the study and treatment of these disorders as well as for detecting and identifying other tumor suppressor genes. Colorectal cancer is a significant problem in the U.S., with 130,000 new cases per year and more than 65,000 deaths per year. Colorectal cancer is a multistep process involving the loss of function of so-called tumor suppressor genes as well as the activation of oncogenes. Studies in cell cultures have shown that the transfer of wild-type tumor suppressor genes to colon cancer cells lacking this gene suppresses tumorigenicity. cDNAs encoding an mRNA that is down-regulated in adenocarcinomas and adenomas of the colon have been isolated and cloned. The mRNA encodes a polypeptide of about 84,500 daltons. This down-regulated in adenoma (DRA) gene maps to chromosome 7, in which abnormalities have previously been linked to colorectal carcinomas. The polypeptide product of the cDNA may be used for studying the process of tumorigenesis and suppression. In addition, the DRA gene and/or polypeptide may be valuable as therapy for colon cancer or for staging colon tumors. Finally, this invention includes nucleotide probes for detecting and isolating other tumor suppressor genes. (portfolio: Cancer—Diagnostics, in vitro, DNA based; Cancer—Research Reagents, DNA based; Gene-Based Therapies—Diagnostics)

Screening Assays for Compounds That Cause Apoptosis

CC Harris, XW Wang, JH Hoeijmakers (NCI)
Filed 19 Dec 94
Serial No. 08/359,316

This application discloses a method for screening compounds for those which have the property of inducing programmed cell death, or "apoptosis", and which therefore are candidates for treating cancers caused by a loss of ability to induce apoptosis. Apoptosis is a normal body mechanism for controlling the growth of cells; the loss of ability to induce apoptosis in cells with defective DNA replication is associated with the formation of certain cancers. One major pathway for monitoring cells for transformation and for inducing apoptosis in transformed cells involves the nuclear protein coded for by the p53 tumor suppressor gene. Mutations in the p53 gene have been linked to a number of human cancers. The screening assays are based on the knowledge that the p53 dependent apoptosis pathway involves the

interaction of the p53 protein with XPB or XPD proteins of the disease *Xeroderma pigmentosum* (XP), or both. The application discloses *in vitro* diagnostic assays for two of the eight genetic forms of XP, specifically those related to defects in the B or D groups. The assays capitalize on the p53/XP protein interaction by using the ability of compounds with certain binding properties to induce apoptosis to detect the defects indicative of XP. The application also describes a peptide which interferes with the binding of p53 to XPB or XPD protein and may thus be capable of inducing apoptosis in cells susceptible to p53-mediated apoptosis. Issuance of a patent for this invention is currently pending. (portfolio: Cancer—Diagnostics, in vitro, DNA based; Cancer—Research Reagents, DNA based; Gene-Based Therapies—Diagnostics)

Cancer-Related Autocrine Motility Factor, Autotaxin

ML Stracke, LA Liotta, E Schiffmann, HC Krutzsch (NCI)
Filed 28 Nov 94
Serial No. 08/346,455

Many types of tumor cells have been found to produce proteins termed "autocrine motility factors". Cell motility plays an important role in the metastasis of tumor cells. The present novel motility factor autotaxin has been isolated and molecular cloned. The cDNA encoding the entire autotaxin protein contains 3251 base pairs, and has an mRNA size of approximately 3.3 kb. The full-length deduced amino acid sequence of autotaxin comprises a protein of 915 amino acids. Autotaxin was found to hydrolyze the type I phosphodiesterase substrate p-nitrophenyl thymidine-5' monophosphate. Autotaxin stimulates both random and directed migration of human A2058 melanoma cells at picomolar concentrations.

The patent application includes claims to the autotaxin protein and cDNA and antibodies thereto. These materials may be useful in the development of cancer diagnostics and therapeutics. (portfolio: Cancer—Diagnostics, in vitro, MAb based; Cancer—Therapeutics, biological response modifiers; Cancer—Therapeutics, immunoconjugates, MAb)

The IRS Family of Genes

MF White, XJ Sun, JH Pierce (NCI)
Filed 03 Oct 94
Serial No. 08/317,310

Insulin Receptor Substrate (IRS) is a polypeptide that has recently been shown to play a role in activation of downstream responses to insulin as well

as a possible role in models of obesity or insulin resistance. This invention discloses IRS-2 polypeptide. An IRS-2 polypeptide, insulin receptor substrate-2, specifically binds the insulin receptor, the interleukin-4 receptor, interleukin-13 receptor, insulin-like growth factor, or IL-15 receptor. Disclosed is a method of diagnosis of an insulin-related disorder, such as diabetes, or immune related diseases relating in human or other mammals. A method of measuring the effect of treatment, using a cell or tissue sample the misexpresses the IRS-2 gene. The invention also discloses the manufacture of a transgenic animal that expresses a mutant form of the IRS-2 gene and is useful as a model for the study of insulin-related disorders or other disorders characterized by unwanted cell growth. (portfolio: Cancer—Diagnostics, in vitro, DNA based; Cancer—Diagnostics, in vivo, other; Cancer—Therapeutics, gene therapy, vectors; Cancer—Therapeutics, gene therapy, genes; Cancer—Therapeutics, biological response modifiers, growth factors; Gene-Based Therapies—Therapeutics, gene therapy, therapeutic genes)

Antigenic Matrix Metalloproteinase Peptides

LA Liotta, W Stetler-Stevenson, H Krutzsch (NCI)
Serial No. 07/830,313 filed 26 Feb 90
U.S. Patent 5,372,809 issued 13 Dec 94

Inhibitory synthetic peptides have been made which incorporate various regions of the type IV collagenase purified from human melanoma cells. These peptides have been used to generate antibodies against specific domains within the type IV collagenase molecule. These peptides have also been shown to inhibit matrix metalloproteinases, and therefore may be useful in the treatment of matrix metalloproteinase-related disease states such as arthritis, tumor growth, invasion and metastasis, inappropriate angiogenesis, and certain inflammatory conditions, such as sarcoidosis. The peptides are suitable for administration by any means which provides ready transmission into the circulation, such as injection, infusion, inhalation, or buccal or sublingual administration. Ophthalmologic administration via eye drops may also be possible. In addition to their inhibitory properties, the peptides may also be used to generate antibodies that recognize matrix metalloproteinases and antibodies that recognize collagenase IV specifically. Collagenase IV-specific antibodies are particularly advantageous, since the enzyme shares significant sequence

homology with other matrix metalloproteinases. Antibodies made with certain of the peptides are capable of distinguishing activated and non-activated forms of collagenase IV. Hence, the peptides have potential applications as both therapeutic and diagnostic agents. (portfolio: Cancer—Research Reagents; Cancer—Diagnostics, in vitro, DNA based)

Cell Matrix Receptor System And Use In Cancer Diagnosis And Management

LA Liotta, NC Rao, V Terranova (NCI)
Serial No. 06/481,934 filed 04 Apr 83
U.S. Patent No. 4,565,789 issued 21 Jan 86

A method of diagnosis and management of cancer, particularly breast cancer, is provided. The method involves interfering with the mechanism by which tumor cells adhere to the various membranes and tissues of the body, enabling replication, using cell receptors specific for the laminin molecule. The laminin molecule normally adheres to collagen IV of the membranes and tissues. The novel laminin molecule disclosed binds the cell receptor of the tumor cell because it has an affinity for the receptor but it does not have an affinity for collagen IV which is part of the membranes and tissues of the body.

Other applications include possible burn therapy through the promotion of adhesion and growth of epithelial cells, which form the covering of most internal organs and outer surface layers of skin.

Secondly, this invention provides a method for evaluating the effectiveness of chemotherapeutic agents designed to affect the receptor in cancer cells. The invention discloses a kit for detecting the presence of metastasizing cancer cells having this cell receptor. A method of separation of metastatic cancer cells expressing the cell receptor from a mixed population of cells is also provided.

Also provided is a method of detecting breast cancer using radiolabelled antibodies specific to the cell receptor. (Portfolio: Cancer—Diagnostics, in vitro, MAb based; Cancer—Diagnostics, in vivo, conjugate chemistry; Cancer—Diagnostics, in vitro, other; Cancer—Research Reagents, MAb based; Cancer—Miscellaneous; Cancer—Therapeutics, biological response modifiers, growth factors; Internal Medicine—Therapeutics, anti-inflammatory.)

Dated: August 21, 1996.
Maria C. Freire,
Director, Office of Technology Transfer.
[FR Doc. 96-23634 Filed 9-13-96; 8:45 am]
BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Notice of Meeting of the Deafness and Other Communication Disorders Programs Advisory Committee

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Deafness and Other Communication Disorders Programs Advisory Committee.

Date: October 28, 1996.
Place: National Institutes of Health, 9000 Wisconsin Avenue, Building 31C, Conference Room 6, Bethesda, MD 20892.
Time: 8 am to 5 pm.
Purpose/Agenda: To hold discussions on Extramural Research programs.
Contact Person: Ralph F. Naunton, M.D., Director, Division of Human Communication, NIH/NIDCD, 6120 Executive Boulevard, MSC 7180, Bethesda, MD 20892-7180, 301-496-1804.

The entire meeting will be open to the public, with attendance limited to space available. A summary of the meeting and a roster of the members may be obtained from Dr. Naunton's office. For individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodation, please contact Dr. Naunton prior to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.173 Biological Research Related to Deafness and Communication Disorders)

Dated: September 6, 1996.
Margery G. Grubb,
Senior Committee Management Specialist, NIH.
[FR Doc. 96-23564 Filed 9-13-96; 8:45 am]
BILLING CODE 4140-01-M

Prospective Grant of Exclusive License: Immunotoxins With In-Vivo T Cell Suppressant Activity and Methods of Use and Immunotoxins

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the inventions embodied in U.S. Patent Number 5,167,956, and entitled; "Immunotoxins With In-Vivo T Cell Suppressant Activity and Methods of Use", Patent

Applications USSN 08/308,730, 60/008,104 and 60/015,459, and corresponding U.S. and foreign patent applications, all entitled; "Immunotoxins With In-Vivo T Cell Suppressant Activity And Methods Of Use" and U.S. Patent Number 5,208,021, and entitled; "Immunotoxins" and corresponding foreign patent applications to Sandoz Pharma Ltd., Basel, Switzerland. The patent rights for NIH inventors in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use for this prospective exclusive license may be limited to "Induction of Tolerance to Transplanted Organs". The field of use for this prospective exclusive license for U.S. Patent Number 5,208,021 will exclude, at a minimum, fields of use of, "for therapeutic treatment of all cancers" and "for therapeutic treatment of all muscle diseases and disorders."

A major goal in transplant immunobiology is the development of specific immunologic tolerance to organ transplants. This therapy holds the potential of freeing patients from the side effects of continuous pharmacologic immunosuppression and its attendant complications and costs. Dr. David Neville's laboratory at the National Institute for Mental Health, NIH has developed immunotoxins (IT) targeted to the pan-T cell marker CD3 (anti-CD3-IT) and demonstrated that it has a profound immunosuppressive effect on human and rhesus T cells in vivo. A collaboration with Dr. Stewart Knechtle's laboratory (University of Wisconsin, Madison) has shown that a 3-day administration of anti-CD3 IT in rhesus monkeys can transiently deplete T cells to <1% of initial values in both the blood and lymph node compartments. Donor lymphocytes were injected intrathymically in some animals. All monkeys with T cell depletion had prolonged allograft survival. Tolerance was confirmed by skin grafting in 5 of 6 long-surviving recipients (>150 days). No other drug or treatment regimen has come close to achieving these results. In a collaboration with Dr. Judith Thomas' laboratory (University of Alabama,

Birmingham), a lower dose of anti-CD3-IT given 15 hours before transplant with other conditioning agents (donor bone marrow or total lymphoid irradiation), markedly prolongs the lifetime of mismatched renal allografts and has lead to stable tolerance in some recipients. These studies suggest that the anti-CD3 immunotoxin can induce allospecific CTL hyporesponsiveness in rhesus kidney allograft recipients and this treatment has potential for inducing tolerance to allografts in humans.

Another application of this technology is in the treatment of autoimmune diseases. Dr. Neville's laboratory has demonstrated that anti-CD3-IT treatment moderates the course of an experimental T cell driven autoimmune disease (myelin basic protein induced experimental allergic encephalomyelitis or EAE) in rhesus monkeys. EAE in non-treated control monkeys progressed rapidly and paralysis occurred 4-6 days after induction. In monkeys treated with anti-CD3-IT at induction, paralysis was either delayed or never occurred. These results have been achieved with a chemically-coupled reagent. Development of a molecularly engineered anti-CD3-IT is ongoing. Anti-CD3 immunotoxin may be useful in treating T cell driven autoimmune diseases such as rheumatoid arthritis and multiple sclerosis.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: Raphe Kantor, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; Telephone: (301) 496-7735 ext. 247; Facsimile: (301) 402-0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications. Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Only written comments and/or applications for a license which are received by NIH on or before November 15, 1996 will be considered. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: September 6, 1996.
Barbara M. McGarey,
Deputy Director, Office of Technology Transfer.
[FR Doc. 96-23633 Filed 9-13-96; 8:45 am]
BILLING CODE 4140-01-M

Office of Public Health and Science

Announcement of Availability of Funds for Family Planning Services Grants

AGENCY: Office of Public Health and Science, HHS.

ACTION: Notice.

SUMMARY: The Office of Population Affairs announces the availability of funds for FY 1997 family planning services grant projects under the authority of Title X of the Public Health Service Act (42 U.S.C. 300 *et seq.*) and solicits applications for competing grant awards to serve the areas and/or populations set out below. Only applications which propose to serve the populations and/or areas listed in Table I will be accepted for review and possible funding.

OMB Catalog of Federal Domestic Assistance 93.217

DATES: Application due dates vary. See **SUPPLEMENTARY INFORMATION** below.

ADDRESSES: Additional information may be obtained from and completed applications should be sent to the appropriate Regional Health Administrator at the address below:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont): DHHS/PHS Region I, John F. Kennedy Federal Building, Government Center, Room 1400, Boston, MA 02203

Region II (New Jersey, New York, Puerto Rico, Virgin Islands): DHHS/PHS Region II, 26 Federal Plaza, Room 3337, New York, NY 10278

Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, W. Virginia): DHHS/PHS Region III, 3535 Market Street, Philadelphia, PA 19101

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, N. Carolina, S. Carolina, Tennessee): DHHS/PHS Region IV, 101 Marietta Tower, Suite 1106, Atlanta, GA 30323

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin): DHHS/PHS Region V, 105 West Adams Street, 17th Floor, Chicago, IL 60603

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas): DHHS/PHS Region VI, 1200 Main Tower

Building, Room 1800, Dallas, TX 75202

Region VII (Iowa, Kansas, Missouri, Nebraska): DHHS/PHS Region VII, 601 East 12th Street, 5th Fl. W., Kansas City, MO 64106

Region VIII (Colorado, Montana, N. Dakota, S. Dakota, Utah, Wyoming): DHHS/PHS Region VIII, 1961 Stout Street, Denver, CO 80294

Region IX (Arizona, California, Hawaii, Nevada, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, Republic of the Marshall Islands): DHHS/PHS Region IX, 50 United Nations Plaza, Room 327, San Francisco, CA 94102

Region X (Alaska, Idaho, Oregon, Washington): DHHS/PHS Region X, Blanchard Plaza, 2201 Sixth Avenue, M/S RX-20, Seattle, WA 98121

FOR FURTHER INFORMATION CONTACT:

Regional Grants Management Officers: Region I, Mary O'Brien—617/565-1482; Region II, Manley Khaleel—212/264-4493; Region III, Marty Bree—215/596-6653; Region IV, Wayne Cutchins—404/331-2597; Region V, Elaine Smith—312/353-8700; Region VI, Joyce Bailey—214/767-3879; Region VII, Michael Rowland—816/426-5841; Region VIII, Susan A. Jaworowski—303/844-4461; Region IX, Ken Souza—415/437-8125; Region X, Jim Tipton—206/615-2473.

Regional Program Consultants for Family Planning: Region I, James Sliker—617/565-1452; Region II, Barry Gordon—212/264-2535; Region III, Louis Belmonte—215/596-6686; Region IV, Christino Rodriguez—404/331-5254; Region V, Janice Ely—312/353-1700; Region VI, Paul Smith—214/767-3072; Region VII, William S. Royster, Jr.—816/426-2924; Region VIII, John J. McCarthy, Jr.—303/844-5955; Region IX, James Hauser—415/437-8116; Region X, Sharon Schnare—206/615-2501.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300 *et seq.*, authorizes the Secretary of Health and Human Services (HHS) to award grants to public or private nonprofit entities to assist in the establishment and operation of voluntary family planning projects to provide a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents). The statute requires that, to the extent practicable, entities shall encourage family participation. Also, Title X funds

may not be used in programs where abortion is a method of family planning. Implementing regulations appear at 42 CFR part 59, subpart A.

On February 5, 1993, HHS published at 58 FR 7462 an interim rule that suspends the 1988 Title X rules, pending the promulgation of new regulations. The principal effect of this action was to suspend the definitions of "family planning," "grantees," "prenatal care," "Title X," "Title X Program," and "Title X Project" presently found at 42 CFR 59.2 and 42 CFR 59.7–59.10. Proposed rules were also published at 58 FR 7464 on the same date. During the pendency of rulemaking, the compliance standards that were in effect prior to the issuance of the 1988 rule, including those set out in the 1981 Family Planning Guidelines, are being used to administer the program. Copies of the pre-1988 compliance standards are available from the Regional Program Consultants listed above.

Priorities that represent overarching goals for the Title X program include:

(1) Increasing outreach to individuals not likely to seek services, including males, homeless persons, disabled persons, substance abusers and adolescents;

(2) Expanding the comprehensiveness of reproductive health services, including STD and cancer screening and prevention, increased involvement of

male partners, HIV prevention, education and counseling, and substance abuse screening and referral;

(3) Serving adolescents, including more community education, emphasis on postponement of sexual activity, and more accessible provision of contraceptive counseling and contraception;

(4) Eliminating disincentives to providing long-acting, highly effective contraceptives, serving high risk (and high-unit cost) clients, and providing nonrevenue-generating services such as community education and prevention services; and

(5) Emphasizing training and retention of women's health nurse practitioners, particularly minority nurse practitioners and nurse practitioners serving disadvantaged and medically underserved communities.

These program priorities are being pursued to the extent that funding or increases in program efficiency allow. Some funding may be available to Title X grantees to improve and expand services.

The Administration's FY 1997 budget request for the Title X Family Planning Program is \$198 million. This amount represents a two percent increase over the FY 1996 budget of \$193.3 million. Of this amount, \$184 million will be made available to Title X service grantees. Approximately 38 percent of the funds appropriated for FY 1997 and

made available to Title X service grantees will be used for competing grants. The remaining funds will be used for non-competing continuation grants. This program announcement is subject to the appropriation of funds and is a contingency action being taken to ensure that, should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as to provide for the distribution of funds throughout the fiscal year. Since the precise funding levels for FY 1997 are uncertain at this point, the funding levels set out below are based on the FY 1995 appropriation level. However, it is expected that funding levels will be increased, if the appropriation for FY 1977 increases from FY 1996 levels.

For FY 1997, the proposed \$184 million will be allocated among the 10 DHHS regions for both competing and non-competing grants, and will in turn be awarded to public and private non-profit agencies located within the regions. Each regional office is responsible for evaluating applications, establishing priorities, and setting funding levels according to criteria in 42 CFR 59.11.

This notice announces the availability of funds to provide family planning services in 22 States and the Commonwealth of Puerto Rico. Competing grant applications are invited for the following areas:

TABLE I

Populations or areas to be served	Number of competing grants to be awarded	FY 1995 funding	Application due date	Grant funding date
Region I: No grants available for competition in FY 1997				
Region II: Commonwealth of Puerto Rico	1	\$1,683,802	2/28/97	6/30/97
Region III:				
West Virginia	1	1,587,483	11/30/96	3/31/97
Southeastern PA	1	3,259,606	2/28/97	6/30/97
Western PA	1	2,566,846	2/28/97	6/30/97
Central PA	1	1,954,220	2/28/97	6/30/97
Northeastern PA	1	1,185,168	2/28/97	6/30/97
Virginia	1	3,492,148	2/28/97	6/30/97
Delaware	1	647,118	11/30/96	3/31/97
Maryland	1	3,005,096	2/28/97	6/30/97
Region IV:				
Alabama	1	3,831,548	2/28/97	6/30/97
Florida	1	6,771,384	2/28/97	6/30/97
Georgia	1	5,801,774	2/28/97	6/30/97
Kentucky	1	3,859,661	2/28/97	6/30/97
Mississippi	1	3,682,582	2/28/97	6/30/97
North Carolina	1	4,866,987	2/28/97	6/30/97
South Carolina	1	4,172,010	2/28/97	6/30/97
Tennessee	1	5,266,054	2/28/97	6/30/97
Region V:				
Illinois	1	5,860,119	8/31/96	12/31/96
Ohio	1	5,888,625	10/31/96	2/28/97
Central Ohio	1	585,238	10/31/96	2/28/97
Summit, Medina, Portage, OH	1	659,935	2/28/97	6/30/97

TABLE I—Continued

Populations or areas to be served	Number of competing grants to be awarded	FY 1995 funding	Application due date	Grant funding date
Region VI: No grants available for competition in FY 1997				
Region VII: No grants available for competition in FY 1997				
Region VIII:				
South Dakota	1	559,532	2/28/97	6/30/97
Wyoming	1	481,247	9/01/96	1/01/97
Region IX: No grants available for competition in FY 1997				
Region X: No grants available for competition in FY 1997				
Total		69,488,183		

Applications must be postmarked or, if not sent by U.S. mail, received at the appropriate Grants Management Office no later than close of business on application due dates listed above. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked or, if not sent by U.S. mail, delivered to the appropriate Grants Management Office later than the application due date will be judged late and will not be accepted for review. (Applicants should request a legibly dated postmark from the U.S. Postal Service.) Applications which do not conform to the requirements of this program announcement or do not meet the applicable regulatory requirements at 42 CFR part 59, subpart A will not be accepted for review. Applicants will be so notified, and the applications will be returned.

Applications will be evaluated on the following criteria:

- (1) The number of patients and, in particular, the number of low-income patients to be served;
- (2) The extent to which family planning services are needed locally;
- (3) The relative need of the applicant;
- (4) The capacity of the applicant to make rapid and effective use of the Federal assistance;
- (5) The adequacy of the applicant's facilities and staff;
- (6) The relative availability of non-Federal resources within the community to be served and the degree to which those resources are committed to the project; and
- (7) The degree to which the project plan adequately provides for the requirements set forth in the Title X regulations.

Application Requirements

Application kits (including the application form, PHS 5161) and technical assistance for preparing proposals are available from the regional offices. An application must contain: (1)

A narrative description of the project and the manner in which the applicant intends to conduct it in order to carry out the requirements of the law and regulations; (2) a budget that includes an estimate of project income and costs, with justification for the amount of grant funds requested; (3) a description of the standards and qualifications that will be required for all personnel and facilities to be used by the project; and (4) such other pertinent information as may be required by the Secretary as specified in the application kit. In preparing an application, applicants should respond to all applicable regulatory requirements. (The information collections contained in this notice have been approved by the Office of Management and Budget and assigned control number 0937-0189.)

The Office of Public Health and Science (OPHS) requires all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. This is consistent with the OPHS mission to protect and advance the physical and mental health of the American people.

Application Review and Evaluation

Each regional office is responsible for establishing its own review process. Applications must be submitted to the appropriate regional office at the address listed above. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

Grant Awards

Grant projects are generally approved for 3 to 5 years with an annual non-competitive review of a continuation application to obtain continued support. Non-competing continuation awards are subject to factors such as the project making satisfactory progress and the availability of funds. In all cases, continuation awards require a

determination by HHS that continued funding is in the best interest of the Federal Government.

Review Under Executive Order 12372

Applicants under this announcement are subject to the review requirements of Executive Order 12372, Intergovernmental Review of Department of Health and Human Services Programs and Activities, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the Grants Management Office of the appropriate region. State Single Point of Contact comments must be received by the regional office 30 days prior to the funding date to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome of its application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Dated: September 5, 1996.

Thomas C. Kring,

Acting Deputy Assistant Secretary for Population Affairs.

[FR Doc. 96-23553 Filed 9-13-96; 8:45 am]

BILLING CODE 4160-17-M

Substance Abuse and Mental Health Services Administration

Cooperative Agreement With the National Association of State Alcohol and Drug Abuse Directors

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Cooperative agreement to support technical assistance, including synthesis and dissemination of State information; related policy analyses; and analysis and utilization of State data.

SUMMARY: This notice is to provide information to the public concerning a planned cooperative agreement between the Substance Abuse and Mental Health Services Administration (SAMHSA) and the National Association of State Alcohol and Drug Abuse Directors to support State technical assistance and related activities. If the application is recommended for approval by the Initial Review Group, and the SAMHSA National Advisory Council concurs, a cooperative agreement will be awarded. This is not a formal request for applications. An application will be solicited only from the National Association of State Alcohol and Drug Abuse Directors.

Authority/Justification

The cooperative agreement will be made under the authority of section 1948(a) of the Public Health Service Act, as amended (42 U.S.C. 300x-58). A single source award will be made to the National Association of State Alcohol and Drug Abuse Directors (NASADAD) based on its direct relationship with the single State substance abuse authorities. This relationship provides NASADAD with unique qualification to carry out the activities of this cooperative agreement, which requires such an affiliation with the State agencies. As the only national organization representing State substance abuse agencies, NASADAD's membership is composed of the persons directly responsible for the administration of public substance abuse policies and services in the respective States. NASADAD includes State membership of all but one of the Substance Abuse Prevention and Treatment (SAPT) Block Grant recipients, as well as full and continuous communication with the leadership and staff of these agencies. Its membership also administers the 20% of the State's allotments from the Substance Abuse Prevention and Treatment Block Grant that are required by law to be used for substance abuse prevention efforts. NASADAD has the

confidence of its member States, and NASADAD staff are in a unique position to assess State needs for technical assistance.

Background

SAMHSA's mission is to improve the quality and availability of prevention, early intervention, and treatment services for substance abuse, including co-occurring substance abuse and mental illness, in order to improve health and reduce illness, death, disability, and cost to society. State and local governments and communities continue to have the major responsibility for providing public sector substance abuse services for those without health insurance or those whose insurance does not provide adequate coverage. The responsibility for providing for substance abuse services in such cases lies primarily with the States. Current SAPT Block Grant Program legislation requires the Center for Substance Abuse Treatment (CSAT) to provide technical assistance to States with respect to the planning, development, and operation of any program or services carried out under the block grant program. Similar assistance is provided by the Center for Substance Abuse Prevention (CSAP) in relation to the 20% prevention set-aside provided for in the SAPT program legislation. The proposed cooperative agreement will support States in their efforts to improve viable and effective substance abuse service systems that meet the needs of clients, especially in light of current major changes in health care delivery financing and systems. The primary goals of the cooperative agreement are:

- (1) Develop collaboratively with States models that States can use in policy development and decision-making regarding clinical, fiscal, and management aspects of State-based substance abuse service delivery.
- (2) Coordinate or provide specified technical assistance to State substance abuse agencies regarding their programs.
- (3) Gather information and develop policy related to the ability of States to carry out their responsibilities for substance abuse service delivery.
- (4) Develop policy and disseminate information in areas of great interest to States, such as managed care and co-occurring disorders.
- (5) Develop training and other technical assistance materials particular to State needs in carrying out their responsibilities.
- (6) Discuss and develop models and materials which meet the unique needs and special concerns of racial and ethnic minority group members and

special populations so that State services are appropriate, acceptable, and accessible to these individuals.

(7) Collaborate with CSAP and CSAT in providing regional training to meet State technical assistance needs.

(8) Conduct analyses of State data and other information, and make those analyses available to SAMHSA and to others.

(9) Develop reports and monographs to aid States in meeting program requirements and to communicate information and provide technical assistance.

NASADAD is uniquely positioned to fulfill these goals because, as a membership organization, it enjoys the confidence of the States in addressing program and policy issues; it has years of experience in addressing State substance abuse concerns; it possesses substantial capacity to assess State needs; and because systems for routine interchange with States already are in place, including the capacity to obtain quick response from States on time-sensitive issues. As the Government Performance and Results Act encourages Federal funding programs to shift to performance and outcome measurement, with more responsibility and accountability at State levels, the partnership carried out in part through this cooperative agreement will become even more important.

Availability of Funds

The project will be for a 5-year period with \$300,000 available for the first year. Future year funding will depend on the availability of funds, program needs, and program performance.

FOR FURTHER INFORMATION CONTACT:

Margaret M. Gilliam, Office of Policy and Program Coordination, Office of the Administrator, Parklawn Bldg. Room 12C-06, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-4111.

Dated: September 11, 1996.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 96-23670 Filed 9-13-96; 8:45 am]

BILLING CODE 4162-20-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications 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.*):

Applicant: Denver Zoological Gardens, Denver, CO, PRT-819183.

The applicant requests a permit to import one captive-born female black rhinoceros (*Diceros bicornis*) from the Tennoji Zoo, Osaka, Japan for the purpose of enhancement of the survival of the species through captive propagation.

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 430, 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 430(c), Arlington, Virginia 22203. Phone: (703/358-2104); FAX: (703/358-2281).

Dated: September 10, 1996.

Caroline Anderson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 96-23624 Filed 9-13-96; 8:45 am]

BILLING CODE 4310-55-P

Bureau of Land Management

[AZ-055-06-1220-00; 8366]

California: Temporary Closure of Senator Wash Reservoir to All Non-Event Types of Boating, Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of temporary closure of Senator Wash Reservoir to all non-event types of boating from September 13 to September 15, 1996.

SUMMARY: Notice is hereby given that all non-event types of boating are prohibited on the water surface of Senator Wash Reservoir. The closure area encompasses all waters within Senator Wash Reservoir, which is located within sections 31 and 32, Township 14 South, Range 24 East and sections 5 and 6, Township 15 South, Range 24 East, San Bernardino Meridian, California. The area affected by the closure contains 353 acres more

or less at the high water mark of Senator Wash Reservoir.

SUPPLEMENTARY INFORMATION: The temporary closure of Senator Wash Reservoir to all non-event watercraft is being implemented for health and safety concerns during a water ski tournament sponsored by International Novice Tournament (INT) to be held September 13 through September 15, 1996.

This closure is particularly important due to the abnormally low water level resulting from concurrent dewatering of Senator Wash Reservoir by the Bureau of Reclamation for facility maintenance purposes. The estimated water surface area is not expected to allow traditional boating use during the water skiing tournament. This closure shall apply to all persons except those permitted by a Bureau of Land management officer beginning at 8:00 a.m. September 13 and shall remain in effect until 9:00 p.m. September 15, 1996. Authority for this action is contained in 43 CFR 8364.1. Violation of this regulation is punishable by a fine not to exceed \$100,000 and/or imprisonment not to exceed 12 months. A map of the boating access closure area is available at the Yuma Field Office, 2555 East Gila Ridge Road, Yuma, Arizona 85365k; telephone number 520-317-3200.

EFFECTIVE DATE: September 13, 1996.

FOR FURTHER INFORMATION CONTACT:

Ed Perault, Supervisory Outdoor Recreation Planner, 2555 East Gila Ridge Road, Yuma, Arizona 85365, (520) 317-3277.

Dated: September 5, 1996.

Gail Acheson,

Acting Field Manager.

[FR Doc. 96-23635 Filed 9-13-96; 8:45 am]

BILLING CODE 4310-32-M

[CO-950-1430-01; COC-55779]

Public Land Order No. 7217; Withdrawal of National Forest System Land for the Protection of the Bakerville-Loveland Bicycle Trail; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 401 acres of National Forest System land from mining for 20 years to protect the Bakerville-Loveland Bicycle Trail. The land has been and remains open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: September 16, 1996.

FOR FURTHER INFORMATION CONTACT:

Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215-7076, 303-239-3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1988)), for the Forest Service to protect a bicycle trail and associated facilities.

Sixth Principal Meridian

Arapaho Forests

T. 4 S., R. 75 W.,

Sec. 19, E $\frac{1}{2}$ NE $\frac{1}{4}$;

Sec. 20, W $\frac{1}{2}$ NE $\frac{1}{4}$ exclusive of patented lands, and W $\frac{1}{2}$ NW $\frac{1}{4}$.

T. 4 S., R. 76 W.,

Sec. 13, NW $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 14, NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 22, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

A strip of land 100 ft. in width 50 ft. either side of the centerline running through the following described parcels of land:

T. 4 S., R. 75 W.,

Sec. 18, W $\frac{1}{2}$ SW $\frac{1}{4}$ and SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 19, NW $\frac{1}{4}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$;

Sec. 20, SE $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 4 S., E. 76 W.,

Sec. 13, NE $\frac{1}{4}$ SW $\frac{1}{4}$ and N $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 14, S $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 22, E $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 23, N $\frac{1}{2}$ NW $\frac{1}{4}$.

The area described contains approximately 401 acres of National Forest System Land in Clear Creek County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: September 5, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96-23573 Filed 9-13-96; 8:45 am]

BILLING CODE 4310-JB-P

[ID-933-1430-01; IDI-16029 01]

Public Land Order No. 7216; Partial Revocation of Executive Order Dated October 29, 1913; Idaho**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects 40 acres of public land withdrawn by the Bureau of Land Management for Powersite Reserve No. 406. The land is no longer needed for this purpose and the revocation is needed to permit disposal of the land by exchange. This action will open the land to surface entry. The land has been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: October 16, 1996.

FOR FURTHER INFORMATION CONTACT: Cathie Foster, BLM Idaho State Office, 3380 Americana Terrace, Boise, Idaho 83706-2500, 208 384-3163.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated October 29, 1913, which established Powersite Reserve No. 406, is hereby revoked insofar as it affects the following described land:

Boise Meridian

T. 1 N., R. 2 E.,

Sec. 3, SW $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described contains 40 acres in Ada County.

2. At 9 a.m. on October 16, 1996, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on October 16, 1996 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: September 5, 1996.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 96-23572 Filed 9-13-96; 8:45 am]

BILLING CODE 4310-GG-P

ACTION: Notice of Realty Action; Recreation and Public Purpose Act Patent, Kern County, California.

SUMMARY: The following described land has been examined and found suitable for classification for patent to Kern County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*).

Mount Diablo Meridian

T.27S., R.39E.,

Section 11: E $\frac{1}{2}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ Section 12: W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$

Containing 120 acres of public land, more or less.

SUPPLEMENTARY INFORMATION: The County of Kern has applied for land for a buffer and water diversion structure to protect the site currently leased for the Ridgecrest Landfill. The lands are not needed for Federal purposes, and conveyance would be consistent with the 1980 California Desert Conservation Area Plan, as amended. The lease and conveyance of the land would be subject to the following terms and conditions:

1. Provisions of the Recreation and Public Purpose Act and applicable regulations of the Secretary of the Interior.
2. A right of way to the United States for ditches and canals, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).
3. A reservation of all minerals to the United States, and the right to prospect, mine and remove the minerals.

Publication of this Notice in the Federal Register segregates the public lands from all other forms of appropriation under the public land laws and the general mining laws, but not the mineral leasing laws or the Recreation and Public Purpose Act. Detailed information concerning this action is available for review at the California Desert District, 6221 Box Springs Blvd., Riverside, CA 92507. For a period of 45 days after publication of this notice in the Federal Register interested parties may submit comments to the District Manager, California Desert District, in care of the above address. Objections will be reviewed by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, the classification will become effective 60 days after publication of this notice in the Federal Register.

Dated: September 5, 1996.

James L. Williams,

Acting District Manager.

[FR Doc. 96-23567 Filed 9-13-96; 8:45 am]

BILLING CODE 4310-40-M

[ID-957-1910-00-4733]

Filing of Parts of Survey; Idaho

The plat, in two sheets, of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9:00 a.m. September 5, 1996.

The plat, in two sheets, representing the dependent resurvey of portions of the east, west, and north boundaries, the subdivisional lines, the 1893 meanders of the right bank of the Snake River, and of Mineral Survey No. 2643, the subdivision of sections 1, 9, 10, 17, and 19, and a metes-and-bounds survey in section 16, T. 9 S., R. 29 E., Boise Meridian, Idaho, Group No. 888, was accepted, September 5, 1996.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation, Minidoka Project Office.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706-2500.

Dated: September 5, 1996.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 96-23570 Filed 9-13-96; 8:45 am]

BILLING CODE 4310-GG-M**National Park Service****Notice of Inventory Completion for Native American Human Remains in the Possession of Bent's Old Fort National Historic Site, National Park Service, La Junta, CO****AGENCY:** National Park Service**ACTION:** Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of the inventory of human remains in the possession of the National Park Service at Bent's Old Fort National Historic Site, La Junta, CO

A detailed inventory and assessment of the human remains has been made by professional staff of the National Park Service in consultation with representatives of the Absentee-Shawnee Tribe, Alabama and Coushatta Tribes, Apache Tribe, Caddo Indian

[CA-064-05-1430-00, CACA 37102]

Notice of Realty Action Transfer of Public Lands; Kern County, CA

AGENCY: Bureau of Land Management, Department of the Interior.

Tribe, Cheyenne-Arapaho Tribes, Chickasaw Nation, Choctaw Nation, Comanche Indian Tribe, Fort McDowell Mohave-Apache Indian Community, Fort Sill Apache Business Committee, Jicarilla Apache Tribe, Kickapoo Indian Tribe, Kiowa Tribe, Mescalero Apache Tribe, Navajo Nation, Pawnee Indian Tribe, San Carlos Apache Tribe, Southern Ute Indian Tribe, White Mountain Apache Tribe, Wichita and Affiliated Tribes, and the Yavapai-Apache Indian Nation. In addition, a representative of the American Indians in Texas at the Spanish Colonial Missions, a non-federally recognized group, attended consultation meetings. The Kickapoo Traditional Tribe, the Ute Mountain Tribe, and the Ysleta del Sur Pueblo were invited to consultation but did not attend.

In 1964, human remains representing two individuals were discovered under a room floor during an authorized archeological excavation at the fort. No known individuals were identified. No associated funerary objects are present. Non-destructive analysis identified the two individuals as Native American females. The initial archeological report dated both burials to pre-1833. However, recent review of the evidence dates them more likely to between 1849 and 1881.

Historic evidence indicates that the remains date to the time when the site was part of the Cheyenne and Arapaho Reservation, ca. 1860. Surrounding land had been used by the Cheyenne, Arapaho, Kiowa, Comanche, and Ute for hunting and trading since the 1820's or earlier. Oral traditions, especially of the Cheyenne, Arapaho, Kiowa, and Comanche, mention the area surrounding Bent's Old Fort as their homeland during part of their historic migrations. Southern Ute representatives identify the Bent's Old Fort area as a point along a migratory route used by the Ute tribes prior to the 1900s.

Based on the above mentioned information, officials of the National Park Service have determined that pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Officials of the National Park Service have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Cheyenne-Arapaho Tribes, Comanche Indian Tribe, Kiowa Indian Tribe, Southern Ute Indian Tribe, and Ute Mountain Tribe.

This notice has been sent to officials of the Cheyenne-Arapaho Tribes, Comanche Indian Tribes, Kiowa Indian Tribe, Southern Ute Indian Tribe, and Ute Mountain Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Mr. Donald Hill, Superintendent, Bent's Old Fort National Historic Site, 35110 Highway 194 East, La Junta, CO, 81050-9523, telephone (719) 384-2596, before October 16, 1996. Repatriation of the human remains to the Cheyenne-Arapaho Tribes, Comanche Indian Tribe, Kiowa Indian Tribe, Southern Ute Indian Tribe, and Ute Mountain Tribe will begin after that date if no additional claimants come forward.

Dated: September 10, 1996.

Francis P. McManamon,

*Departmental Consulting Archeologist,
Manager, Archeology and Ethnography
Program.*

[FR Doc. 96-23587 Filed 9-13-96; 8:45 am]

BILLING CODE 4310-70-F

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States of America v. Frederick T. Cline et al.*, No. C 96-0760 EFL (N.D. Cal.), was lodged with the United States District Court for the Northern District of California on September 5, 1996. The proposed decree concerns alleged violations of sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a) and 1344, and section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403, as a result of the discharge of dredged and fill materials into wetlands located in Sonoma County, California by Frederic Cline and Cline Cellars, Inc. ("Cline").

The Consent Decree provides for restoration of the wetlands in accord with a restoration plan approved by the United States Army Corps of Engineers and payment of a \$20,000.00 civil penalty to the United States.

The Department of Justice will receive written comments relating to the consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, Attention: Sylvia Quast, Trial Attorney, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026-3986, and should refer to

United States of America v. Frederick T. Cline et al., DJ Reference No. 90-5-1-6-623.

The proposed consent decree may be examined at the Offices of the United States Attorney for the Northern District of California, 450 Golden Gate Avenue, Tenth Floor, San Francisco, California 94102; and the office of District Counsel, United States Army Corps of Engineers, San Francisco District, 333 Market Street, Suite 804, San Francisco, California, 94105, (415) 977-8644.

Letitia J. Grishaw,

*Chief, Environmental Defense Section,
Environment and Natural Resources Division,
United States Department of Justice.*

[FR Doc. 96-23571 Filed 9-13-96; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (96-113)]

NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a NASA Advisory Council, Aeronautics Advisory Committee, Subcommittee on Human Factors meeting.

DATES: November 20, 1996, 8:30 a.m. to 5:00 p.m.; and November 21, 1996, 8:30 a.m. to 3:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1268, Room 2120, Hampton, VA 23681-0001.

FOR FURTHER INFORMATION CONTACT:

Mr. Gregory W. Condon, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604-5567.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the meeting are as follows:

- NASA Aeronautics Update
- NASA Human Factors Update
- Trilateral Committee Human Factors Program Coordination
- FAA Human Factors Coordination
- Human Factors Research
- Airframe Systems Applications
- Airspace Operations Systems Applications

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: September 9, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer.

[FR Doc. 96-23554 Filed 9-13-96; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials: Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of certain Nixon Presidential historical materials from the White House Special Files that are commonly referred to as Nixon contested materials. Notice is hereby given that, in accordance with section 104 of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S.C. 2111 note) and § 1275.46(i) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the National Archives and Records Administration (NARA) has completed its review, and proposes for public opening, certain materials whose public release was previously objected to by former President Nixon in 1987 in accordance with 36 CFR 1275.44.

DATES: NARA intends to make the materials from a file segment described in this notice available to the public beginning October 17, 1996. Because these are the final decisions of the Presidential Materials Review Board, in accordance with the PRMPA's Public Access Regulations, 36 CFR 1275.46 (i)(3), further petitions asserting a constitutional right or privilege which would prevent or limit access cannot be submitted.

ADDRESSES: The materials will be made available to the public at NARA's facility located at 8601 Adelphi Road, College Park, Maryland.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Acting Director, Nixon Presidential Materials Staff, 301-713-6950.

SUPPLEMENTARY INFORMATION: As required by PRMPA and its public access regulations, NARA published a Federal Register notice on January 30, 1987, announcing the public opening of approximately 628.3 cubic feet of the integral file segment identified as the

White House Special Files. Under the PRMPA's public access regulations, former President Richard M. Nixon raised objections, some of which were joined in by other individuals, to the public release of approximately 42,000 documents consisting of about 150,000 pages. In response to President Nixon's objection to the public release of these documents, NARA's Presidential Materials Review Board, as required by PRMPA's public access regulations, was tasked with the responsibility of deciding on the former President's objections. The Presidential Materials Review Board completed its decisionmaking on the contested materials, which culminated with this announcement of NARA's intent to open certain of the documents for public research, to sustain certain of the objections and return those documents as private or personal and to retain but restrict access to other documents. Details of the Board's decisions will be available at the opening.

The materials from the White House Special Files that can be opened are to be released on October 17, 1996. The White House Special Files were segregated from the White House Central Files by the Nixon Administration in 1972 due to their uniqueness and/or sensitivity. The contested documents that NARA plans to release are primarily from the Staff Member and Office Files and selected Subject Files of the White House Central Files.

Dated: September 11, 1996.

John W. Carlin,

Archivist of the United States.

[FR Doc. 96-23647 Filed 9-13-96; 8:45 am]

BILLING CODE 7515-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-37659; File No. SR-CBOE-96-40]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., to Change the Method for Determining the Exercise Settlement Value of Nasdaq-100 Options

September 6, 1996.

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 June 28,

1996, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Exchange subsequently filed Amendment No. 1 to the proposed rule change on September 5, 1996.³ The CBOE has requested accelerated approval for the proposal, as amended. This order approves the CBOE's proposal, as amended, on an accelerated basis and solicits comments from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

CBOE is proposing to modify its rule concerning the method for determining the settlement value of Nasdaq-100 options ("NDX").⁴ In this manner, the CBOE will clarify that the NDX's settlement value is determined using the volume-weighted averaging methodology developed by the Nasdaq Stock Market, Inc., as modified by the Nasdaq from time to time.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has

³ See letter from Timothy Thompson, CBOE, to Matthew Morris, Office of Market Supervision, Division of Market Regulation, Commission, dated September 5, 1996 ("Amendment No. 1"). In Amendment No. 1, the CBOE amended its proposal in two respects. First, the Exchange will issue a regulatory circular to its membership in the event that the Nasdaq makes a substantive change to the method for determining the settlement value of the Nasdaq-100. The Exchange will endeavor to issue a regulatory circular at least seven days in advance of the effectiveness of the change or as soon as practicable after it learns of the change. Second, if the Nasdaq makes a change in the settlement methodology, the Exchange will consult with the Commission to determine whether such a revision is a material change from the current methodology to warrant a rule filing pursuant to Sections 19(b)(2) or 19(b)(3) of the Act. Because the Exchange does not control the decision to change the settlement methodology, however, it is possible that the Exchange may not be made aware of a change in the settlement methodology until after the Nasdaq has instituted such change. In this event, the Exchange will still consult with the Commission concerning the need for a possible rule filing.

⁴ The NDX is a capitalization-weighted index composed of the stocks of 100 of the largest non-financial issuers whose securities are traded on Nasdaq.

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4.

prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the language of the rule describing the method of settling NDX options. The settlement methodology itself is not changing. The proposed rule would describe the settlement methodology as the then current index value as calculated by Nasdaq and reported to the CBOE using the volume-weighted prices ("VWPs") of the securities underlying the Nasdaq-100 Index, which VWPs shall be calculated according to the then current volume-weighted averaging methodology developed by Nasdaq.⁵

The Exchange's rule currently describes the methodology employed by Nasdaq in determining the settlement value for Nasdaq-100 options in a general manner.⁶ The rule, however, does not describe, and was not intended to describe, every nuance of the settlement methodology used by Nasdaq. For example, the rule does not explain that Nasdaq will adjust the values for corrections up until the end of the five-minute period for the last stock in the Nasdaq-100. Similarly, the rule does not explain that trade reports with modifiers that are not reported in the last sale prices that are publicly disseminated by Nasdaq will not be used in the computation of the volume-weighted average of the underlying stock. In fact, Nasdaq has made minor technical changes to the valuation methodology since the Exchange filed its rule.⁷ Although no changes are

presently anticipated, the possibility exists that there could be other minor changes in the calculation method in the future. Therefore, the Exchange believes that a more general description of the settlement methodology will prevent any possible confusion that this rule was intended to describe every detail of the NDX settlement calculation. Rather, the CBOE rule will simply serve as an indication that interested parties should refer to relevant Exchange regulatory circulars or Nasdaq for more detail, if required.

2. Statutory Basis

The Exchange believes that because this rule change will prevent confusion regarding whether the CBOE rules present the details of the methodology used by Nasdaq in determining the settlement value of the Nasdaq-100, this rule change is based upon and is in furtherance of the objectives of Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The self-regulatory organization 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

Comments were neither solicited nor received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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, D.C. 20549. Copies of such filings also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-96-40 and should be submitted by October 7, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder. Specifically, the Commission finds that the CBOE's proposal to make the description of the method for determining the exercise settlement value of Nasdaq-100 options more general will contribute to the maintenance of fair and orderly markets by helping to prevent confusion regarding the completeness of the CBOE's description.

As noted above, the rule change does not change the current settlement methodology for the Nasdaq-100. Rather, the change will provide the CBOE with a more flexible means through which to implement certain minor, non-substantive changes to the settlement methodology that Nasdaq may impose.⁸ At the same time, the proposal will ensure that the CBOE membership and the investing public are adequately informed of any changes in the settlement methodology through the issuance of regulatory circulars.⁹

The Commission finds good cause to approve the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. By accelerating the effectiveness of the CBOE's rule

⁵ Nasdaq is the official reporting authority under Exchange rules for the Nasdaq-100 Index and sends its settlement value to the CBOE.

⁶ The current methodology employed by Nasdaq in determining the NDX settlement value can be generally described as follows. Nasdaq computes a VWP for each stock underlying the Nasdaq-100 Index by looking at transaction prices in the five-minute period (usually 8:30 to 8:35 a.m., Chicago time) beginning with a stock's first transaction price at or after 8:30 a.m., Chicago time, as reported by Nasdaq. The VWP of each stock in the Index is calculated as the weighted average of its transaction prices during this five-minute period. The weight associated with a particular transaction price is the fraction of the total volume of trading during this five-minute period which was executed at this transaction price. If the first transaction of a stock occurs after 2:55 p.m., Chicago time, then its VWP is computed from transaction prices reported before 3:00 p.m., Chicago time.

⁷ For example, the Exchange has issued a regulatory circular to its membership informing them of a recent technical change made by Nasdaq. This circular informed the membership that only

trade reports which update the last sale on Nasdaq will be included in the calculation of the volume-weighted average.

⁸ The Commission notes that if the Nasdaq makes a change to the settlement methodology, the Exchange will consult with the Commission to determine whether this revision is a material change from the current methodology to warrant a rule filing pursuant to Section 19(b) of the Act or Rule 19b-4 thereunder. The Commission also realizes that because the Exchange does not control the decision to change the settlement methodology, it is possible that the Exchange may not be made aware of a change in the settlement methodology until after the Nasdaq has instituted such change. In this event, the Exchange will still consult with the Commission concerning the need for a possible rule filing.

⁹ According to the CBOE, the Exchange will endeavor to issue a regulatory circular at least seven days in advance of the effectiveness of a substantive change to the method of determining the settlement value of the Nasdaq-100, or as soon as practicable after the Exchange learns of the change.

proposal, the Commission will enable the new language to become effective prior to the next expiration. In addition, the Commission believes that the proposed settlement method does not present any new or novel regulatory issues as the CBOE's proposal merely restates in a more general manner that which the Commission has already approved.¹⁰ Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)¹¹ of the Act, that the proposed rule change (File No. SR-CBOE-96-40), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-23560 Filed 9-13-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37657; File No. SR-CHX-96-25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Investment Company Units

September 6, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 28, 1996 the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to renumber Rule 23, Article XXVIII of the Exchange's

rules relating to investment company units to Rule 24, Article XXVIII.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 25, 1996, the Commission approved a proposed overhaul of Article XXVIII of the Exchange's rules. Rule 23 of Article XXVIII currently relates to public disclosure requirements for Tier I and Tier II issues.² On August 21, 1996, the Commission approved another proposed change relating to investment company units, also numbered Rule 23, Article XXVIII of the Exchange's rules.³

The primary purpose of this proposed rule change is to renumber the investment company units rule as Rule 24 of Article XXVIII. Specifically, because the Exchange recently overhauled Article XXVIII when it created the Tier I and Tier II securities listing standards, the investment company units rule should be renumbered and placed appropriately within the new listing requirements.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act⁴ in that it is designed to prevent fraudulent and manipulative acts and practices and to perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes or changes a stated policy, practice or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act⁵ and subparagraph (e) of Rule 19b-4 thereunder.⁶

At any time within sixty 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 purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX-96-25 and should be submitted by October 7, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

¹⁰ See Securities Exchange Act Release No. 37089 (April 9, 1996), 61 FR 16660 (April 16, 1996) (File No. SR-CBOE-96-12).

¹¹ 15 U.S.C. 78s(b)(2) (1988).

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² Securities Exchange Act Release No. 37481 (July 25, 1996), 61 FR 40270 (approving File No. SR-CHX-95-26).

³ Securities Exchange Act Release No. 37589 (Aug. 21, 1996), 61 FR 44370 (approving File No. SR-CHX-96-12).

⁴ 15 U.S.C. 78f(b)(4).

⁵ 15 U.S.C. 78s(b)(3)(A).

⁶ 17 CFR 240.19b-4.

⁷ 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96-23561 Filed 9-13-96; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-37663; File No. SR-NASD-96-26]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Obligations of CQS Market Makers To Have Available Quotation Services That Provide Quotation Information for CQS Securities

September 10, 1996.

On June 21, 1996, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ to amend NASD Rule 6630 to require NASD members registered with The Nasdaq Stock Market, Inc. ("Nasdaq") as Consolidated Quotation Service ("CQS Service" or "CQS")² market makers³ to have available in close proximity to the Nasdaq terminals at which they make markets in CQS securities a quotation service that disseminates the bid and offer prices then being furnished by or on behalf of all exchanges and CQS market makers in the CQS issues for

which they are registered. The Commission published notice of the proposed rule change in the Federal Register on July 15, 1996.⁴ The Commission received no comments in response to the notice. The Commission has reviewed the proposed rule change, and for the reasons discussed below, has determined to approve the proposed rule change.

I. Description of the Proposed Rule Amendment

The amendment to NASD Rule 6330,⁵ the NASD's rule governing CQS market maker obligations, provides that a CQS market maker must have available, in close proximity to the Nasdaq terminal; at which it makes a market in a CQS security, a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of each exchange and each CQS market maker trading and quoting that CQS security.

The NASD states that this rule amendment is necessitated by a planned modification to Nasdaq's CQS Service that is intended to increase Nasdaq computer processing capacity. Specifically, Nasdaq is planning to modify the Nasdaq CQS Service so that quotation montages for exchange-listed securities will consist only of CQS market makers' quotations.⁶ CQS market makers will be required to receive quotation information for CQS securities from the exchanges via independent vendors. The NASD has stated that the use by market makers of vendor services for receipt of CQS market data is the norm because quotations on the Nasdaq's CQS Service are not dynamically updated. Furthermore, vendor services can provide subscribers with additional analytical features.

Nasdaq has represented to the Commission that, by eliminating exchange quotations from Nasdaq's CQS Service, it will be able to redeploy its computer processing capacity presently devoted to processing these quotations toward meeting the demands associated with processing Nasdaq trading volume

greater than one billion shares a day.⁷ Once exchange quotations have been deleted from the Nasdaq CQS Service, the service will essentially function as a means by which CQS market makers can monitor their current quotations resident in Nasdaq as well as the timeliness with which their quotation updates are being processed and disseminated by Nasdaq. Thus, rather than providing quotation information from all market participants in CQS, the Nasdaq CQS Service will function primarily as a quotation verification mechanism for CQS market makers.

Section 6(a)(i)(A) of the ITS Plan states that "for each ITS/CAES security in which an ITS/CAES market maker is registered as such with the NASD for the purposes of the Applications [of the ITS Plan], there shall be available at each location on the premises of such ITS/CAES market maker at which ITS/CAES stations are located a quotation service that disseminates the bid price and offer price then being furnished by or on behalf of each other participant." As a participant in the ITS, the NASD has agreed to this provision of the ITS Plan. Accordingly, since Nasdaq is planning to eliminate exchange quotations from the Nasdaq CQS Service's quotation montages, the proposed amendment ensures the NASD's ongoing compliance with Section 6(a)(i)(A) of the ITS Plan. In particular, by mandating that all CQS market makers have available, in close proximity to the Nasdaq terminals at which they make markets in CQS securities, the same exchange quotation information that is scheduled to be deleted from the Nasdaq CQS Service (i.e., exchange quotes in CQS issues), the NASD will be continuing to satisfy its obligation under Section 6(a)(i)(A) of the ITS Plan.

II. Discussion

The Commission must determine whether the proposed rule change is consistent with the Act, including Section 15A(b)(6). Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

¹ 15 U.S.C. 78s(b)(1)

² Nasdaq's CQS is a service provided by Nasdaq that provides subscribers with quotation, last sale, and volume information for securities listed on the New York and American Stock Exchanges. With respect to quotations, the service provides a non-dynamically updated montage of quotations from all exchanges and NASD members registered as CQS market makers in a particular issue. It should be noted that Nasdaq's CQS Service is an internal Nasdaq service that is a completely separate system from the Consolidated Quotation System in which the eight registered securities exchanges and the NASD participate to collect, process and disseminate quotations.

³ A NASD member cannot enter quotes into CQS unless it is registered with Nasdaq as a CQS market maker. CQS market makers are obligated under NASD rules to quote continuous, firm, two-sided markets with a minimum size of 500 shares. The minimum quotation size for an individual CQS security may be lowered, under unique circumstances, from 500 shares to 200 shares by the NASD. All CQS market makers in Rule 19c-3 securities must also be registered with Nasdaq as ITS/CAES market makers. ITS/CAES is the NASD's link to the Intermarket Trading System ("ITS") that enables CQS market makers in Rule 19c-3 securities to direct agency and principal orders to and receive orders from the floors of participating ITS exchanges. CAES is an automated system operated by Nasdaq that allows NASD members to direct agency and principal orders in exchange-listed securities to CAES for automatic execution against CQS market makers. For non-19c-3 securities, CQS market makers must be registered as CAES market makers.

⁴ Securities Exchange Act Release No. 37412 (July 9, 1996), 61 FR 36947.

⁵ NASD Rule 6330 was formerly Section 2 of Part VI of Schedule D to the NASD By-Laws prior to the revision of the NASD Manual.

⁶ In order to make possible this modification, the Commission today issued a letter exempting Nasdaq from the requirements of the Rule 11Ac1-2(c)(2)(iv) under the Exchange Act (the "Vendor Display Rule"), which requires, among other things, that vendors not exclude quotation information based on the market center making available such information. See Letter from Holly H. Smith, Associate Director, SEC, to Robert E. Aber, V.P. and General Counsel, Nasdaq (September 10, 1996).

⁷ The NASD states that the processing of exchange quotations through CQS can consume approximately 40 percent of Nasdaq's computer capacity on a given day.

open market and a national market system and, in general, to protect investors and the public interest. Having considered the merits of the proposed rule change, the Commission has determined that it is consistent with the requirements of the Act, and is therefore approving the proposed rule change.

The Commission believes it is crucial for Nasdaq to be able to process transactions should volume exceed one billion shares a day. The NASD has determined that it can free up some Nasdaq capacity immediately by deleting certain quotation information from Nasdaq's CQS Service. In order for CQS market makers to uphold their market making responsibilities in exchange-listed stocks, however, the NASD rule requires that CQS market makers have a quotation service disseminating quotations from exchanges and CQS market makers in close proximity to their Nasdaq terminals. This proximity requirement ensures that CQS market makers will be capable of viewing exchange quotations and it also appears to satisfy the appropriate provisions of the ITS Plan.

The NASD has represented that neither it nor its subsidiaries believe that eliminating exchange quotations from CQS will compromise the NASD's ability to monitor trading in the third market. The NASD has stated that the NASDR's Market Regulation Department already receives market information concerning exchange-listed securities from securities information vendors. The Commission also notes that the NASD recently entered into a settlement with the Commission that requires the NASD to enhance its systems for market surveillance.⁸

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change SR-NASD-96-26 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 96-23636 Filed 9-13-96; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 02/72-0561]

Prospect Street NYC Discovery Fund, L.P., Notice of Request for Exemption

On August 16, 1996, Prospect Street NYC Discovery Fund, L.P. (Prospect), a

Delaware limited partnership and SBIC Licensee number 02/72-0561 filed a request to the SBA pursuant to Section 107.730(a) of the Regulations governing small business investment companies (13 C.F.R. 107.730(a) (1996)) for an exemption allowing the Licensee to invest in BondNet, of Greenwich, Connecticut. BondNet received prior financial assistance from an Associate (as defined by Section 107.5 of the SBA Regulations) of Prospect, and has itself become an Associate of the Licensee. BondNet is currently in need of additional capital, and Prospect can only offer this assistance to BondNet upon receipt of a prior written exemption from SBA. This exemption is the basis for this notice.

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 this exemption request 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 New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: September 9, 1996.

Don A. Christensen

Associate Administrator for Investment.

[FR Doc. 96-23593 Filed 9-13-96; 8:45 am]

BILLING CODE 8025-01-P

Declaration of Disaster Loan Area #2891, Tennessee; Amendment #1

The above-numbered Declaration, approved on August 29, 1996, is hereby amended to include Meigs County, Tennessee as a county that is contiguous to Hamilton County, Tennessee for this Declaration. Meigs County was inadvertently omitted from the original Declaration.

All other information remains the same, i.e., the termination date for filing applications for physical damage is October 28, 1996, and for economic injury the deadline is May 29, 1997.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 6, 1996.

Ginger Lew,

Acting Administrator.

[FR Doc. 96-23577 Filed 9-13-96; 8:45 am]

BILLING CODE 8025-01-P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1488).

TIME AND DATE: 10 a.m. (EDT), September 18, 1996.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on August 21, 1996.

New Business

Discussion Item

Final Rule Review.

A—Budget and Financing

A1. Approval of Short-Term Borrowing from the Treasury.

C—Energy

C1. Delegation of authority to the Senior Vice President of Procurement, or that office's designee, to enter into individual uranium procurement contracts of up to \$15 million each for the four-year period 1999 through 2002, based on the approval of the President TVA, Nuclear.

C2. Delegation of authority to the Vice President of Fuel Supply and Engineering to award seven 6-year coal contracts under

C3. Proposed decreases in prices under dispersed power price schedule—CSPP.

E—Real Property Transactions

E1. Sale of noncommercial, nonexclusive permanent easements affecting 0.28 acre of land on Tellico Lake in Monroe and Loudon Counties, Tennessee, to Kenneth D. Holloway (Tract No. XTELR-165RE), Ronald Kemp (Tract No. XTELR-182RE), and W.R. Yeary (Tract No. XTELR-184RE) for construction and maintenance of recreational water-use facilities.

E2. Grant of a permanent easement to the City of Alcoa affecting approximately 0.14 acre of land on Fort Loudoun Lake in Blount County, Tennessee, for construction of a sewerline (Tract No. XTFL-123S).

E3. Commercial 19-year recreation lease to Thomas Everhart affecting approximately 3.5 acres of land on Cherokee Lake in Hamblen County, Tennessee, for a commercial campground (Tract No. XCK-576L).

E4. Deed modification affecting approximately 2.37 acres of former TVA land (Tract No. XPR-80) in exchange for fee ownership of approximately 4.51 acres of Pickwick Lake land (Tract No. PR-2355) in Colbert County, Alabama.

E5. Grant of a 25-year recreation easement to Marshall County, Kentucky, affecting approximately 19 acres of land on Kentucky Lake (Tract No. XTGIR-140RE) for public recreation.

E6. Deed modification affecting approximately 76 acres of former TVA land on Norris Lake in Campbell County, Tennessee (Tract No. XNR-584), to allow Norris Crest Partnership to subdivide the

⁸ Exchange Act Release No. 37538 at 5 (August 8, 1996).

⁹ 17 CFR 200.30-3(a)(12).

property for residential development, in exchange for a sum of money and a fee title to a 14-acre shoreline management zone surrounding the tract.

F—Unclassified

F1. Filing of condemnation cases.

Information Items

1. Filing of condemnation cases.
2. Delegation of authority to the Chief Administrative Officer, or that officer's delegate, to enter into a cooperative agreement with River Valley Partners, Inc.
3. Contract with Matrix Management, Inc., to support TVA's Chief Operating Officer organizations in strategic programmatic areas and management processes.
4. Amendments to the Rules and Regulations of the TVA Retirement System to allow vested members who voluntarily leave TVA employment between September 1, 1996, and September 30, 1997, to receive immediate retirement benefits, regardless of age.

5. Approval for the Chief Administrative Officer, or that officer's delegate, to negotiate and enter into a cooperative agreement with the University of Virginia.
6. Approval for the Chief Administrative Officer, or that officer's delegate, to negotiate and enter into Amendment No. 1 to Contract No. TV-96619V between TVA and the University of Kentucky Research Foundation.

For more information: Please call TVA Public Relations at (423) 632-6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898-2999.

Dated: September 11, 1996.
Edward S. Christenbury,
General Counsel and Secretary.
[FR Doc. 96-23753 Filed 9-12-96; 12:13 pm]

BILLING CODE 8120-08-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST-96-1400; Order 96-9-13]

Application of Maverick Airways Corporation for Issuance of New 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 (1) finding Maverick Airways Corporation fit, willing, and able, and (2) awarding it a certificate to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than September 20, 1996.

ADDRESSES: Objections and answers to objections should be filed in Docket

OST-96-1400 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. Janet A. Davis, Air Carrier Fitness Division (X-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: September 10, 1996.

Charles A. Hunnicutt,
Assistant Secretary for Aviation and International Affairs.

[FR Doc. 96-23578 Filed 9-13-96; 8:45 am]

BILLING CODE 4910-62-P

DEPARTMENT OF THE TREASURY

[Treasury Order Number 101-07]

Delegation to the Director, Bureau of Engraving and Printing, for the Production of Currency Notes To Meet the Demands of the Federal Reserve Banks; Authority Delegation

Dated: September 6, 1996.

1. By virtue of the authority vested in the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b)(2) and 12 U.S.C. 418-420, I hereby delegate to the Director, Bureau of Engraving and Printing, ("the Director"):

a. The authority and responsibility vested in the Secretary of the Treasury under 12 U.S.C. 418 through 420, related to the production of Federal Reserve notes, including the engraving of plates and dies, the printing of Federal Reserve notes in such quantities as may be required to supply the Federal Reserve Banks, and the delivery of said notes to the Federal Reserve Banks. Such notes are to be retained in the custody of the Bureau of Engraving and Printing ("the Bureau") while awaiting currency shipment orders from the Board of Governors of the Federal Reserve System; and

b. The Director shall perform the function of verifying the inventory of unissued stocks of Federal Reserve notes each fiscal year and shall furnish certified copies of the results to the Board of Governors of the Federal Reserve System, the Commissioner of the Financial Management Service, and the Secretary.

2. The Director may redelegate the authority and responsibility delegated herein in writing to an Associate Director of the Bureau.

3. Each fiscal year, the Director shall provide the Secretary with a copy of the currency order from the Federal Reserve System within fifteen days of receipt.

4. Cancellation. Treasury Order 101-07, "Control and Custody of Unissued Federal Reserve Notes," dated July 30, 1980.

Robert E. Rubin,
Secretary of the Treasury.

[FR Doc. 96-23576 Filed 9-13-96; 8:45 am]

BILLING CODE 4810-25-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28683]

Policy on Funding of Combined Part 150 and Part 161 Studies and Analyses

AGENCY: Federal Aviation Administration, DOT.

ACTION: Policy statement.

SUMMARY: This document states the Federal Aviation Administration (FAA) policy concerning the analysis of proposed airport noise and access restrictions under the requirements of 14 CFR part 161 and the eligibility of such analysis for Federal funding when combined with airport noise compatibility planning under 14 CFR part 150.

DATES: This policy is effective September 16, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. William W. Albee, Policy and Regulatory Division (AEE-300), Office of Environment and Energy, telephone (202) 267-3553, facsimile (202) 267-5594; or Ms. Lynne Sparks Pickard, Community and Environmental Needs Division (APP-600), Office of Airport Planning and Programming, telephone (202) 267-3263, facsimile (202) 267-8821. The address for both contacts is FAA, 800 Independence Avenue, SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

Title 14 CFR part 150 (part 150), issued as an interim rule in 1981 and a final rule in 1985, implements the former Aviation Safety and Noise Abatement Act of 1979 (49 U.S.C. 47501 through 47509, hereinafter referred to as ASNA). Part 150 promotes comprehensive noise evaluation and mitigation and is the primary program under which the FAA supports local airport noise compatibility planning and projects. Part 150 is a voluntary program that allows airport operators to prepare noise exposure maps and to recommend

measures in a noise compatibility program to reduce noise and non-compatible land uses. Airport operators may submit airport noise compatibility programs to the FAA for approval under criteria established by ASNA and part 150. The FAA is authorized to provide Airport Improvement Program (AIP) funding for airport noise compatibility planning (i.e., the preparation of the noise exposure maps and the noise compatibility program) and for noise projects (i.e., measures approved by the FAA in a noise compatibility program).

Title 14 CFR part 161 (part 161), issued as a final rule September 25, 1991, implements the Airport Noise and Capacity Act (49 U.S.C. 47521 through 47533, hereinafter referred to as ANCA), enacted in 1990. Part 161 contains requirements governing airport noise and access restrictions (also called "use restrictions," or simply "restrictions"). Part 161 requires analysis and public notice of noise and access restrictions proposed to be adopted by airport operators. Sections 161.211 and 161.321 allow airport operators the option of integrating a part 161 analysis for a proposed restriction on Stage 2 and Stage 3 aircraft, respectively, with a part 150 planning study. In the preamble to part 161, FAA states that "the part 150 option does make Federal financial assistance available to airport operators to analyze a proposed restriction." This statement recognizes that a part 161 analysis is eligible for AIP funding if included within the scope of a part 150 planning study. A part 161 analysis is not otherwise eligible for Federal funding.

In 1995, an airport first proposed to include a part 161 analysis of proposed use restrictions a part of an update to its part 150 study. The FAA Associated Administrator for Airports issued a letter on December 14, 1995, to explain when a part 161 analysis may be eligible for AIP funding through optional use of part 150. This letter has been misinterpreted by some parties as announcing a change in FAA policy concerning imposition of airport noise and access restrictions. The FAA is issuing this policy statement to clarify its position.

Notice of FAA Policy

Accordingly, the FAA is formally notifying airport operators, airport users, and all other interested persons of the FAA policy concerning the eligibility of analysis of restrictions under part 161 for Federal funding, when accomplished in conjunction with preparation of an airport noise compatibility program under part 150.

Policy Statement

The FAA has continuously, consistently, and actively encouraged a balanced approach to address noise problems and discouraged unreasonable and unwarranted airport use restrictions. That policy remains unchanged. A restriction should be considered only as a last resort when all other mitigation measures are inadequate to satisfactorily address the problem and a restriction is the only remaining option that could provide noise relief. With limited statutory exceptions, all airport use restriction proposals must comply with the requirements of part 161, including a rigorous analysis.

When an airport operator decides to propose an airport noise and access restriction subject to the requirements of part 161, the FAA encourages that airport operator to integrate its part 161 analysis into a comprehensive part 150 study which first analyzes in detail nonrestrictive measures to mitigate noise, and then analyzes the proposed restriction as a last resort to address a noise problem not mitigated by the other measures.

For Stage 2 restrictions, which are not subject to FAA approval under part 161, the FAA strongly encourages airport operators who have elected to integrate a part 161 analysis into a part 150 study to await the FAA's determinations under part 150 before adopting a Stage 2 restriction. The FAA's part 150 determinations may provide valuable insight to the airport operator regarding the proposed restriction's consistency with existing laws and the position of the FAA with respect to the restriction. This encouragement was explicitly stated in the preamble to part 161 (see 56 FR 48669, September 25, 1991).

Federal funding through the AIP conforms to the legal authorizations established by ASNA and supports the FAA's objectives under ANCA. In order to be eligible for AIP funding, a part 161 analysis must be prepared within the comprehensive noise planning framework established by part 150. A part 161 analysis may be eligible as airport noise compatibility planning if it is included within the scope of work of a part 150 planning study. Alternatively, a part 161 analysis may be eligible as a noise project if it meets the following three conditions: (1) it is recommended in the airport operator's part 150 program as further study necessary to address a noise compatibility problem beyond the scope of the initial part 150 study; (2) it meets part 150 approval criteria and is approved under part 150 for further study; and (3) the part 161

analysis is integrated into a part 150 update following the same procedures prescribed for an initial study in § 161.211 for a Stage 2 restriction proposal or § 161.321 for a Stage 3 restriction proposal.

AIP funding of a part 161 analysis when integrated with a part 150 planning study in no way represents an FAA endorsement of a restriction or of any results of such an analysis. AIP funding supports the FAA's interest in a rigorous part 161 analysis, when an airport operator has determined to prepare such an analysis; supports the concept of comprehensive and balanced noise planning and mitigation, with restrictions as last resort measures; and supports the issuance of part 150 determinations as a facet of FAA guidance on Stage 2 restriction proposals.

The above eligibility criteria do not guarantee AIP funding. If a proposed noise or access restriction would, on its face, violate existing law or be inconsistent with other powers and duties of the FAA Administrator, it would not be funded for study in connection with a part 150 study. Additionally, all AIP funding decisions are subject to an established priority system and to practical limitations on the amounts of money available during the fiscal year.

Issued in Washington, DC on September 6, 1996.

David R. Hinson,
Administrator.

[FR Doc. 96-23579 Filed 9-13-96; 8:45 am]

BILLING CODE 4910-13-M

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotorcraft issues, current rulemaking actions, and future activities and plans.

DATES: The meeting will be held on October 3, 1996, 9 a.m.-12 noon. Arrange for oral presentations by September 18, 1996.

ADDRESSES: The meeting will be held in the main conference room of the Helicopter Association International, 1635 Prince St., Alexandria, VA 22314-2818.

FOR FURTHER INFORMATION CONTACT: Mr. David Higginbotham, Office of Rulemaking, Aircraft & Airport Rules

Division, ARM-200, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3498.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II). The agenda will include:

1. Presentation of the status reports on each of the tasks listed below:
 - a. Harmonization of Miscellaneous Rotorcraft Regulations.
 - b. Critical parts.
 - c. Performance and Handling Qualities Requirements.
 - d. Class D External Loads
 - e. Normal Category Gross Weight and Passenger Issues
2. Introduction of Mr. John D. Swihart, Jr., who will assume the position of the ARAC Assistant Chair for Rotorcraft Issues on October 4, 1996.

Attendance is open to the public but will be limited to the space available. The public must make arrangements by September 18, 1996, to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies to him at the meeting. In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Fort Worth, Texas, on September 6, 1996.

Thomas E. Archer,
Acting Assistant Executive Director for Rotorcraft Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 96-23580 Filed 9-13-96; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application (#96-03-C-00-BLI) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Bellingham International Airport, Submitted by the Port of Bellingham, Bellingham, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Bellingham International Airport under the provisions of 49 U.S.C. 40117 and Part

158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 16, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW., Suite 250; Renton, Washington 98055-4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Larry Woodbury, Director of Aviation, of the Port of Bellingham at the following address: Port of Bellingham, Bellingham International Airport, 4255 Mitchell Way, #2, Bellingham, WA 98226.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Port of Bellingham under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT:

Ms. Mary Vargas, (206) 227-2660; Seattle Airports District Office, SEA-ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055-4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#96-03-C-00-BLI) to impose and use the revenue from a PFC at Bellingham International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 6, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by Port of Bellingham, Bellingham, Washington, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 14, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: January 1, 1997.

Proposed charge expiration date: December 31, 1998.

Total estimated PFC revenue: \$734,136.00.

Brief description of proposed project(s): Part 150 Land Acquisition Program; and Alpha Taxiway Pull-Out on North (Construction and design).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Carriers

servicing Bellingham International Airport with aircraft with less than 10-seats, and not exceeding 1% of the total passengers.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Regional, Airports Division, ANM-600, 1601 Lind Avenue SW, Suite 540, Renton, WA 98055-4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Port of Bellingham.

Issued in Renton, Washington on September 6, 1996.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 96-23672 Filed 9-13-96; 8:45 am]

BILLING CODE 4910-13-M

Notice of Intent To Rule on Application (96-02-C-00-ISP) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Long Island MacArthur Airport, Islip, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Long Island MacArthur Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 16, 1996.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Philip Brito, Manager New York Airports District Office, 600 Old Country Road, Room 446, Garden City, New York 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Ralph L. Hensel, Airport Manager for the County of Clinton, New York, at the following address: Clinton County Airport, 198 Airport Road, Plattsburg, New York 12901.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Clinton, New York under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT:

Philip Brito, Manager New York Airports District Office, 600 Old Country Road, Room 446, Garden City, New York, 11530 (Tel 516-227-3803). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Clinton County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101-508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 27, 1996, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Clinton was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 26, 1996.

The following is a brief overview of the application.

Level of the proposed PFC: \$3.00.

Proposed charge effective date: July 1, 1993.

Proposed charge expiration date: February 1, 1999.

Total estimated PFC revenue: \$208,705.

Brief description of proposed projects: The PFC funds will be utilized to fund the local share of the following proposed AIP projects.

- Purchase Snow Blower
- Remove obstructions Runways 1, 14, 19 & 32
- Rehabilitate Apron and Taxiway E and F
- Purchase Runway Sweeper

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: All air taxi/commercial operators filing form 1800-31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the

application in person at the Clinton County Airport.

Issued in Jamaica, New York state on August 30, 1996.

Thomas Felix,

Acting Manager, Planning & Programming Branch.

[FR Doc. 96-23673 Filed 9-13-96; 8:45 am]

BILLING CODE 4910-13-M

Surface Transportation Board¹

[STB Finance Docket No. 32934]

Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company—Construction and Operation Exemption—Stockton, CA

Burlington Northern Railroad Company (BN) and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) (collectively BN/Santa Fe) have filed a notice of exemption under 49 CFR 1150.36 to construct an 800-foot wye track, two No. 10 turnouts, and a new 36-foot crossing at Stockton, CA. The proposed construction would provide a connection between Union Pacific's (UP) line to Keddie, CA, and BN/Santa Fe's line to Barstow, CA.²

Construction is scheduled to begin within 60 days of the effective date of this exemption.

The Board's Section of Environmental Analysis (SEA) analyzed the potential environmental impact of this construction and operation in the environmental documents prepared in Finance Docket No. 32760, the merger of the Union Pacific and Southern Pacific Railroads. SEA concluded that based on its independent analysis, the available information, and the recommended mitigation measures, the construction and operation at Stockton would not result in significant environmental impacts. The Board imposed the mitigation measures recommended by SEA in Finance Docket No. 32760

¹ The ICC Termination Act of 1995, Pub. L. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10901.

² The construction is planned to implement the UP trackage rights UP/SP granted to BN/Santa Fe in Finance Docket No. 32760 (Sub-No. 1), *Union Pacific Railroad Company, Missouri Pacific Railroad Company, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSL Corp. and The Denver & Rio Grande Western Railroad Company—Trackage Rights Exemption—Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company*.

Decision No. 44, served August 12, 1996 (see condition Nos. 62-75, 83).

This exemption will be effective on November 25, 1996, unless stayed. Petitions to stay the effective date of this notice on any grounds must be filed by September 26, 1996. Petitions for reconsideration must be filed by October 6, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 32934, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423 and served on: Erika Z. Jones, Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Washington, DC 20006.

Decided: September 10, 1996.

By the Board, David M. Konschnik,
Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96-23639 Filed 9-13-96; 8:45 am]

BILLING CODE 4915-00-P

[STB Docket No. AB-307 (Sub-No. 3X)]

Wyoming and Colorado Railroad Company, Inc.—Abandonment Exemption—in Albany County, WY

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board exempts from the prior approval requirements of 49 U.S.C. 10903 the abandonment by Wyoming and Colorado Railroad Company of a 66.16-mile segment of its Coalmont Branch from milepost 67.47 at the Colorado/Wyoming line to milepost 1.31 near Laramie, WY, subject to trail use, public use, historic preservation, environmental conditions, and standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 16, 1996. Formal expressions of intent to file an OFA under 49 CFR

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10903.

1152.27(c)(2)² must be filed by September 26, 1996; petitions to stay must be filed by October 1, 1996; and petitions to reopen must be filed by October 11, 1996.

ADDRESSES: Send pleadings referring to Docket No. AB-307 (Sub-No. 3X) to: (1) Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423; and (2) Petitioner's representatives: Douglas M. Durbano, Durbano & Merrill, 3340 Harrison Blvd., Suite 200, Ogden, UT 84403; and Karl Morell, Ball, Janik & Novack, 1101 Pennsylvania Avenue, N.W., Suite 1035, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927-5660. [TDD for the hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., Room 2229, 1201 Constitution Avenue, N.W., Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: September, 9, 1996.

By the Board, Chairman Morgan, Vice Chairman Simmons, and Commissioner Owen.

Vernon A. Williams,
Secretary.

[FR Doc. 96-23506 Filed 9-13-96; 8:45 am]

BILLING CODE 4915-00-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8379

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is

soliciting comments concerning Form 8379, Injured Spouse Claim and Allocation.

DATES: Written comments should be received on or before November 15, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Martha R. Brinson, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Injured Spouse Claim and Allocation.

OMB Number: 1545-1210.

Form Number: Form 8379.

Abstract: Form 8379 is used by a non-obligated spouse to request the non-obligated spouse's share of a joint income tax refund that would otherwise be applied to the past due obligation owed to a state or federal agency by the other spouse.

Current Actions: On page 1 of Form 8379, line 5 was deleted. This information is no longer needed.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 1 hr., 47 min.

Estimated Total Annual Burden Hours: 356,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 6, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96-23643 Filed 9-13-96; 8:45 am]

BILLING CODE 4830-01-U

[INTL-869-89]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL-869-89 (TD 8353), Information With Respect to Certain Foreign-Owned Corporations (§§ 1.6038A-2 and 1.6038A-3).

DATES: Written comments should be received on or before November 15, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information With Respect to Certain Foreign-Owned Corporations.

OMB Number: 1545-1191.

Regulation Project Number: INTL-869-89 (Final).

Abstract: The regulations require record maintenance, annual information

² See *Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 41 C.F.R. 164 (1987).

filing, and the authorization of the U.S. corporation to act as an agent for IRS summons purposes. These requirements will allow IRS international examiners to better audit the tax returns of U.S. corporations engaged in crossborder transactions with a related party.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 63,000.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 630,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 10, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96-23644 Filed 9-13-96; 8:45 am]

BILLING CODE 4830-01-U

[FI-165-84]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, FI-165-84, Below-Market Loans (§§ 1.7872-11(g)(1) and 1.7872-11(g)(3)).

DATES: Written comments should be received on or before November 15, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Carol Savage, (202) 622-3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Below-Market Loans.

OMB Number: 1545-0913.

Regulation Project Number: FI-165-84 (Notice of proposed rulemaking).

Abstract: Internal Revenue Code section 7872 recharacterizes a below-market loan as a market rate loan and an additional transfer by the lender to the borrower equal to the amount of imputed interest. The regulation requires both the lender and the borrower to attach a statement to their respective income tax returns for years

in which they have either imputed income or claim imputed deductions under Code section 7872.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 1,631,202.

Estimated Time Per Respondent: 18 minutes.

Estimated Total Annual Burden Hours: 481,722.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 10, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96-23645 Filed 9-13-96; 8:45 am]

BILLING CODE 4830-01-U

Corrections

Federal Register
Vol. 61, No. 180
Monday, September 16, 1996

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.

Wednesday, September 4, 1996, make the following correction:
On page 46624, in the second column, in the table, in the second column, in the last line, "3.72" should read "30.72".

BILLING CODE 1505-01-D

§ 2635.204, in the second line, add "Example 1" after "and".
2. On the same page, in the same column, in § 2635.204(g)(2), in the fourth line, insert "because" before "it".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE
International Trade Administration

[A-428-621]

Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany

Correction

In notice document 96-22678 beginning on page 46623 in the issue of

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635
RIN 3209-AA04

Widely Attended Gatherings Gifts Exception Under the Standards of Ethical Conduct for Employees of the Executive Branch

Correction

In rule document 96-21144 beginning on page 42965 in the issue of Tuesday, August 20, 1996, make the following correction:

§2635.204 [Corrected]

1. On page 42969, in the first column, in the amendatory instruction B. to

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96-034]

Agency Information Collection Activities Under OMB Review

Correction

In notice document 96-18810 beginning on page 38507 in the issue of Wednesday, July 24, 1996, make the following correction:

On page 38507, in the third column, under 3., the OMB No. "2115-9978" should read "2115-0089".

BILLING CODE 1505-01-D

Registered Federal

Monday
September 16, 1996

Part II

Department of Housing and Urban Development

24 CFR Parts 91 and 92

HOME Investment Partnerships Program:
Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Parts 91 and 92****[Docket No. FR-3962-F-02]****RIN 2501-AC06****Office of the Secretary; HOME Investment Partnerships Program: Final Rule****AGENCY:** Office of the Secretary, HUD.**ACTION:** Final rule.

SUMMARY: This final rule sets forth regulations to implement the HOME Investment Partnerships Program (the HOME program). The HOME program provides grants to States, units of general local government, consortia, and insular areas to implement local housing strategies designed to increase homeownership and affordable housing opportunities for low- and very low-income Americans.

EFFECTIVE DATE: October 16, 1996.**FOR FURTHER INFORMATION CONTACT:**

Mary Kolesar, Director, Program Policy Division, Office of Affordable Housing Programs, Room 7162, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708-2470 (this is not a toll-free number). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:**I. Statutory and Regulatory Background**

The HOME Investment Partnerships Act (the HOME Act) (Title II of the Cranston-Gonzalez National Affordable Housing Act) was signed into law on November 28, 1990 (Pub. L. 101-625), and created the HOME Investment Partnerships Program that provides funds to expand the supply of affordable housing for very low-income and low-income persons. Interim regulations for the HOME Investment Partnerships Program were first published on December 16, 1991 (56 FR 65313) and are codified at 24 CFR part 92.

The original statute has been amended three times since enactment. The Housing and Community Development Act of 1992 (HCDA 1992) (Pub. L. 102-550, approved October 28, 1992) included a substantial number of amendments to the HOME Program. These amendments were implemented in rules published on December 22, 1992 (57 FR 60960), June 23, 1993 (58 FR 34130), and April 19, 1994 (59 FR 18626). The HUD Demonstration Act

(Pub. L. 103-120, approved October 27, 1993) provided additional authorization for HOME Program technical assistance. The Multifamily Housing Property Disposition Reform Act of 1994 (MHPDRA) (Pub. L. 103-233, approved April 11, 1994) included an additional number of amendments to the HOME Program. These amendments were implemented in a rule published on August 26, 1994 (59 FR 44258).

A proposed rule (60 FR 36012) to modify the HOME allocation formula and an interim rule (60 FR 36020) with clarifying changes to the HOME regulation and a request for additional comments before the issuance of a final rule were published on July 12, 1995. The proposed rule was issued as an interim rule on January 23, 1996 (61 FR 1824). Finally, on March 6, 1996 (61 FR 9036), an interim rule making a number of streamlining amendments to the HOME regulation was published.

The preamble to the July 12, 1995 interim rule solicited comments on various specific policy issues, as well as on any other aspect of the HOME regulation, in anticipation of preparing a final rule. This rule addresses the comments that were received, and makes the interim HOME regulation a final rule.

II. Summary of Comments and Responses**Subpart A—General**

The Department is appreciative of all the public comment on both the proposed and interim rules published on July 12, 1995. Thirty seven (37) comments were received on the interim rule and twenty-one (21) comments were received on the proposed rule from State and local participating jurisdictions, nonprofit developers, public interest groups and community and nonprofit associations. This rule also furthers goals of reinventing government by incorporating public input in rulemaking and clarifying statutory language. The Department has reviewed every section of the program rules and believes that the rule has been substantially reinvented to be clearer and more user friendly.

The Department in a succession of program rules has attempted to make the program rules more simple, and easier to understand and administer in adherence with the principles of reinventing government. The program experience of State and local participating jurisdictions has informed and shaped the program rules in many areas such as the recapture/resale provisions for new homebuyers, the nature and timing of match, the

targeting and operation of tenant-based rental assistance.

Fifteen comments were received on general policy. Twelve commenters supported the changes in the seventh interim rule and the growing flexibility and simplification of the HOME program. They were pleased with the open dialogue enjoyed with HUD staff in working out the technical details, as well as with the opportunity to comment on the entire body of regulations. One commenter found HOME to be flexible, responsive to local needs, and fostering true public/private/community collaboration. Another stated that HOME is now the single most important and used low-income housing program. However, this commenter was also concerned that HOME funds were being substituted for State and local funds and requested that the HOME rule specifically prohibit this.

Three commenters felt that HOME was in need of major significant improvement, although they acknowledged that most of the needed changes were statutory. One commenter stated that the abundant and burdensome requirements do not provide an avenue for creative solutions to affordable housing. Another commenter was increasingly concerned that the original notion of a "housing block grant" with significant flexibility to support locally designed initiatives is being lost. Furthermore, the commenter noted that existing HOME restrictions are not compatible with those under the Low Income Housing Tax Credit or the Section 8 Certificate and Voucher programs.

Among the statutory requirements identified as particularly burdensome by commenters were local match, income targeting, rent limitations, per unit subsidy limitations, the period of affordability, and wage rates. Requested statutory changes were: flexible treatment of over-income tenants; allowing for on-site monitoring every two years; excluding land acquisition and homeownership from Davis-Bacon requirements; restoring the funding threshold, removal of the per-unit subsidy limit; and conforming HOME to the Low Income Housing Tax Credit program.

Requirements such as HOME rents, tiered income targeting, and match are statutory provisions which are not subject to regulatory revision. To the extent the Department has regulatory flexibility in the areas of monitoring and sources of local match, it has exercised that flexibility in this rule. For the convenience of the reader, the preamble does distinguish which provisions are

statutory and not subject to regulatory revision. In providing more local flexibility, the Department has created options which permit participating jurisdictions to make choices in how to define income, to expand eligible sources of match, to efficiently monitor rental housing, and to prepare written agreements which reflect the appropriate requirements.

Additional requirements which commenters identified as burdensome, but which are actually regulatory, include: site and neighborhood standards, the capping of low-income at the national income ceiling and the use of HOME for project-based assistance.

These issues will be discussed section by section in the balance of the preamble.

Section 92.2 Definitions

Commitment

Three comments were received on this definition. Two commenters found the language under § 92.2(i)(C) to be confusing. This section refers to the requirement for a legally binding agreement between the PJ and the project owner. The commenters noted that in a typical acquisition project, the PJ will enter into a contract with the purchaser who in turn will enter into a contract for sale with the owner. The purchaser (who is the recipient of HOME funds) will acquire title, rather than transfer title. The commenters recommended that new language be added to define "project owner" as an entity that will receive HOME assistance and will be the owner of the project not later than the completion of the project.

Another commenter suggested that when land is being acquired for a HOME project that the expected start of construction should be extended from 12 to 24 months from the date of commitment.

The Department agrees with the clarification on project owner and has made the change in the definition. The Department believes that 12 months from the time of project commitment to construction start is a reasonable period of time and declines to make that change.

Community Housing Development Organization (CHDO)

Eleven comments were received on the definition of a CHDO. Two commenters urged that the definition of a CHDO remain the same. Concern was expressed that tampering with the CHDO definition could be harmful to the development of local affordable housing delivery systems.

Eight commenters found that the current definition is restrictive, targets a

very narrow band of specific non-profit organizations, and often disqualifies accomplished and committed community organizations. Two commenters felt there needed to be additional avenues for groups just forming to access capacity building funds.

Four commenters requested that the requirements concerning CHDO governing board membership be changed to include all legitimate non-profit housing providers. One commenter stated that the CHDO set-aside should be a non-profit set-aside (statutory). State and local governments, through their consolidated plans, should be able to determine the appropriate CHDO organizational structure.

One commenter urged that CHDO qualifications be consistent with requirements for non-profit participation in other federal housing programs and the Low Income Housing Tax Credit program. Another commenter found that the current regulations concerning demonstrated capacity need to be more specific, and should include such elements as a long term organizational plan and regulatory experience and knowledge. A third commenter requested that the requirement that CHDOs have a formal process for low-income beneficiaries to advise the CHDO, be made as flexible as possible. Under no circumstances should CHDOs be required to amend their bylaws if they can demonstrate a satisfactory community consultation process.

One commenter found that the current CHDO model is purely urban and negatively impacts on rural areas whose non-profits are relatively young, primarily experienced in poverty programs and unfamiliar with labor standards, Section 3, Section 504 and rehabilitation/acquisition requirements. The same commenter urged that CHDOs be allowed to undertake all eligible HOME activities, instead of those where the CHDO acts in the riskier owner, developer or sponsor role.

The Department declines to make any changes in the community housing development organization (CHDO) definition. The Department believes that there was specific statutory intent to create an entitlement for community-based nonprofit organizations who would own, sponsor or develop HOME-assisted housing. While partnerships with State and local government are critical to the development of affordable housing, these organizations are viewed as private, independent organizations separate and apart from State or local governments.

One of the major objectives of the Department's technical assistance program is to increase the number of capable, successful CHDOs able and willing to use the CHDO set-aside, required by the statute.

Homeownership

Two comments were received. Both commenters supported allowing a PJ to classify limited equity cooperatives and/or mutual housing as either homeownership or rental housing based on State law. This would ensure consistent treatment throughout a State's affordable housing programs. It was suggested that the regulations define both terms. It was recommended that the HOPE 2 definition of "mutual housing" be used.

The Department has, in fact, been granting waivers in deferring to a participating jurisdiction's determination under State and local law as to whether a unit was rental or homeownership. It is clarifying this procedure in the final rule but is not defining the terms in deference to State and local law.

Housing

The Department has expanded this definition to include all forms of housing which are eligible for assistance under the HOME program. The Department has also clarified that certain types of facilities do not qualify as housing under the HOME program. Such facilities are generally classified as "public facilities" and may be funded under the Community Development Block Grant program.

Program Income

The Department has added a definition of program income to clarify what is included and considered as program income. The Department did this in response to many inquiries on the use and retention of program income from participating jurisdictions.

Project

Thirteen comments were received. Commenters were unanimous in urging HUD to eliminate the "4 block rule" for defining a single project. Commenters stated that this requirement generates substantial, unnecessary paperwork and results in the arbitrary division of projects into four block segments. Commenters were unanimous in urging HUD to allow local flexibility in defining "project". One commenter felt the HUD Field Office should have this authority. All other commenters felt that the local participant jurisdictions should have this authority.

Five commenters noted that scattered site housing projects which are part of neighborhood revitalization strategies are discouraged by the current requirement. Two commenters could see no compelling reason for the "4 block rule".

Four commenters pointed out that the "4 block rule" is particularly inappropriate for rural areas which often do not have distinct neighborhoods, and are not divided into city blocks. One commenter noted that block size varies, and suggested that a 1/2-mile radius be used instead.

One commenter raised concerns about how any change in the definition would affect Davis-Bacon applicability.

The Department is amending the definition of project by deleting the four block area provision. The Department recognizes the negative effect on scattered site projects, subdivisions and the inappropriateness of the standard in rural areas. However, the concept of a project as a site or sites together with any building or buildings located on the site(s) under common ownership, management and financing and assisted with HOME funds as a single undertaking under this part remains. To the extent twelve or more units are HOME-assisted and are constructed under one construction contract, Davis-Bacon provisions would apply, regardless of whether the contract covers units that comprise one or more projects. However, on larger projects that formerly comprised separate projects, Davis-Bacon applicability could now be affected by the prohibition in § 92.354 on arranging multiple construction contracts *within a single project* for the purpose of avoiding the wage provisions.

Reconstruction

One comment was received. The commenter expressed concern that "rehabilitation" and "reconstruction" are held to different standards. It was recommended that the term "reconstruction" only apply to those cases where a very small percentage of the existing structure is maintained.

The definition of reconstruction continues to read that it is considered rehabilitation for purposes of this part.

Single Room Occupancy (SRO) Housing

Four comments were received. All commenters strongly supported the July 12, 1995 regulation clarifying that, for acquisition or rehabilitation of an existing residential structure or hotel, neither food preparation nor sanitary facilities are required within the units. One commenter stated that it would like this flexibility to extend to new

construction and reconstruction projects as well.

One commenter urged that the HOME's SRO definition continue to conform to the definition for other federal programs so the programs can work together.

The HOME definition for SRO is adopted from a FHA multifamily insurance program and it is more permissive in its occupancy standard. The Department declines to eliminate the requirement to have either food preparation or sanitary facilities when buildings are newly constructed or converted from non-residential space. By creating new housing with some or all of the basic amenities, it is hoped that the units will be more marketable and livable in the future.

Subpart B—Allocation Formula

Section 92.50 Formula Allocation

On July 12, 1995, the Department published a proposed rule to make a change in the operation of the HOME formula. It was proposed that Section 92.50(d)(3) would be revised to maximize the number of units of general local government which receive an initial allocation of HOME funds.

Formerly, units of general local government, after an initial distribution of funds available for allocation, were eliminated at \$250,000 and below. They were eliminated from the pool of eligible jurisdictions and their allocations were redistributed among other units of general local government. This redistribution technique continued until 95% of the funds had been distributed among units of general local government that received \$500,000 or more. The new method would drop only one jurisdiction on each recalculation, and redistribute funds to all others, thus assuring that the maximum number of units of general local government receive an allocation.

The Department received 12 comments on this section of the proposed rule.

On the formula redistribution technique to maximize the number of participating jurisdictions, eight commenters favored the change while two did not. One of the two commenters felt that additional performance criteria should be added to the formula calculations rewarding good performance.

Another commenter suggested that the Department establish a participation threshold of \$500,000/\$750,000 regardless of the annual appropriation. PJs who previously qualified under a lower threshold would be grandfathered (statutory change). The same commenter

recommended that allocations for newly formed or expanded consortia come from the State set-aside rather than from the PJ set-aside (statutory change).

The Department has adopted the proposed formula change and republished the rule on January 23, 1996 for effect in order to use the methodology for FY 1996 allocations. The two other suggested changes have not been made because they would require statutory changes.

Subpart E—Program Requirements

Section 92.201 Distribution of Assistance

Two comments were received. Both commenters expressed concern that State participating jurisdictions can allocate funds to participating jurisdictions which receive their own direct funding allocation. This diverts HOME funds from smaller rural communities which are in great need of these funds. The commenters urged that the regulations be revised to prohibit this practice.

The State's ability to distribute HOME funds to projects anywhere within the State is a statutory provision.

Section 92.202 Site and Neighborhood Standards

Ten comments were received. The commenters were unanimous in recommending that site and neighborhood standards not apply to HOME new construction projects. Commenters felt that these standards inhibit investment in minority areas, discourage revitalization of the most needy areas and keep participating jurisdictions from assisting minority families who wish to move into racially mixed areas. Commenters considered the imposition of federal standards to be contrary to the basic notion of local control and discretion inherent in the HOME program.

Five commenters stated that compliance with State and local standards should be sufficient. Therefore, Federal site and neighborhood requirements should be entirely eliminated. One commenter noted that the Federal standards often conflict with Court ordered housing plans.

Five commenters recommended that participating jurisdictions be permitted to address the issues of concentration and impact as part of their consolidated plans. This would allow for public input and the adoption of standards which are appropriate for local needs.

The Department is limiting the application of site and neighborhood standards to newly constructed rental

projects and excluding new construction homeowner projects. The Department believes that the creation of new homeowner opportunities is important to all neighborhoods.

Section 92.203 Income Determinations

Five comments were received. Four commenters requested that participating jurisdictions have the option to define income in the same manner as the CDBG program. Current HOME requirements are unduly strict and labor intensive. Under CDBG, jurisdictions may select one of three criteria: (a) Section 8; (b) census long form; (c) IRS adjusted gross income. Since CDBG and HOME are often combined in the same project, allowing the same income definition to be used facilitates program administration.

One commenter recommended retaining the Section 8 definition for income as a more accurate reflection of a person's income.

Commenters also urged flexibility in obtaining income verification. One commenter recommended that participating jurisdictions be permitted to either directly obtain verification or accept the verification from another program with income requirements that are at least as strict. One commenter urged that occupants of HOME assisted units who do not receive Section 8 should simply be allowed to report income based on a pay stub or tax return. Two commenters requested that HOME participating jurisdictions be allowed to use the same "presumed income eligibility" approach for special needs populations that the CDBG program uses.

Special needs populations may only be presumed income eligible in the CDBG Program for limited clientele, at least 51 percent of whom are low or moderate income persons. For housing, income eligibility must be established.

One commenter requested that the Section 8 income qualification process not be used in determining eligibility for homeownership assistance. Section 8 criteria are designed for rental assistance and can penalize a person who has saved for a downpayment or home maintenance.

One commenter requested that HUD eliminate the requirement that caps the 80% of median income level in high cost communities at the national median. This penalizes such communities.

The Department has adopted the three options to define income currently permitted in the CDBG Program. For rental projects, the HOME statute requires that income be verified initially and during the period of affordability.

However, the Department has also provided three ways to determine tenant eligibility before a tenant receives the benefit of HOME assistance. The options create greater flexibility in initial and subsequent income determinations for tenants occupying HOME-assisted rental units.

In regard to the request to remove income limit caps in high cost areas, the Department recently reevaluated its policy of capping Low-Income limits at the national median family income (currently \$41,600 for a family of four) in areas with unusually high income. It determined that it continues to make good policy sense to have an income limit cap in this era of increasingly scarce Federal housing assistance resources, and that it has legislative authority to set a cap. HUD also has determined, however, that the logic of the income limits calculation system suggested that higher income limits should be permitted for high-income areas with unusually high housing-cost-to-income relationships. On May 2, 1996, HUD Notice 96-01 increased the Low-Income limits for 8 metropolitan and 12 nonmetropolitan areas based on this determination.

Section 92.205 Eligible Activities: General

Fifteen comments were received concerning eligible activities.

Refinancing of Multifamily Properties

Thirteen comments concerned the refinancing of multifamily properties. One commenter opposed using HOME funds for refinancing multifamily properties because it does not generally result in a net increase in affordable housing.

Twelve commenters supported using HOME funds for refinancing multifamily properties. Refinancing was seen as an important tool in preserving affordable housing. Refinancing was also viewed as an effective way to leverage private funds. One commenter noted that in a soft market, refinancing is often the most cost effective way to increase the number of affordable units. Several commenters stated that refinancing ensures that existing affordable units are retained at a level of affordability and maintenance which would justify the HOME investment. Another commenter stated that it is often necessary to include the refinancing of debt in a rehabilitation financing package in order to attract conventional lenders. One commenter found that in rural areas where HOME rents are low, the refinancing of existing debt is needed to ensure project feasibility.

Despite strong support for allowing multifamily refinancing, most commenters felt refinancing should only be permitted under certain circumstances. HUD was urged to move cautiously after further consultation with HOME participating jurisdictions and organizations. However, one commenter stated that HUD should allow participating jurisdictions to structure their own refinancing provisions subject to local HUD office approval (similar to resale/recapture provisions).

One commenter would limit refinancing to properties where ownership has recently been, or is being transferred to a public entity, a non-profit or resident owners. Another commenter would limit refinancing to projects owned by non-profits where refinancing would result in lowered rents and where code violations exist. Another commenter would limit refinancing to use in conjunction with receivership, provided continued affordability and stability of units is maintained. Another commenter would limit refinancing to buildings where either increased affordable units or reduced rents could be demonstrated. Another commenter would limit refinancing to debt incurred to improve property within the last twelve months, provided the debt service would be reduced and rents would be lowered. Another commenter would require that at least 49 percent of the units must be HOME-assisted and the affordability period be 20 years regardless of the amount of HOME assistance.

The Department recognizes the necessity of refinancing for some multifamily projects but is also aware that the use of HOME funds for this purpose reduces the amount of funds available for the development of additional affordable units. In developing guidance in the final rule at § 92.206(b)(2), the Department felt refinancing should be permissible under certain circumstances according to guidelines developed by the participating jurisdiction as part of its consolidated plan. At minimum, the guidelines would require refinancing be done in connection with rehabilitation, reduce overall project costs when HOME funds are lent and subject multifamily rental projects be to a longer affordability period of at least 15 years. A participating jurisdiction would also identify whether refinancing would be permitted city wide or limited to a particular area such as a neighborhood identified in neighborhood revitalization strategy, an Empowerment Zone or Enterprise community. HOME funds cannot be

used to refinance a multifamily loan made with Federal funds or which is Federally insured.

Other Activities

One commenter recommended that housing counseling be an eligible activity for households which are considering applying for HOME assistance, or households which have applied and been rejected. Currently, housing counseling is only eligible as a project soft cost for owners or tenants of funded projects.

Participating jurisdictions may also use their administrative funds to cover the cost of homebuyer counseling programs.

One commenter recommended that HOME be allowed to fund exterior painting, landscaping and clean-up in neighborhood revitalization areas, along with the development of affordable housing to further neighborhood stability.

While the Department is providing additional flexibility with regard to housing standards, it is not permitting its use for emergency repair or neighborhood cleanup programs with HOME funds unless all assisted units are brought up to an established standard (see § 92.251). The HOME Program was created to be a housing production program and has successfully assisted 184,000 units of standard housing.

Forms of Assistance

Ten comments were received. Eight comments concerned loan guarantees.

Loan Guarantees

Commenters were unanimous in supporting the July 12, 1995 regulatory change establishing the eligibility of loan guarantees. Commenters considered loan guarantees to be an excellent way to leverage the use of private funds and welcomed this flexibility.

However, most commenters felt that the loan guarantee requirements needed further revisions. One commenter requested that the regulations clarify that loan guarantees must be used to expand the availability of private financing or obtain more favorable terms. This same commenter found the 20% cap on the guarantee fund to be too rigid and recommended an increase to 50%, with the provision for additional waivers. Another commenter felt investor interest may be reduced by the requirement that all guaranteed loans must meet HOME requirements. The commenter suggested a less restrictive standard for projects which have no direct HOME subsidy, such as the

project having at least 20% of the units affordable as long as the HOME funds guarantee the loan (statutory change).

One commenter made numerous suggestions for revising the way a loan guarantee pool should be structured. The commenter was concerned that current language appears to require participating jurisdictions to underwrite and manage subrecipient loans, and urged that participating jurisdictions be given the authority to delegate this to the subrecipient. This commenter also noted that most loan pools are established by dollar amount, and not by the number of estimated loans. The commenter recommended that participating jurisdictions be given both options. The commenter was concerned with the prohibition on increasing the number of loans, and the fact that the current requirements result in guaranteeing initial loans at 100%. Recommendations include allowing the draw down of funds when there is a clear binding commitment in place with the lender; allowing non-eligible HOME loans to be included in the loan pool, provided the loan guarantee is limited to HOME eligible loans; allowing HOME funds to subsidize interest on the loan pool; clarifying that repayment of non-HOME funds are not subject to HOME eligibility restrictions; and providing for Secretarial approval of other loan guarantee models which meet the basic purpose of the regulations.

The Department is open to additional suggestions concerning the way to structure loan guarantees as was indicated in the preamble to July 12, 1995 rule. A participating jurisdiction may carry out a loan guarantee program through a subrecipient, with the duties and responsibilities detailed in a written agreement. However, the participating jurisdiction is ultimately responsible for the administration of all of its HOME funds. HOME funds may be drawn down for a loan guarantee at the point in time when HOME funds are invested in a project. While this may lead to 100 percent guarantee of earlier loans in order to establish a minimum balance in the guarantee fund, that will quickly diminish as successive loans are guaranteed. The Department in creating a "project" concept of a certain number of loans to be guaranteed did so in order to trigger the reporting of the units being assisted at the end of the project, regardless of whether all the projected loans were made. HOME funds can also be used to write down the interest rate of private loans in order to make the loan more affordable for new homebuyers or project owners. In the July 12, 1995 rule, the Department at § 92.205(b)(2) made it clear that while

loans funds guaranteed with HOME funds are subject to all HOME requirements, funds which are used to repay the guaranteed loans are not.

Other

One commenter requested that "compensating balances" be specifically allowed. Another commenter recommended that HOME provide bridge financing for tax credit projects, and for a long-term loan guarantee program like Section 108 (statutory change).

The Department believes that the loan guarantee concept is a more efficient way to leverage private funds than the compensating balance approach. In a new section at § 92.206(g), the Department has clarified that HOME funds may be used for construction or bridge financing. The Department does not currently have statutory authority to create a Section 108 type program for HOME but has suggested such an approach in its current legislative package.

One commenter recommended that the regulations clarify the eligibility of equity investments which are part of the financial work-out of an existing low-income housing project.

Under existing rules, a participating jurisdiction may provide funds in the form of an equity investment. This means that the participating jurisdiction becomes part owner of the housing. The eligible cost would be acquisition.

Termination Before Completion

Current regulations require the repayment of all funds expended on a project which does not go forward. One commenter proposed that participating jurisdictions be allowed to forgive such repayment where there are impediments to project development which are reasonably beyond the control of the owner. This approach is consistent with policy which forgives CHDO project-specific loans. There are instances where neither the owner nor the PJ can recover these funds. Participating jurisdictions should not be required to assume financial liability for such situations.

The Department declines to change its policy with regard to reimbursement of funds when a project does not proceed, but will examine the facts relating to specific instances as they occur. The statute provides separate loan authority to cover CHDO predevelopment costs, which are not eligible for other HOME projects and may be forgiven if the project does not go forward.

Manufactured Housing

Five comments were received on the requirement that HOME-assisted manufactured housing for rent or homeownership be situated on permanent foundations.

One commenter suggested that State laws governing the taxation of manufactured housing as real property should be the standard for determining whether a unit is considered HOME-eligible.

Four commenters recommended that the permanent foundation requirement be eliminated. All of these commenters cited the significant additional cost (estimated at about \$7,500 by some commenters) as an obstacle to providing affordable housing in rural areas and as the primary reason for elimination. Three of the commenters questioned HUD's assumption that permanent foundations make manufactured housing units safer. One of the commenters pointed out that not all areas of the country experience the type of weather patterns that might justify the expense of installing manufactured housing units on permanent foundations.

One commenter urged the Department to maintain its current requirements with respect to manufactured housing. The commenter cited safety and the need to develop a stock of permanently situated, standard manufactured housing in rural areas as the justification for this position.

The Department has removed references to manufactured housing in §§ 92.252 and 92.254. The Department has included under eligible activities, a new section at § 92.205(a)(5) on manufactured housing in which it has eliminated the requirement for a permanent foundation in deference to local and State standards for this type of unit.

Section 92.206 Eligible Project Costs

Three comments were received. Two commenters recommended that the rule be revised to permit initial operating reserves for new construction and all rehabilitation projects, not just substantial rehabilitation projects.

The Department has made this change as well as clarifying that reserves for initial operating expenses (which include scheduled payments to project replacement reserves) permitted for the first 18 months of a project may remain with the project after that period at the discretion of the participating jurisdiction.

Another commenter suggested that all pre-environmental clearance activity costs be reimbursable activity delivery costs.

The Department agrees that participating jurisdictions may incur costs which may be reimbursed with HOME funds, provided all HOME requirements have been met, including the environmental review requirements of Part 58. Under certain circumstances, costs may be incurred prior to the award of a fiscal year HOME allocation and charged to the HOME allocation after its award. This is discussed under the new § 92.212. However, costs for activities covered by Part 58 can not be reimbursed if the NEPA requirements are not met prior to incurring these costs. The costs of preparing environmental reviews and clearances may be charged to either administrative costs or project costs. This is clarified under § 92.207(g).

Section 92.207 Eligible Administration and Planning Costs

Four comments were received. Two commenters said that the 10 percent administrative fee is insufficient and should be increased (statutory). They also recommended that participating jurisdictions be permitted to charge application and monitoring fees of developers of HOME-assisted projects. One commenter recommended that the Department return to its original regulatory language of permitting 10 percent of the HOME allocation to be spent on administration. They objected to the cost allocation methods suggested at § 92.207(a)(1).

Participating jurisdictions are permitted to charge nominal application fees to discourage frivolous applications. The HOME Program, however, provides a 10 percent administrative fee for ongoing administration of the program. The cost allocation methods detailed at § 92.207(a)(1) are simply an amplification of the procedures required by OMB Circular A-87 revised and OASC-10, Cost Principles and Procedures for Establishing Cost Allocation Plans.

The Department has also clarified that meeting the requirements under Subpart H, *Other Federal Requirements*, is an eligible administrative cost.

The third commenter recommended that the Section 8 Housing Quality Standards inspection for a unit receiving tenant-based rental assistance be an eligible related soft cost chargeable to a TBRA project.

The Department declines to make this change since it views the operation of a tenant-based rental assistance program as an administrative cost under the 10 percent administrative cost cap.

Assisted Units in Multi-unit Projects

The Department in a new paragraph at § 92.205(d) expressly permits HOME funds to assist less than all units in a project and addresses prorating costs in projects with less than 100 percent HOME-assisted units. The regulation permits cost allocation when the units are not comparable in size, features or amenities. Guidance on attribution of eligible costs to the HOME program is detailed in CPD Notice-94-12, *Allocating costs and identifying HOME-assisted units in multifamily projects*.

Section 92.208 Eligible CHDO Operating Expense and Capacity Building Costs

One commenter recommended that the 5 percent CHDO operating expenses be deducted from the CHDO set-aside.

The statute provides that both the 10 percent administrative amount and the 5 percent CHDO operating fund be deducted from the participating jurisdiction's total allocation. A participating jurisdiction has discretion about whether to use either or both allowable percentages.

Section 92.211 Tenant-based Rental Assistance

Six comments were received. All six commenters endorsed the interim rule change which permitted HOME tenant-based rental assistance to be targeted to special needs populations. One commenter asked whether special needs populations would be defined for this purpose, suggesting that complete local flexibility be permitted within the confines of existing civil rights and fair housing law.

The Department declines to define special needs populations and defers to the priorities which participating jurisdictions establish in their consolidated plan under 24 CFR 91.

§§ 92.209, 210 and 211 on tenant-based rental assistance and security deposits have all been consolidated in § 92.209. This section contains clarification of required income eligibility determinations and annual property inspections.

Section 92.212 Pre-award Costs

The Department added a new section covering pre-award costs and the requirements which must be met.

Section 92.214 Prohibited Activities

Six comments were received on this section of the rule. Five of the commenters recommended that the Department permit the funding of both operating reserves and reserves for replacement. To the extent the Department permits initial operating

reserves for the first eighteen months of a project, these funds can remain in the project at the discretion of the participating jurisdiction. Two of the five commenters suggested that the Department also permit operating subsidies.

As discussed earlier under § 92.206, Eligible project costs, the Department agrees that during the initial rentup of a project both operating reserves and reserves for replacement required for the first 18 months of a project may be funded and retained by the project at the discretion of the participating jurisdiction.

With the program emphasis on production, the Department declines to fund operating subsidies.

Two commenters also requested that participating jurisdictions be permitted to add additional HOME funds to projects during the period of affordability, to handle unanticipated costs particularly during a twenty year affordability period.

While the Department declines to make this a general policy, it would be willing to examine cases where it might be appropriate to permit additional funding.

Income Targeting

Section 92.216 Income Targeting: Tenant-based Rental Assistance and Rental Units

Four comments were received on the overall targeting requirement for project and rental assistance under the HOME Program. Two of the commenters suggested that the targeting requirements be changed to parallel the requirements for the low-income housing tax credit i.e. that 20 percent of the units be reserved for households at 50 percent of median income or that 40 percent of the units be reserved for households at 60 percent of median income (statutory).

One commenter suggested that the complex rent structure be eliminated while retaining a single targeting requirement that all assistance should benefit tenant households below 80 percent of median income (statutory).

Another commenter objected to the requirement that family income and family size and composition be reexamined at least annually (statutory).

Since all the changes require statutory amendments, the Department did not adopt any of these changes. See § 92.203(a)(1) for options in determining tenant eligibility in HOME-assisted rental housing.

Matching Contribution Requirement

The Department received comments from seventeen parties regarding match.

Four of these commenters recommended that the HOME match requirements be eliminated (statutory). Two commenters suggested that the match concept be replaced by a leverage requirement (statutory). One of these commenters suggested a 50% to 75% non-Federal leverage requirement.

Numerous other commenters made specific suggestions for changing the current match requirements.

Sections 92.218–92.222, covering the match contribution requirements, have been revised to make the sections clearer, to reflect policy determinations gained through program operation and to expand the sources of match in response to public comment.

Section 92.218 Amount of Matching Contribution

One commenter stated that the requirement that match liability and contributions be calculated on a fiscal year basis is cumbersome. The commenter suggested that, in light of the consolidated plan and the adoption of single program years that may not coincide with the Federal fiscal year, participating jurisdictions be permitted to count match on a program year basis.

While the Department is sympathetic to the comment, the statute refers to funds expended “during the fiscal year”.

Another commenter suggested that match liability be incurred at the time of project completion, rather than as a PJ expends HOME funds. This, the commenter asserted, would simplify tracking and monitoring match.

The statute specifies that match liability is incurred as HOME funds are expended.

Section 92.219 Recognition of Matching Contribution

Three commenters suggested that all State affordable housing resources be counted as match. Instead of tracking contributions to specific, eligible housing projects, States should be permitted to certify that they are committing resources to decent, safe and affordable housing for low-income persons. These three commenters and an additional commenter contended that other affordable housing (not assisted with HOME funds) should not be required to meet the criteria set out in the rule to qualify as match. One of the three commenters stated that State participating jurisdictions should not be required to have written agreements with the owners of other affordable housing counted as match to ensure that the projects meet the criteria to qualify as affordable housing.

The statute requires other affordable housing counted as match to meet the qualifications of Section 215 of the statute. For projects containing both HOME-assisted and affordable housing units, there appeared to be confusion that contributions to affordable housing units could only be counted if at least 50% of the units were HOME assisted. The Department wants to clarify that contributions to affordable housing that meet the requirements in § 92.219(b) should be recognized whether there are no, some or a majority of HOME-assisted units in the project. The Department also wishes to stress that contributions are counted only after a written agreement is executed.

Two commenters asked the Department to clarify that housing that is “substantially equivalent” to HOME-assisted housing may be counted as match.

There is currently no such requirement in the HOME program. This was proposed statutory language that was never passed.

Section 92.220 Form of Matching Contribution

Thirteen commenters requested that the Department expand the definition of match so that additional types of contributions would be deemed eligible.

Five commenters suggested that sweat equity be counted as an eligible match. One of these commenters suggested that this provision be extended only to organized mutual self-help groups that can document shared labor requirements.

The Department recognizes the value of a sweat equity contribution by homeowners as a source of match and has changed the rule accordingly.

Five commenters suggested that owner equity in homeownership or rental projects be counted as an eligible match. One of these commenters suggested that this provision be extended only in cases where the equity is a “permanent contribution” to the affordable housing.

By definition owner equity is not a permanent contribution to affordable housing because owners realize their equity upon sale of the unit or project. However, under cash contributions made from nonfederal sources, § 92.220(a)(1)(i), the Department has clarified that cash contributions made to a nonprofit organization for use in a HOME project may be counted as match.

Six commenters suggested that the value of social services provided to the residents of HOME-assisted and HOME-eligible housing be counted as matching contributions. Several of the

commenters pointed out that significant State and local resources are expended for this purpose. One of the commenters suggested that the value of all non-Federal services provided to the residents of HOME-assisted or other affordable housing (i.e., whether the services are housing-based or provided to the general community) be permitted to be counted as match.

The Department has changed the rule to recognize as match the direct costs related to supportive services necessary to facilitate independent living or required as part of self-sufficiency programs provided to residents of HOME-assisted units during the period of affordability. In addition, the Department has recognized the value of homebuyer counseling services provided to families who acquire properties with HOME funds.

Two commenters requested that the rule be changed to count 100% of the value of tax-exempt bond financing for affordable housing, rather than the 25% per loan for single-family projects and 50% for multifamily projects currently permitted (statutory).

Two commenters suggested that the rule be changed to permit donated professional services to be valued at their market value, rather than the labor rate established annually for the program.

The rule has been changed to value skilled labor at the rate which is normally charged while unskilled labor will be valued at a rate set by the Secretary. The rate is currently \$10 per hour.

One commenter suggested that in-kind administrative services provided to State HOME programs by small local governments be counted as an eligible match contribution.

Match credit derived from administrative expenses is not recognized statutorily as a source of match.

Four commenters stated that funds lent to affordable housing projects (HOME and non-HOME) that are repaid to the original source, rather than the local HOME account, should be counted as match.

This is currently permitted. However, the value of the match is the present value of the yield foregone on a below-market interest rate loan, not the full face value.

Five commenters wrote in support of the two changes made in the July 12, 1995 rule to count fees and charges waived by nongovernmental entities as match and to permit match requirements for forgiven CHDO redevelopment loans to be waived.

Section 92.221 Match Credit

Two commenters asserted that the requirement that match be credited in the year that it is made may cause compliance problems (i.e., inadequate match contributions in a given year) when a PJ relies upon multi-year match contributions such as property tax forgiveness.

This may be true if there is a long delay in dedicating the match contribution. However, the current rule permits the present value of the tax-exemption over the period of forgiveness to be credited immediately, not year-by-year.

One commenter recommended that States be permitted to accept resources from local participating jurisdictions to use for State match contributions.

Although not explicitly stated in the regulation, for a HOME-assisted project a State may count resources provided by a locality as match as described in § 92.221(c).

Section 92.222 Match Reduction

One commenter urged the Department to reduce the match requirement for CHDO activities.

There is no statutory authority to permit this.

Another commenter contended that match reductions granted to States for disasters and distress result in inequities that complicate the administration of the program. Specifically, this commenter stated that, when States can offer HOME funds without match requirements to jurisdictions within urban counties or consortia and the consortia or urban county itself must provide full match, the local PJ is put at a disadvantage in using its HOME funds.

Match reduction based on disaster designation would be the same for both a State and a local jurisdiction, because a State match reduction applies only to funds the State uses in a disaster area. While the Department recognizes the different match liability between State and local HOME funds created by distress designations, it is clear that there is not sufficient HOME funds from either source to address the affordable housing needs and that HOME funds should not go unused in any community.

Subpart F—Project Requirements

Section 92.250 Maximum Per-Unit Subsidy Amount

Two comments on the maximum per-unit subsidy limits were received. One commenter proposed that Congress eliminate the statutory provision requiring HUD to establish per-unit

subsidy limits. This commenter contended that local governments are in the best position to establish limits based on knowledge of local construction costs and housing conditions.

Section 212(e) of NAHA was specific that the Secretary shall establish limits on the amount of HOME funds which can be invested on a per unit basis, therefore, it would require a statutory change. The Department has also added a new paragraph to highlight the requirement for and use of locally-developed subsidy layering guidelines when HOME funds are combined with other governmental assistance.

Another commenter suggested that the Department reconsider its decision to define group housing as being one unit to permit more HOME funds to be expended on such units.

This is not a regulatory definition. See CPD Notice 94-01, *Using HOME Funds for Single Room Occupancy and Group Housing*, which provides great flexibility to participating jurisdictions in how they characterize SROs and group homes.

Section 92.251 Property Standards

Thirteen parties commented on the property standards applicable to properties assisted with HOME program funds. Nearly all the commenters recommended some form of change to the existing requirement that all HOME-assisted properties meet the Section 8 Housing Quality Standards (HQS).

Eleven commenters recommended that the Department, under some circumstances, permit HOME to be used for emergency repairs in which a unit will not be brought up to HQS. Five of the commenters suggested that the Department establish a maximum per unit dollar limit for emergency repairs where a unit would not be required to meet HQS or some other housing code. Another commenter suggested that the Department limit the percentage of each HOME allocation that could be used for such repairs.

Two commenters, who supported emergency repairs, recommended that the Department maintain HQS as the standard for all other HOME assisted units.

Three commenters suggested that the Department permit home repair, weatherization or handicapped accessibility that will not bring a unit up to code. Another commenter, who favored elimination of the HQS requirement, felt that, at a minimum, single family housing should be exempted from the requirement.

Four commenters recommended that the Department require units to meet

locally-established housing codes. Two other commenters suggested that State participating jurisdictions that adopt national model codes be permitted to use those as the HOME property standard.

One commenter suggested that the Department replace the HQS requirement with the FHA Minimum Property Standards, to prevent duplicative inspections where HOME and FHA insurance are being combined.

Two commenters recommended that the Department continue to require substantially rehabilitated units to meet the cost-effective energy conservation standards. Another commenter requested that the Department make these standards optional.

One commenter recommended that the Department continue to apply the Council of American Building Officials' Model Energy Code to HOME-funded new construction (statutory).

Two commenters requested that the HQS requirement be eliminated for manufactured housing units.

Many of these comments with regard to the use of HOME funds have been addressed in the preamble under eligible activities and project costs. With regard to the property standard that a HOME-assisted project must meet, the Department has revised the rule to permit newly constructed or rehabilitated housing to meet local codes, rehabilitation standards, ordinances, and zoning ordinances. In the absence of local code for new construction or rehabilitation, housing must meet one of the model codes cited in this section. All other HOME units including those occupied by tenants receiving HOME tenant-based rental assistance, must meet Section 8 Housing Quality Standards (HQS). During the affordability period, rental units must continue to meet the standard which was initially used when the unit was assisted. The cost effective energy conservation and effectiveness standards have been deleted as a requirement because they were deleted from 24 CFR Part 39 although participating jurisdictions are encouraged to use them as guidelines in the rehabilitation of HOME-assisted housing. New guidelines will be issued shortly.

Section 92.252 Qualification as Affordable Housing: Rental Housing

Nineteen parties provided comments on the HOME provisions for the qualification of affordable rental housing. Most of the commenters recommended changes to simplify the rental requirements or to conform the HOME requirements with those of the

Low-Income Housing Tax Credit (LIHTC).

The Department has revised this whole section to make the rental requirements easier to understand and clarified the procedures with regard to initial and subsequent tenant eligibility determinations.

With the statutorily required two tier income targeting and annual income recertification requirements, the HOME statute differs from the LIHTC requirements. The rule spells out the options by which tenant income can be reviewed during the affordability period and offers a degree of flexibility for single-family rental properties. One option permits a tenant to submit a written statement of income, which may be actual income or income ranges which delineate when a tenant is below 50 percent or above 80 percent of median income. The tenant submits this statement as well as a certification to its completeness and accuracy. For multifamily projects with longer periods of affordability, tenant income must be examined periodically using source documents indicating annual income.

Two commenters recommended that the Department eliminate the 20-year period of affordability for rental new construction and base affordability periods on the amount of HOME funds invested regardless of activity. One of these commenters felt that all HOME requirements should be eliminated once the HOME funds have been repaid (statutory). The other commenter suggested that the Department establish a de minimis threshold of \$2,500. Units receiving less than this amount in HOME funds would have no HOME requirements.

The Department is retaining the longer affordability period for new construction rental projects because of the substantial investment of HOME funds in these projects. The other recommendations can not be implemented because they are statutory.

One commenter felt that the affordability periods established in the HOME rule were too short and did not accurately reflect the statutory provision that HOME-assisted properties remain affordable for their useful life. Another commenter suggested that participating jurisdictions be given the authority to waive affordability periods for rental projects in those instances where a tenant wishes to purchase the assisted unit. This commenter also felt that rental units in HOME-assisted homeownership projects should not be subject to the rental requirements.

The Department has made provision for the purchase of a rental unit by an existing tenant as a way to encourage

homeownership. That provision is included at § 92.255, which describes the affordability requirements depending upon whether additional HOME funds are invested to assist the existing tenant to become a homebuyer. In response to the last comment, the Department has reconsidered the automatic application of rental requirements to rental units in HOME-assisted homeownership projects. The new requirements are discussed in § 92.254(a)(ii)(5).

One commenter recommended that the separate program-wide and project-specific income targeting requirements be eliminated and replaced with a more flexible system. Specifically, the commenter suggested that all HOME rental units be initially occupied by families with incomes below 60% of area median income and carry rents not to exceed 30% of the income of a family at 80% of area median income (statutory).

Ten commenters approved of the July 12, 1995 regulatory change with respect to rent levels when HOME is combined with State or Federal project-based assistance. Four commenters believed that the Department should extend this provision to HOME-assisted units occupied by families receiving tenant-based assistance. One commenter felt that the provision should be extended to include local project-based assistance.

On the change in the threshold for the 20 percent very-low income occupancy requirement from a project with three units to a project with five units, the Department received fourteen comments. Twelve of those comments were supportive of the change citing an easing of administrative requirements for small rental properties. Three commenters, national public interest groups, opposed the change as a diminishment of the potential number of units occupied by very-low tenants.

The Department because of language in Section 215(a)(1)(B) of the statute can not provide similar treatment for local project-based rental assistance as it did for Federal or State rental assistance.

Section 92.253 Tenant and Participant Protections

Two parties commented on the HOME tenant and participant protections. One commenter recommended that the Department delete these provisions and permit participating jurisdictions to develop their own standards (statutory). Another commenter specifically objected to the requirement that tenants be given 30 days notice before tenancy can be terminated for cause. (statutory). The commenter states that the HOME requirements are inconsistent with other

HUD program requirements, which differentiate between "good cause" and "material noncompliance." The effect of this provision, the commenter claims, is that owners must wait 30 days to begin eviction proceedings for a tenant that has failed to pay rent or has committed a violent crime on the premises. The commenter recommends eliminating the notice requirement.

Because of the statutory nature of these items, the Department has not accepted these recommendations.

Section 92.254 Qualification as Affordable Housing: Homeownership

Seventeen parties commented on the provisions that set out the qualifying criteria for affordable homeownership units. Three commenters objected to the requirement that the purchase-price or after-rehabilitation value of assisted homeownership units not exceed 95% of the median purchase price for the area. One commenter pointed out that this requirement makes it difficult to assist low-income elderly persons who are "house-rich." Another expressed the belief that this provision limited homebuyer assistance programs to areas of low-income concentration (statutory).

In response to these comments but recognizing the need to carry out statutory intent, the Department is offering a participating jurisdiction the option of determining 95 percent of the median area purchase price locally and putting that information into its consolidated plan for approval by the Department. Alternatively, a participating jurisdiction can continue to use and may obtain the Single Family Mortgage Limits for Section 203(b) from the single housing family division in the field office. The information will no longer be distributed nationally by the Office of Affordable Housing Programs, CPD Headquarters.

Four other commenters did not object to the limitation on purchase price, but recommended elimination of the limit on the appraised value of a unit at the time of acquisition. Two commenters contended that the purchase price limitation alone was sufficient to limit the use of HOME funds to suitable, modest housing. One commenter noted that the appraised value limitation has a negative impact on the use of newly constructed units, which typically have higher appraised value, in the HOME Program. Another commenter recommended that the Department permit participating jurisdictions to use alternate method to appraisals to determine after-rehabilitation value of properties.

Whether using the Section 203(b) or locally derived 95 percent of median

purchase price limits, a participating jurisdictions will be responsible for setting the limits, determining the property value of units which are acquired and rehabilitated, and demonstrating that HOME funds are used in keeping with statutory intent, that of subsidizing the purchase of modest housing. The requirement for an appraisal has been eliminated, however, PJs must have a reasonable method to determine property value.

Twelve commenters expressed their approval of the changes made to the homebuyer assistance recapture provisions in the July 12, 1995 interim rule. This rule provided participating jurisdictions additional flexibility in establishing recapture rules. The commenters felt that these changes would make the HOME Program easier to use in a variety of housing markets.

Two commenters objected to the provision that applies the resale restrictions to homebuyer units for which no direct subsidy was provided to the homebuyer so that no HOME funds will be subject to recapture. One State commented that it uses its HOME funds to revitalize distressed areas by rehabilitating housing and selling it at market price. Because the area is distressed, demand is low, and the housing is available at affordable prices without the need for homebuyer assistance. Most of the homebuyers are low-income. The State urged that homebuyers who are buying housing rehabilitated or constructed with HOME funds in distressed neighborhoods not be burdened with deed restrictions which make the property even less desirable.

The final rule contains a new provision under which resale deed or other restrictions are not required to be imposed. The provision permits the participating jurisdiction to do a market analysis which supports a presumption that the housing meets the resale requirements, i. e., the housing will be available to a subsequent low-income purchaser who will use the property as its principal residence and will be sold at a price which is affordable to a reasonable range of low-income homebuyers and affords the homeowner a fair return on investment. The market analysis must include an evaluation of the location and characteristics of the housing and residents in the neighborhood in relation to housing and incomes in the housing market area. If a participating jurisdiction in preparing a neighborhood revitalization strategy or an Empowerment Zone or Enterprise Community application has developed this type of market data, those

submissions may serve as the required analysis under this section.

One commenter asked that the Department clarify that the net proceeds of a homebuyer unit resale include the original homebuyer's investment in capital improvements.

The net proceeds, the sales price minus loan repayment other than HOME funds and closing costs, does not include capital improvements, except to the extent that these improvements would be reflected in the sales price. However, capital improvements are included in the calculation of the homebuyer's investment in the property and considered in determining the amount of HOME funds to be recaptured.

The Department has added a new section on *Special considerations for single family properties with more than one unit*. This section clarifies the application of rental requirements when HOME funds are used to assist both the homeowners unit and one or more rental units. If HOME funds are used to assist only the rental units in such a property then the requirements of § 92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of § 92.254.

Section 92.255 Mixed-income Projects

One commenter contended that, in projects with units that are not HOME-assisted, incomes should be collected only for residents of units that are HOME-assisted.

This section is retitled and the requirements previously in this section have been incorporated into the match section at § 92.219(a). In response to the commenter, income information is not required to be collected for tenants occupying units that are not HOME-assisted unless the units are HOME eligible and an investment in these units is being counted as a match contribution.

Section 92.256 Mixed-use Projects

One commenter suggested that the Department eliminate the requirement that mixed use projects be at least 51% residential in order for contributions to the nonresidential portion to count as match (statutory).

This section is being eliminated and the statutory requirement on match is being consolidated into the rule at § 92.219(a)(4).

Section 92.258 Limitation on the Use of HOME Funds With FHA Mortgage Insurance

Six commenters recommended elimination of the provision extending

the HOME period of affordability to match the term of the mortgage when HOME and FHA mortgage insurance are combined. Commenters noted that this placed a significant burden on owners receiving a small amount of HOME funds, especially homebuyers receiving downpayment assistance. Others characterized the requirement as unfairly penalizing projects that receive FHA mortgage insurance. An additional commenter suggested that the requirement apply only to projects receiving more than \$15,000 in HOME funds.

One commenter supported the requirement and recommended that it be left intact.

The Department agrees with the majority of commenters and has eliminated this provision.

Subpart G—Community Housing Development Organizations

Thirteen comments were received relating to the CHDO set-aside, operating expenses, and redevelopment costs.

Section 92.300 Set-aside for Community Housing Development Organizations

One commenter felt that the rule as it now stands is excellent but the unwillingness of certain participating jurisdictions to delegate authority to CHDOs is a significant issue. This view was echoed by a second commenter who criticized participating jurisdictions for their unwillingness to provide CHDO operating funds. This commenter recommends that the final rule elaborate on the extent to which CHDOs may retain funds repaid from set-aside projects and, by so doing, distinguish between these repayments and program income which must be returned to the PJ. The commenter also objects to participating jurisdictions requiring that local match provided to CHDO projects be returned to the local or State trust fund account upon repayment instead of being retained by the CHDO. In the commenter's view, this policy seriously undermines the ability of any CHDO to obtain local match.

The Department is revising this section to permit participating jurisdictions to allow CHDOs, who are assisting homebuyers in connection with the development of homebuyer housing under § 92.254, to retain the return of the investment of HOME funds (i.e. interest on HOME loans, the proceeds from permanent financing) for use for HOME-eligible or other affordable housing activities. However,

any recapture of HOME funds not meeting the affordability requirements is required to be used for HOME activities in accordance with the requirements of Part 92.

In the opinion of three commenters, owner-occupied housing rehabilitation should be included among eligible CHDO set-aside projects while a fourth supports allowing downpayment assistance to be included as well. One of these commenters goes further in recommending that any HOME-eligible activity undertaken by a CHDO, including tenant-based assistance, be considered as a set-aside project. This view was also expressed by three other commenters. Yet another commenter proposed that a carry-over credit be instituted for funding provided in excess of the minimum 15 percent set-aside in any year (statutory).

The statutory provisions established the CHDO set-aside exclusively for community-based nonprofits who would own, sponsor or develop affordable housing. It is in keeping with this special intent, that the Department declines to include other eligible activities for use of set-aside funds. The Department has also determined that the statute is clear that a minimum of 15 percent of each year's HOME allocation should be reserved and used by CHDOs.

One commenter requested that the language in § 92.300(a) relating to CHDO ownership of projects in partnership with other persons or entities should be changed to make clear that separate nonprofit subsidiaries as well as wholly owned for-profit subsidiaries can be a managing general partner. According to the commenter, it is common, particularly when using Low-Income Housing Tax Credits, for CHDOs to establish a separate, nonprofit subsidiary to be the managing general partner.

The Department has made that clarification.

One commenter strongly expressed their opposition to Federally mandated set-asides in general and the 15 percent CHDO set-aside in particular believing that the Federal government should not dictate which housing providers receive States fund. According to the commenter, States face the distressing prospect of losing scarce housing funds to reallocation because they have few qualified nonprofits and even fewer qualified CHDOs. This commenter recommends that, at a minimum, the set-aside should be transformed into a general nonprofit set-aside, using a reasonable definition such as that utilized under the Low-Income Housing Tax Credit (statutory).

Another commenter objected to the CHDO set-aside, stating that it often must award funds to nonprofit groups that are less qualified than for-profit developers in order to meet this requirement. The commenter recommends that all references to CHDOs be deleted from the law and that the CHDO set-aside be transformed into a general non-profit set-aside (statutory).

With respect to CHDO operating expenses, one commenter believes that the requirement limiting availability to CHDOs expected to receive set-aside funds within 24 months should be eliminated. Instead, the agreement between the PJ and the CHDO should specify the expectations of the parties. In addition, the commenter feels that if the operating support is being used to strengthen a CHDO's asset or property management capacity, then the agreement should also set benchmarks for these efforts. Finally, the commenter suggests that language in the regulations describing eligible uses for operating support be changed to make clear that such support is not limited to the costs directly associated with the development of specific projects.

Another commenter recommended that the provision of operating funds to CHDOs be made mandatory since participating jurisdictions seem unwilling to provide this support (statutory). The Department believes that CHDO operating funds are the means to permit CHDOs to successfully use HOME funds for projects in which they are owners, sponsors or developers. These operating funds may be used for general administrative and operating expenses as well as for project costs, but they are being provided in connection with the anticipated use of HOME funds, just as they are provided to participating jurisdictions for the production of HOME-assisted affordable housing. The Department has clarified at § 92.300(f) that the limitation on the amount of HOME funding received by a CHDO in any fiscal year does not include administrative funds provided under § 92.207 when a CHDO is acting in a subrecipient or contractor capacity.

Section 92.301 Project-specific Assistance to Community Housing Development Organizations

One commenter recommends that the authority to use HOME as redevelopment funds that would not need to be repaid if the project did not go forward be extended to non-CHDO owners and developers (statutory).

Subpart H—Other Federal Requirements

Section 92.350 Equal Opportunity and Fair Housing

Four comments were received on this section. Two commenters objected to the imposition of the Section 3 rule, which they contend goes substantially beyond local capacity to administer employment and training programs. They indicate that the rule requirements go far beyond the statutory requirement of employing local residents to the “greatest extent feasible”. They also contend that the Davis Bacon requirements impede Section 3 objectives in that small, local contractors do not have the administrative expertise to maintain compliance and reporting records.

One commenter suggested that local minority and women’s owned business programs should be given credit for meeting Section 3 requirements. Another commenter complained that it is burdensome to apply Section 3 requirements to a whole project when Federal funds often represent a small portion of the financing.

The Section 3 requirements were subject to separate rulemaking and comment and the Department has not altered the requirements in this section.

One commenter suggested that affirmative marketing compliance monitoring should be done at the same time that HOME projects are monitored for rents, tenant incomes, and Housing Quality Standards.

The Department believes examination of affirmative marketing records during on-site inspections and reviews of rents is a good suggestion, however, no change has been made to the regulation.

Section 92.352 Environmental Review

Seven comments were received. Two commenters requested that participating jurisdictions be authorized to use substantially equivalent State or local environmental law and review procedures in place of NEPA (statutory). Four commenters requested that States be authorized to assume responsibility for the release of funds based on environmental reviews and certifications completed by State recipients and State CHDOs. The current procedure requiring States to request funds release from HUD delays projects.

Four commenters requested that 1–4 unit projects and all owner-occupied homeownership projects be exempt from environmental review (statutory). Two commenters requested that historic preservation reviews be waived for emergency repairs. Two commenters

requested that one environmental review and funds release process be allowed for projects receiving both HOME and CDBG funds.

One commenter found current requirements unduly restrictive concerning options. The commenter noted that the Department allows options to be undertaken prior to environmental review, when a full refund of the option fee is provided if the project does not go forward. However, the commenter noted that such a scenario is unlikely in real estate transactions. The commenter urged that options be treated as other initial feasibility actions, in that options allow the developer to secure the right, but not the obligation to purchase a site. The commenter also requested that options purchased with non-federal funds be permitted prior to environmental review, even if HOME funds will be subsequently used.

Environmental review requirements are subject to separate rulemaking under 24 CFR 58. Part 58 currently authorizes States to exercise HUD’s responsibilities with respect to approval of a State recipient’s environmental certification and RROF. However, when a State elects to directly undertake the HOME program, HUD provides the second level of review. Therefore, States must submit their certification and RROF to HUD. Part 58 has been revised to allow purchase options prior to the completion of an environmental review, if the option agreement is subject to a determination by the recipient of the desirability of the property following the environmental review and the option cost reflects a nominal portion of the purchase price. Participating jurisdictions may currently conduct a single environmental review and submit a single RROF for projects funded with both CDBG and HOME, provided the separate funding sources are identified.

Section 92.353 Displacement, Relocation and Acquisition

Four comments were received on this section. Two commenters recommend altering the Uniform Relocation Act requirements for tenants displaced by HOME or CDBG-financed activity. They view benefits for a five year period as overly generous and suggest that the benefits be for two years and be paid once at the capitalized value of the benefits.

The calculation of benefits is based on explicit statutory language. Persons whose displacement is subject to the Uniform Relocation Act (URA) are entitled to an amount that is 42 times the difference between their rent at the unit from which they are displaced and

the comparable unit they are offered (or 42 times the difference between 30% of household income and the rent at the comparable unit, if that results in a larger payment). For low and moderate income persons whose displacement is subject to section 104(d) of the Housing and Community Development Act of 1974, the payment is calculated to assure that their post-relocation shelter costs do not exceed 30% of income for five years. Since these benefit levels are set by statute, the Department has no authority to change them.

Two commenters strongly recommended that the URA requirements be simplified for homeownership situations. Current rules require that the participating jurisdiction notify the sellers of the property that the property is not being acquired under eminent domain and that they are not eligible for relocation benefits. Additionally, if the unit being offered for sale is occupied by a tenant, relocation benefits would be triggered. It was recommended that homebuyer programs be exempt from relocation requirements when the participating jurisdiction has no role in determining which house is selected by the buyer when it is offered for sale on the open market.

When HOME funds are used for homeownership programs, the property purchased is a Federally-assisted acquisition. Thus, it is subject to the provisions of the URA, and sellers and displaced tenants must be accorded certain rights and benefits. Although the selling homeowner is not entitled to relocation benefits, it is necessary to inform the seller that the purchaser does not have the power of eminent domain and of the estimate of fair market value. These actions are necessary to meet the URA requirements of section 301 (2) and (3). If there are tenants in the home, they are entitled to the standard URA benefits. Since these are statutory requirements, the Department cannot change or waive them.

Section 92.354 Labor

Nine comments were received on this section of the rule. Four commenters suggested eliminating the Davis-Bacon requirements for the HOME Program, and if not eliminated completely, at least conforming the requirements to CDBG in that land acquisition with HOME would not trigger Davis Bacon requirements. It was also suggested that some substantial dollar amount trigger Davis-Bacon (statutory).

Two commenters suggested that Davis Bacon requirements not be applied to homeownership projects when the units are sold to individual homebuyers.

Two commenters complained about the substantial administrative burden of the requirements and how that discourages small, local contractors from participating in contradiction to the Section 3 goals and requirements.

Davis-Bacon requirements apply to twelve or more HOME-assisted units under one construction contract, whether rental or homeowner. Small, local contractors can work on single family units or small rental projects while gaining experience before taking on a larger project with Davis Bacon requirements.

Section 92.356 Conflict of Interest

The third change in the July 12, 1995 proposed rule, the application of conflict of interest rules to developers, whether for profit or nonprofit, of projects receiving HOME funds elicited sixteen comments. Eleven commenters endorsed the application of the requirements either totally or with qualifications relating to occupancy of resident managers or income-qualified CHDO board members. Five commenters opposed the application of the requirements as too burdensome and intrusive on the participating jurisdiction's administration of the program.

The Department believes that the positive comments outweigh the negative ones and has adopted the conflict of interest provisions for developers, both profit and nonprofit, that receive HOME funds. The determination of a conflict is made at the State or local level and does not involve the Department, unlike the procedure when the conflict involves an official or an employee of the participating jurisdictions, its State recipients or subrecipients.

Subpart K—Program Administration

Section 92.502 C/MIS: Disbursement of HOME Funds

Five parties commented on C/MIS and disbursement-related issues. All of the commenters suggested ways in which they believed the Department could simplify or streamline the current system. Three commenters recommended that the Department eliminate or relax the requirement that HOME funds drawn from the Treasury account be expended for eligible costs within 15 days (statutory). One of the commenters suggested extending the period to 30 days. Two commenters recommended that participating jurisdictions be allowed to draw lump sums for projects and place the funds in escrow accounts (statutory).

Three commenters requested that participating jurisdictions be permitted to draw down lump sums of HOME funds for long-term relocation expenses. One commenter stated that long-term relocation obligations prevented it from sending in project completion forms. Both commenters believed that the five-year deadline for the expenditure of funds would elapse before participating jurisdictions had completed monthly payments for relocation.

Existing policies should be adequate to permit required payments of relocation benefits without delaying project completion. Although relocation benefits to displaced tenants may be calculated to assist them with their shelter costs for as long as 5 years, the Department does not require that monthly payments be made for such a period. Although a single lump sum payment of benefits is prohibited by statute (except where down payment assistance is involved), the Department allows great latitude to displacing agencies in setting up the payout of the assistance. For example, quarterly or semi-annual payments could be made for a period deemed reasonable by the participating jurisdiction, at the end of which the balance could be paid to the displaced person.

One commenter noted that the Department needs to reduce the complexity of drawing down funds and decrease the time that it takes project set-up forms faxed to HUD to be entered into the system. The commenter suggested that the Department adopt the Payment Management System used by the Department of Health and Human Services.

Two commenters stated that the reports generated by the C/MIS should be useful and user friendly. One commenter suggested that the C/MIS operating hours being changed to accommodate participating jurisdictions in western time zones.

One commenter suggested that CHDOs be permitted to set up their own accounts in the C/MIS.

The same commenter suggested that subrecipients be permitted to have their own U.S. Treasury accounts and draw HOME funds directly from the Treasury.

Two commenters suggested that the new Integrated Data and Information System (IDIS) being developed by the Department for HOME and other programs allow participating jurisdictions to set up HOME funds for broad activities (e.g., rehabilitation) rather than on a project-by-project basis. One of these commenters recommended that information on families receiving HOME tenant-based rental assistance (i.e., social security number, tenant

contribution, amount of subsidy) be included as part of a project completion report rather than at set-up.

There currently is no project completion form required for TBRA. The new Integrated Data and Information system (IDIS) will continue to collect data on a project basis. Only participating jurisdictions and state recipients are permitted to have HOME funds deposited directly into their own bank accounts (statutory).

Three commenters requested that participating jurisdictions be permitted to accumulate significant amounts of program income in their local HOME accounts before being required to expend the funds. Currently, participating jurisdictions are required to disburse program income on hand before drawing any additional funds from the U.S. Treasury. The commenters contend that this results in administrative burden, particularly when only small amounts of program income are on hand.

This is an OMB and Treasury Department requirement for all Federal programs under part 85, not a HOME regulatory requirement. Our current (nonregulatory) guidance to participating jurisdictions is that they may undertake a periodic accounting of program income whenever their financial reports are normally available and spend those funds before drawing additional Federal funds.

One commenter objected to the requirement at § 92.502(g) that requires States to designate the local PJ as a State recipient and suballocate its HOME funds when a State and local PJ undertake a jointly funded project.

This requirement has been dropped and State and local participating jurisdictions can each set up a project for its share of the funds and report on the proportionate number of units.

Another commenter expressed concern about jointly funded projects undertaken by CHDOs. The commenter believes that the State funds suballocated to a local participating jurisdiction is credited to that jurisdiction, rather than the State.

This is not the case. The State funds retain their identity, so all expenditures and production information related to the State's share of the project are included in the State's report.

Section 92.503 Program Income, Repayments, and Recaptured Funds

In response to many public comments and numerous requests for clarification, the Department has created a new section describing program income, repayments and funds that are recaptured. In prior rules, program

income has often been described as a return on the investment of HOME funds. This section hopefully will provide adequate guidance to participating jurisdiction on these issues.

Section 92.504 PJ Responsibilities; Written Agreements; Monitoring

The Department has substantially revised this section to be more specific about the contents of the written agreement between the participating jurisdiction and the entity receiving the HOME funds. The revisions were done in response to many comments requesting clarification about the contents of the agreement.

Six comments were received regarding the HOME monitoring requirements at § 92.504(e). All of the commenters felt that the current requirements were too burdensome and should be changed.

Two commenters suggested that the HOME monitoring requirements be changed to conform with the LIHTC monitoring requirements, which they felt offered more flexibility in determining the number of tenant files reviewed and the frequency of on-site visits. One commenter suggested that less information should be required from tenants whose rents are close to market rents than from those who receive a significant subsidy. The commenter suggests a single pay stub as proof of low-income status.

Two commenters felt that participating jurisdictions should be permitted to develop their own monitoring plans to assure project compliance with HOME requirements. One of these commenters suggested that these plans could be subject to HUD approval.

Another commenter suggested that HUD, in place of the current monitoring provisions, require participating jurisdictions to develop monitoring plans that include an initial on-site inspection, biannual on-site financial and management reviews and remote monitoring of tenant files and financial statements in alternate years. One commenter recommended that HOME rental projects be monitored every two years rather than annually, regardless of the size of the project.

The Department has provided options with regard to determining tenant income during the period of affordability which are discussed under the preamble comments at § 92.203.

With regard to monitoring requirements, the Department has created additional flexibility in the schedule for on-site inspections of

smaller projects as permitted by the statute.

One commenter stated that the Department should eliminate the requirement that, when a PJ applies a longer period of affordability period to a project than is required by HUD, monitoring of the project continue for the extended affordability period.

There is no such requirement.

One commenter suggested that, when a project is found to be out of compliance with HOME requirements and the participating jurisdiction is unable to obtain timely repayment from the owner, the Department reduce the participating jurisdictions future grants rather than require repayment to the HOME account.

The Department declines to make this change because it reduces funds available to provide affordable housing but will review cases as necessary to determine appropriate action.

Section 92.506 Audits

One commenter wrote in support of the Office of Management and Budget's efforts to increase the threshold for audits from \$25,000 to \$300,000.

A bill has been proposed to make this change but has not been enacted.

Section 92.508 Recordkeeping

The Department has revised this section to ensure consistency with the requirements of Part 92. In addition, the period for record retention has been extended to five years in keeping with the Part 91 Consolidated Plan requirement. In response to comments, the Department has clarified the record retention period for various types of records. The Department has clarified that certain records do not have to be retained for the full period of affordability for rental projects.

Section 92.552 Notice and Opportunity for Hearing; Sanctions

The Department recently published a proposed regulation at 61 FR 18026 (April 23, 1996) setting forth hearing procedures for formal hearings according to the Administrative Procedures Act (5 U.S.C. 551 et seq.). The Department intends to adopt these hearing procedures for the HOME program. Conforming changes to the HOME regulations will be made when the final rule for Part 26 is published.

Conforming Changes to Part 91

The Department has made conforming changes to 24 CFR part 91, the Consolidated Plan. If a participating jurisdiction chooses to refinance existing debt in connection with the rehabilitation of multifamily properties,

it would be required to develop guidelines which would describe under what conditions it would permit the use of HOME funds for refinancing. The guidelines would be made part of the participating jurisdiction's consolidated plan and be subject to public review and comment.

Extension of Interim Rule

Section 92.5 of the interim rule was added to implement a Department-wide policy for the expiration of interim rules within a set period of time if they are not issued in final form before the end of the period. This section also provides that the expiration period may be extended by notice published in the Federal Register, and the Department is hereby providing notice that the interim rule remains in effect without interruption until the effective date of this final rule.

III. Findings and Certifications

Paperwork Reduction Act. The information collection requirements for the HOME Investment Partnerships Program have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0191. This final rule does not contain additional mandatory information collection requirements, but does contain additional voluntary information collection requirements in §§ 92.206 and 92.254. When received, the OMB approval number for these information collection requirements will be published in a separate notice in the Federal Register. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Unfunded Mandates Reform Act. Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose any Federal mandates on any State, local or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

Environmental Review. A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30

p.m. weekdays in the Office of the Rules Docket Clerk.

Regulatory Planning and Review. This rule has been reviewed in accordance with Executive Order 12866, issued by the President on September 30, 1993 (58 FR 51735, October 4, 1993). Any changes to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Impact on Small Entities. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities, because jurisdictions that are statutorily eligible to receive formula allocations are relatively larger cities, counties or States.

Federalism Impact. The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that this rule does not have federalism implications concerning the division of local, State, and federal responsibilities. While the HOME Program interim rule was determined to be a rule with federalism implications and the Department submitted a Federalism Assessment concerning the interim rule to OMB, this final rule only makes limited adjustments to the interim rule and does not significantly affect any of the factors considered in the Federalism Assessment for the interim rule.

Impact on the Family. The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that this rule would not have significant impact on family formation, maintenance, and general well-being. Assistance provided under this rule can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the means to live independently in mainstream American society. This rule would not, however, affect the institution of the family, which is requisite to coverage by the Order.

The Catalog of Federal Domestic Assistance Number for the HOME Program is 14.239.

List of Subjects

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low- and

moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, the Department amends parts 91 and 92 of title 24 of the Code of Federal Regulations as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

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

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

2. Section 91.220 is amended by adding a new paragraph (g)(2)(iii), to read as follows:

§ 91.220 Action plan.

* * * * *

(g) * * *

(2) * * *

(iii) If the participating jurisdiction intends to use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated with HOME funds, it must state its refinancing guidelines required under 24 CFR 92.206(b). The guidelines shall describe the conditions under which the participating jurisdictions will refinance existing debt. At minimum, the guidelines must:

(A) Demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing.

(B) Require a review of management practices to demonstrate that disinvestment in the property has not occurred; that the long term needs of the project can be met; and that the feasibility of serving the targeted population over an extended affordability period can be demonstrated.

(C) State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both.

(D) Specify the required period of affordability, whether it is the minimum 15 years or longer.

(E) Specify whether the investment of HOME funds may be jurisdiction-wide or limited to a specific geographic area, such as a neighborhood identified in a neighborhood revitalization strategy

under 24 CFR 91.215(e)(2) or a Federally designated Empowerment Zone or Enterprise Community.

(F) State that HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG.

3. Section 91.320 is amended by adding a new paragraph (g)(2)(iii), to read as follows:

§ 91.320 Action plan.

* * * * *

(g) * * *

(2) * * *

(iii) If the State intends to use HOME funds to refinance existing debt secured by multifamily housing that is being rehabilitated with HOME funds, it must state its refinancing guidelines required under 24 CFR 92.206(b). The guidelines shall describe the conditions under which the State will refinance existing debt. At minimum, the guidelines must:

(A) Demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing.

(B) Require a review of management practices to demonstrate that disinvestment in the property has not occurred; that the long term needs of the project can be met; and that the feasibility of serving the targeted population over an extended affordability period can be demonstrated.

(C) State whether the new investment is being made to maintain current affordable units, create additional affordable units or both.

(D) Specify the required period of affordability, whether it is the minimum 15 years or longer.

(E) Specify whether the investment of HOME funds may be jurisdiction-wide or limited to a specific geographic area, such as a neighborhood identified in a neighborhood revitalization strategy under 24 CFR § 91.215(e)(2) or a Federally designated Empowerment Zone or Enterprise Community.

(F) State HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG.

4. Part 92 is revised to read as follows:

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

Subpart A—General

Sec.

92.1 Overview.

92.2 Definitions.

92.4 Waivers and suspension of requirements for disaster areas.

Subpart B—Allocation Formula

92.50 Formula allocation.

Insular Areas Program

- 92.60 Allocation amounts for insular areas.
- 92.61 Program description.
- 92.62 Review of program description and certifications.
- 92.63 Amendments to program description.
- 92.64 Applicability of requirements to insular areas.
- 92.65 Funding sanctions.
- 92.66 Reallocation.

Subpart C—Consortia; Designation and Revocation of Designation as a Participating Jurisdiction

- 92.100 [Reserved]
- 92.101 Consortia.
- 92.102 Participation threshold amount.
- 92.103 Notification of intent to participate.
- 92.104 Submission of a consolidated plan.
- 92.105 Designation as a participating jurisdiction.
- 92.106 Continuous designation as a participating jurisdiction.
- 92.107 Revocation of designation as a participating jurisdiction.

Subpart D—Submission Requirements

- 92.150 Submission requirements.

Subpart E—Program Requirements

- 92.200 Private-public partnership.
- 92.201 Distribution of assistance.
- 92.202 Site and neighborhood standards.
- 92.203 Income determinations.
- 92.204 Applicability of requirements to entities that receive a reallocation of HOME funds, other than participating jurisdictions.

Eligible and Prohibited Activities

- 92.205 Eligible activities: General.
- 92.206 Eligible project costs.
- 92.207 Eligible administrative and planning costs.
- 92.208 Eligible community housing development organization (CHDO) operating expense and capacity building costs.
- 92.209 Tenant-based rental assistance: Eligible costs and requirements.
- 92.212 Pre-award costs.
- 92.213 [Reserved]
- 92.214 Prohibited activities.
- 92.215 Limitation on jurisdictions under court order.

Income Targeting

- 92.216 Income targeting: Tenant-based rental assistance and rental units.
- 92.217 Income targeting: Homeownership.

Matching Contribution Requirement

- 92.218 Amount of matching contribution.
- 92.219 Recognition of matching contribution.
- 92.220 Form of matching contribution.
- 92.221 Match credit.
- 92.222 Reduction of matching contribution requirement.

Subpart F—Project Requirements

- 92.250 Maximum per-unit subsidy amount and subsidy layering.
- 92.251 Property standards.

92.252 Qualification as affordable housing: Rental housing.

92.253 Tenant and participant protections.

92.254 Qualification as affordable housing: Homeownership.

92.255 Converting rental units to homeownership units for existing tenants.

92.256 [Reserved].

92.257 Religious organizations.

92.258 Elder cottage housing opportunity (ECHO) units.

Subpart G—Community Housing Development Organizations

- 92.300 Set-aside for community housing development organizations (CHDOs).
- 92.301 Project-specific assistance to community housing development organizations.
- 92.302 Housing education and organizational support.
- 92.303 Tenant participation plan.

Subpart H—Other Federal Requirements

- 92.350 Other Federal requirements.
- 92.351 Affirmative marketing; minority outreach program.
- 92.352 Environmental review.
- 92.353 Displacement, relocation, and acquisition.
- 92.354 Labor.
- 92.355 Lead-based paint.
- 92.356 Conflict of interest.
- 92.357 Executive Order 12372.

Subpart I—Technical Assistance

- 92.400 Coordinated Federal support for housing strategies.

Subpart J—Reallocations

- 92.450 General.
- 92.451 Reallocation of HOME funds from a jurisdiction that is not designated a participating jurisdiction or has its designation revoked.
- 92.452 Reallocation of community housing development organization set-aside.
- 92.453 Criteria for competitive reallocations.
- 92.454 Reallocations by formula.

Subpart K—Program Administration

- 92.500 The HOME Investment Trust Fund.
- 92.501 HOME Investment Partnership Agreement.
- 92.502 Program disbursement and information system.
- 92.503 Program income, repayments, and recaptured funds.
- 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspections.
- 92.505 Applicability of uniform administrative requirements.
- 92.506 Audit.
- 92.507 Closeout.
- 92.508 Recordkeeping.
- 92.509 Performance reports.

Subpart L—Performance Reviews and Sanctions

- 92.550 Performance reviews.
- 92.551 Corrective and remedial actions.
- 92.552 Notice and opportunity for hearing; sanctions.

Authority: 42 U.S.C. 3535(d) and 12701–12839.

Subpart A—General**§ 92.1 Overview.**

This part implements the HOME Investment Partnerships Act (the HOME Investment Partnerships Program). In general, under the HOME Investment Partnerships Program, HUD allocates funds by formula among eligible State and local governments to strengthen public-private partnerships and to expand the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income and low-income families. Generally, HOME funds must be matched by nonfederal resources. State and local governments that become participating jurisdictions may use HOME funds to carry out multi-year housing strategies through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance. Participating jurisdictions may provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies and other forms of investment that HUD approves.

§ 92.2 Definitions.

The terms “1937 Act”, “ALJ”, “Fair Housing Act”, “HUD”, “Indian Housing Authority (IHA)”, “Public Housing Agency (PHA)”, and “Secretary” are defined in 24 CFR 5.100.

Act means the HOME Investment Partnerships Act at title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12701 *et seq.*

Adjusted income. See § 92.203.

Annual income. See § 92.203.

Certification shall have the meaning provided in section 104(21) of the Cranston-Gonzalez National Affordable Housing Act, as amended, 42 U.S.C. 12704.

Commitment means:

(1) The participating jurisdiction has executed a legally binding agreement with a State recipient, a subrecipient or a contractor to use a specific amount of HOME funds to produce affordable housing or provide tenant-based rental assistance; or has executed a written agreement reserving a specific amount of funds to a community housing development organization; or has met the requirements to commit to a specific local project, as defined in paragraph (2), of this definition.

(2) Commit to a specific local project means:

(i) If the project consists of rehabilitation or new construction (with

or without acquisition) the participating jurisdiction (or State recipient or subrecipient) and project owner have executed a written legally binding agreement under which HOME assistance will be provided to the owner for an identifiable project under which construction can reasonably be expected to start within twelve months of the agreement date. If the project is owned by the participating jurisdiction or State recipient, the project has been set up in the disbursement and information system established by HUD, and construction can reasonably be expected to start within twelve months of the project set-up date.

(ii)(A) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is acquiring the property with HOME funds, the participating jurisdiction (or State recipient or subrecipient) and the property owner have executed a legally binding contract for sale of an identifiable property and the property title will be transferred to the participating jurisdiction (or State recipient or subrecipient) within six months of the date of the contract.

(B) If the project consists of acquisition of standard housing and the participating jurisdiction (or State recipient or subrecipient) is providing HOME funds to a family to acquire single family housing for homeownership or to a purchaser to acquire rental housing, the participating jurisdiction (or State recipient or subrecipient) and the family or purchaser have executed a written agreement under which HOME assistance will be provided for the purchase of the single family housing or rental housing and the property title will be transferred to the family or purchaser within six months of the agreement date.

(iii) If the project consists of tenant-based rental assistance, the participating jurisdiction (or State recipient, or subrecipient) has entered into a rental assistance contract with the owner or the tenant in accordance with the provisions of § 92.209.

Community housing development organization means a private nonprofit organization that:

- (1) Is organized under State or local laws;
- (2) Has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual;
- (3) Is neither controlled by, nor under the direction of, individuals or entities seeking to derive profit or gain from the organization. A community housing development organization may be

sponsored or created by a for-profit entity, but:

(i) The for-profit entity may not be an entity whose primary purpose is the development or management of housing, such as a builder, developer, or real estate management firm.

(ii) The for-profit entity may not have the right to appoint more than one-third of the membership of the organization's governing body. Board members appointed by the for-profit entity may not appoint the remaining two-thirds of the board members; and

(iii) The community housing development organization must be free to contract for goods and services from vendors of its own choosing;

(4) Has a tax exemption ruling from the Internal Revenue Service under section 501(c)(3) or (4) of the Internal Revenue Code of 1986 (26 CFR 1.501(c)(3)-1);

(5) Does not include a public body (including the participating jurisdiction). An organization that is State or locally chartered may qualify as a community housing development organization; however, the State or local government may not have the right to appoint more than one-third of the membership of the organization's governing body and no more than one-third of the board members may be public officials or employees of the participating jurisdiction or State recipient. Board members appointed by the State or local government may not appoint the remaining two-thirds of the board members;

(6) Has standards of financial accountability that conform to 24 CFR 84.21, "Standards for Financial Management Systems;"

(7) Has among its purposes the provision of decent housing that is affordable to low-income and moderate-income persons, as evidenced in its charter, articles of incorporation, resolutions or by-laws;

(8) Maintains accountability to low-income community residents by:

(i) Maintaining at least one-third of its governing board's membership for residents of low-income neighborhoods, other low-income community residents, or elected representative of low-income neighborhood organizations. For urban areas, "community" may be a neighborhood or neighborhoods, city, county or metropolitan area; for rural areas, it may be a neighborhood or neighborhoods, town, village, county, or multi-county area (but not the entire State); and

(ii) Providing a formal process for low-income program beneficiaries to advise the organization in its decisions regarding the design, siting,

development, and management of affordable housing;

(9) Has a demonstrated capacity for carrying out activities assisted with HOME funds. An organization may satisfy this requirement by hiring experienced key staff members who have successfully completed similar projects, or a consultant with the same type of experience and a plan to train appropriate key staff members of the organization; and

(10) Has a history of serving the community within which housing to be assisted with HOME funds is to be located. In general, an organization must be able to show one year of serving the community before HOME funds are reserved for the organization. However, a newly created organization formed by local churches, service organizations or neighborhood organizations may meet this requirement by demonstrating that its parent organization has at least a year of serving the community.

Family has the same meaning given that term in 24 CFR 5.403.

HOME funds means funds made available under this part through allocations and reallocations, plus program income.

Homeownership means ownership in fee simple title or a 99 year leasehold interest in a one- to four-unit dwelling or in a condominium unit, or equivalent form of ownership approved by HUD. The ownership interest may be subject only to the restrictions on resale required under § 92.254(a); mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the participating jurisdiction; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest. For purposes of the insular areas, homeownership includes leases of 40 years or more. The participating jurisdiction must determine whether or not ownership or membership in a cooperative or mutual housing project constitutes homeownership under State law.

Household means one or more persons occupying a housing unit.

Housing includes manufactured housing and manufactured housing lots, permanent housing for disabled homeless persons, transitional housing, single-room occupancy housing, and group homes. Housing also includes elder cottage housing opportunity (ECHO) units that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings. Housing does not include emergency shelters (including shelters

for disaster victims) or facilities such as nursing homes, convalescent homes, hospitals, residential treatment facilities, correctional facilities and student dormitories.

Insular areas means Guam, the Northern Mariana Islands, the United States Virgin Islands, and American Samoa.

Jurisdiction means a State or unit of general local government.

Low-income families means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Metropolitan city has the meaning given the term in 24 CFR 570.3.

Neighborhood means a geographic location designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government; except that if the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government.

Participating jurisdiction means a jurisdiction (as defined in this section) that has been so designated by HUD in accordance with § 92.105.

Person with disabilities means a household composed of one or more persons, at least one of whom is an adult, who has a disability.

(1) A person is considered to have a disability if the person has a physical, mental, or emotional impairment that:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions.

(2) A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age 22;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitations in three or more of the

following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated. Notwithstanding the preceding provisions of this definition, the term "person with disabilities" includes two or more persons with disabilities living together, one or more such persons living with another person who is determined to be important to their care or well-being, and the surviving member or members of any household described in the first sentence of this definition who were living, in a unit assisted with HOME funds, with the deceased member of the household at the time of his or her death.

Program income means gross income received by the participating jurisdiction, State recipient, or a subrecipient directly generated from the use of HOME funds or matching contributions. When program income is generated by housing that is only partially assisted with HOME funds or matching funds, the income shall be prorated to reflect the percentage of HOME funds used. Program income includes, but is not limited to, the following:

(1) Proceeds from the disposition by sale or long-term lease of real property acquired, rehabilitated, or constructed with HOME funds or matching contributions;

(2) Gross income from the use or rental of real property, owned by the participating jurisdiction, State recipient, or a subrecipient, that was acquired, rehabilitated, or constructed, with HOME funds or matching contributions, less costs incidental to generation of the income;

(3) Payments of principal and interest on loans made using HOME funds or matching contributions;

(4) Proceeds from the sale of loans made with HOME funds or matching contributions;

(5) Proceeds from the sale of obligations secured by loans made with HOME funds or matching contributions;

(6) Interest earned on program income pending its disposition; and

(7) Any other interest or return on the investment permitted under § 92.205(b) of HOME funds or matching contributions.

Project means a site or sites together with any building (including a

manufactured housing unit) or buildings located on the site(s) that are under common ownership, management, and financing and are to be assisted with HOME funds as a single undertaking under this part. The project includes all the activities associated with the site and building. For tenant-based rental assistance, project means assistance to one or more families.

Project completion means that all necessary title transfer requirements and construction work have been performed; the project complies with the requirements of this part (including the property standards under § 92.251); the final drawdown has been disbursed for the project; and the project completion information has been entered in the disbursement and information system established by HUD. For tenant-based rental assistance, project completion means the final drawdown has been disbursed for the project.

Reconstruction means the rebuilding, on the same lot, of housing standing on a site at the time of project commitment. The number of housing units on the lot may not be decreased or increased as part of a reconstruction project, but the number of rooms per unit may be increased or decreased. Reconstruction also includes replacing an existing substandard unit of manufactured housing with a new or standard unit of manufactured housing. Reconstruction is rehabilitation for purposes of this part.

Single room occupancy (SRO) housing means housing (consisting of single room dwelling units) that is the primary residence of its occupant or occupants. The unit must contain either food preparation or sanitary facilities (and may contain both) if the project consists of new construction, conversion of non-residential space, or reconstruction. For acquisition or rehabilitation of an existing residential structure or hotel, neither food preparation nor sanitary facilities are required to be in the unit. If the units do not contain sanitary facilities, the building must contain sanitary facilities that are shared by tenants.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive officer to act on behalf of the State with regard to the provisions of this part.

State recipient. See § 92.201(b)(2).

Subrecipient means a public agency or nonprofit organization selected by the participating jurisdiction to administer all or a portion of the participating jurisdiction's HOME program. A public

agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a subrecipient. The participating jurisdiction's selection of a subrecipient is not subject to the procurement procedures and requirements.

Tenant-based rental assistance is a form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. Tenant-based rental assistance under this part also includes security deposits for rental of dwelling units.

Transitional housing means housing that:

(1) Is designed to provide housing and appropriate supportive services to persons, including (but not limited to) deinstitutionalized individuals with disabilities, homeless individuals with disabilities, and homeless families with children; and

(2) Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the participating jurisdiction or project owner before occupancy.

Unit of general local government means a city, town, township, county, parish, village, or other general purpose political subdivision of a State; a consortium of such political subdivisions recognized by HUD in accordance with § 92.101; and any agency or instrumentality thereof that is established pursuant to legislation and designated by the chief executive to act on behalf of the jurisdiction with regard to provisions of this part. When a county is an urban county, the urban county is the unit of general local government for purposes of the HOME Investment Partnerships Program.

Urban county has the meaning given the term in 24 CFR 570.3.

Very low-income families means low-income families whose annual incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

§ 92.4 Waivers and suspension of requirements for disaster areas.

HUD's authority for waiver of regulations and for the suspension of requirements to address damage in a Presidentially declared disaster area is

described in 24 CFR 5.110 and in section 290 of the Act, respectively.

Subpart B—Allocation Formula

§ 92.50 Formula allocation.

(a) *Jurisdictions eligible for a formula allocation.* HUD will provide allocations of funds in amounts determined by the formula described in this section to units of general local governments that, as of the end of the previous fiscal year, are metropolitan cities, urban counties, or consortia approved under § 92.101; and States.

(b) *Amounts available for allocation; State and local share.* The amount of funds that are available for allocation by the formula under this section is equal to the balance of funds remaining after reserving amounts for Indian tribes, insular areas, housing education and organizational support, other support for State and local housing strategies, and other purposes authorized by Congress, in accordance with the Act and appropriations.

(c) *Formula factors.* The formula for determining allocations uses the following factors. The first and sixth factors are weighted 0.1; the other four factors are weighted 0.2.

(1) *Vacancy-adjusted rental units* where the household head is at or below the poverty level. These rental units are multiplied by the ratio of the national rental vacancy rate over a jurisdiction's rental vacancy rate.

(2) *Occupied rental units with at least one of four problems (overcrowding, incomplete kitchen facilities, incomplete plumbing, or high rent costs).* *Overcrowding* is a condition that exists if there is more than one person per room occupying the unit. *Incomplete kitchen facilities* means the unit lacks a sink with running water, a range, or a refrigerator. *Incomplete plumbing* means the unit lacks hot and cold piped water, a flush toilet, or a bathtub or shower inside the unit for the exclusive use of the occupants of the unit. *High rent costs* occur when more than 30 percent of household income is used for rent.

(3) *Rental units built before 1950 occupied by poor families.*

(4) *Rental units described in paragraph (c)(2) of this section multiplied by the ratio of the cost of producing housing for a jurisdiction divided by the national cost.*

(5) *Number of families at or below the poverty level.*

(6) *Population of a jurisdiction multiplied by a net per capita income (pci). To compute net pci for a jurisdiction or for the nation, the pci of a three person family at the poverty*

threshold is subtracted from the pci of the jurisdiction or of the nation. The index is constructed by dividing the national net pci by the net pci of a jurisdiction.

(d) *Calculating formula allocations for units of general local government.* (1) Initial allocation amounts for units of general local government described in paragraph (a)(1) of this section are determined by multiplying the sum of the shares of the six factors in paragraph (c) of this section by 60 percent of the amount available under paragraph (b) of this section for formula allocation. The shares are the ratio of the weighted factor for each jurisdiction over the corresponding factor for the total for all of these units of general local government.

(2) If any of the initial amounts for such units of general local government in Puerto Rico exceeds twice the national average, on a per rental unit basis, that amount is capped at twice the national average.

(3) To determine the maximum number of units of general local government that receive a formula allocation, only one jurisdiction (the unit of general local government with the smallest allocation of HOME funds) is dropped from the pool of eligible jurisdictions on each successive recalculation. Then the amount of funds available for units of general local government is redistributed to all others. This recalculation/redistribution continues until all remaining units of general local government receive an allocation of \$500,000 or more. Only units of general local government which receive an allocation of \$500,000 or more under the formula will be awarded an allocation. In fiscal years in which Congress appropriates less than \$1.5 billion of HOME funds, \$335,000 is substituted for \$500,000.

(4) The allocation amounts determined under paragraph (d)(3) of this section are reduced by any amounts that are necessary to provide increased allocations to States that have no unit of general local government receiving a formula allocation (see paragraph (e)(4) of this section). These reductions are made on a prorata basis, except that no unit of general local government allocation is reduced below \$500,000 (or \$335,000 in fiscal years in which Congress appropriates less than \$1.5 billion of HOME funds).

(e) *Calculating formula allocations for States.* (1) Forty percent of the funds available for allocation under paragraph (b) of this section are allocated to States. The allocation amounts for States are calculated by determining initial amounts for each State, based on the

sum of the shares of the six factors. For 20 percent of the funds to be allocated to States, the shares are the ratio of the weighted factor for the entire State over the corresponding factor for the total for all States. For 80 percent of the funds to be allocated to States, the shares are the ratio of the weighted factor for all units of general local government within the State that do not receive a formula allocation over the corresponding factor for the total for all States.

(2) If the initial amounts for Puerto Rico (based on either or both the 80 percent of funds or 20 percent of funds calculation) exceed twice the national average, on a per rental unit basis, each amount that exceeds the national average is capped at twice the national average, and the resultant funds are reallocated to other States on a prorata basis.

(3) If the initial amounts when combined for any State are less than the \$3,000,000, the allocation to that State is increased to the \$3,000,000 and all other State allocations are reduced by an equal amount on a prorata basis, except that no State allocation is reduced below \$3,000,000.

(4) The allocation amount for each State that has no unit of general local government within the State receiving an allocation under paragraph (d) of this section is increased by \$500,000. Funds for this increase are derived from the funds available for units of general local government, in accordance with paragraph (d)(4) of this section.

Insular Areas Program

§ 92.60 Allocation amounts for insular areas.

(a) *Initial allocation amount for each insular area.* The initial allocation amount for each insular area is determined based upon the insular area's population and occupied rental units compared to all insular areas.

(b) *Threshold requirements.* The HUD Field Office shall review each insular area's progress on outstanding allocations made under this section, based on the insular area's performance report, the timeliness of close-outs, and compliance with fund management requirements and regulations, taking into consideration the size of the allocation and the degree and complexity of the program. If HUD determines from this review that the insular area does not have the capacity to administer effectively a new allocation, or a portion of a new allocation, in addition to allocations currently under administration, HUD may reduce the insular area's initial allocation amount.

(c) *Previous audit findings and outstanding monetary obligations.* HUD shall not make an allocation to an insular area that has either an outstanding audit finding for any HUD program, or an outstanding monetary obligation to HUD that is in arrears, or for which a repayment schedule has not been established. This restriction does not apply if the HUD Field Office finds that the insular area has made a good faith effort to clear the audit and, when there is an outstanding monetary obligation to HUD, the insular area has made a satisfactory arrangement for repayment of the funds due HUD and payments are current.

(d) *Increases to the initial allocation amount.* If funds reserved for the insular areas are available because HUD has decreased the amount for one or more insular areas in accordance with paragraphs (b) or (c) of this section, or for any other reason, HUD may increase the allocation amount for one or more of the remaining insular areas based upon the insular area's performance in committing HOME funds within the 24 month deadline, producing housing units described in its program description, and meeting HOME program requirements. Funds that become available but which are not used to increase the allocation amount for one or more of the remaining insular areas will be reallocated in accordance with § 92.66.

(e) *Notice of allocation amounts.* HUD will notify each insular area, in writing, as to the amount of its HOME allocation.

§ 92.61 Program description.

(a) *Submission requirement.* Not later than 90 days after HUD notifies the insular area of the amount of its allocation, the insular area must submit a program description and certifications to HUD.

(b) *Content of program description.* The program description must contain the following:

- (1) An executed Standard Form 424;
- (2) The estimated use of HOME funds and a description of projects and eligible activities, including number of units to be assisted, estimated costs, and tenure type (rental or owner occupied) and, for tenant assistance, number of households to be assisted;

(3) A timetable for the implementation of the projects or eligible activities;

(4) If the insular area intends to use HOME funds for homebuyers, the guidelines for resale or recapture as required in § 92.254(a)(5);

(5) If the insular area intends to use HOME funds for tenant-based rental assistance, a description of how the

program will be administered consistent with the minimum guidelines described in § 92.209;

(6) If an insular area intends to use other forms of investment not described in § 92.205(b), a description of the other forms of investment;

(7) A statement of the policy and procedures to be followed by the insular area to meet the requirements for affirmative marketing, and establishing and overseeing a minority and women business outreach program under § 92.351;

(8) If the insular area intends to use HOME funds for refinancing along with rehabilitation, the insular area's guidelines described in § 92.206(b).

(c) *Certifications.* The following certifications must accompany the program description:

(1) A certification that, before committing funds to a project, the insular area will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other governmental assistance than is necessary to provide affordable housing;

(2) If the insular area intends to provide tenant-based rental assistance, the certification required by § 92.209;

(3) A certification that the submission of the program description is authorized under applicable law and the insular area possesses the legal authority to carry out the HOME Investment Partnerships Program, in accordance with the HOME regulations;

(4) A certification that it will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of § 92.353;

(5) A certification that the insular area will use HOME funds in compliance with all requirements of this part;

(6) The certification with regard to the drug-free workplace required by 24 CFR part 24, subpart F; and

(7) The certification required with regard to lobbying required by 24 CFR part 87, together with disclosure forms, if required by 24 CFR part 87.

§ 92.62 Review of program description and certifications.

(a) *Review of program description.* The responsible HUD Field Office will review an insular area's program description and will approve the description unless the insular area has failed to submit information sufficient to allow HUD to make the necessary determinations required for § 92.61

(b)(4), (b)(6), and (b)(7), or the guidelines under (b)(8) are not satisfactory to HUD, if applicable; or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs. If the insular area has not submitted information on § 92.61 (b)(4), (b)(6), and (b)(7), or the guidelines under (b)(8) are not satisfactory to HUD, if applicable; or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, the insular area may be required to furnish such further information or assurances as HUD may consider necessary to find the program description and certifications satisfactory. The HUD Field Office shall work with the insular area to achieve a complete and satisfactory program description.

(b) *Review period.* Within thirty days of receipt of the program description, the HUD Field Office will notify the insular area if determinations cannot be made under § 92.61 (b)(4), (b)(6), (b)(7), or (b)(8) with the supporting information submitted, or if the proposed projects or activities are beyond currently demonstrated capability. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information or to revise the proposed projects or activities in its program description.

(c) *HOME Investment Partnership Agreement.* After HUD Field Office approval under this section, a HOME funds allocation is made by HUD execution of the agreement, subject to execution by the insular area. The funds are obligated on the date HUD notifies the insular area of HUD's execution of the agreement.

§ 92.63 Amendments to program description.

An insular area must submit to HUD for approval any substantial change in its HUD-approved program description that it makes and must document any other changes in its file. A substantial change involves a change in the guidelines for resale or recapture (§ 92.61(b)(4)), other forms of investment (§ 92.61(b)(6)), minority and women business outreach program (§ 92.61(b)(7)) or refinancing (§ 92.61(b)(8)); or a change in the tenure type of the project or activities; or a funding increase to a project or activity of \$100,000 or 50% (whichever is greater). The HUD Field Office will notify the insular area if its program

description, as amended, does not permit determinations to be made under § 92.61 (b)(4), (b)(6), (b)(7), or (b)(8), or if the level of proposed projects or eligible activities is not within the management capability demonstrated by past performance in housing and community development programs, within 30 days of receipt. The insular area will have a reasonable period of time, agreed upon mutually, to submit the necessary supporting information to revise the proposed projects or activities in its program description.

§ 92.64 Applicability of requirements to insular areas.

(a) Insular areas are subject to the same requirements in subpart E (Program Requirements), subpart F (Project Requirements), subpart K (Program Administration), and subpart L (Performance Reviews and Sanctions) of this part as participating jurisdictions, except for the following:

(1) Subpart E (Program Requirements): Administrative costs, as described in § 92.207, are eligible costs for insular areas in an amount not to exceed 15 percent of the HOME funds provided to the insular area. The matching contribution requirements in this part do not apply.

(2) Subpart K (Program Administration):

(i) Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury for each insular area and the HOME funds must be used for approved activities. A local account must be established for program income. Each insular area may use either a separate local HOME account or a subsidiary account within its general fund (or other appropriate fund) as the local HOME account. HUD will recapture HOME funds in the HOME Treasury account by the amount of:

(A) Any funds that are not committed within 24 months after the last day of the month in which HUD notifies the insular area of HUD's execution of the HOME Investment Partnership Agreement;

(B) Any funds that are not expended within five years after the last day of the month in which HUD notifies the insular area of HUD's execution of the HOME Investment Partnership Agreement; and

(C) Any penalties assessed by HUD under § 92.552.

(ii) Section 92.502 (Program disbursement and information system) applies, except that references to the HOME Investment Trust Fund mean HOME account. In addition, § 92.502(c) does not apply, and instead compliance

with Treasury Circular No. 1075 (31 CFR part 205) and 24 CFR 85.21 is required.

(iii) Section 92.503 (Program income, repayments, and recaptured funds) applies, except that the funds may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.

(3) Section 92.504 (Participating jurisdiction responsibilities; written agreements; on-site inspections) applies, except that the written agreement must ensure compliance with the requirements in this section.

(4) Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.

(5) Section 92.509 (Performance reports) applies, except that a performance report is required for the fiscal year allocation only after completion of the approved projects funded by the allocation.

(6) Subpart L (Performance Reviews and Sanctions): Section 92.552 does not apply. Instead, § 92.65 applies.

(b) The requirements of subpart H (Other Federal Requirements) of this part apply as follows: § 92.357 Executive Order 12372 applies as written, and the requirements of the remaining sections which apply to participating jurisdictions are applicable to the insular areas.

(c) Subpart B (Allocation Formula), subpart C (Consortia; Designation and Revocation as a Participating Jurisdiction), subpart D (Submission Requirements), and subpart G (Community Housing Development Organizations) of this part do not apply.

(d) Subpart A (General) applies, except that for the definitions of "commitment", "program income", and "subrecipient", "participating jurisdiction" means "insular area."

§ 92.65 Funding sanctions.

Following notice and opportunity for informal consultation, HUD may withhold, reduce or terminate the assistance where any corrective or remedial actions taken under § 92.551 fail to remedy an insular area's performance deficiencies, and the deficiencies are sufficiently substantial, in the judgment of HUD, to warrant sanctions.

§ 92.66 Reallocation.

Any HOME funds which are reduced or recaptured from an insular area's allocation and which are not used to increase the allocation amount for one or more of the remaining insular areas as provided in § 92.60 of this part, will be reallocated by HUD to the States in

accordance with the requirements in subpart J for reallocating funds initially allocated to a State.

Subpart C—Consortia; Designation and Revocation of Designation as a Participating Jurisdiction

§ 92.100 [Reserved]

§ 92.101 Consortia.

(a) A consortium of geographically contiguous units of general local government is a unit of general local government for purposes of this part if the requirements of this section are met.

(1) One or more members of a proposed consortium or an existing consortium whose consortium qualification terminates at the end of the fiscal year, must provide written notification by March 1 to the HUD Field Office of its intent to participate as a consortium in the HOME Program for the following fiscal year. Provided that subsequent deadlines could be met, the Field Office may accept notification at a later date.

(2) The proposed consortium must provide, at such time and in a manner and form prescribed by HUD, the qualification documents, which will include submission of:

(i) A written certification by the State that the consortium will direct its activities to alleviation of housing problems within the State; and

(ii) Documentation which demonstrates that the consortium has executed one legally binding cooperation agreement among its members authorizing one member unit of general local government to act in a representative capacity for all member units of general local government for the purposes of this part and providing that the representative member assumes overall responsibility for ensuring that the consortium's HOME Program is carried out in compliance with the requirements of this part.

(3) Before the end of the fiscal year in which the notice of intent and documentation are submitted, HUD must determine that the consortium has sufficient authority and administrative capability to carry out the purposes of this part on behalf of its member jurisdictions. HUD will endeavor to make its determination as quickly as practicable after receiving the consortium's documentation in order to provide the consortium an opportunity to correct its submission, if necessary. If the submission is deficient, HUD will work with the consortium to resolve the issue, but will not delay the formula allocations.

(b) A metropolitan city or an urban county may be a member of a

consortium. A unit of general local government that is included in an urban county may be part of a consortium, only if the urban county joins the consortium. The included local government cannot join the consortium except through participation in the urban county.

(c) A non-urban county may be a member of a consortium. However, the county cannot on its own include the whole county in the consortium. A unit of local government located within the non-urban county that wishes to participate as a member of the consortium must sign the HOME consortium agreement.

(d) If the representative unit of general local government distributes HOME funds to member units of general local government, the representative unit is responsible for applying to the member units of general local government the same requirements as are applicable to subrecipients.

(e) The consortium's qualification as a unit of general local government continues for a period of three successive Federal fiscal years, or until HUD revokes its designation as a participating jurisdiction, or until an urban county member fails to requalify under the CDBG program as an urban county for a fiscal year included in the consortium's qualification period, or the consortium fails to receive a HOME allocation for the first Federal fiscal year of the consortium's qualification period and does not request to be considered to receive a HOME allocation in each of the subsequent two years. However, if a member urban county's three year CDBG qualification cycle is not the same as the consortium, the consortium may elect a shorter qualification period than three years to synchronize with the urban county's qualification period. During the period of qualification, additional units of general local government may join the consortium, but no included unit of general local government may withdraw from the consortium. See 24 CFR part 91, subpart E, for consolidated plan requirements for consortia, including the requirement that all members of the consortia must be on the same program year.

§ 92.102 Participation threshold amount.

(a) To be eligible to become a participating jurisdiction, a unit of general local government must have a formula allocation under § 92.50 that is equal to or greater than \$750,000; or

(b) If a unit of general local government's formula allocation is less than \$750,000, HUD must find:

(1) The unit of general local government has a local PHA and has

demonstrated a capacity to carry out the provisions of this part, as evidenced by satisfactory performance under one or more HUD-administered programs that provide assistance for activities comparable to the eligible activities under this part; and

(2) The State has authorized HUD to transfer to the unit of general local government a portion of the State's allocation or the State, the unit of general local government, or both, has made available its own resources such that the sum of the amounts transferred or made available are equal to or greater than the difference between the unit of general local government's formula allocation and \$750,000.

(c) In fiscal years in which Congress appropriates less than \$1.5 billion for this part, \$500,000 is substituted for \$750,000 each time it appears in this section.

§ 92.103 Notification of intent to participate.

(a) Not later than 30 days after receiving notice of its formula allocation amount, a jurisdiction must notify HUD in writing of its intention to become a participating jurisdiction.

(b) A unit of general local government that has a formula allocation of less than \$750,000, or less than \$500,000 in fiscal years in which Congress appropriates less than \$1.5 billion for this part, must submit, with its notice, one or more of the following, as appropriate, as evidence that it has met the threshold allocation requirements in § 92.102(b):

(1) Authorization from the State to transfer a portion of its allocation to the unit of general local government;

(2) A letter from the governor or designee indicating that the required funds have been approved and budgeted for the unit of general local government;

(3) A letter from the chief executive officer of the unit of general local government indicating that the required funds have been approved and budgeted.

§ 92.104 Submission of a consolidated plan.

A jurisdiction that has not submitted a consolidated plan to HUD must submit to HUD, not later than 90 days after providing notification under § 92.103, a consolidated plan in accordance with 24 CFR part 91.

§ 92.105 Designation as a participating jurisdiction.

When a jurisdiction has complied with the requirements of §§ 92.102 through 92.104 and HUD has approved the jurisdiction's consolidated plan in accordance with 24 CFR part 91, HUD

will designate the jurisdiction as a participating jurisdiction.

§ 92.106 Continuous designation as a participating jurisdiction.

Once a State or unit of general local government is designated a participating jurisdiction, it remains a participating jurisdiction for subsequent fiscal years and the requirements of §§ 92.102 through 92.105 do not apply, unless HUD revokes the designation in accordance with § 92.107.

§ 92.107 Revocation of designation as a participating jurisdiction.

HUD may revoke a jurisdiction's designation as a participating jurisdiction if:

(a) HUD finds, after reasonable notice and opportunity for hearing as provided in § 92.552(b) that the jurisdiction is unwilling or unable to carry out the provisions of this part, including failure to meet matching contribution requirements; or

(b) The jurisdiction's formula allocation falls below \$750,000 (or below \$500,000 in fiscal years in which Congress appropriates less than \$1.5 billion for this part) for three consecutive years, below \$625,000 (or below \$410,000 in fiscal years in which Congress appropriates less than \$1.5 billion for this part) for two consecutive years, or the jurisdiction does not receive a formula allocation in any one year.

(c) When HUD revokes a participating jurisdiction's designation as a participating jurisdiction, HUD will reallocate any remaining funds in the jurisdiction's HOME Investment Trust Fund established under § 92.500 in accordance with § 92.451.

Subpart D—Submission Requirements

§ 92.150 Submission requirements.

In order to receive its HOME allocation, a participating jurisdiction must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the consolidated plan, the process of developing the consolidated plan, including citizen participation, the submission date, HUD approval, and amendments.

Subpart E—Program Requirements

§ 92.200 Private-public partnership.

Each participating jurisdiction must make all reasonable efforts to maximize participation by the private sector in accordance with section 221 of the Act.

§ 92.201 Distribution of assistance.

(a) *Local.* (1) Each local participating jurisdiction must, insofar as is feasible,

distribute HOME funds geographically within its boundaries and among different categories of housing need, according to the priorities of housing need identified in its approved consolidated plan.

(2) The participating jurisdiction may only invest its HOME funds in eligible projects within its boundaries, or in joint projects within the boundaries of contiguous local jurisdictions which serve residents from both jurisdictions.

(b) *State.* (1) Each State participating jurisdiction is responsible for distributing HOME funds throughout the State according to the State's assessment of the geographical distribution of the housing needs within the State, as identified in the State's approved consolidated plan. The State must distribute HOME funds to rural areas in amounts that take into account the non-metropolitan share of the State's total population and objective measures of rural housing need, such as poverty and substandard housing, as set forth in the State's approved consolidated plan. To the extent the need is within the boundaries of a participating unit of general local government, the State and the unit of general local government shall coordinate activities to address that need.

(2) A State may carry out its own HOME program without active participation of units of general local government or may distribute HOME funds to units of general local government to carry out HOME programs in which both the State and all or some of the units of general local government perform specified program functions. A unit of general local government designated by a State to receive HOME funds from a State is a State recipient.

(3) (i) A State that uses State recipients to perform program functions shall ensure that the State recipients use HOME funds in accordance with the requirements of this part and other applicable laws. The State may require the State recipient to comply with requirements established by the State or may permit the State recipient to establish its own requirements to comply with this part.

(ii) The State shall conduct such reviews and audit of its State recipients as may be necessary or appropriate to determine whether the State recipient has committed and expended the HOME funds in the United States Treasury account as required by § 92.500, and has met the requirements of this part, particularly eligible activities, income targeting, affordability, and matching contribution requirements.

(4) A State and local participating jurisdiction may jointly fund a project within the boundaries of the local participating jurisdiction. The State may provide the HOME funds to the project or it may provide the HOME funds to the local participating jurisdiction to fund the project.

(5) A State may fund projects on Indian reservations located within the State provided that the State includes Indian reservations in its consolidated plan.

§ 92.202 Site and neighborhood standards.

(a) *General.* A participating jurisdiction must administer its HOME program in a manner that provides housing that is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d—2000d—4), the Fair Housing Act (42 U.S.C. 3601 *et seq.*, E.O. 11063 (3 CFR, 1959–1963 Comp., p. 652), and HUD regulations issued pursuant thereto; and promotes greater choice of housing opportunities.

(b) *New rental housing.* In carrying out these requirements with respect to new construction of rental housing, a participating jurisdiction must follow 24 CFR 893.6(b).

§ 92.203 Income determinations.

(a) The HOME program has income targeting requirements for the HOME program and for HOME projects. Therefore, the participating jurisdiction must determine each family is income eligible by determining the family's annual income.

(1) For families who are tenants in HOME-assisted housing and not receiving HOME tenant-based rental assistance, the participating jurisdiction must determine annual income by one of the following methods:

(i) Examine the source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

(ii) Obtain from the family a written statement of the amount of the family's annual income and family size, along with a certification that the information is complete and accurate. The certification must state that the family will provide source documents upon request.

(iii) Obtain a written statement from the administrator of a government program under which the family receives benefits and which examines each year the annual income of the family. The statement must indicate the tenant's family size and state the amount of the family's annual income;

or alternatively, the statement must indicate the current dollar limit for very low- or low-income families for the family size of the tenant and state that the tenant's annual income does not exceed this limit.

(2) For all other families, the participating jurisdiction must determine annual income by examining the source documents evidencing annual income (e.g., wage statement, interest statement, unemployment compensation statement) for the family.

(b) When determining whether a family is income eligible, the participating jurisdiction must use one of the following three definitions of "annual income":

(1) "Annual income" as defined under the Section 8 Housing Assistance Payments programs in 24 CFR part 813 (except when determining the income of a homeowner for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family Assets); or

(2) Annual Income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(i) Wages, salaries, tips, commissions, etc.;

(ii) Self-employment income from owned non-farm business, including proprietorships and partnerships;

(iii) Farm self-employment income;

(iv) Interest, dividends, net rental income, or income from estates or trusts;

(v) Social Security or railroad retirement;

(vi) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(vii) Retirement, survivor, or disability pensions; and

(viii) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

(3) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

(c) When determining the adjusted income of a family, the participating jurisdiction must use the definition of "adjusted income" for the Section 8 Housing Assistance Payments programs in 24 CFR part 813, except that the participating jurisdiction may use any of the three definitions of "annual income" permitted in paragraph (a) of this section. The HOME rents for very low-income families are based on adjusted income. See § 92.252. In addition, the participating jurisdiction

may base the amount of tenant-based rental assistance on the adjusted income of the family.

(d) (1) The participating jurisdiction must calculate the annual income of the family by projecting the prevailing rate of income of the family at the time the participating jurisdiction determines that the family is income eligible. Annual income shall include income from all family members. Income or asset enhancement derived from the HOME-assisted project shall not be considered in calculating annual income.

(2) The participating jurisdiction is not required to re-examine the family's income at the time the HOME assistance is provided, unless more than six months has elapsed since the participating jurisdiction determined that the family qualified as income eligible.

§ 92.204 Applicability of requirements to entities that receive a reallocation of HOME funds, other than participating jurisdictions.

(a) Jurisdictions other than participating jurisdictions and community housing development organizations receiving competitive reallocations from HUD are subject to the same requirements in subpart E (Program Requirements), subpart F (Project Requirements), subpart K (Program Administration), and subpart L (Performance Reviews and Sanctions) of this part as participating jurisdictions, except for the following:

(1) Subpart E (Program Requirements): the matching contribution requirements in § 92.218 through § 92.221 do not apply.

(2) Subpart K (Program Administration):

(i) Section 92.500 (The HOME Investment Trust Fund) does not apply. HUD will establish a HOME account in the United States Treasury and the HOME funds must be used for approved activities. A local account must be established for program income. HUD will recapture HOME funds in the HOME Treasury account by the amount of:

(A) Any funds that are not committed within 24 months after the last day of the month in which HUD notifies the entity of HUD's execution of the HOME Investment Partnership Agreement;

(B) Any funds that are not expended within five years after the last day of the month in which HUD notifies the entity of HUD's execution of the HOME Investment Partnership Agreement; and

(C) Any penalties assessed by HUD under § 92.552.

(ii) Section 92.502 (Program disbursement and information system)

applies, except that references to the HOME Investment Trust Fund mean HOME account and the reference to 24 CFR part 58 does not apply. In addition, § 92.502(c) does not apply, and instead, compliance with Treasury Circular No. 1075 (31 CFR part 205) and 24 CFR 85.21 is required.

(iii) Section 92.503 (Program income, repayments, and recaptured funds) applies, except that program income may be retained provided the funds are used for eligible activities in accordance with the requirements of this section.

(3) Section 92.504 (Participating jurisdiction responsibilities; written agreements; on-site inspections) applies, except that the written agreement must ensure compliance with the requirements in this section.

(4) Section 92.508 (Recordkeeping) applies with respect to the records that relate to the requirements of this section.

(5) Section 92.509 (Performance reports) applies, except that a performance report is required only after completion of the approved projects.

(b) The requirements in subpart H (Other Federal Requirements) of this part apply as written, except that jurisdictions and community housing development organizations receiving reallocations from HUD must comply with affirmative marketing requirements, labor requirements, and lead-based paint requirements, applicable to participating jurisdictions.

(c) Subpart B (Allocation Formula), subpart C (Consortia; Designation and Revocation of Designation as a Participating Jurisdiction), and subpart G (Community Housing Development Organizations) of this part do not apply.

(d) Subpart A (General) applies, except that for the definitions of *commitment*, *program income*, and *subrecipient*, "participating jurisdiction" means jurisdiction or community housing development organization receiving the competitive reallocation.

Eligible and Prohibited Activities

§ 92.205 Eligible activities: general.

(a) *Eligible activities.* (1) HOME funds may be used by a participating jurisdiction to provide incentives to develop and support affordable rental housing and homeownership affordability through the acquisition (including assistance to homebuyers), new construction, reconstruction, or rehabilitation of non-luxury housing with suitable amenities, including real property acquisition, site improvements, conversion, demolition, and other

expenses, including financing costs, relocation expenses of any displaced persons, families, businesses, or organizations; to provide tenant-based rental assistance, including security deposits; to provide payment of reasonable administrative and planning costs; and to provide for the payment of operating expenses of community housing development organizations. The housing must be permanent or transitional housing. The specific eligible costs for these activities are set forth in §§ 92.206 through 92.209.

(2) Acquisition of vacant land or demolition must be undertaken only with respect to a particular housing project intended to provide affordable housing.

(3) Conversion of an existing structure to affordable housing is rehabilitation, unless the conversion entails adding one or more units beyond the existing walls, in which case, the project is new construction for purposes of this part.

(4) *Manufactured housing.* HOME funds may be used to purchase and/or rehabilitate a manufactured housing unit, or purchase the land upon which a manufactured housing unit is located. Except for existing, owner-occupied manufactured housing that is rehabilitated with HOME funds, the manufactured housing unit must, at the time of project completion, be connected to permanent utility hook-ups and be located on land that is owned by the manufactured housing unit owner or land for which the manufactured housing owner has a lease for a period at least equal to the applicable period of affordability.

(b) *Forms of assistance.* (1) A participating jurisdiction may invest HOME funds as equity investments, interest-bearing loans or advances, non-interest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this part. Each participating jurisdiction has the right to establish the terms of assistance, subject to the requirements of this part.

(2) A participating jurisdiction may invest HOME funds to guarantee loans made by lenders and, if required, the participating jurisdiction may establish a loan guarantee account with HOME funds. The HOME funds may be used to guarantee the timely payment of principal and interest or payment of the outstanding principal and interest upon foreclosure of the loan. The amount of the loan guarantee account must be based on a reasonable estimate of the default rate on the guaranteed loans, but

under no circumstances may the amount on deposit exceed 20 percent of the total outstanding principal amount guaranteed; except that the account may include a reasonable minimum balance. While loan funds guaranteed with HOME funds are subject to all HOME requirements, funds which are used to repay the guaranteed loans are not.

(c) *Minimum amount of assistance.* The minimum amount of HOME funds that must be invested in a project involving rental housing or homeownership is \$1,000 times the number of HOME-assisted units in the project.

(d) *Multi-unit projects.* HOME funds may be used to assist one or more housing units in a multi-unit project. Only the actual HOME eligible development costs (i.e. costs eligible under § 92.206(a), (b) or (c) of the assisted units may be charged to the HOME program. If the assisted and non-assisted units are not comparable, the actual costs may be determined based on a method of cost allocation. If the assisted and non-assisted units are comparable in terms of size, features and number of bedrooms, the actual cost of the HOME-assisted units can be determined by pro-rating the total HOME eligible development costs of the project so that the proportion of the total development costs charged to the HOME program does not exceed the proportion of the HOME-assisted units in the project.

(e) *Terminated projects.* A HOME assisted project that is terminated before completion, either voluntarily or otherwise, constitutes an ineligible activity and any HOME funds invested in the project must be repaid to the participating jurisdiction's HOME Investment Trust Fund in accordance with § 92.503(b) (except for project-specific assistance to community housing development organizations as provided in § 92.301(a)(3) and § 92.301(b)(3)).

§ 92.206 Eligible project costs.

HOME funds may be used to pay the following eligible costs:

(a) *Development hard costs.* The actual cost of constructing or rehabilitating housing. These costs include the following:

(1) For new construction, costs to meet the applicable new construction standards of the participating jurisdiction and the Model Energy Code referred to in § 92.251;

(2) For rehabilitation, costs:

(i) To meet the property standards in § 92.251;

(ii) To make essential improvements, including energy-related repairs or

improvements, improvements necessary to permit use by persons with disabilities, and the abatement of lead-based paint hazards, as required by § 92.355, and to repair or replace major housing systems in danger of failure; and

(3) For both new construction and rehabilitation, costs:

(i) To demolish existing structures;

(ii) To make utility connections including off-site connections from the property line to the adjacent street; and

(iii) To make improvements to the project site that are in keeping with improvements of surrounding, standard projects. Site improvements may include on-site roads and sewer and water lines necessary to the development of the project. The project site is the property, owned by the project owner, upon which the project is located.

(4) For both new construction and rehabilitation of multifamily rental housing, costs to construct or rehabilitate laundry and community facilities which are located within the same building as the housing and which are for the use of the project residents and their guests.

(b) *Refinancing costs.* The cost to refinance existing debt secured by housing that is being rehabilitated with HOME funds:

(1) For single-family (1- to 4-family) owner-occupied housing when loaning HOME funds to rehabilitate the housing, if the refinancing is necessary to reduce the overall housing costs to the borrower and make the housing more affordable.

(2) For multifamily projects, when loaning HOME funds to rehabilitate the units if refinancing is necessary to permit or continue affordability under § 92.252. The participating jurisdiction must establish refinancing guidelines and state them in its consolidated plan described in 24 CFR part 91. Regardless of the amount of HOME funds invested, the minimum affordability period shall be 15 years. The guidelines shall describe the conditions under which the participating jurisdictions will refinance existing debt. At minimum, the guidelines must:

(i) Demonstrate that rehabilitation is the primary eligible activity and ensure that this requirement is met by establishing a minimum level of rehabilitation per unit or a required ratio between rehabilitation and refinancing;

(ii) Require a review of management practices to demonstrate that disinvestment in the property has not occurred, that the long term needs of the project can be met and that the

feasibility of serving the targeted population over an extended affordability period can be demonstrated;

(iii) State whether the new investment is being made to maintain current affordable units, create additional affordable units, or both;

(iv) Specify the required period of affordability, whether it is the minimum 15 years or longer;

(v) Specify whether the investment of HOME funds may be jurisdiction-wide or limited to a specific geographic area, such as a neighborhood identified in a neighborhood revitalization strategy under 24 CFR 91.215(e)(2) or a Federally designated Empowerment Zone or Enterprise Community; and

(vi) State that HOME funds cannot be used to refinance multifamily loans made or insured by any Federal program, including CDBG.

(c) *Acquisition costs.* Costs of acquiring improved or unimproved real property, including acquisition by homebuyers.

(d) *Related soft costs.* Other reasonable and necessary costs incurred by the owner or participating jurisdiction and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds. These costs include, but are not limited to:

(1) Architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups.

(2) Costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees.

(3) Costs of a project audit that the participating jurisdiction may require with respect to the development of the project.

(4) Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants as required by § 92.351.

(5) For new construction or rehabilitation, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) and which may only be used to pay project operating expenses, scheduled payments to a replacement reserve, and debt service. Any HOME funds placed in an operating deficit reserve that

remain unexpended after the period of project rent-up may be retained for project reserves if permitted by the participating jurisdiction.

(6) Staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing inspections, and other services related to assisting potential owners, tenants, and homebuyers, e.g., housing counseling, may be charged to project costs only if the project is funded and the individual becomes the owner or tenant of the HOME-assisted project. For multi-unit projects, such costs must be allocated among HOME-assisted units in a reasonable manner and documented.

(7) For both new construction and rehabilitation, costs for the payment of impact fees that are charged for all projects within a jurisdiction.

(8) Costs of environmental review and release of funds in accordance with 24 CFR Part 58 which are directly related to the project.

(e) *Community housing development organization costs.* Eligible costs of project-specific assistance are set forth in § 92.301.

(f) *Relocation costs.* The cost of relocation payments and other relocation assistance to persons displaced by the project are eligible costs.

(1) Relocation payments include replacement housing payments, payments for moving expenses, and payments for reasonable out-of-pocket costs incurred in the temporary relocation of persons.

(2) Other relocation assistance means staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship.

(g) *Costs relating to payment of loans.* If the HOME funds are not used to directly pay a cost specified in this section, but are used to pay off a construction loan, bridge financing loan, or guaranteed loan, the payment of principal and interest for such loan is an eligible cost only if:

(1) The loan was used for eligible costs specified in this section, and

(2) The HOME assistance is part of the original financing for the project and the project meets the requirements of this part.

§ 92.207 Eligible administrative and planning costs.

A participating jurisdiction may expend, for payment of reasonable administrative and planning costs of the HOME program, an amount of HOME funds that is not more than ten percent of the fiscal year HOME basic formula allocation plus any funds received in accordance with § 92.102(b) to meet or exceed participation threshold requirements that fiscal year. A State that transfers any HOME funds in accordance with § 92.102(b) must exclude these funds in calculating the amount it may expend for administrative and planning costs. A participating jurisdiction may also use up to ten percent of the program income deposited in its local HOME account during the program year, for administrative and planning costs. Reasonable administrative and planning costs include:

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the participating jurisdiction's staff. In charging costs to this category the participating jurisdiction may either include the entire salary, wages, and related costs allocable to the program of each person whose *primary* responsibilities with regard to the program involves program administration assignments, or the prorated share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The participating jurisdiction may use only one of these methods. Program administration includes the following types of assignments:

(i) Developing systems and schedules for ensuring compliance with program requirements;

(ii) Developing interagency agreements and agreements with entities receiving HOME funds;

(iii) Monitoring HOME-assisted housing for progress and compliance with program requirements;

(iv) Developing agreements and monitoring housing not assisted with HOME funds that the participating jurisdiction designates as a matching contribution in accordance with § 92.219(b) for compliance with applicable program requirements;

(v) Preparing reports and other documents related to the program for submission to HUD;

(vi) Coordinating the resolution of audit and monitoring findings;

(vii) Evaluating program results against stated objectives; and

(viii) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraphs (a)(1)(i) through (vii) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services;

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space; and

(5) Costs of administering tenant-based rental assistance programs.

(b) *Staff and overhead.* Staff and overhead costs directly related to carrying out the project, such as work specifications preparation, loan processing, inspections, and other services related to assisting potential owners, tenants, and homebuyers (e.g., housing counseling); and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs or as project costs under § 92.206 (d)(6) and (f)(2), at the discretion of the participating jurisdiction.

(c) *Public information.* The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with HOME funds.

(d) *Fair housing.* Activities to affirmatively further fair housing in accordance with the participating jurisdiction's certification under 24 CFR part 91.

(e) *Indirect Costs.* Indirect costs may be charged to the HOME program under a cost allocation plan prepared in accordance with OMB Circulars A-87 or A-122 as applicable.

(f) *Preparation of the consolidated plan.* Preparation of the consolidated plan required under 24 CFR part 91. Preparation includes the costs of public

hearings, consultations, and publication.

(g) *Other Federal requirements.* Costs of complying with the Federal requirements in subpart H of this part. Project-specific environmental review costs may be charged as administrative costs or as project costs in accordance with § 92.206(d)(8), at the discretion of the participating jurisdiction.

§ 92.208 Eligible community housing development organization (CHDO) operating expense and capacity building costs.

(a) Up to 5 percent of a participating jurisdiction's fiscal year HOME allocation may be used for the operating expenses of community housing development organizations (CHDOs). These funds may not be used to pay operating expenses incurred by a CHDO acting as a subrecipient or contractor under the HOME Program. Operating expenses means reasonable and necessary costs for the operation of the community housing development organization. Such costs include salaries, wages, and other employee compensation and benefits; employee education, training, and travel; rent; utilities; communication costs; taxes; insurance; equipment; materials and supplies. The requirements and limitations on the receipt of these funds by CHDOs are set forth in § 92.300 (e) and (f).

(b) HOME funds may be used for capacity building costs under § 92.300(b).

§ 92.209 Tenant-based rental assistance: Eligible costs and requirements.

(a) *Eligible costs.* Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family pursuant to this section. Administration of tenant-based rental assistance is eligible only under general management oversight and coordination at § 92.207(a).

(b) *General requirement.* A participating jurisdiction may use HOME funds for tenant-based rental assistance only if the participating jurisdiction makes the certification about inclusion of this type of assistance in its consolidated plan in accordance with 24 CFR 91.225(d)(1), 91.325(d)(1), or 91.425(a)(2)(i), and specifies local market conditions that lead to the choice of this option.

(c) *Tenant selection.* The participating jurisdiction must select families in accordance with written tenant selection policies and criteria that are consistent with the following:

(1) *Low-income families.* Tenant-based rental assistance may only be

provided to very low- and low-income families. The participating jurisdiction must determine that the family is very low- or low-income before the assistance is provided. During the period of assistance, the participating jurisdiction must annually determine that the family continues to be low-income.

(2) *Federal preferences.* At least 50 percent of the families assisted must qualify, or would qualify in the near future without tenant-based rental assistance, for one of the three Federal preferences under section 6(c)(4)(A) of the 1937 Act. These are families that occupy substandard housing (including families that are homeless or living in a shelter for homeless families); families that are paying more than 50 percent of their annual income for rent; or families that are involuntarily displaced. [For FY 1995 only, a Federal preference is also given to families that include one or more adult members who are employed. For FY 1996 only, the Federal preferences do not apply.]

(3) *Preferences for Individuals with Special Needs.* (i) The participating jurisdiction may establish a preference for individuals with special needs. The participating jurisdiction may offer, in conjunction with a tenant-based rental assistance program, particular types of non-mandatory services that may be most appropriate for persons with a special need or a particular disability. Generally, tenant-based rental assistance and the related services should be made available to all persons with special needs or disabilities who can benefit from such services.

(ii) The participating jurisdiction may also provide a preference for a specific category of individuals with disabilities (e.g., persons with HIV/AIDS or chronic mental illness) if the specific category is identified in the participating jurisdiction's consolidated plan as having unmet need and the preference is needed to narrow the gap in benefits and services received by such persons.

(iii) Preferences cannot be administered in a manner that limits the opportunities of persons on any basis prohibited by the laws listed under 24 CFR 5.105(a). For example, a participating jurisdiction may not determine that persons given a preference under the program are therefore prohibited from applying for or participating in other programs or forms of assistance.

(iv) To the extent that a participating jurisdiction is operating a tenant-based rental assistance program targeted exclusively to individuals with special needs or disabilities or to a specific category of individuals with special

needs or disabilities, at least 50% of the individuals must qualify or would qualify in the near future for one of the three Federal preferences as described in paragraph (c)(2) of this section.

(4) *Existing tenants in the HOME-assisted projects.* A participating jurisdiction may select low-income families currently residing in housing units that are designated for rehabilitation or acquisition under the participating jurisdiction's HOME program without requiring that the family meet the requirements of paragraph (c)(2) of this section. Families so selected may use the tenant-based assistance in the rehabilitated or acquired housing unit or in other qualified housing.

(d) *Portability of assistance.* A participating jurisdiction may require the family to use the tenant-based assistance within the participating jurisdiction's boundaries or may permit the family to use the assistance outside its boundaries.

(e) *Term of rental assistance contract.* The term of the rental assistance contract providing assistance with HOME funds may not exceed 24 months, but may be renewed, subject to the availability of HOME funds. The term of the rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between a participating jurisdiction and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between a participating jurisdiction and a family, the term of the contract need not end on termination of the lease, but no payments may be made after termination of the lease until a family enters into a new lease.

(f) *Rent reasonableness.* The participating jurisdiction must disapprove a lease if the rent is not reasonable, based on rents that are charged for comparable unassisted rental units.

(g) *Tenant protections.* The lease must comply with the requirements in § 92.253 (a) and (b).

(h) *Maximum subsidy.* (1) The amount of the monthly assistance that a participating jurisdiction may pay to, or on behalf of, a family may not exceed the difference between a rent standard for the unit size established by the participating jurisdiction and 30 percent of the family's monthly adjusted income.

(2) The participating jurisdiction must establish a minimum tenant contribution to rent.

(3) The participating jurisdiction's rent standard for a unit size must be based on:

(i) Local market conditions; or
(ii) For each unit size, may not be less than 80 percent of the published Section 8 Existing Housing fair market rent (in effect when the payment standard amount is adopted) nor more than the fair market rent or HUD-approved community-wide exception rent (in effect when the participating jurisdiction adopts its rent standard amount). (Community-wide exception rents are maximum gross rents approved by HUD for the Rental Certificate Program under 24 CFR 882.106(a)(3) for a designated municipality, county, or similar locality, which apply to the whole PHA jurisdiction.) A

participating jurisdiction may approve on a unit-by-unit basis a subsidy based on a rent standard that exceeds the applicable fair market rent by up to 10 percent for 20 percent of units assisted.

(i) *Housing quality standards.* Housing occupied by a family receiving tenant-based assistance under this section must meet the requirements set forth in 24 CFR 982.401. The participating jurisdiction must inspect the housing initially and re-inspect it annually.

(j) *Security deposits.* (1) A participating jurisdiction may use HOME funds provided for tenant-based rental assistance to provide loans or grants to very low- and low-income families for security deposits for rental of dwelling units whether or not the participating jurisdiction provides any other tenant-based rental assistance under this section.

(2) The relevant State or local definition of "security deposit" in the jurisdiction where the unit is located is applicable for the purposes of this part, except that the amount of HOME funds that may be provided for a security deposit may not exceed the equivalent of two month's rent for the unit.

(3) Only the prospective tenant may apply for HOME security deposit assistance, although the participating jurisdiction may pay the funds directly to the tenant or to the landlord.

(4) HOME funds for security deposits may be provided as a grant or as a loan. If they are provided as a loan, the loan repayments are program income to be used in accordance with § 92.503.

(5) Paragraphs (b), (c), (d), (f), (g), and (i) of this section are applicable to HOME security deposit assistance.

(k) *Program operation.* A tenant-based rental assistance program must be operated consistent with the requirements of this section. The participating jurisdiction may operate

the program itself, or may contract with a PHA or other entity with the capacity to operate a rental assistance program. The tenant-based rental assistance may be provided through an assistance contract to an owner that leases a unit to an assisted family or directly to the family. In either case, the participating jurisdiction (or entity operating the program) must approve the lease.

(l) *Use of Section 8 assistance.* In any case where assistance under section 8 of the 1937 Act becomes available to a participating jurisdiction, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the tenant-based rental assistance under this part.

§ 92.212 Pre-award costs.

(a) *General.* Before the effective date of the HOME Investment Partnership Agreement, the participating jurisdiction may incur costs which may be charged to the HOME allocation after the award of the HOME allocation, provided the costs are in compliance with the requirements of this part (including environmental review requirements) and with the statutory and regulatory requirements in effect at the time the costs are charged to the HOME allocation.

(b) *Administrative and planning costs.* Eligible administrative and planning costs may be incurred as of the beginning of the participating jurisdiction's consolidated program year (see 24 CFR 91.10) or the date the consolidated plan describing the HOME allocation to which the costs will be charged is received by HUD, whichever is later.

(c) *Project costs.* Eligible project costs may be incurred during the current program year in an amount not to exceed 25% of the current HOME allocation amount, to be charged to the following year's HOME allocation. Before incurring the pre-award costs, the participating jurisdiction must comply with its citizen participation plan requirements addressing 24 CFR 91.105(b)(2), (4), (5) and (g) (local governments) or 24 CFR 91.115(b)(2), (4), (5) and (f) (States). In lieu of a full action plan, the participating jurisdiction may develop a mini-action plan which describes the proposed pre-award projects and costs in accordance with 24 CFR 91.220(c) and includes, if applicable, 24 CFR 91.220(g)(2) (local governments) or 24 CFR 91.320(c) and, if applicable, 24 CFR 91.320(g)(2) (States). The mini-action plan must state that HOME funding for the project(s) is subject to the future availability of HOME funds. The subsequent action

plan (i.e., action plan for the HOME allocation to which the costs will be charged) must also include the use of HOME funds contained in the mini-action plan.

(d) *Subrecipient or State recipient costs.* The participating jurisdiction may authorize its subrecipient or State recipient to incur pre-award costs in accordance with the requirements of this section. The authorization must be in writing.

(e) *Other pre-agreement costs.* Pre-agreement costs in excess of the amount set forth in paragraph (c) of this section must be approved, in writing, by the HUD Field Office before the costs are incurred.

§ 92.213 [Reserved]

§ 92.214 Prohibited activities.

(a) HOME funds may not be used to:

- (1) Provide project reserve accounts, except as provided in § 92.206(d)(5), or operating subsidies;

- (2) Provide tenant-based rental assistance for the special purposes of the existing section 8 program, in accordance with section 212(d) of the Act;

- (3) Provide non-federal matching contributions required under any other Federal program;

- (4) Provide assistance authorized under section 9 of the 1937 Act (annual contributions for operation of public housing);

- (5) Carry out activities authorized under 24 CFR part 968 (Public Housing Modernization);

- (6) Provide assistance to eligible low-income housing under 24 CFR part 248 (Prepayment of Low Income Housing Mortgages);

- (7) Provide assistance (other than tenant-based rental assistance or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the participating jurisdiction in the written agreement under § 92.504. However, additional HOME funds may be committed to a project up to one year after project completion (see § 92.502), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250.

- (8) Pay for the acquisition of property owned by the participating jurisdiction, except for property acquired by the participating jurisdiction with HOME funds, or property acquired in anticipation of carrying out a HOME project; or

- (9) Pay for any cost that is not eligible under §§ 92.206 through 92.209.

(b) Participating jurisdictions may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, participating jurisdictions may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications. Such fees are applicable credits under OMB Circular A-87.

§ 92.215 Limitation on jurisdictions under court order.

Limitations on the use of HOME funds in connection with litigation involving discrimination or fair housing are set forth in section 224 of the Act.

Income Targeting

§ 92.216 Income targeting: Tenant-based rental assistance and rental units.

Each participating jurisdiction must invest HOME funds made available during a fiscal year so that, with respect to tenant-based rental assistance and rental units:

(a) Not less than 90 percent of:

- (1) The families receiving such rental assistance are families whose annual incomes do not exceed 60 percent of the median family income for the area, as determined and made available by HUD with adjustments for smaller and larger families (except that HUD may establish income ceilings higher or lower than 60 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction cost or fair market rent, or unusually high or low family income) at the time of occupancy or at the time funds are invested, whichever is later; or

- (2) The dwelling units assisted with such funds are occupied by families having such incomes; and

(b) The remainder of:

- (1) The families receiving such rental assistance are households that qualify as low-income families (other than families described in paragraph (a)(1) of this section) at the time of occupancy or at the time funds are invested, whichever is later; or

- (2) The dwelling units assisted with such funds are occupied by such households.

§ 92.217 Income targeting: Homeownership.

Each participating jurisdiction must invest HOME funds made available during a fiscal year so that with respect to homeownership assistance, 100 percent of these funds are invested in dwelling units that are occupied by households that qualify as low-income families at the time of occupancy or at

the time funds are invested, whichever is later.

Matching Contribution Requirement

§ 92.218 Amount of matching contribution.

(a) *General.* Each participating jurisdiction must make contributions to housing that qualifies as affordable housing under the HOME program, throughout a fiscal year. The contributions must total not less than 25 percent of the funds drawn from the jurisdiction's HOME Investment Trust Fund Treasury account in that fiscal year, excluding funds drawn for purposes identified in paragraph (c) of this section.

(b) *Shortfall amount from State or local resources.* Amounts made available under § 92.102(b)(2) from the resources of a State (other than a transfer of the State's formula allocation), the local participating jurisdiction, or both, to enable the local participating jurisdiction to meet the participation threshold amount are not required to be matched and do not constitute matching contributions.

(c) *HOME funds not required to be matched.* HOME funds used for administrative and planning costs (pursuant to § 92.207); community housing development organization operating expenses (pursuant to § 92.208); capacity building (pursuant to § 92.300(b)) of community housing development organizations; and project specific assistance to community housing development organizations (pursuant to § 92.301) when the participating jurisdiction waives repayment under the provisions of § 92.301(a)(3) or § 92.301(b)(3) are not required to be matched.

(d) *Match contribution for other programs.* Contributions that have been or will be counted as satisfying a matching requirement of another Federal grant or award may not count as satisfying the matching contribution requirement for the HOME program.

§ 92.219 Recognition of matching contribution.

(a) *Match contribution to HOME-assisted housing.* A contribution is recognized as a matching contribution if it is made with respect to:

- (1) A tenant who is assisted with HOME funds;

- (2) A HOME-assisted unit;

- (3) The portion of a project that is not HOME-assisted provided that at least 50 percent of the housing units in the project are HOME-assisted. If the match contribution to the portion of the project that is not HOME-assisted meets the affordable housing requirements of § 92.219(b)(2), the percentage

requirement for HOME-assisted units does not apply; or

(4) The commercial space in a mixed-use project in which at least 51 percent of the floor space is residential provided that at least 50 percent of the dwelling units are HOME-assisted.

(b) *Match contribution to affordable housing that is not HOME-assisted.* The following requirements apply for recognition of matching contributions made to affordable housing that is not HOME-assisted:

(1) For tenant-based rental assistance that is not HOME-assisted:

(i) The contribution must be made with respect to a tenant who is assisted with tenant-based rental assistance that meets the requirements of §§ 92.203 (Income determinations) and 92.209 (Tenant-based rental assistance, except for § 92.209(e) Term of rental assistance contract); and

(ii) The participating jurisdiction must demonstrate in writing that such assistance meets the provisions of §§ 92.203 and 92.209 (except § 92.209(e)).

(2) For affordable housing that is not HOME-assisted:

(i) The contribution must be made with respect to housing that qualifies as affordable housing under § 92.252 or § 92.254.

(ii) The participating jurisdiction or its instrumentality must execute, with the owner of the housing (or, if the participating jurisdiction is the owner, with the manager or developer), a written agreement that imposes and enumerates all of the affordability requirements from § 92.252 and § 92.253(a) and (b) (Tenant protections), or § 92.254, whichever are applicable; the property standards requirements of § 92.251; and income determinations made in accordance with § 92.203. This written agreement must be executed before any match contributions may be made.

(iii) A participating jurisdiction must establish a procedure to monitor HOME match-eligible housing to ensure continued compliance with the requirements of §§ 92.203 (Income determinations), 92.252 (Qualification as affordable housing: Rental housing), 92.253(a) and (b) (Tenant protections) and 92.254 (Qualification as affordable housing: Homeownership). No other HOME requirements apply.

(iv) The match contribution may be in any eligible form of match except those in § 92.220(a)(2) (forbearance of fees) and (4) (on-site and off-site infrastructure).

(v) Match contributions to mixed-use or mixed-income projects that contain affordable housing units will be

recognized only if the contribution is made to the project's affordable housing units.

§ 92.220 Form of matching contribution.

(a) *Eligible forms.* Matching contributions must be made from nonfederal resources and may be in the form of one or more of the following:

(1) *Cash contributions from nonfederal sources.* To be recognized as a cash contribution, funds must be contributed permanently to the HOME program (or to affordable housing not assisted with HOME funds), regardless of the form of investment provided to the project. Therefore, to receive match credit for the full amount of a loan to a HOME project, all repayment, interest, or other return on investment of the contribution must be deposited in the local account of the participating jurisdiction's HOME Investment Trust Fund to be used for eligible HOME activities in accordance with the requirements of this part. A cash contribution to affordable housing that is not assisted with HOME funds must be contributed permanently to the project. Repayments of matching contributions in affordable housing projects, as defined in § 92.219(b), that are not HOME-assisted, must be made to the local account of the participating jurisdiction's HOME Investment Trust Fund to get match credit for the full loan amount.

(i) A cash contribution may be made by the participating jurisdiction, non-Federal public entities, private entities, or individuals, except as prohibited under paragraph (b)(4) of this section. A cash contribution made to a nonprofit organization for use in a HOME project may be counted as a matching contribution.

(ii) A cash contribution may be made from program income (as defined by 24 CFR § 85.25(b)) from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G) and the Housing Development Grant Program (24 CFR part 850), and from the Rental Rehabilitation Grant Program (24 CFR part 511) after all fiscal year Rental Rehabilitation grants have been closed out.

(iii) The grant equivalent of a below-market interest rate loan to the project that is not repayable to the participating jurisdiction's HOME Investment Trust Fund may be counted as a cash contribution, as follows:

(A) If the loan is made from funds borrowed by a jurisdiction or public agency or corporation the contribution is the present discounted cash value of the difference between the payments to be made on the borrowed funds and payments to be received from the loan to the project based on a discount rate equal to the interest rate on the borrowed funds.

(B) If the loan is made from funds other than funds borrowed by a jurisdiction or public agency or corporation, the contribution is the present discounted cash value of the yield foregone. In determining the yield foregone, the participating jurisdiction must use as a measure of a market rate yield one of the following, as appropriate:

(1) With respect to one- to four-unit housing financed with a fixed interest rate mortgage, a rate equal to the 10-year Treasury note rate plus 200 basis points;

(2) With respect to one- to four-unit housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points; or

(3) With respect to a multifamily project, a rate equal to the 10-year Treasury note rate plus 300 basis points.

(iv) Proceeds of bonds that are not repaid with revenue from an affordable housing project (e.g., general obligation bonds) and that are loaned to a HOME-assisted or other qualified affordable housing project constitute a cash contribution under this paragraph.

(v) A cash contribution may be counted as a matching contribution only if it is used for costs eligible under §§ 92.206 or 92.209, or for the following (which are not HOME eligible costs): the cost of removing and relocating an ECHO housing unit during the period of affordability in accordance with § 92.258(d)(3)(ii), payments to a project reserve account beyond payments permitted by § 92.206(d)(5), operating subsidies, or costs relating to the portion of a mixed-income or mixed-use HOME-assisted project not related to the affordable housing units.

(2) *Forbearance of fees.* (i) *State and local taxes, charges or fees.* The value (based on customary and reasonable means for establishing value) of State or local taxes, fees, or other charges that are normally and customarily imposed or charged by a State or local government on all transactions or projects in the conduct of its operations, which are waived, foregone, or deferred (including State low-income housing tax credits) in a manner that achieves affordability of HOME-assisted projects, may be counted as match. The amount of any real estate taxes may be based on

post-improvement property value. For taxes, fees, or charges that are forgiven for future years, the value is the present discounted cash value, based on a rate equal to the rate for the Treasury security with a maturity closest to the number of years for which the taxes, fees, or charges are waived, foregone, or deferred.

(ii) *Other charges or fees.* The value of fees or charges associated with the transfer or development of real estate that are normally and customarily imposed or charged by public or private entities, which are waived or foregone, in whole or in part, in a manner that achieves affordability of HOME-assisted projects, may be counted as match. Fees and charges under this paragraph do not include fees or charges for legal or other professional services; professional services which are donated, in whole or in part, are an eligible matching contribution in accordance with paragraph (a)(7) of this section.

(iii) Fees or charges that are associated with the HOME Program only (rather than normally and customarily imposed or charged on all transactions or projects) are not eligible forms of matching contributions.

(3) *Donated Real Property.* The value, before the HOME assistance is provided and minus any debt burden, lien, or other encumbrance, of donated land or other real property may be counted as match. The donation may be made by the participating jurisdiction, non-Federal public entities, private entities, or individuals, except as prohibited under paragraph (b)(4) of this section.

(i) Donated property not acquired with Federal resources is a contribution in the amount of 100% of the value.

(ii) Donated property acquired with Federal assistance may provide a partial contribution as follows. The property must be acquired with Federal assistance specifically for a HOME project (or for affordable housing that will be counted as match pursuant to § 92.219(b)(2)). The property must be acquired with the Federal assistance at demonstrably below the appraised value and must be acknowledged by the seller as a donation to affordable housing at the time of the acquisition with the Federal assistance. The amount of the contribution is the difference between the acquisition price and the appraised value at the time of acquisition with the Federal assistance. If the property is acquired with the Federal assistance by someone other than the HOME project (or affordable housing) owner, to continue to qualify as a contribution, the property must be given to the HOME project (or affordable housing) owner at a price that does not exceed the amount

of the Federal assistance used to acquire the property.

(iii) Property must be appraised in conformance with established and generally recognized appraisal practice and procedures in common use by professional appraisers. Opinions of value must be based on the best available data properly analyzed and interpreted. The appraisal of land and structures must be performed by an independent, certified appraiser.

(4) The cost, not paid with Federal resources, of on-site and off-site infrastructure that the participating jurisdiction documents are directly required for HOME-assisted projects. The infrastructure must have been completed no earlier than 12 months before HOME funds are committed to the project.

(5) Proceeds from multifamily and single family affordable housing project bond financing validly issued by a State or local government, or an agency or instrumentality of a State or local government or a political subdivision of a State and repayable with revenues from the affordable housing project financed as follows:

(i) Fifty percent of the loan amount made from bond proceeds to a multifamily affordable housing project owner may qualify as match.

(ii) Twenty-five percent of the loan amount from bond proceeds made to a single-family affordable housing project owner may qualify as match.

(iii) Loans made from bond proceeds may not constitute more than 25 percent of a participating jurisdiction's total annual match contribution.

(6) The reasonable value of donated site-preparation and construction materials, not acquired with Federal resources. The value of site-preparation and construction materials is to be determined in accordance with the participating jurisdiction's cost estimate procedures.

(7) The reasonable rental value of the donated use of site preparation or construction equipment.

(8) The value of donated or voluntary labor or professional services (see § 92.354(b)) in connection with the provision of affordable housing. A single rate established by HUD shall be applicable for determining the value of unskilled labor. The value of skilled labor or professional services shall be determined by the rate that the individual or entity performing the labor or service normally charges.

(9) The value of sweat equity (see § 92.354(c)) provided to a homeownership project, under an established component of a participating jurisdiction's program, up

until the time of project completion (i.e., submission of a project completion form). Such labor shall be valued at the rate established for unskilled labor at paragraph (a)(8) of this section.

(10) The direct cost of supportive services provided to families residing in HOME-assisted units during the period of affordability. The supportive services must be necessary to facilitate independent living or be required as part of a self-sufficiency program. Examples of supportive services include: case management, mental health services, assistance with the tasks of daily living, substance abuse treatment and counseling, day care, and job training and counseling.

(11) The direct cost of homebuyer counseling services provided to families that acquire properties with HOME funds under the provisions of § 92.254(a), including ongoing counseling services provided during the period of affordability. These services may be provided as part of a homebuyer counseling program that is not specific to the HOME Program, but only the cost of services to families that complete purchases with HOME assistance may be counted as match.

(b) *Ineligible forms.* The following are examples that do not meet the requirements of paragraph (a) of this section and do not count toward meeting a participating jurisdiction's matching contribution requirement:

(1) Contributions made with or derived from Federal resources or funds, regardless of when the Federal resources or funds were received or expended. CDBG funds (defined in 24 CFR 570.3) are Federal funds for this purpose;

(2) The interest rate subsidy attributable to the Federal tax-exemption on financing or the value attributable to Federal tax credits;

(3) Owner equity or investment in a project; and

(4) Cash or other forms of contributions from applicants for or recipients of HOME assistance or contracts, or investors who own, are working on, or are proposing to apply for, assistance for a HOME-assisted project, except as permitted under paragraph (a)(9) of this section.

§ 92.221 Match credit.

(a) *When credit is given.* Contributions are credited on a fiscal year basis at the time the contribution is made, as follows:

(1) A cash contribution is credited when the funds are expended.

(2) The grant equivalent of a below-market interest rate loan is credited at the time of the loan closing.

(3) The value of state or local taxes, fees, or other charges that are normally and customarily imposed but are waived, foregone, or deferred is credited at the time the state or local government or other public or private entity officially waives, forgoes, or defers the taxes, fees, or other charges and notifies the project owner.

(4) The value of donated land or other real property is credited at the time ownership of the property is transferred to the HOME project (or affordable housing) owner.

(5) The cost of investment in infrastructure directly required for HOME-assisted projects is credited at the time funds are expended for the infrastructure or at the time the HOME funds are committed to the project if the infrastructure was completed before the commitment of HOME funds.

(6) The value of donated material is credited as match at the time it is used for affordable housing.

(7) The value of the donated use of site preparation or construction equipment is credited as match at the time the equipment is used for affordable housing.

(8) The value of donated or voluntary labor or professional services is credited at the time the work is performed.

(9) A loan made from bond proceeds under § 92.220(a)(5) is credited at the time of the loan closing.

(10) The direct cost of social services provided to residents of HOME-assisted units is credited at the time that the social services are provided during the period of affordability.

(11) The direct cost of homebuyer counseling services provided to families that purchase HOME-assisted units is credited at the time that the homebuyer purchases the unit or for post-purchase counseling services, at the time the counseling services are provided.

(b) *Excess match.* Contributions made in a fiscal year that exceed the participating jurisdiction's match liability for the fiscal year in which they were made may be carried over and applied to future fiscal years' match liability. Loans made from bond proceeds in excess of 25 percent of a participating jurisdiction's total annual match contribution may be carried over to subsequent fiscal years as excess match, subject to the annual 25 percent limitation.

(c) Credit for match contributions shall be assigned as follows:

(1) For HOME-assisted projects involving more than one participating jurisdiction, the participating jurisdiction that makes the match contribution may decide to retain the match credit or permit the other

participating jurisdiction to claim the credit.

(2) For HOME match contributions to affordable housing that is not HOME-assisted (match pursuant to § 92.219(b)) involving more than one participating jurisdiction, the participating jurisdiction that makes the match contribution receives the match credit.

(3) A State that provides non-Federal funds to a local participating jurisdiction to be used for a contribution to affordable housing, whether or not HOME-assisted, may take the match credit for itself or may permit the local participating jurisdiction to receive the match credit.

§ 92.222 Reduction of matching contribution requirement.

(a) *Reduction for fiscal distress.* HUD will determine match reductions annually.

(1) *Distress criteria for local government participating jurisdictions.* If a local government participating jurisdiction satisfies both of the distress factors in paragraphs (a)(1)(i) and (ii) of this section, it is in severe fiscal distress and its match requirement will be reduced by 100% for the period specified in paragraph (a)(3) of this section. If a local government participating jurisdiction satisfies either distress factor in paragraphs (a)(1)(i) or (ii) of this section, it is in fiscal distress and its match requirement will be reduced by 50 percent, for the period specified in paragraph (a)(4) of this section.

(i) *Poverty rate.* The average poverty rate in the participating jurisdiction was equal to or greater than 125 percent of the average national poverty rate during the calendar year for which the most recent data are available, as determined according to information of the Bureau of the Census.

(ii) *Per capita income.* The average per capita income in the participating jurisdiction was less than 75 percent of the average national per capita income, during the calendar year for which the most recent data are available, as determined according to information from the Bureau of the Census.

(2) *Distress criteria for participating jurisdictions that are States.* If a State satisfies at least 2 of the 3 distress factors in paragraphs (a)(2)(i) through (iii) of this section, it is in severe fiscal distress and its match requirement will be reduced by 100% for the period specified in paragraph (a)(3) of this section. If a State satisfies any 1 of the 3 distress factors in paragraphs (a)(2)(i) through (iii) of this section, it is in fiscal distress and its match requirement will be reduced by 50 percent, for the period

specified in paragraph (a)(4) of this section.

(i) *Poverty rate.* The average poverty rate in the State was equal to or greater than 125 percent of the average national poverty rate during the calendar year for which the most recent data are available, as determined according to information from the Bureau of the Census.

(ii) *Per capita income.* The average per capita income in the State was less than 75 percent of the average national per capita income, during the calendar year for which the most recent data are available, as determined according to information from the Bureau of the Census.

(iii) *Personal income growth.* The average personal income growth rate in the State over the most recent four quarters for which the data are available was less than 75 percent of the average national personal income growth rate during that period, as determined according to information from the Bureau of Economic Analysis.

(3) *Period of match reduction for severe fiscal distress.* A 100% match reduction is effective for the fiscal year in which the severe fiscal distress determination is made and for the following fiscal year.

(4) *Period of match reduction for fiscal distress.* A 50% match reduction is effective for the fiscal year in which the fiscal distress determination is made and for the following fiscal year, except that if a severe fiscal distress determination is published in that following fiscal year, the participating jurisdiction starts a new two-year match reduction period in accordance with the provisions of paragraph (a)(3) of this section.

(b) *Reduction of match for participating jurisdictions in disaster areas.* If a participating jurisdiction is located in an area in which a declaration of major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act is made, it may request a reduction of its matching requirement. For a local participating jurisdiction, the HUD Field office may reduce the matching requirement specified in § 92.218 by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year. For a State participating jurisdiction, the HUD Field office may reduce the matching requirement specified in § 92.218, by up to 100 percent for the fiscal year in which the declaration of major disaster is made and the following fiscal year with respect to any HOME funds expended in an area to which the declaration of a major disaster applies.

At its discretion and upon request of the participating jurisdiction, the HUD Field Office may extend the reduction for an additional year.

Subpart F—Project Requirements

§ 92.250 Maximum per-unit subsidy amount and subsidy layering.

(a) *Maximum per-unit subsidy amount.* The amount of HOME funds that a participating jurisdiction may invest on a per-unit basis in affordable housing may not exceed the per-unit dollar limits established by HUD under 24 CFR 221.514(b)(1) and (c) for elevator-type projects, involving nonprofit mortgagors, insured under section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l(d)(3)) that apply to the area in which the housing is located. These limits are available from the Multifamily Division in the HUD Field Office. If the participating jurisdiction's per-unit subsidy amount has already been increased to 210% as permitted in 24 CFR 221.514(c), upon request to the Field Office, HUD will allow the per-unit subsidy amount to be increased on a program-wide basis to an amount, up to 240% of the original per unit limits.

(b) *Subsidy layering.* Before committing funds to a project, the participating jurisdiction must evaluate the project in accordance with guidelines that it has adopted for this purpose and will not invest any more HOME funds, in combination with other governmental assistance, than is necessary to provide affordable housing.

§ 92.251 Property standards.

(a) (1) Housing that is constructed or rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances at the time of project completion, except as provided in paragraph (b) of this section. The participating jurisdiction must have written standards for rehabilitation that ensure that HOME-assisted housing is decent, safe, and sanitary. In the absence of a local code for new construction or rehabilitation, HOME-assisted new construction or rehabilitation must meet, as applicable: one of three model codes (Uniform Building Code (ICBO), National Building Code (BOCA), Standard Building Code (SBCCI)); or the Council of American Building Officials (CABO) one or two family code; or the Minimum Property Standards (MPS) in 24 CFR 200.925 or 200.926. To avoid duplicative inspections when FHA financing is involved in a HOME-assisted property, a participating

jurisdiction may rely on a Minimum Property Standards (MPS) inspection performed by a qualified person. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(2) All other HOME-assisted housing must meet all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

(3) The housing must meet the accessibility requirements in the regulations referenced in 24 CFR 5.105(a) which implement the Fair Housing Act (42 U.S.C. 3601–19) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

(b) The following requirements apply to housing for homeownership that is to be rehabilitated after transfer of the ownership interest:

(1) Before the transfer of the homeownership interest, the participating jurisdiction must:

(i) Inspect the housing for any defects that pose a danger to health; and

(ii) Notify the prospective purchaser of the work needed to cure the defects and the time by which defects must be cured and applicable property standards met.

(2) The housing must be free from all noted health and safety defects before occupancy and not later than 6 months after the transfer.

(3) The housing must meet the property standards in paragraph (a)(1) of this section not later than 2 years after transfer of the ownership interest.

(c) An owner of rental housing assisted with HOME funds must maintain the housing in compliance with all applicable State and local housing quality standards and code requirements and if there are no such standards or code requirements, the housing must meet the housing quality standards in 24 CFR 982.401.

(d) All housing occupied by tenants receiving HOME tenant-based rental assistance must meet the housing quality standards in 24 CFR 982.401.

§ 92.252 Qualification as affordable housing: Rental housing.

The HOME-assisted units in a rental housing project must be occupied only by households that are eligible as low-income families and must meet the following requirements to qualify as affordable housing. The affordability requirements also apply to the HOME-assisted non-owner-occupied units in single-family housing purchased with

HOME funds in accordance with § 92.254.

(a) *Rent limitation.* HUD provides the following maximum HOME rent limits. The maximum HOME rents are the lesser of:

(1) The fair market rent for existing housing for comparable units in the area as established by HUD under 24 CFR 888.111; or

(2) A rent that does not exceed 30 percent of the adjusted income of a family whose annual income equals 65 percent of the median income for the area, as determined by HUD, with adjustments for number of bedrooms in the unit. The HOME rent limits provided by HUD will include average occupancy per unit and adjusted income assumptions.

(b) *Additional Rent limitations.* In rental projects with five or more HOME-assisted rental units, twenty (20) percent of the HOME-assisted units must be occupied by very low-income families and meet one of following rent requirements:

(1) The rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD provides the HOME rent limits which include average occupancy per unit and adjusted income assumptions. However, if the rent determined under this paragraph is higher than the applicable rent under paragraph (a) of this section, then the maximum rent for units under this paragraph is that calculated under paragraph (a) of this section.

(2) The rent does not exceed 30 percent of the family's adjusted income. If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

(c) *Initial rent schedule and utility allowances.* The participating jurisdiction must establish maximum monthly allowances for utilities and services (excluding telephone). The participating jurisdiction must review and approve rents proposed by the owner for units subject to the maximum rent limitations in paragraphs (a) or (b) of this section. For all units subject to the maximum rent limitations in paragraphs (a) or (b) of this section for which the tenant is paying utilities and services, the participating jurisdiction must ensure that the rents do not exceed

the maximum rent minus the monthly allowances for utilities and services.

(d) *Nondiscrimination against rental assistance subsidy holders.* The owner cannot refuse to lease HOME-assisted units to a certificate or voucher holder under 24 CFR part 982—Section 8 Tenant-Based Assistance; Unified Rule for Tenant-Based Assistance under the Section 8 Rental Certificate Program and the Section 8 Rental Voucher Program or to the holder of a comparable document evidencing participation in a HOME tenant-based rental assistance program because of the status of the prospective tenant as a holder of such certificate, voucher, or comparable HOME tenant-based assistance document.

(e) *Periods of Affordability.* The HOME-assisted units must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. They must be imposed by deed restrictions, covenants running with the land, or other mechanisms approved by HUD, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family or business ties, obtains an ownership interest in the project or property.

Rental housing activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds: Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000 or rehabilitation involving refinancing	15
New construction or acquisition of newly constructed housing	20

(f) *Subsequent rents during the affordability period.* (1) The maximum HOME rent limits are recalculated on a

periodic basis after HUD determines fair market rents and median incomes. HUD then provides the new maximum HOME rent limits to participating jurisdictions. Regardless of changes in fair market rents and in median income over time, the HOME rents for a project are not required to be lower than the HOME rent limits for the project in effect at the time of project commitment.

(2) The participating jurisdiction must provide project owners with information on updated HOME rent limits so that rents may be adjusted (not to exceed the maximum HOME rent limits in paragraph (f)(1) of this section) in accordance with the written agreement between the participating jurisdiction and the owner. Owners must annually provide the participating jurisdiction with information on rents and occupancy of HOME-assisted units to demonstrate compliance with this section.

(3) Any increase in rents for HOME-assisted units is subject to the provisions of outstanding leases, and in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

(g) *Adjustment of HOME rent limits for a particular project.* (1) Changes in fair market rents and in median income over time should be sufficient to maintain the financial viability of a project within the HOME rent limits in this section.

(2) HUD may adjust the HOME rent limits for a project, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly.

(h) *Tenant income.* The income of each tenant must be determined initially in accordance with § 92.203. In addition, each year during the period of affordability the project owner must re-examine each tenant's annual income in accordance with one of the options in § 92.203 selected by the participating jurisdiction. An owner of a multifamily project with an affordability period of 10 years or more who re-examines tenant's annual income through a statement and certification in accordance with § 92.203(a)(1)(ii), must examine the income of each tenant, in accordance with § 92.203(a)(1)(i), every sixth year of the affordability period. Otherwise, an owner who accepts the tenant's statement and certification in accordance with § 92.203(a)(1)(ii) is not required to examine the income of tenants in multifamily or single-family

projects unless there is evidence that the tenant's written statement failed to completely and accurately state information about the family's size or income.

(i) *Over-income tenants.* (1) HOME-assisted units continue to qualify as affordable housing despite a temporary noncompliance caused by increases in the incomes of existing tenants if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected.

(2) Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under State or local law or 30 percent of the family's adjusted income, except that tenants of HOME-assisted units that have been allocated low-income housing tax credits by a housing credit agency pursuant to section 42 of the Internal Revenue Code of 1986 (26 U.S.C. 42) must pay rent governed by section 42.

(j) *Fixed and floating HOME units.* In a project containing HOME-assisted and other units, the participating jurisdiction may designate fixed or floating HOME units. This designation must be made at the time of project commitment. Fixed units remain the same throughout the period of affordability. Floating units are changed to maintain conformity with the requirements of this section during the period of affordability so that the total number of housing units meeting the requirements of this section remains the same, and each substituted unit is comparable in terms of size, features, and number of bedrooms to the originally designated HOME-assisted unit.

§ 92.253 Tenant and participant protections.

(a) *Lease.* The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

(b) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(1) *Agreement to be sued.* Agreement by the tenant to be sued, to admit guilt, or to a judgment in favor of the owner in a lawsuit brought in connection with the lease;

(2) *Treatment of property.* Agreement by the tenant that the owner may take, hold, or sell personal property of household members without notice to the tenant and a court decision on the rights of the parties. This prohibition, however, does not apply to an

agreement by the tenant concerning disposition of personal property remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with State law;

(3) *Excusing owner from responsibility.* Agreement by the tenant not to hold the owner or the owner's agents legally responsible for any action or failure to act, whether intentional or negligent;

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit without notice to the tenant;

(5) *Waiver of legal proceedings.* Agreement by the tenant that the owner may evict the tenant or household members without instituting a civil court proceeding in which the tenant has the opportunity to present a defense, or before a court decision on the rights of the parties;

(6) *Waiver of a jury trial.* Agreement by the tenant to waive any right to a trial by jury;

(7) *Waiver of right to appeal court decision.* Agreement by the tenant to waive the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

(8) *Tenant chargeable with cost of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs even if the tenant wins in a court proceeding by the owner against the tenant. The tenant, however, may be obligated to pay costs if the tenant loses.

(c) *Termination of tenancy.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, State, or local law; for completion of the tenancy period for transitional housing; or for other good cause. To terminate or refuse to renew tenancy, the owner must serve written notice upon the tenant specifying the grounds for the action at least 30 days before the termination of tenancy.

(d) *Tenant selection.* An owner of rental housing assisted with HOME funds must adopt written tenant selection policies and criteria that:

(1) Are consistent with the purpose of providing housing for very low-income and low-income families;

(2) Are reasonably related to program eligibility and the applicants' ability to perform the obligations of the lease;

(3) Give reasonable consideration to the housing needs of families that would have a Federal preference under

section 6(c)(4)(A) of the 1937 Act (see § 92.209(c)(2)) ;

(4) Provide for the selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(5) Give prompt written notification to any rejected applicant of the grounds for any rejection.

§ 92.254 Qualification as affordable housing: homeownership.

(a) *Acquisition with or without rehabilitation.* Housing that is for acquisition by a family must meet the affordability requirements of this paragraph (a).

(1) The housing must be single-family housing (1- to 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot) .

(2) The housing must be modest housing as follows:

(i) In the case of acquisition of newly constructed housing or standard housing, the housing has a purchase price for the type of single family housing that does not exceed 95 percent of the median purchase price for the area, as described in paragraph (a)(2)(iii) of this section.

(ii) In the case of acquisition with rehabilitation, the housing has an estimated value after rehabilitation that does not exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(iii) of this section.

(iii) If a participating jurisdiction intends to use HOME funds for homebuyer assistance or for rehabilitation of owner-occupied single-family properties, the participating jurisdiction may use the Single Family Mortgage Limits under Section 203(b) of the National Housing Act (12 U.S.C. 1709(b)) (which may be obtained from the HUD Field Office) or it may determine 95 percent of the median area purchase price for single family housing in the jurisdiction, as follows. The participating jurisdiction must set forth the price for different types of single family housing (1- to 4-unit family residence, condominium unit, cooperative unit, combination of manufactured housing and lot or manufactured housing lot) for the jurisdiction. The 95 percent of median area purchase price must be established in accordance with a market analysis which ensured that a sufficient number of recent housing sales are included in the survey. Sales must cover the requisite number of months based on volume: For 500 or more sales per month, a one-month reporting period; for 250 through 499 sales per month, a

two-month reporting period; for less than 250 sales per month, at least a three-month reporting period. The data must be listed in ascending order of sales price. The address of the listed properties must include the location within the participating jurisdiction. Lot, square and subdivision data may be substituted for the street address. The housing sales data must reflect all, or nearly all, of the one-family house sales in the entire participating jurisdiction. To determine the median, take the middle sale on the list if an odd number of sales and if an even number, take the higher of the middle numbers and consider it the median. After identifying the median sales price, the amount should be multiplied by .95 to determine the 95 percent of the median area purchase price. This information must be submitted to the HUD Field Office for review.

(3) The housing must be acquired by a homebuyer whose family qualifies as a low-income family and the housing must be the principal residence of the family throughout the period described in paragraph (a)(4) of this section.

(4) *Periods of affordability.* The HOME-assisted housing must meet the affordability requirements for not less than the applicable period specified in the following table, beginning after project completion. The per unit amount of HOME funds and the affordability period that they trigger are described more fully in paragraphs (a)(5)(i) (resale) and (ii) (recapture) of this section.

Homeownership assistance HOME amount per-unit	Minimum period of affordability in years
Under \$15,000	5
\$15,000 to \$40,000	10
Over \$40,000	15

(5) *Resale and recapture.* To ensure affordability, the participating jurisdiction must impose either resale or recapture requirements, at its option. The participating jurisdiction must establish the resale or recapture requirements that comply with the standards of this section and set forth the requirements in its consolidated plan. HUD must determine that they are appropriate.

(i) *Resale.* Resale requirements must ensure, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability, that the housing is made available for subsequent purchase only

to a buyer whose family qualifies as a low-income family and will use the property as its principal residence. The resale requirement must also ensure that the price at resale provides the original HOME-assisted owner a fair return on investment (including the homeowner's investment and any capital improvement) and ensure that the housing will remain affordable to a reasonable range of low-income homebuyers. The period of affordability is based on the total amount of HOME funds invested in the housing.

(A) Except as provided in paragraph (a)(5)(i)(B) of this section, deed restrictions, covenants running with the land, or other similar mechanisms must be used as the mechanism to impose the resale requirements. The affordability restrictions may terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The participating jurisdiction may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event, obtains an ownership interest in the housing.

(B) Certain housing may be presumed to meet the resale restrictions (i.e., the housing will be available and affordable to a reasonable range of low-income homebuyers; a low-income homebuyer will occupy the housing as the family's principal residence; and the original owner will be afforded a fair return on investment) during the period of affordability without the imposition of enforcement mechanisms by the participating jurisdiction. The presumption must be based upon a market analysis of the neighborhood in which the housing is located. The market analysis must include an evaluation of the location and

characteristics of the housing and residents in the neighborhood (e.g., sale prices, age and amenities of the housing stock, incomes of residents, percentage of owner-occupants) in relation to housing and incomes in the housing market area. An analysis of the current and projected incomes of neighborhood residents for an average period of affordability for homebuyers in the neighborhood must support the conclusion that a reasonable range of low-income families will continue to qualify for mortgage financing. For example, an analysis shows that the housing is modestly priced within the housing market area and that families with incomes of 65% to 80% of area median can afford monthly payments under average FHA terms without other government assistance and housing will remain affordable at least during the next five to seven years compared to other housing in the market area; the size and amenities of the housing are modest and substantial rehabilitation will not significantly increase the market value; the neighborhood has housing that is not currently owned by the occupants, but the participating jurisdiction is encouraging homeownership in the neighborhood by providing homeownership assistance and by making improvements to the streets, sidewalks, and other public facilities and services. If a participating jurisdiction in preparing a neighborhood revitalization strategy under § 91.215(e)(2) of its consolidated plan or Empowerment Zone or Enterprise Community application under 24 CFR part 597 has incorporated the type of market data described above, that submission may serve as the required analysis under this section. If the participating jurisdiction continues to provide homeownership assistance for housing in the neighborhood, it must periodically update the market analysis to verify the original presumption of continued affordability.

(ii) *Recapture*. Recapture provisions must ensure that the participating jurisdiction recoups all or a portion of the HOME assistance to the homebuyers, if the housing does not continue to be the principal residence of the family for the duration of the period of affordability. The participating jurisdiction may structure its recapture provisions based on its program design and market conditions. The period of affordability is based upon the total amount of HOME funds subject to recapture described in paragraph (a)(5)(ii)(A)(5) of this section.

(A) The following options for recapture requirements are acceptable to HUD. The participating jurisdiction may adopt, modify or develop its own recapture requirements for HUD approval.

(1) *Recapture entire amount*. The participating jurisdiction may recapture the entire amount of the HOME investment from the homeowner.

(2) *Reduction during affordability period*. The participating jurisdiction may reduce the HOME investment amount to be recaptured on a prorata basis for the time the homeowner has owned and occupied the housing measured against the required affordability period.

(3) *Shared net proceeds*. If the net proceeds are not sufficient to recapture the full HOME investment (or a reduced amount as provided for in paragraph (a)(5)(ii)(A)(2) of this section) plus enable the homeowner to recover the amount of the homeowner's downpayment and any capital improvement investment made by the owner since purchase, the participating jurisdiction may share the net proceeds. The net proceeds are the sales price minus loan repayment (other than HOME funds) and closing costs. The net proceeds may be divided proportionally as set forth in the following mathematical formulas:

$$\frac{\text{HOME investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{HOME amount to be recaptured}$$

$$\frac{\text{homeowner investment}}{\text{HOME investment} + \text{homeowner investment}} \times \text{Net proceeds} = \text{amount to homeowner}$$

(4) *Owner investment returned first*. The participating jurisdiction may permit the homebuyer to recover the homebuyer's entire investment (downpayment and capital improvements made by the owner since

purchase) before recapturing the HOME investment.

(5) *Amount subject to recapture*. The HOME investment that is subject to recapture is based on the amount of HOME assistance that enabled the homebuyer to buy the dwelling unit.

This includes any HOME assistance that reduced the purchase price from fair market value to an affordable price, but excludes the amount between the cost of producing the unit and the market value of the property (i.e., the development subsidy). The recaptured funds must be

used to carry out HOME-eligible activities in accordance with the requirements of this part. If the HOME assistance is only used for the development subsidy and therefore not subject to recapture, the resale option must be used.

(6) *Special considerations for single-family properties with more than one unit.* If the HOME funds are only used to assist a low-income homebuyer to acquire one unit in single-family housing containing more than one unit and the assisted unit will be the principal residence of the homebuyer, the affordability requirements of this section apply only to the assisted unit. If HOME funds are also used to assist the low-income homebuyer to acquire one or more of the rental units in the single-family housing, the affordability requirements of § 92.252 apply to assisted rental units, except that the participating jurisdiction may impose resale or recapture restrictions on all assisted units (owner-occupied and rental units) in the single family housing. If resale restrictions are used, the affordability requirements on all assisted units continue for the period of affordability. If recapture restrictions are used, the affordability requirements on the assisted rental units may be terminated, at the discretion of the participating jurisdiction, upon recapture of the HOME investment. (If HOME funds are used to assist only the rental units in such a property then the requirements of § 92.252 would apply and the owner-occupied unit would not be subject to the income targeting or affordability provisions of § 92.254.)

(7) *Lease-purchase.* HOME funds may be used to assist homebuyers through lease-purchase programs. The housing must be purchased by a homebuyer within 36 months of signing the lease-purchase agreement. The homebuyer must qualify as a low-income family at the time the lease-purchase agreement is signed and at the time the housing is transferred if more than six months have elapsed since the participating jurisdiction determined that the family was income eligible. If HOME funds are used to acquire housing that will be resold to a homebuyer through a lease-purchase program, the HOME affordability requirements for rental housing in § 92.252 shall apply if the housing is not transferred to a homebuyer within forty-two months after project completion.

(b) *Rehabilitation not involving acquisition.* Housing that is currently owned by a family qualifies as affordable housing only if:

(1) The estimated value of the property, after rehabilitation, does not

exceed 95 percent of the median purchase price for the area, described in paragraph (a)(2)(iii) of this section; and

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing.

(c) *Ownership interest.* The ownership in the housing assisted under this section must meet the definition of "homeownership" in § 92.2.

(d) *New construction without acquisition.* Newly constructed housing that is built on property currently owned by a family which will occupy the housing upon completion, qualifies as affordable housing if it meets the requirements under paragraph (a) of this section.

§ 92.255 Converting rental units to homeownership units for existing tenants.

The participating jurisdiction may permit the owner of HOME-assisted rental units to convert the rental units to homeownership units by selling, donating, or otherwise conveying the units to the existing tenants to enable the tenants to become homeowners in accordance with the requirements of § 92.254. If no additional HOME funds are used to enable the tenants to become homeowners, the homeownership units are subject to a minimum period of affordability equal to the remaining affordable period if the units continued as rental units. If additional HOME funds are used to directly assist the tenants to become homeowners, the minimum period of affordability is the affordability period under § 92.254(a)(4), based on the amount of direct homeownership assistance provided.

§ 92.256 [Reserved]

§ 92.257 Religious organizations.

HOME funds may not be provided to primarily religious organizations, such as churches, for any activity including secular activities. In addition, HOME funds may not be used to rehabilitate or construct housing owned by primarily religious organizations or to assist primarily religious organizations in acquiring housing. However, HOME funds may be used by a secular entity to acquire housing from a primarily religious organization, and a primarily religious entity may transfer title to its property to a wholly secular entity and the entity may participate in the HOME program in accordance with the requirements of this part. The entity may be an existing or newly established entity, which may be an entity established by the religious organization. The completed housing project must be used exclusively by the

owner entity for secular purposes, available to all persons regardless of religion. In particular, there must be no religious or membership criteria for tenants of the property.

§ 92.258 Elder cottage housing opportunity (ECHO) units.

(a) *General.* HOME funds may be used for the initial purchase and initial placement costs of elder cottage housing opportunity (ECHO) units that meet the requirements of this section, and that are small, free-standing, barrier-free, energy-efficient, removable, and designed to be installed adjacent to existing single-family dwellings.

(b) *Eligible owners.* The owner of a HOME-assisted ECHO unit may be:

(1) The owner-occupant of the single-family host property on which the ECHO unit will be located;

(2) A participating jurisdiction; or

(3) A non-profit organization.

(c) *Eligible tenants.* During the affordability period, the tenant of a HOME-assisted ECHO unit must be an elderly or disabled family as defined in 24 CFR 5.403 and must also be a low-income family.

(d) *Applicable requirements.* The requirements of § 92.252 apply to HOME-assisted ECHO units, with the following modifications:

(1) Only one ECHO unit may be provided per host property.

(2) The ECHO unit owner may choose whether or not to charge the tenant of the ECHO unit rent, but if a rent is charged, it must meet the requirements of § 92.252.

(3) The ECHO housing must remain affordable for the period specified in § 92.252(e). If within the affordability period the original occupant no longer occupies the unit, the ECHO unit owner must:

(i) Rent the unit to another eligible occupant on site;

(ii) Move the ECHO unit to another site for occupancy by an eligible occupant; or

(iii) If the owner of the ECHO unit is the host property owner-occupant, the owner may repay the HOME funds in accordance with the recapture provisions imposed by the participating jurisdiction consistent with § 92.254(a)(5)(ii). The participating jurisdiction must use the recaptured HOME funds for additional HOME activities.

(4) The participating jurisdiction has the responsibility to enforce the project requirements applicable to ECHO units.

Subpart G—Community Housing Development Organizations

§ 92.300 Set-aside for community housing development organizations (CHDOs).

(a)(1) Within 24 months after HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnerships Agreement, the participating jurisdiction must reserve not less than 15 percent of the HOME allocation for investment only in housing to be developed, sponsored, or owned by community housing development organizations. For a State, the HOME allocation includes funds reallocated under § 92.451(c)(2)(i) and, for a unit of general local government, funds transferred from a State under § 92.102(b). The funds are reserved when a participating jurisdiction enters into a written agreement with the community housing development organization. The funds must be provided to a community housing development organization or its subsidiary. If a CHDO owns the project in partnership, it or its wholly owned for-profit or non-profit subsidiary must be the managing general partner. In acting in any of the capacities specified, the community housing development organization must have effective project control. In addition, a community housing development organization, in connection with housing it develops, sponsors or owns with HOME funds provided under this section, may provide direct homeownership assistance (e.g. downpayment assistance) and not be considered a subrecipient.

(2) The participating jurisdiction determines the form of assistance, e.g., grant or loan, that the community housing development organization receives and whether any proceeds must be returned to the participating jurisdiction or may be retained by the community housing development organization. While the proceeds the participating jurisdiction permits the community housing development organization to retain are not subject to the requirements of this part, the participating jurisdiction must specify in the written agreement with the community housing development organization whether they are to be used for HOME-eligible or other housing activities to benefit low-income families. However, funds recaptured because housing no longer meets the affordability requirements under § 92.254(a)(5)(ii) are subject to the requirements of this part in accordance with § 92.503.

(b) Each participating jurisdiction must make reasonable efforts to identify

community housing development organizations that are capable, or can reasonably be expected to become capable, of carrying out elements of the jurisdiction's approved consolidated plan and to encourage such community housing development organizations to do so. If during the first 24 months of its participation in the HOME Program a participating jurisdiction cannot identify a sufficient number of capable community housing development organizations, up to 20 percent of the minimum community housing development organization setaside of 15 percent specified in paragraph (a) of this section, above, (but not more than \$150,000 during the 24 month period) may be committed to develop the capacity of community housing development organizations in the jurisdiction.

(c) Up to 10 percent of the HOME funds reserved under this section may be used for activities specified under § 92.301.

(d) HOME funds required to be reserved under this section are subject to reduction, as provided in § 92.500(d).

(e) If funds for operating expenses are provided under § 92.208 to a community housing development organization that is not also receiving funds under paragraph (a) of this section for housing to be developed, sponsored or owned by the community housing development organization, the participating jurisdiction must enter into a written agreement with the community housing development organization that provides that the community housing development organization is expected to receive funds under paragraph (a) of this section within 24 months of receiving the funds for operating expenses, and specifies the terms and conditions upon which this expectation is based.

(f) *Limitation.* A community housing development organization may not receive HOME funding for any fiscal year in an amount that provides more than 50 percent or \$50,000, whichever is greater, of the community housing development organization's total operating expenses in that fiscal year. This also includes organizational support and housing education provided under section 233(b)(1), (2), and (6) of the Act, as well as funds for operating expenses provided under § 92.208.

§ 92.301 Project-specific assistance to community housing development organizations.

(a) *Project-specific technical assistance and site control loans.* (1) *General.* Within the percentage

specified in § 92.300(c), HOME funds may be used by a participating jurisdiction to provide technical assistance and site control loans to community housing development organizations in the early stages of site development for an eligible project. These loans may not exceed amounts that the participating jurisdiction determines to be customary and reasonable project preparation costs allowable under paragraph (a)(2) of this section. All costs must be related to a specific eligible project or projects.

(2) *Allowable costs.* A loan may be provided to cover project costs necessary to determine project feasibility (including costs of an initial feasibility study), consulting fees, costs of preliminary financial applications, legal fees, architectural fees, engineering fees, engagement of a development team, option to acquire property, site control and title clearance. General operational expenses of the community housing development organization are not allowable costs.

(3) *Repayment.* The community housing development organization must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in part or in whole, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the borrower.

(b) *Project-specific seed money loans.*

(1) *General.* Within the percentage specified in § 92.300(c), HOME funds may be used to provide loans to community housing development organizations to cover preconstruction project costs that the participating jurisdiction determines to be customary and reasonable, including, but not limited to the costs of obtaining firm construction loan commitments, architectural plans and specifications, zoning approvals, engineering studies, and legal fees.

(2) *Eligible sponsors.* A loan may be provided only to a community housing development organization that has, with respect to the project concerned, site control (evidenced by a deed, a sales contract, or an option contract to acquire the property), a preliminary financial commitment, and a capable development team.

(3) *Repayment.* The community housing development organization must repay the loan to the participating jurisdiction from construction loan proceeds or other project income. The participating jurisdiction may waive repayment of the loan, in whole or in

part, if there are impediments to project development that the participating jurisdiction determines are reasonably beyond the control of the community housing development organization.

§ 92.302 Housing education and organizational support.

HUD is authorized to provide education and organizational support assistance, in conjunction with HOME funds made available to community housing development organizations in accordance with section 233 of the Act. HUD will publish a notice in the Federal Register announcing the availability of funding under this section, as appropriate. The notice need not include funding for each of the eligible activities, but may target funding from among the eligible activities.

§ 92.303 Tenant participation plan.

A community housing development organization that receives assistance under this part must adhere to a fair lease and grievance procedure approved by the participating jurisdiction and provide a plan for and follow a program of tenant participation in management decisions.

Subpart H—Other Federal Requirements

§ 92.350 Other Federal requirements.

(a) The Federal requirements set forth in 24 CFR 5.105(a), *Nondiscrimination and equal opportunity*, are applicable to participants in the HOME program.

(b) OMB Circulars referenced in this part may be obtained from: Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G-2200, Washington, DC 20503; telephone: (202) 395-7332.

§ 92.351 Affirmative marketing; minority outreach program.

(a) *Affirmative marketing.* (1) Each participating jurisdiction must adopt affirmative marketing procedures and requirements for rental and homebuyer projects containing 5 or more HOME-assisted housing units. Affirmative marketing steps consist of actions to provide information and otherwise attract eligible persons in the housing market area to the available housing without regard to race, color, national origin, sex, religion, familial status or disability. (The affirmative marketing procedures do not apply to families with Section 8 tenant-based rental housing assistance or families with tenant-based rental assistance provided with HOME funds.)

(2) The affirmative marketing requirements and procedures adopted must include:

(i) Methods for informing the public, owners, and potential tenants about Federal fair housing laws and the participating jurisdiction's affirmative marketing policy (e.g., the use of the Equal Housing Opportunity logotype or slogan in press releases and solicitations for owners, and written communication to fair housing and other groups);

(ii) Requirements and practices each owner must adhere to in order to carry out the participating jurisdiction's affirmative marketing procedures and requirements (e.g., use of commercial media, use of community contacts, use of the Equal Housing Opportunity logotype or slogan, and display of fair housing poster);

(iii) Procedures to be used by owners to inform and solicit applications from persons in the housing market area who are not likely to apply for the housing without special outreach (e.g., use of community organizations, places of worship, employment centers, fair housing groups, or housing counseling agencies);

(iv) Records that will be kept describing actions taken by the participating jurisdiction and by owners to affirmatively market units and records to assess the results of these actions; and

(v) A description of how the participating jurisdiction will annually assess the success of affirmative marketing actions and what corrective actions will be taken where affirmative marketing requirements are not met.

(3) A State that distributes HOME funds to units of general local government must require each unit of general local government to adopt affirmative marketing procedures and requirements that meet the requirement in paragraphs (a) and (b) of this section.

(b) *Minority outreach.* A participating jurisdiction must prescribe procedures acceptable to HUD to establish and oversee a minority outreach program within its jurisdiction to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, including, without limitation, real estate firms, construction firms, appraisal firms, management firms, financial institutions, investment banking firms, underwriters, accountants, and providers of legal services, in all contracts entered into by the participating jurisdiction with such persons or entities, public and private, in order to facilitate the activities of the participating jurisdiction to provide affordable housing authorized under

this Act or any other Federal housing law applicable to such jurisdiction. Section 85.36(e) of this title describes actions to be taken by a participating jurisdiction to assure that minority business enterprises and women business enterprises are used when possible in the procurement of property and services.

§ 92.352 Environmental review.

(a) *General.* The environmental effects of each activity carried out with HOME funds must be assessed in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58.

(b) *Responsibility for review.* (1) The jurisdiction (e.g., the participating jurisdiction or State recipient) or insular area must assume responsibility for environmental review, decisionmaking, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under 24 CFR part 58. No funds may be committed to a HOME activity or project before the completion of the environmental review and approval of the request for release of funds and related certification, except as authorized by 24 CFR part 58.

(2) A State participating jurisdiction must also assume responsibility for approval of requests for release of HOME funds submitted by State recipients.

(3) HUD will perform the environmental review, in accordance with 24 CFR part 50, for a competitively awarded application for HOME funds submitted to HUD by an entity that is not a jurisdiction.

§ 92.353 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the participating jurisdiction must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must

relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* (1) *General.* A displaced person (defined in paragraph (c)(2) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655) and 49 CFR part 24. A “displaced person” must be advised of his or her rights under the Fair Housing Act and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, the minority person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(2) *Displaced Person.* (i) For purposes of paragraph (c) of this section, the term *displaced person* means a person (family individual, business, nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(A) After notice by the owner to move permanently from the property, if the move occurs on or after:

(1) The date of the submission of an application to the participating jurisdiction or HUD, if the applicant has

site control and the application is later approved; or

(2) The date the jurisdiction approves the applicable site, if the applicant does not have site control at the time of the application; or

(B) Before the date described in paragraph (c)(2)(i)(A) of this section, if the jurisdiction or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(C) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(1) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(i) The tenant’s monthly rent before such agreement and estimated average monthly utility costs; or

(ii) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(2) The tenant is required to relocate temporarily, does not return to the building/complex, and either

(i) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(ii) Other conditions of the temporary relocation are not reasonable; or

(3) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(ii) Notwithstanding paragraph (c)(2)(i) of this section, a person does not qualify as a *displaced person* if:

(A) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable federal, State or local law, or other good cause, and the participating jurisdiction determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at

least 30 days advance written notice to the tenant specifying the grounds for the action.

(B) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a “displaced person” (or for any assistance under this section) as a result of the project;

(C) The person is ineligible under 49 CFR 24.2(g)(2); or

(D) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) The jurisdiction may, at any time, ask HUD to determine whether a displacement is or would be covered by this rule.

(3) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (c) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the execution of the agreement covering the acquisition, rehabilitation, or demolition.

(d) *Optional relocation assistance.* The participating jurisdiction may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to paragraph (c) of this section. The jurisdiction may also provide relocation assistance to persons covered under paragraph (c) of this section beyond that required. For any such assistance that is not required by State or local law, the jurisdiction must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Residential antidisplacement and relocation assistance plan.* The participating jurisdiction shall comply with the requirements of 24 CFR part 42, subpart B.

(f) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(g) *Appeals.* A person who disagrees with the participating jurisdiction’s

determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the jurisdiction. A low-income person who is dissatisfied with the jurisdiction's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

§ 92.354 Labor.

(a) *General.* (1) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a-5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–332).

(2) The contract for construction must contain these wage provisions if HOME funds are used for any project costs in § 92.206, including construction or nonconstruction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.

(3) Participating jurisdictions, contractors, subcontractors, and other participants must comply with regulations issued under these acts and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor

Standards Compliance in Housing and Community Development Programs), as applicable. Participating jurisdictions must require certification as to compliance with the provisions of this section before making any payment under such contract.

(b) *Volunteers.* The prevailing wage provisions of paragraph (a) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.

(c) *Sweat equity.* The prevailing wage provisions of paragraph (a) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

§ 92.355 Lead-based paint.

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821 *et seq.*) and 24 CFR part 35. The lead-based paint provisions of 24 CFR 982.401(j) also apply, irrespective of the applicable property standard under § 92.251. In a project in which not all units are assisted with HOME funds, the lead-based paint requirements apply to all units and common areas in the project. Unless otherwise provided, the participating jurisdiction is responsible for testing and abatement activities.

§ 92.356 Conflict of interest.

(a) *Applicability.* In the procurement of property and services by participating jurisdictions, State recipients, and subrecipients, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42, respectively, apply. In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section apply.

(b) *Conflicts prohibited.* No persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decisionmaking process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the participating jurisdiction, State recipient, or subrecipient which are receiving HOME funds.

(d) *Exceptions: Threshold requirements.* Upon the written request of the participating jurisdiction, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME Investment Partnerships Program and the effective and efficient administration of the participating jurisdiction's program or project. An exception may be considered only after the participating jurisdiction has provided the following:

(1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(2) An opinion of the participating jurisdiction's or State recipient's attorney that the interest for which the exception is sought would not violate State or local law.

(e) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the participating jurisdiction has satisfactorily met the requirements of paragraph (d) of this section, HUD will consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;

(2) Whether the person affected is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (c) of this section;

(5) Whether undue hardship will result either to the participating jurisdiction or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(6) Any other relevant considerations.

(f) *Owners and Developers.* (1) No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent or consultant of the owner, developer or sponsor) whether private, for profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project. This provision does not apply to an owner-occupant of single-family housing or to an employee or agent of the owner or developer of a rental housing project who occupies a HOME assisted unit as the project manager or maintenance worker.

(2) *Exceptions.* Upon written request of a housing owner or developer, the participating jurisdiction (or State recipient, if authorized by the State participating jurisdiction) may grant an exception to the provisions of paragraph (f)(1) of this section on a case-by-case basis when it determines that the exception will serve to further the purposes of the HOME program and the effective and efficient administration of the owner's or developer's HOME-assisted project. In determining whether to grant a requested exception, the participating jurisdiction shall consider the following factors:

(i) Whether the person receiving the benefit is a member of a group or class of low-income persons intended to be the beneficiaries of the assisted housing, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(ii) Whether the person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted housing in question;

(iii) Whether the tenant protection requirements of § 92.253 are being observed;

(iv) Whether the affirmative marketing requirements of § 92.351 are being observed and followed; and

(v) Any other factor relevant to the participating jurisdiction's determination, including the timing of the requested exception.

§ 92.357 Executive Order 12372.

(a) *General.* Executive Order 12372, as amended by Executive Order 12416 (3 CFR, 1982 Comp., p. 197 and 3 CFR, 1983 Comp., p. 186) (Intergovernmental Review of Federal Programs) and HUD's implementing regulations at 24 CFR part 52, allow each State to establish its own process for review and comment on

proposed Federal financial assistance programs.

(b) *Applicability.* Executive Order 12372 applies to applications submitted with respect to HOME funds being competitively reallocated under subpart J of this part to units of general local government.

Subpart I—Technical Assistance

§ 92.400 Coordinated Federal support for housing strategies.

(a) *General.* HUD will provide assistance in accordance with Subtitle C of the Act.

(b) *Notice of funding.* HUD will publish a notice in the Federal Register announcing the availability of funding under this section as appropriate.

Subpart J—Reallocations

§ 92.450 General.

(a) This subpart J sets out the conditions under which HUD reallocates HOME funds that have been allocated, reserved, or placed in a HOME Investment Trust Fund.

(b) A jurisdiction that is not a participating jurisdiction but is meeting the requirements of §§ 92.102, 92.103, and 92.104, (participation threshold, notice of intent, and submission of consolidated plan) is treated as a participating jurisdiction for purposes of receiving a reallocation under subpart J of this part.

§ 92.451 Reallocation of HOME funds from a jurisdiction that is not designated a participating jurisdiction or has its designation revoked.

(a) *Failure to be designated a participating jurisdiction.* HUD will reallocate, under this section, any HOME funds allocated to or reserved for a jurisdiction that is not a participating jurisdiction if:

(1) HUD determines that the jurisdiction has failed to:

(i) Meet the participation threshold amount in § 92.102;

(ii) Provide notice of its intent to become a participating jurisdiction in accordance with § 92.103; or

(iii) Submit its consolidated plan, in accordance with 24 CFR part 91; or

(2) HUD after providing for amendments and resubmissions in accordance with 24 CFR part 91 disapproves the jurisdiction's consolidated plan.

(b) *Designation revoked.* HUD will reallocate, under this section, any funds remaining in a jurisdiction's HOME Investment Trust Fund after HUD has revoked the jurisdiction's designation as a participating jurisdiction under § 92.107.

(c) *Manner of reallocation.* HUD will reallocate funds that are subject to reallocation under this section in the following manner:

(1) If the funds to be reallocated under this section are from a State, HUD will:

(i) Make the funds available by competition in accordance with criteria in § 92.453 among applications submitted by units of general local government within the State and with preference being given to applications from units of general local government that are not participating jurisdictions, and

(ii) Reallocate the remainder by formula in accordance with § 92.454.

(2) If the funds to be reallocated are from a unit of general local government:

(i) Located in a State that is participating jurisdiction, HUD will reallocate the funds to that State. The State, in distributing these funds, must give preference to the provision of affordable housing within the unit of general local government; or

(ii) Located in a State that is not a participating jurisdiction, HUD will reallocate the funds by competition among units of general local government and community housing development organizations within the State, with priority going to applications for affordable housing within the unit of general local government; and reallocate the remainder by formula in accordance with § 92.454.

§ 92.452 Reallocation of community housing development organization set-aside.

HUD will reallocate, under this section, any HOME funds reduced or recaptured by HUD from a participating jurisdiction's HOME Investment Trust Fund under § 92.300(d). HUD will reallocate these funds by competition in accordance with criteria in § 92.453 to other participating jurisdictions for affordable housing development, sponsored, or owned by community housing development organizations.

§ 92.453 Criteria for competitive reallocations.

(a) *General.* HUD will invite applications through Federal Register notice for HOME funds that become available for competitive reallocation under § 92.451 or § 92.452, or both. The notice will describe the application requirements and procedures, including the deadline for the submission of applications of at least 30 days, the total funding available for the competition and any maximum amount of individual awards. The notice will describe the selection criteria and any special factors to be evaluated in awarding points

under the selection criteria. The selection criteria are those set forth in this section and any additional requirements in §§ 92.451 and 92.452. The notice will also state whether HUD will make selections based on the application for a project or activities.

(b) *Threshold factors.* To be considered for a competitive reallocation, an application submitted by a jurisdiction must demonstrate to the satisfaction of HUD that:

(1) *Cooperative efforts.* The jurisdiction is engaged, or has made good faith efforts to engage, in cooperative efforts between the State and appropriate participating jurisdictions within the State to develop, coordinate, and implement housing strategies under the Act; and

(2) *Barrier removal.* (i) The jurisdiction is implementing, or has plans to implement, a strategy to remove or ameliorate negative effects of public policies which raise the cost of housing or constrain incentives to develop, maintain, or improve affordable housing; or demonstrate the absence of these policies.

(ii) A local jurisdiction must provide a satisfactory explanation (based on its approved consolidated plan, or based on the State's approved consolidated plan, if the jurisdiction is not required to submit a consolidated plan) of whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by State and local policies, statutes, ordinances, regulations, and administrative procedures and processes. Of particular concern are policies such as tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment. The jurisdiction must also provide a satisfactory description of its strategy to remove or ameliorate negative effects, if any, of such policies.

(iii) A State must provide a satisfactory explanation of whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the State are affected by State, as well as local policies, statutes, ordinances, regulations, and administrative procedures and processes. Of particular concern are policies such as tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment. A State must also provide a satisfactory description of its strategy to remove or ameliorate

directly any negative effects, as well as to work with units of general local government involved to remove or ameliorate such negative effects of such policies. The strategy should propose, as appropriate, a program of State enabling reforms, direct State action as well as model codes, standards, and technical assistance for local governments.

(c) *Evaluation criteria.* Each applicant jurisdiction meeting the threshold factors in paragraph (b) of this section and each applicant that is not a jurisdiction will be evaluated and ranked in accordance with criteria contained in the notice that are consistent with the following factors and take into account selection preferences and other requirements in § 92.450 through § 92.452 that may apply, based on the source of the HOME funds being competitively reallocated.

(1) *Policies (25 Points).* The degree to which the applicant is pursuing policies that:

(i) Make existing housing more affordable;

(ii) Preserve the affordability of privately owned housing that is vulnerable to conversion, demolition, disinvestment, or abandonment;

(iii) Increase the supply of housing that is affordable to very low-income and low-income persons, particularly in areas that are accessible to expanding job opportunities; and,

(iv) Remedy the effects of discrimination and improve the housing opportunities for disadvantaged minorities.

(2) *Actions (50 points).* The applicant's actions that:

(i) Direct HOME funds to benefit very low-income families, to a greater extent than required by § 92.252(b). Extra consideration will be given for activities that expand the supply of affordable housing for very low-income families whose annual incomes do not exceed 30 percent of the median family income for the area;

(ii) Apply the tenant selection preference categories applicable under section 8 of the 1937 Act to the selection of tenants for housing assisted with HOME funds;

(iii) Provide matching resources in excess of funds required under § 92.218; and

(iv) Stimulate a high degree of investment and participation by the private sector, including nonprofit organizations.

(3) *Commitment (25 points).* The applicant's demonstrated commitment to expand the supply of affordable rental housing, including units developed by public housing agencies, as indicated by the additional number of

units of affordable housing made available through new construction or rehabilitation within the previous two years, making adjustments for regional variations in construction and rehabilitation costs and giving special consideration to the number of additional units made available under this part through new construction or rehabilitation, including units developed by public housing agencies, in relation to the amounts made available under this program.

§ 92.454 Reallocations by formula.

(a) HUD will reallocate under this section:

(1) Any HOME funds remaining available for reallocation after HUD has made competitive reallocations under § 92.451 and § 92.452;

(2) Any HOME funds available for reallocation because HUD reduced or recaptured funds from participating jurisdiction under § 92.500(d) for failure to commit the funds within the time specified;

(3) Any HOME funds withdrawn by HUD from a participating jurisdiction under 24 CFR 91.520(f) for failure to submit in a timely manner a performance report required by 24 CFR 91.520 that is satisfactory to HUD; and

(4) Any HOME funds remitted to HUD under § 92.503(b) when a jurisdiction ceases to be a participating jurisdiction.

(b) Any reallocation of funds from a State must be made only among all participating States, and any reallocation of funds from units of general local government must be made only among all participating units of general local government, except those participating jurisdictions that HUD has removed from participating in reallocations under § 92.552.

(c) A local participating jurisdiction's share of a reallocation is calculated by multiplying the amount available for reallocation to units of general local government by a factor that is that ratio of the participating jurisdiction's formula allocation provided under § 92.50 to the total of the formula allocations provided for all local participating jurisdictions sharing in the reallocation. A State participating jurisdiction's share is comparably determined using the amount available for reallocation to States.

(d) HUD will make reallocations under this section quarterly, unless the amount available for such reallocation is insufficient to warrant making a reallocation. In any event, HUD will make a reallocation under this section at least once a year. The minimum amount of a reallocation is \$1000.

Subpart K—Program Administration**§ 92.500 The HOME Investment Trust Fund.**

(a) *General.* A HOME Investment Trust Fund consists of the accounts described in this section solely for investment in accordance with the provisions of this part. HUD will establish a HOME Investment Trust Fund United States Treasury account for each participating jurisdiction. Each participating jurisdiction may use either a separate local HOME Investment Trust Fund account or, a subsidiary account within its general fund (or other appropriate fund) as the local HOME Investment Trust Fund account.

(b) *Treasury Account.* The United States Treasury account of the HOME Investment Trust Fund includes funds allocated to the participating jurisdiction under § 92.50 (including for a local participating jurisdiction, any transfer of the State's allocation pursuant to § 92.102(b)(2)) and funds reallocated to the participating jurisdiction, either by formula or by competition, under subpart J of this part; and

(c) *Local Account.* (1) The local account of the HOME Investment Trust Fund includes deposits of HOME funds disbursed from the Treasury account; the deposit of any State funds (other than HOME funds transferred pursuant to § 92.102(b)(2)) or local funds that enable the jurisdiction to meet the participating threshold amount in § 92.102; any program income (from both the allocated funds and matching contributions in accordance with the definition of program income); and any repayments or recaptured funds as required by § 92.503.

(2) The participating jurisdiction may establish a second local account of the HOME Investment Trust Funds if:

(i) The participating jurisdiction has its own affordable housing trust fund that the participating jurisdiction will use for matching contributions to the HOME program;

(ii) The statute or local ordinance requires repayments from its own trust fund to be made to the trust fund;

(iii) The participating jurisdiction establishes a separate account within its own trust fund for repayments of the matching contributions; and

(iv) The funds in the account are used solely for investment in eligible activities within the participating jurisdiction's boundaries in accordance with the provisions of this part, except as provided under § 92.201(a)(2).

(3) The funds in the local account cannot be used for the matching

contribution and do not need to be matched.

(d) *Reductions.* HUD will reduce or recapture HOME funds in the HOME Investment Trust Fund by the amount of:

(1) Any funds in the United States Treasury account that are required to be reserved (i.e., 15 percent of the funds) by a participating jurisdiction under § 92.300 that are not reserved for a community housing development organization pursuant to a written agreement within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement (HUD will make the notification on the date HUD executes the agreement);

(2) Any funds in the United States Treasury account that are not committed within 24 months after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement (HUD will make the notification on the date HUD executes the agreement);

(3) Any funds in the United States Treasury account that are not expended within five years after the last day of the month in which HUD notifies the participating jurisdiction of HUD's execution of the HOME Investment Partnership Agreement (HUD will make the notification on the date HUD executes the agreement); and

(4) Any penalties assessed by HUD under § 92.552.

§ 92.501 HOME Investment Partnership Agreement.

Allocated and reallocated funds will be made available pursuant to a HOME Investment Partnership Agreement. The agreement ensures that HOME funds invested in affordable housing are repayable if the housing ceases to qualify as affordable housing before the period of affordability expires.

§ 92.502 Program disbursement and information system.

(a) *General.* The Home Investment Trust Fund account established in the United States Treasury is managed through a computerized disbursement and information system established by HUD. The system disburses HOME funds that are allocated or reallocated, and collects and reports information on the use of HOME funds in the United States Treasury account. [For purposes of reporting in the Integrated Disbursement and Information System, a HOME project is an activity.]

(b) *Project set-up.* (1) After the participating jurisdiction executes the

HOME Investment Partnership Agreement, submits the applicable banking and security documents, complies with the environmental requirements under 24 CFR part 58 for release of funds and commits funds to a specific local project, the participating jurisdiction may identify (set up) specific investments in the disbursement and information system. Investments that require the set-up of projects in the system are the acquisition, new construction, or rehabilitation of housing, and the provision of tenant-based rental assistance. The participating jurisdiction is required to enter complete project set-up information at the time of project set-up.

(2) If the project set-up information is not completed within 20 days of the project set-up call, the project may be cancelled by the system. In addition, a project which has been committed in the system for 12 months without an initial disbursement of funds may be cancelled by the system.

(c) *Disbursement of HOME funds.* (1) After complete project set-up information is entered into the disbursement and information system, HOME funds for the project may be drawn down from the United States Treasury account by the participating jurisdiction by electronic funds transfer. The funds will be deposited in the local account of the HOME Investment Trust Fund of the participating jurisdiction within 48 to 72 hours of the disbursement request. Any drawdown of HOME funds from the United States Treasury account is conditioned upon the provision of satisfactory information by the participating jurisdiction about the project or tenant-based rental assistance and compliance with other procedures, as specified by HUD.

(2) HOME funds drawn from the United States Treasury account must be expended for eligible costs within 15 days. Any interest earned within the 15 day period may be retained by the participating jurisdiction as HOME funds. Any funds that are drawn down and not expended for eligible costs within 15 days of the disbursement must be returned to HUD for deposit in the participating jurisdiction's United States Treasury account of the HOME Investment Trust Fund. Interest earned after 15 days belongs to the United States and must be remitted promptly, but at least quarterly, to HUD, except that a local participating jurisdiction may retain interest amounts up to \$100 per year for administrative expenses and States are subject to the Intergovernmental Cooperation Act (31 U.S.C. 6501 et seq.).

(3) HOME funds in the local account of the HOME Investment Trust Fund must be disbursed before requests are made for HOME funds in the United States Treasury account.

(4) A participating jurisdiction will be paid on an advance basis provided it complies with the requirements of this part.

(d) *Project completion.*

(1) Complete project completion information must be entered into the disbursement and information system, or otherwise provided, within 120 days of the final project drawdown. If satisfactory project completion information is not provided, HUD may suspend further project set-ups or take other corrective actions.

(2) Additional HOME funds may be committed to a project up to one year after project completion, but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under § 92.250.

(e) *Access by other participants.* Access to the disbursement and information system by other entities participating in the HOME program (e.g., State recipients) will be governed by procedures established by HUD.

§ 92.503 Program income, repayments, and recaptured funds.

(a) *Program income.* (1) Program income must be used in accordance with the requirements of this part. Program income must be deposited in the participating jurisdiction's HOME Investment Trust Fund local account unless the participating jurisdiction permits the State recipient or subrecipient to retain the program income for additional HOME projects pursuant to the written agreement required by § 92.504.

(2) If the jurisdiction is not a participating jurisdiction when the program income is received, the funds are not subject to the requirements of this part.

(3) Program income derived from consortium activities undertaken by or within a member unit of general local government which thereafter terminates its participation in the consortium continues to be program income of the consortium.

(b) *Repayments.* (1) Any HOME funds invested in housing that does not meet the affordability requirements for the period specified in § 92.252 or § 92.254, as applicable, must be repaid by the participating jurisdiction in accordance with paragraph (b)(3) of this section.

(2) Any HOME funds invested in a project that is terminated before completion, either voluntarily or otherwise, must be repaid by the

participating jurisdiction in accordance with paragraph (b)(3) of this section except for repayments of project specific community housing development organization loans which are waived in accordance with §§ 92.301(a)(3) and 92.301(b)(3).

(3) If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund Treasury account, they must be repaid to the Treasury account. If the HOME funds were disbursed from the participating jurisdiction's HOME Investment Trust Fund local account, they must be repaid to the local account. If the jurisdiction is not a participating jurisdiction when the repayment is made, the funds must be remitted to HUD and reallocated in accordance with § 92.454.

(c) *Recaptures.* HOME funds recaptured in accordance with § 92.254(a)(5)(ii) must be used in accordance with the requirements of this part. Recaptured funds must be deposited in the participating jurisdiction's HOME Investment Trust Fund local account unless the participating jurisdiction permits the State recipient, subrecipient, or community housing development organization to retain the recaptured funds for additional HOME projects pursuant to the written agreement required by § 92.504. If the jurisdiction is not a participating jurisdiction when the recaptured funds are received, the funds must be remitted to HUD and reallocated in accordance with § 92.454.

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

(a) *Responsibilities.* The participating jurisdiction is responsible for managing the day to day operations of its HOME program, ensuring that HOME funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of State recipients, subrecipients, or contractors does not relieve the participating jurisdiction of this responsibility. The performance of each contractor and subrecipient must be reviewed at least annually.

(b) *Executing a written agreement.* Before disbursing any HOME funds to any entity, the participating jurisdiction must enter into a written agreement with that entity. Before disbursing any HOME funds to any entity, a State recipient, subrecipient, or contractor which is administering all or a part of the HOME program on behalf of the participating jurisdiction, must also enter into a written agreement with that entity. The written agreement must

ensure compliance with the requirements of this part.

(c) *Provisions in written agreements.* The contents of the agreement may vary depending upon the role the entity is asked to assume or the type of project undertaken. This section details basic requirements by role and the minimum provisions that must be included in a written agreement.

(1) *State recipient.* The provisions in the written agreement between the State and a State recipient will depend on the program functions that the State specifies the State recipient will carry out in accordance with § 92.201(b).

(i) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the State to effectively monitor performance under the agreement.

(ii) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period.

(iii) *Program income.* The agreement must state if program income is to be remitted to the State or to be retained by the State recipient for additional eligible activities.

(iv) *Uniform administrative requirements.* The agreement must require the State recipient to comply with applicable uniform administrative requirements, as described in § 92.505.

(v) *Project requirement.* The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project assisted.

(vi) *Other program requirements.* The agreement must require the State recipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the State recipient does not assume the State's responsibilities for release of funds under § 92.352 and the intergovernmental review process in § 92.357 does not apply to the State recipient.

(vii) *Affirmative marketing.* The agreement must specify the State recipient's affirmative marketing responsibilities in accordance with § 92.351, if the HOME funds received by the State recipient will be used for housing containing five or more assisted units.

(viii) *Requests for disbursement of funds.* The agreement must specify that the State recipient may not request disbursement of HOME funds under this agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the State recipient requests funds from the State.

(ix) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the State in meeting its recordkeeping and reporting requirements.

(x) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of affordable housing requirements by the State or the intended beneficiaries, if the State recipient will be the owner at project completion of the affordable housing. The means of enforcement may include liens on real property, deed restrictions, or covenants running with the land. The affordability requirements in § 92.252 must be enforced by deed restriction. In addition, the agreement must specify remedies for breach of the HOME requirements. The agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the State recipient materially fails to comply with any term of the agreement. The State may permit the agreement to be terminated for convenience in accordance with 24 CFR 85.44.

(xi) If the State recipient provides funds to for-profit owners or developers, nonprofit owners or developers, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance, or contractors who are providing services to the State recipient, the State recipient must have a written agreement with such entities which meets the requirements of this section.

(xii) *Duration of the agreement.* The duration of the agreement will depend on which functions the State recipient performs (e.g., whether the State recipient or the State has responsibility for monitoring rental projects for the period of affordability) and which activities are funded under the agreement.

(2) *Subrecipient.* A subrecipient is a public agency or nonprofit selected by the participating jurisdiction to administer all or a portion of the participating jurisdiction's HOME Program. The agreement between the participating jurisdiction and the subrecipient must include:

(i) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, a budget, and the period of the agreement. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction effectively to monitor performance under the agreement.

(ii) *Program income.* The agreement must state if program income is to be remitted to the participating jurisdiction or to be retained by the subrecipient for additional eligible activities.

(iii) *Uniform administrative requirements.* The agreement must require the subrecipient to comply with applicable uniform administrative requirements, as described in § 92.505.

(iv) *Other program requirements.* The agreement must require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart H of this part, except that the subrecipient does not assume the participating jurisdiction's responsibilities for environmental review under § 92.352 and the intergovernmental review process in § 92.357 does not apply.

(v) *Affirmative marketing.* The agreement must specify the subrecipient's affirmative marketing responsibilities in accordance with § 92.351, if the HOME funds administered by the subrecipient will be used for housing containing five or more assisted units.

(vi) *Requests for disbursement of funds.* The agreement must specify that the subrecipient may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed. Program income must be disbursed before the subrecipient requests funds from the participating jurisdiction.

(vii) *Reversion of assets.* The agreement must specify that upon expiration of the agreement, the subrecipient must transfer to the participating jurisdiction any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

(viii) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements.

(ix) *Enforcement of the agreement.* The agreement must specify remedies for breach of the provisions of the

agreement. The agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the agreement. The participating jurisdiction may permit the agreement to be terminated for convenience in accordance with 24 CFR 85.44.

(x) If the subrecipient provides HOME funds to for-profit owners or developers, nonprofit owners or developers, subrecipients, homeowners, homebuyers, tenants receiving tenant-based rental assistance, or contractors, the subrecipient must have a written agreement which meets the requirements of this section.

(3) *For-profit or nonprofit housing owner, sponsor or developer (other than single-family owner-occupant).*

(i) *Use of the HOME funds.* The agreement between the participating jurisdiction and a for-profit or nonprofit housing owner, sponsor or developer must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the participating jurisdiction to effectively monitor performance under the agreement.

(ii) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 92.252 or § 92.254, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period. If the owner or developer is undertaking rental projects, the agreement must establish the initial rents and the procedures for rent increases. If the owner or developer is undertaking homeownership projects for sale to homebuyers in accordance with § 92.254(a), the agreement must set forth the resale or recapture requirements which must be imposed on the housing.

(iii) *Project requirements.* The agreement must require compliance with project requirements in subpart F of this part, as applicable in accordance with the type of project assisted.

(iv) *Property standards.* The agreement must require the housing to meet the property standards in § 92.251 and the lead-based paint requirements in § 92.355 upon project completion. The agreement must also require owners of rental housing assisted with HOME funds to maintain the housing in compliance with § 92.251 for the duration of the affordability period.

(v) *Affirmative marketing.* If the project contains 5 or more HOME-assisted units, the agreement must

specify the owner or developer's affirmative marketing responsibilities as enumerated by the participating jurisdiction in accordance with § 92.351.

(vi) *Records and reports.* The agreement must specify the particular records that must be maintained and the information or reports that must be submitted in order to assist the participating jurisdiction in meeting its recordkeeping and reporting requirements.

(vii) *Enforcement of the agreement.* The agreement must provide for a means of enforcement of the affordable housing requirements by the participating jurisdiction or the intended beneficiaries. This means of enforcement may include liens on real property, deed restrictions or covenants running with the land. The affordability requirements in § 92.252 must be enforced by deed restriction. In addition, the agreement must specify remedies for breach of the provisions of the agreement.

(viii) *Requests for disbursement of funds.* The agreement must specify that the developer may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(ix) *Duration of the agreement.* The agreement must specify the duration of the agreement. If the housing assisted under this agreement is rental housing, the agreement must be in effect through the affordability period required by the participating jurisdiction under § 92.252. If the housing assisted under this agreement is homeownership housing, the agreement must be in effect at least until completion of the project and ownership by the low-income family.

(x) *Conditions for religious organizations.* Where applicable, the agreement must include the conditions prescribed in § 92.257 for the use of HOME funds by religious organizations.

(xi) *Community housing development organization provisions.* If the nonprofit owner or developer is a community housing development organization and is using set-aside funds under § 92.300, the agreement must include the appropriate provisions under §§ 92.300 and 92.301.

(4) *Contractor.* The participating jurisdiction selects a contractor through applicable procurement procedures and requirements. The contractor provides goods or services in accordance with a written agreement (the contract). For contractors who are administering all or a portion of the HOME program, the

contract must include at a minimum the following provisions:

(i) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, a budget, and the length of the agreement.

(ii) *Program requirements.* The agreement must provide that the contractor is subject to the requirements in Part 92 that are applicable to the participating jurisdiction, except §§ 92.505 and 92.506 do not apply, and the contractor cannot assume the participating jurisdiction responsibilities for environmental review, decisionmaking, and action under § 92.352. Where the contractor is administering only a portion of the program, the agreement must list the requirements applicable to the activities the contractor is administering.

(iii) *Duration of agreement.* The agreement must specify the duration of the contract. Generally, the duration of a contract should not exceed two years.

(5) *Homebuyer, homeowner or tenant receiving tenant-based rental or security deposit assistance.* When a participating jurisdiction provides assistance to a homebuyer, homeowner or tenant the written agreement may take many forms depending upon the nature of assistance. As appropriate, it must include as a minimum:

(i) For homebuyers, the agreement must conform to the requirements in § 92.254(a), the value of the property, principal residence, lease-purchase, if applicable, and the resale or recapture provisions. The agreement must specify the amount of HOME funds, the form of assistance, e.g., grant, amortizing loan, deferred payment loan, the use of the funds (e.g., down-payment, closing costs, rehabilitation) and the time by which the housing must be acquired.

(ii) For homeowners, the agreement must conform to the requirements in § 92.254(b) and specify the amount and form of HOME assistance, rehabilitation work to be undertaken, date for completion, and property standards to be met.

(iii) For tenants, the rental assistance contract or the security deposit contract must conform to §§ 92.209 and 92.253.

(d) *On site inspections.*—(1) *HOME assisted rental housing.* During the period of affordability, the participating jurisdiction must perform on-site inspections of HOME-assisted rental housing to determine compliance with the property standards of § 92.251 and to verify the information submitted by the owners in accordance with the requirements of § 92.252 no less than: every three years for projects containing

1 to 4 units; every two years for projects containing 5 to 25 units; and every year for projects containing 26 or more units. Inspections must be based on a sufficient sample of units.

(2) *Tenant-based rental assistance.* The participating jurisdiction must perform annual on-site inspections of rental housing occupied by tenants receiving HOME-assisted TBRA to determine compliance with the property standards of § 92.251.

§ 92.505 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of OMB Circular No. A-87 and the following requirements of 24 CFR part 85 apply to the participating jurisdiction, State recipients, and any governmental subrecipient receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.22, 85.26, 85.32 through 85.34, 85.36, 85.44, 85.51, and 85.52.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A-122 and the following requirements of 24 CFR part 84 apply to subrecipients receiving HOME funds that are nonprofit organizations that are not governmental subrecipients: §§ 84.2, 84.5, 84.13 through 84.16, 84.21, 84.22, 84.26 through 84.28, 84.30, 84.31, 84.34 through 84.37, 84.40 through 84.48, 84.51, 84.60 through 84.62, 84.72, and 84.73.

§ 92.506 Audit.

Audits of the participating jurisdiction, State recipients, and subrecipients must be conducted in accordance with 24 CFR parts 44 and 45, as applicable.

§ 92.507 Closeout.

(a) HOME funds from each individual Federal fiscal year (i.e., the allocation and any reallocated funds from the particular federal fiscal year appropriation) will be closed out when all the following criteria have been met:

(1) All funds to be closed out have been drawn down and expended for completed project costs, or funds not drawn down and expended have been deobligated by HUD;

(2) The matching requirements in § 92.218 have been met;

(3) Project Completion Reports for all projects using funds to be closed out have been submitted and project completion information has been entered into the program disbursement and information system established by HUD;

(4) The participating jurisdiction has been reviewed and audited and HUD has determined that all requirements, except for affordability, have been met

or all monitoring and audit findings have been resolved.

(i) The participating jurisdiction's most recent audit report and audit reports of state recipients, where applicable, must be received by HUD. If the audit does not cover all funds to be closed out, the closeout may proceed, provided the participating jurisdiction agrees in the Closeout Report that any costs paid with the funds that were not audited must be subject to the participating jurisdiction's next single audit and that the participating jurisdiction may be required to repay to HUD any disallowed costs based on the results of the audit.

(ii) The on-site monitoring of the participating jurisdiction by the HUD Field Office must include verification of data reflected in the Closeout Report and reconciliation of any discrepancies which may exist between program disbursement and information system data and participating jurisdiction or state recipient records.

(b) The Closeout Report contains the final data on the funds and must be signed by the participating jurisdiction and HUD. In addition, the report must contain:

(1) A provision regarding unaudited funds, required by paragraph (a)(4)(i) of this section; and

(2) A provision requiring the participating jurisdiction to continue to meet the requirements applicable to housing projects for the period of affordability specified in § 92.252 or § 92.254, to keep records demonstrating that the requirements have been met and to repay the HOME funds, as required by § 92.503, if the housing fails to remain affordable for the required period.

§ 92.508 Recordkeeping.

(a) *General.* Each participating jurisdiction must establish and maintain sufficient records to enable HUD to determine whether the participating jurisdiction has met the requirements of this part. At a minimum, the following records are needed:

(1) *Records concerning designation as a participating jurisdiction.*

(i) For a consortium, the consortium agreement among the participating member units of general local government as required by § 92.101.

(ii) For a unit of general local government receiving a formula allocation of less than \$750,000 (or less than \$500,000 in fiscal years in which Congress appropriates less than \$1.5 billion for this part), records demonstrating that funds have been made available (either by the State or the unit of general local government, or

both) equal to or greater than the difference between its formula allocation and \$750,000 (or \$500,000 in fiscal years in which Congress appropriates less than \$1.5 billion) as required by § 92.102(b).

(2) *Program records.* (i) Records of the efforts to maximize participation by the private sector as required by § 92.200.

(ii) The forms of HOME assistance used in the program, including any forms of investment described in the Consolidated Plan under 24 CFR part 91 which are not identified in § 92.205(b).

(iii) The subsidy layering guidelines adopted in accordance with § 92.250 which support the participating jurisdiction's Consolidated Plan certification.

(iv) If existing debt is refinanced for multi-family rehabilitation projects, the refinancing guidelines established in accordance with § 92.206(b), described in the Consolidated Plan.

(v) If HOME funds are used for tenant-based rental assistance, records supporting the participating jurisdiction's Consolidated Plan certification in accordance with § 92.209(b), including documentation of the local market conditions that led to the choice of this option; written selection policies and criteria; supporting documentation for preferences for specific categories of individuals with disabilities; and records supporting the rent standard and minimum tenant contribution established in accordance with § 92.209(h).

(vi) If HOME funds are used for tenant-based rental assistance or rental housing, records evidencing that not less than 90 percent of the families receiving such rental assistance meet the income requirements of § 92.216.

(vii) If HOME funds are used for homeownership housing, the procedures used for establishing 95 percent of the median purchase price for the area in accordance with § 92.254(a)(2), in the Consolidated Plan.

(viii) If HOME funds are used for acquisition of housing for homeownership, the resale or recapture guidelines established in accordance with § 92.254(a)(5), in the Consolidated Plan.

(ix) Records demonstrating compliance with the matching requirements of § 92.218 through § 92.222 including a running log and project records documenting the type and amount of match contributions by project.

(x) Records documenting compliance with the 24 month commitment deadline of § 92.500(d).

(xi) Records demonstrating compliance with the fifteen percent CHDO set-aside requirement of § 92.300(a).

(xii) Records documenting compliance with the ten percent limitation on administrative and planning costs in accordance with § 92.207.

(3) *Project records.* (i) A full description of each project assisted with HOME funds, including the location, form of HOME assistance, and the units or tenants assisted with HOME funds.

(ii) The source and application of funds for each project, including supporting documentation in accordance with 24 CFR 85.20.

(iii) Records demonstrating that each rental housing or homeownership project meets the minimum per-unit subsidy amount of § 92.205(c), the maximum per-unit subsidy amount of § 92.250(a) and the subsidy layering guidelines adopted in accordance with § 92.250(b).

(iv) Records demonstrating that each project meets the property standards of § 92.251 and the lead based paint requirements of § 92.355.

(v) Records demonstrating that each family is income eligible in accordance with § 92.203.

(vi) Records demonstrating that each tenant-based rental assistance project meets the written tenant selection policies and criteria of § 92.209(c), including the tenant preference requirements, the rent reasonableness requirements of § 92.209(f), the maximum subsidy provisions of § 92.209(h), HQS inspection reports, and calculation of the HOME subsidy.

(vii) Records demonstrating that each rental housing project meets the affordability and income targeting requirements of § 92.252 for the required period. Records must be kept for each family assisted.

(viii) Records demonstrating that each multifamily rental housing project involving rehabilitation with refinancing complies with the refinancing guidelines established in accordance with § 92.206(b).

(ix) Records demonstrating that each lease for a tenant receiving tenant-based rental assistance and for an assisted rental housing unit complies with the tenant and participant protections of § 92.253. Records must be kept for each family.

(x) Records demonstrating that the purchase price or estimated value after rehabilitation for each homeownership housing project does not exceed 95 percent of the median purchase price for the area in accordance with § 92.254(a)(2). The records must

demonstrate how the estimated value was determined.

(xi) Records demonstrating that each homeownership project meets the affordability requirements of § 92.254 for the required period.

(xii) Records demonstrating that any pre-award costs charged to the HOME allocation meet the requirements of § 92.212.

(4) *Community Housing Development Organizations (CHDOs) Records.* (i) Written agreements reserving HOME funds to CHDOs in accordance with § 92.300(a).

(ii) Records setting forth the efforts made to identify and encourage CHDOs, as required by § 92.300(b).

(iii) The name and qualifications of each CHDO and amount of HOME CHDO set-aside funds reserved and committed.

(iv) Records demonstrating that each CHDO complies with the written agreements required by § 92.504.

(v) Records concerning the use of CHDO set-aside funds, including funds used to develop CHDO capacity pursuant to § 92.300(b).

(vi) Records concerning the use of funds for CHDO operating expenses and demonstrating compliance with the requirements of § 92.208, § 92.300(e) and § 92.300(f).

(vii) Records concerning the tenant participation plan required by § 92.303.

(viii) Records concerning project-specific assistance to CHDOs pursuant to § 92.301, including the impediments to repayment, if repayment is waived.

(5) *Financial records.* (i) Records identifying the source and application of funds for each fiscal year, including the formula allocation, any reallocation (identified by federal fiscal year appropriation), and any State or local funds provided under § 92.102(b).

(ii) Records concerning the HOME Investment Trust Fund Treasury account and local account required to be established and maintained by § 92.500, including deposits, disbursements, balances, supporting documentation and any other information required by the program disbursement and information system established by HUD.

(iii) Records identifying the source and application of program income, repayments and recaptured funds.

(iv) Records demonstrating adequate budget control, in accordance with 24 CFR 85.20, including evidence of periodic account reconciliations.

(6) *Program administration records.*

(i) Records demonstrating compliance with the written agreements required by § 92.504.

(ii) Records demonstrating compliance with the applicable uniform

administrative requirements required by § 92.505.

(iii) Records documenting required inspections, monitoring reviews and audits, and the resolution of any findings or concerns.

(7) *Records concerning other Federal requirements.* (i) Equal opportunity and fair housing records.

(A) Data on the extent to which each racial and ethnic group and single-headed households (by gender of household head) have applied for, participated in, or benefited from, any program or activity funded in whole or in part with HOME funds.

(B) Documentation of actions undertaken to meet the requirements of 24 CFR Part 135 which implements section 3 of the Housing Development Act of 1968, as amended (12 U.S.C. 1701u).

(C) Documentation of the actions the participating jurisdiction has taken to affirmatively further fair housing.

(ii) Affirmative marketing and MBE/WBE records.

(A) Records demonstrating compliance with the affirmative marketing procedures and requirements of § 92.351.

(B) Documentation and data on the steps taken to implement the jurisdiction's outreach programs to minority-owned (MBE) and female-owned (WBE) businesses including data indicating the racial/ethnic or gender character of each business entity receiving a contract or subcontract of \$25,000 or more paid, or to be paid, with HOME funds; the amount of the contract or subcontract, and documentation of participating jurisdiction's affirmative steps to assure that minority business and women's business enterprises have an equal opportunity to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction, and services.

(iii) Records demonstrating compliance with the environmental review requirements of § 92.352 and 24 CFR part 58, including flood insurance requirements.

(iv) Records demonstrating compliance with the requirements of § 92.353 regarding displacement, relocation, and real property acquisition, including project occupancy lists identifying the name and address of all persons occupying the real property on the date described in § 92.353(c)(2)(i)(A), moving into the property on or after the date described in § 92.353(c)(2)(i)(A), and occupying the property upon completion of the project.

(v) Records demonstrating compliance with the labor requirements of § 92.354, including contract provisions and payroll records.

(vi) Records demonstrating compliance with the lead-based paint requirements of § 92.355.

(vii) Records supporting exceptions to the conflict of interest prohibition pursuant to § 92.356.

(viii) Debarment and suspension certifications required by 24 CFR parts 24 and 91.

(ix) Records concerning intergovernmental review, as required by § 92.357.

(b) *States with State Recipients.* A State that distributes HOME funds to State recipients must require State recipients to keep the records required by paragraphs (a)(2), (a)(3), (a)(5), (a)(6) and (a)(7) of this section, and such other records as the State determines to be necessary to enable the State to carry out its responsibilities under this part. The State need not duplicate the records kept by the State recipients. The State must keep records concerning its review of State recipients required under § 92.201(b)(3).

(c) *Period of record retention.* All records pertaining to each fiscal year of HOME funds must be retained for the most recent five year period, except as provided below.

(1) For rental housing projects, records may be retained for five years after the project completion date; except that records of individual tenant income verifications, project rents and project inspections must be retained for the most recent five year period, until five years after the affordability period terminates.

(2) For homeownership housing projects, records may be retained for five years after the project completion date, except for documents imposing recapture/resale restrictions which must be retained for five years after the affordability period terminates.

(3) For tenant-based rental assistance projects, records must be retained for five years after the period of rental assistance terminates.

(4) Written agreements must be retained for five years after the agreement terminates.

(5) Records covering displacements and acquisition must be retained for five years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with § 92.353.

(6) If any litigation, claim, negotiation, audit, monitoring, inspection or other action has been started before the

expiration of the required record retention period records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the required period, whichever is later.

(d) *Access to records.* (1) The participating jurisdiction must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable state and local laws regarding privacy and obligations of confidentiality.

(2) HUD and the Comptroller General of the United States, any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the participating jurisdiction, state recipients, and subrecipients, in order to make audits, examinations, excerpts, and transcripts.

§ 92.509 Performance reports.

(a) *Management reports.* Each participating jurisdiction must submit management reports on its HOME Investment Partnerships Program in such format and at such time as HUD may prescribe.

(b) *Annual performance report.* For annual performance report requirements, see 24 CFR part 91.

Subpart L—Performance Reviews and Sanctions

§ 92.550 Performance reviews.

(a) *General.* HUD will review the performance of each participating jurisdiction in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the participating jurisdiction's and, as appropriate, the State recipient's records and reports, findings from on-site monitoring, audit reports, and information generated from the disbursement and information system established by HUD. Where applicable, HUD may also consider relevant information pertaining to a participating jurisdiction's or State recipient's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the participating jurisdiction or State recipient. Comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the participating jurisdiction.

(b) *Standards for comprehensive performance review.* A participating jurisdiction's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine:

(1) For local participating jurisdictions and State participating jurisdictions administering their own HOME programs, whether the participating jurisdiction has committed the HOME funds in the United States Treasury account as required by § 92.500 and expended the funds in the United States Treasury account as required by § 92.500, and has met the requirements of this part, particularly eligible activities, income targeting, affordability, and matching requirements; or

(2) For State participating jurisdictions distributing HOME funds to State recipients, whether the State has met the matching contribution and other requirements of this part; has distributed the funds in accordance with the requirements of this part; and has made such reviews and audits of its State recipients as may be appropriate to determine whether they have satisfied the requirements of paragraph (b)(1) of this section.

§ 92.551 Corrective and remedial actions.

(a) *General.* HUD will use the procedures in this section in conducting the performance review as provided in § 92.550 and in taking corrective and remedial actions.

(b) *Performance review.*

(1) If HUD determines preliminarily that the participating jurisdiction has not met a requirement of this part, the participating jurisdiction will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD (not to exceed 30 days) and on the basis of substantial facts and data, that it has done so.

(2) If the participating jurisdiction fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD will take corrective or remedial action in accordance with this section or § 92.552.

(c) *Corrective and remedial actions.* Corrective or remedial actions for a performance deficiency (failure to meet a provision of this part) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may instruct the participating jurisdiction to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including:

(i) Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Canceling or revising activities likely to be affected by the performance deficiency, before expending HOME funds for the activities;

(iv) Reprogramming HOME funds that have not yet been expended from affected activities to other eligible activities;

(v) Reimbursing its HOME Investment Trust Fund in any amount not used in accordance with the requirements of this part;

(vi) Suspending disbursement of HOME funds for affected activities; and

(vii) Making matching contributions as draws are made from the participating jurisdiction's HOME Investment Trust Fund United States Treasury Account.

(2) HUD may also change the method of payment from an advance to reimbursement basis; and take other remedies that may be legally available.

§ 92.552 Notice and opportunity for hearing; sanctions.

(a) If HUD finds after reasonable notice and opportunity for hearing that a participating jurisdiction has failed to comply with any provision of this part and until HUD is satisfied that there is no longer any such failure to comply:

(1) HUD shall reduce the funds in the participating jurisdiction's HOME Investment Trust Fund by the amount of any expenditures that were not in accordance with the requirements of this part; and

(2) HUD may do one or more of the following:

(i) Prevent withdrawals from the participating jurisdiction's HOME Investment Trust Fund for activities affected by the failure to comply;

(ii) Restrict the participating jurisdiction's activities under this part to activities that conform to one or more model programs which HUD has developed in accordance with section 213 of the Act;

(iii) Remove the participating jurisdiction from participation in allocations or reallocations of funds made available under subpart B or J of this part;

(iv) Require the participating jurisdiction to make matching contributions in amounts required by § 92.218(a) as HOME funds are drawn from the participating jurisdiction's

HOME Investment Trust Fund United States Treasury Account. Provided, however, that HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (b)(1) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by the failure to comply.

(b) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the participating jurisdiction, or at HUD's option, the State recipient.

(1) *Notice of opportunity for hearing.* HUD shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall be sent by first class mail. The notice shall specify:

(i) In a manner which is adequate to allow the respondent to prepare its response, the basis upon which HUD determined that the respondent failed to comply with a provision of this part;

(ii) That the hearing procedures are governed by these rules;

(iii) That the respondent has 14 days from receipt of the notice within which to provide a written request for a hearing to the Chief Docket Clerk, Office of Administrative Law Judges, and the address and telephone number of the Chief Docket Clerk;

(iv) The action HUD proposes to take and that the authority for this action is § 92.552; and

(v) That if the respondent fails to request a hearing within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(2) *Initiation of hearing.* The respondent shall be allowed 14 days from receipt of the notice within which to notify the Chief Docket Clerk, Office of Administrative Law Judges, of its request for a hearing. If no request is received within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an ALJ. The case shall be referred to the ALJ at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the

disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:

(i) Administer oaths and affirmations;

(ii) Issue subpoenas as authorized by law;

(iii) Rule upon offers of proof and receive relevant evidence;

(iv) Order or limit discovery before the hearing as the interests of justice may require;

(v) Regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) Consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) Make and file initial determinations.

(4) *Ex parte communications.* An *ex parte* communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. *Ex parte* communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an *ex parte* communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized *ex parte* communications shall not be taken into consideration in deciding any matter in issue.

(5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. HUD has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties

may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Generally within 60 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by first class mail and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching the initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the rationale therefor, affirming, modifying or revoking the

decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.

Dated: August 28, 1996.

Henry G. Cisneros,

Secretary.

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Registered
Patent

Monday
September 16, 1996

Part III

**Department of
Health and Human
Services**

Office of Public Health and Science

Funding Availability: National Center for
Primary Care; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES**Office of Public Health and Science****Office of Minority Health; Notice of Availability of Funds—Construction Grant for a National Center for Primary Care**

SUMMARY: The Office of Minority Health (OMH), Office of Public Health and Science announces that Fiscal Year (FY) 1996 funds are available for the construction of a National Center for Primary Care. Funds were appropriated for this purpose by the Balanced Budget Downpayment Act II, Pub. L. 104-134 for FY 1996.

Authority: This program will be conducted under the authority of section 1701 of the Public Health Service Act and Pub. L. 104-134.

DATES: To receive consideration, applications must be received by (enter 45 days from date of publication) by the Grants Management Officer, Mrs. Carolyn Williams, at the address below. Applications will meet the deadline if they are either: (1) Received on or before the deadline date; or (2) postmarked on or before the deadline date. A legibly dated receipt from a commercial carrier or the U.S. Postal Service will be accepted instead of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Grant applications that are received after the deadline date will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: Additional information related to technical and program issues may be obtained from Ms. Twei Doong, Deputy Director, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone number (301) 443-5084. Grant application kits and information regarding business, administrative or fiscal issues related to the awarding of the grant under this Notice may be requested from Ms. Carolyn Williams, Grants Management Officer, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, MD 20852, telephone number (301) 594-0758. Applicants for grants will use Form PHS 5161.

SUPPLEMENTARY INFORMATION:**Program and Background Information**

Minority individuals and communities suffer disproportionately from excess morbidity and mortality from causes that are known to be preventable by community-oriented prevention and primary care. For

example, minority individuals have nearly twice the prevalence of diabetes as the general population, and minority diabetics suffer complications at twice the rate of nonminority diabetics.

Minority communities' lack of access to health care is a causative factor for this disparity in health outcomes. Despite a similar prevalence of cardiovascular disease, African-Americans with heart disease have mortality rates twice that of their white counterparts. Minority Women are only half as likely to have had a Pap smear or other preventive health care in the past year as are their majority counterparts, despite a significantly higher risk of cervical neoplasia.

Minority individuals are also significantly under represented among health professionals and faculty and leadership of health professional schools. The availability of minority health professionals is critical to the improvement of health outcomes for minority populations. Minority physicians are significantly more likely to enter generalist careers and to serve in underserved areas. A study of physician practice locations and the racial and ethnic makeup and socioeconomic status of communities was recently published in the New England Journal of Medicine. This study concluded that black physicians cared for significantly more black patients and Hispanic physicians for significantly more Hispanic patients. Black physicians cared for more patients covered by Medicaid and Hispanic physicians for more uninsured patients. Achieving the goals of Health People 2000 for the entire nation will require additional well-trained health professionals and researchers who are experts in the unique problems and strengths of low-income minority communities. To reach these objectives there must be more minority faculty and leadership in academic institutions.

The National Center for Primary Care will provide an academic infrastructure for research, training, communications, and demonstration projects designed to promote the improvement of the health of underserved communities and populations at the national level. While a variety of programs and demonstrations are being undertaken around the country, efforts are autonomous and disconnected. The National Center for Primary Care will serve both as a clearinghouse for existing activities and as a catalyst for new cutting-edge efforts to achieve equity in health status, health care delivery, and in developing the health professional workforce for under represented minority individuals.

Availability of Funds

A total of \$7.5 million is available in FY 1996 for one award to a school of medicine for the construction of a National Center for Primary Care.

Project Requirements

Proposals will be accepted for the construction of a facility with the dedicated purpose of housing programs designed to promote, at the national level, the improvement of health in underserved minority communities and populations. At a minimum, the Center should include office space, conference rooms, classroom space, auditorium/lecture halls, library or reading room, and computer facility to house most or all of the following program elements:

(1) Medical education program enhancements to expand the number of physicians and other health professionals trained to serve poor and minority populations

(2) Research and demonstration projects designed to assess the impact of various health care delivery models and treatments on health outcomes specifically in minority populations

(3) Community-based intervention demonstration projects designed as reproducible models for improving the health of minorities and other underserved populations

(4) Practical research from primary and secondary data sources on the causes and risk factors related to excess mortality and morbidity in minority communities and populations

(5) Practical research from primary and secondary data sources on issues related to minorities in the health professional workforce, and design interventions to increase minority representation in all segments of the health professions

(6) Provision of conference, publications, and electronic mechanisms (e.g., access to Internet, bulletin boards, etc.) to coordinate communication with other programs and institutions with the same minority health emphasis, focused on the health of minority communities and populations

Title 45 CFR 74.32(2) requires that this facility be used for the purpose for which it was constructed for its entire useful life.

Eligibility Requirements

Applications will be accepted only from medical schools or academic consortia that have a demonstrated track record of commitment to improvement of health in underserved minority communities and populations. Applicant schools must submit

documentation demonstrating that they meet all of the following criteria as evidence of this commitment.

Applicants who do not provide such documentation will be determined ineligible and their applications will be returned without further review.

(1) Mission statement emphasizes commitment to health of minorities and other underserved populations as a central theme

(2) The curricula in the departments and graduate training programs in the areas of Preventive Medicine, Public Health, and primary care (particularly Family Medicine) contain elements specifically focused on minority health

(3) More than 50% of students and trainees at the institutions are from minority groups that are under-represented in the medical professions

(4) More than 40% of the institution's full and part-time faculty and senior leadership are from under-represented minority groups

(5) A strong track record of partnership with community-based organizations to improve health in the minority community

(6) Capability to undertake program leadership at a national scale for all project requirements described in this notice

(7) A strong track record of having 50% or more of its physician graduates over the last five years who have chosen to enter primary care specialties

(8) A strong track record of having at least 30% of its physician graduates over the last five years serving in underserved communities

Evaluation Criteria

Applications must meet the following criteria. Projects will be reviewed on a competitive basis by an objective review committee based on an assessment of how well applications meet the following evaluation criteria:

(1) Clarity and strength of justification of the need for the proposed facility

(2) Clarity of defined program goals and objectives; degree to which the specific activities required to accomplish the goals of the proposed Center are defined

(3) Strength and documentation that the institution is capable of carrying out project requirements described above, strength of the qualifications of staff to

ensure that program elements are undertaken

(4) Documentation of affiliations with other health professions training institutions and health care facilities that serve predominately minority populations

(5) Documentation that a large proportion of clinical activities are devoted to serving the health care needs of rural or inner-city, low-income, minority populations

(6) Documentation that a large proportion of its clinical activities are devoted to research or demonstration projects directly aimed at improving the health of minorities and other underserved populations

(7) Strength and clarity of justification for the amount and type of space requested to support program requirements

(8) The appropriateness of the project design, facility construction plans and schematic drawings, and time frames for initiation through completion of the project

(9) The reasonableness and justification for the itemized costs in the construction budget

(10) The ability of the applicant to contribute funds for the construction project. It is expected that the recipient will contribute at least 25% of the total project cost.

Other Award Information

The application is subject to the provisions of Executive Order 12372, as implemented under 45 CFR Part 100, which allows State the option of setting up a system for reviewing applications within their States for assistance under certain Federal programs. Applicants (other than federally recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC for each affected State. All comments from a state office must be received within 60 days after the application deadline by the Office of Minority Health's Grants Management Officer. A list of addresses of the SPOCs is enclosed with the application kit material.

Provision of Smoke-Free Workplace and Non-Use of Tobacco Products by Recipients of PHS Grants: The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the non-use of all tobacco products. In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

The PHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement is related to all of the priority areas of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017-001-00474-0) or Healthy People Summary Report (Stock No. 017-001-00473-1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325 (telephone: 202/783-3238).

Use of Metric Units in Application Plans, Design, and Project Construction

Per Executive Order 12770, July 1991, all construction projects funded in whole or in part with Federal funds must use System International (SI) Metric Units. Usage shall conform to Federal Standard 376B, Preferred Metric Units for General Use by the Federal Government. Applicants must use this system (SI) for planning, estimating, design and construction phases of Federally supported projects.

This program is not subject to the Public Health System Reporting Requirements.

There is no CFDA number for this program since it is viewed as a one-time project.

Dated: August 29, 1996.

Clay E. Simpson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 96-23252 Filed 9-13-96; 8:45 am]

BILLING CODE 4160-17-M

Registered
Federal

Monday
September 16, 1996

Part IV

Department of Labor

Office of the Secretary

Agency Recordkeeping/Reporting
Requirements Under Emergency Review
by the Office of Management and
Budget; Notice

DEPARTMENT OF LABOR**Office of the Secretary****Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)**

September 11, 1996.

The Department of Labor has submitted the following (see below) emergency processing public information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub.L. 104-13, 44 U.S.C. Chapter 35). OMB approval has been requested by September 16, 1996. A copy of this ICR, with applicable supporting

documentation, may be obtained by calling the Department of Labor Acting Departmental Clearance Officer, Theresa M. O'Malley ((202) 219-5095).

Comments and questions about the ICR listed below should be forwarded to Office Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395-7316).

The Office of Management and Budget is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected, and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of response.

Agency: Employment and Training Administration.

Title: Work Opportunity Tax Credit.

OMB Number: 1205-0 new.

Cite reference	Total respondents	Frequency	Total responses	Average time/re-sponse	Burden
Data collection	52	Quarterly	208	31	6,448
Record keeping	52	One-time	One-time	897	51,844
Totals			208		58,292

Total Burden Cost (Capital/Startup):

Note: Currently the WOTC is an unfunded mandate. However, the House in its 1997 appropriation report, states that the Committee intends to provide funds after the legislation is enacted. It is expected that future Congressional action will follow through with this funding.

Total Burden Cost (operating/maintaining): \$0.

Description: The Employment and Training Administration (ETA) has oversight responsibilities for the Work Opportunity Tax Credit (WOTC) under

the Small Business Jobs Protection act of 1996 (Pub. L. 104-188). Data collected on the WOTC will be collected by the State Employment Security Agencies and provided to the U.S. Employment Service, Division of Planning and Operations, Washington, D.C., through the appropriate U.S. Department of Labor, Regional Office. The data will be used, primarily, for program management, including monitoring, oversight and the identification of technical assistance and training requirements. The data is also provided

to the congress through an annual Training and Employment Report of the Secretary of Labor. The information reported on ETA Form 8588, TJTC Verification Results, required by Public Law 97-248 (Attachment 3) will be reported annually to the Committee House Ways and Means of the House of Representatives.

Theresa M. O'Malley,

Acting Department Clearance Officer.

[FR Doc. 96-23701 Filed 9-13-96; 8:45 am]

BILLING CODE 4510-30-M

Registered
Federal

Monday
September 16, 1996

Part V

**Department of
Housing and Urban
Development**

24 CFR Part 572

**Homeownership of Single Family Homes
Program (HOPE 3); Streamlining Final
Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 572****[Docket No. FR-3857-F-02]****RIN 2506-AB71****Office of the Assistant Secretary for Community Planning and Development; Homeownership of Single Family Homes Program (HOPE 3); Streamlining Final Rule****AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.**ACTION:** Final rule.

SUMMARY: This rule completes the rulemaking process for an interim rule on HUD's regulations for the HOPE for Homeownership of Single Family Homes Program (HOPE 3) Program and further amends the regulations to comply with the President's regulatory reform initiatives. The rule streamlines HOPE 3 program regulations by eliminating provisions that are redundant of statutes or are otherwise unnecessary, and will make the regulations clearer and more concise. Additional HOPE 3 streamlining proposals that require notice-and-comment rulemaking will be included in a separate proposed rule that HUD expects to publish soon in the Federal Register.

EFFECTIVE DATE: October 16, 1996.

FOR FURTHER INFORMATION CONTACT: Gordon McKay, Director, Office of Affordable Housing Programs, Room 7168, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, telephone number (202) 708-2685 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: On March 4, 1995, President Clinton issued a memorandum to all Federal departments and agencies regarding regulatory reinvention. In response to this memorandum, the Department of Housing and Urban Development conducted a page-by-page review of its regulations to determine which can be eliminated, consolidated, or otherwise improved. HUD determined that the regulations for the HOPE for Homeownership of Single Family Homes Program (42 U.S.C. 12891-12898a) (HOPE 3) Program could be improved and streamlined.

On July 12, 1995 (60 FR 36016), HUD published an interim rule that streamlined program implementation, clarified inconsistencies in previous regulatory provisions, and facilitated grantees' performance of HOPE 3 programs. HUD received only one comment in response to the interim rule, from a Housing Authority. The commenter agreed with the changes made by the final rule, stating that the changes seem to remove operational burdens and streamline program implementation.

Today's rule makes additional streamlining changes and makes final changes that were implemented in the interim rule, including: correcting an inconsistency involving grantee performance in transferring HOPE 3 properties; lengthening the time grantees are allowed to use sale and resale proceeds; eliminating a prohibition against commingling grant or match funds with sale or resale proceeds; clarifying that the cost of required rehabilitation must be counted, whenever incurred, when determining whether a homebuyer can afford a HOPE 3 unit; modifying the definition of income in order to establish a consistent approach to determining a family's eligibility for the program and its required monthly payment; updating the references to the consolidated planning process under part 91 of this title; adding a paragraph authorizing program closeout procedures; and reducing the match requirement from 33 to 25 percent for grants awarded after April 11, 1994.

The additional amendments in this rule to §§ 572.115(a)(2) and 572.210(f) will give HUD Field Offices greater authority to extend deadlines for transferring homeownership interests and spending implementation grant funds. This will allow the Field Offices to provide greater flexibility to grantees when appropriate.

This final rule also removes several provisions in the regulations that repeat statutory language from title IV, subtitle C, of the National Affordable Housing Act, 42 U.S.C. 12891-12898) (NAHA), for example, see § 572.140, Third party rights, which is a grant of jurisdiction in lawsuits.

It is unnecessary to maintain in the Code of Federal Regulations (CFR) language that merely repeats statutory requirements, because those requirements are otherwise fully accessible and binding. Furthermore, if regulations contain statutory language, HUD must amend the regulations whenever Congress amends the statute. Therefore, this final rule removes repetitious statutory language.

In this rule HUD has also consolidated redundant provisions within part 572. For example, provisions in § 572.210(e) on matching requirements will now only appear in § 572.220, a separate section on matching requirements.

In the separate proposed rule, HUD will streamline the competitive funding provisions in part 572. In the exercise of its discretion with respect to funding awards, and in view of extremely limited funds that might become available through repayments, HUD also is clarifying in this preamble that a previously approved grant amount will not be amended to increase the grant amount.

Some provisions in the regulations do not have to be maintained in the Code of Federal Regulations, because of the status of the HOPE 3 program. At this time, HUD does not have significant unobligated HOPE 3 funds, and does not anticipate requesting a new appropriation for HOPE 3 funds. Therefore, HUD is removing provisions on the selection process and criteria applicable to planning grants. However, because authority for the program has not been repealed, receipt of resale proceeds will continue into the future, and the statute specifies a requirement for certain regulations applicable to planning grants, HUD will maintain current provisions on planning grants by means of savings clauses in this final rule (see §§ 572.200, 572.205, and 572.315). (Similar provisions on the selection process and criteria relating to implementation grants, which are not subject to a statutory requirement for regulations, are proposed for removal in the separate proposed rule)

HUD does not expect to make any planning grants under the program in the future, and any current planning grants are already beyond the original deadline for completion of activities. However, in the event that planning grants are made in the future, HUD will recodify the applicable provisions in full. Existing awards remain subject to grant agreements and the regulatory provisions applicable to those agreements.

Lastly, HUD is simplifying some language and removing some provisions in the regulations that do not contain regulatory requirements. For example, several sections in the regulations contain nonbinding guidance or explanations (see §§ 572.130(d) (3) and (4) and 572.220(b)(2)(ii)). While this information is very helpful to recipients, HUD will more appropriately provide this information through other sources, rather than maintaining it in the CFR. For immediate convenience, an

uncodified appendix to this rule includes such information that is being removed from the CFR.

Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. However, part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). A number of the provisions in this final rule were published for comment in an interim rule (60 FR 36016, July 12, 1995); the one comment received agreed with the changes in those provisions. HUD finds that good cause exists to publish other changes included in this rule for effect without first soliciting public comment. These additional changes merely remove unnecessary regulatory provisions. Therefore, prior public comment on the additional changes is unnecessary.

Other Matters

Paperwork Reduction Act Statement

The information collection requirements contained in §§ 572.225, 572.300, and 572.425 of the HOPE 3 regulations have been submitted to the Office of Management and Budget for an extension of the control number, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2506–0128. A notice requesting public comment on this extension will be published in the Federal Register. When assigned, the OMB control number will be published by a separate notice in the Federal Register. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule merely makes final program changes that are already in effect and streamlines regulations by removing unnecessary provisions. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

This rulemaking does not have an environmental impact. This rulemaking simply makes final an existing regulation and consolidates and streamlines provisions; it does not alter the environmental effect of the regulations being amended. A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) at the time of the interim rule. That finding remains applicable to this rule, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule will not have the potential for significant impact on family formation, maintenance, or general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule.

The Catalog of Federal Domestic Assistance number for this program is 14.240.

List of Subjects in 24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

Accordingly, for the reasons set out in the preamble, the amendments included in the interim rule at 60 FR 36016 (July

12, 1995) are adopted as final and part 572 of title 24 of the Code of Federal Regulations is further amended as follows:

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

1. The authority citation for part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

§ 572.1 [Amended]

2. Section 572.1 is amended by removing paragraph (b) and by removing the paragraph designation and heading "*Purpose*" of paragraph (a).

3. Section 572.5 is amended by revising the definitions of "*Displaced homemaker*", "*First-time homebuyer*", and "*Single parent*", to read as follows:

§ 572.5 Definitions.

* * * * *

Displaced homemaker means as the term is defined in 42 U.S.C. 12704. The individual must not have worked full-time, full-year in the labor force for at least 2 years.

* * * * *

First-time homebuyer means as the term is defined in 42 U.S.C. 12704.

* * * * *

Single parent means as the term is defined in 42 U.S.C. 12896.

4. Section 572.110 is amended by revising the first sentence of paragraph (b)(1), to read as follows:

§ 572.110 Identifying and selecting eligible families for homeownership.

* * * * *

(b) * * * (1) In making selections for the program, each recipient must give first preference to qualified residents who legally occupied units on the date the recipient's application for the implementation grant was submitted to HUD and to persons residing in the units at the time the properties are selected. * * *

* * * * *

5. Section 572.115 is amended by revising paragraph (a)(2) to read as follows:

§ 572.115 Transfer of homeownership interests.

(a) * * *

(2) The HUD Field Office may approve a request for an extension of the deadline in paragraph (a)(1) of this section on a per-program or per-unit basis if the Field Office determines that all program activities will be completed in accordance with the timing requirements of § 572.210(f) (including

any extension granted under § 572.210(f)).

* * * * *

§ 572.130 [Amended]

6. Section 572.130 is amended by removing the examples at the end of paragraphs (d)(3) and (4).

7. Section 572.140 is revised to read as follows:

§ 572.140 Third party rights.

The rights of third parties are governed by 42 U.S.C. 12895(d) and apply to the requirements of this part.

8. Section 572.200 is revised to read as follows:

§ 572.200 Planning grants.

Any planning grants made by HUD under the HOPE 3 program will continue to be governed by the provisions in this section in effect immediately before October 16, 1996. When or before HUD announces the availability of funds for planning grants under this part, these provisions will be recodified.

9. Section 572.205 is revised to read as follows:

§ 572.205 Planning grants—eligible activities.

Any planning grants made by HUD under the HOPE 3 program will continue to be governed by the provisions in this section in effect immediately before October 16, 1996. When or before HUD announces the availability of funds for planning grants under this part, these provisions will be recodified.

10. Section 572.210 is amended by revising paragraphs (a) and (f) and by removing and reserving paragraph (e) to read as follows:

§ 572.210 Implementation grants.

(a) *General authority.* HUD will make implementation grants to HOPE 3 applicants for the purpose of carrying out homeownership programs approved under this part. Applications will be selected in accordance with selection criteria to be published in a NOFA.

* * * * *

(e) [Reserved]

(f) *Deadline for completion.* A recipient must spend all implementation grant amounts within 4 years from the effective date of the grant agreement. The appropriate HUD Field Office may approve a request to extend the deadline when it determines that an extension is warranted.

* * * * *

11. Section 572.220 is amended by:
a. Revising paragraph (a)(1);
b. Adding a new paragraph (a)(3);

c. Revising paragraph (b)(1)(ii)(C);
d. Revising the second sentence in paragraph (b)(2)(i); and
e. Removing the example at the end of paragraph (b)(2)(ii), to read as follows:

§ 572.220 Implementation grants—matching requirements.

(a) * * *
(1) Except as provided in paragraph (a)(3) of this section, each recipient must assure that matching contributions equal to not less than 33 percent (or 25 percent for grants awarded after April 11, 1994) of the amount of the implementation grant shall be provided from non-Federal sources to carry out the homeownership program. Amounts contributed to the match must be used for eligible activities or in accordance with the requirements of this section.

(2) * * *
(3) When the recipient is an IHA, and the IHA (acting in that capacity) has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds, the match requirements under this section will not apply.

(b) * * *
(1) * * *
(ii) * * *
(C) Income from a Federal grant earned after the end of the award period, if no Federal programmatic requirements govern the disposition of the program income.
(2) * * *
(i) * * * This limitation is in addition to the 15 percent limitation on administrative costs (see § 572.215(o)).

* * * * *

12. Section 572.315 is revised to read as follows:

§ 572.315 Rating criteria for planning grants.

Any planning grants made by HUD under the HOPE 3 program will continue to be governed by the provisions in this section in effect immediately before October 16, 1996. When or before HUD announces the availability of funds for planning grants under this part, these provisions will be recodified.

13. Section 572.420 is amended by revising paragraphs (b) and (h) and by removing and reserving paragraphs (c) and (d), to read as follows:

§ 572.420 Miscellaneous requirements.

* * * * *

(b) Requirements in 24 CFR part 5. The Disclosure requirements; provisions on Debarred, suspended or ineligible

contractors; and Drug-Free Workplace requirements, as identified in § 5.105 (b), (c), and (d) of this title, apply to this program.

(c) [Reserved]

(d) [Reserved]

* * * * *

(h) *Lead-based paint.* Residential property assisted under this program constitutes HUD-associated housing for purposes of the requirements of part 35 of this title. Unless otherwise provided, recipients are responsible for testing and abatement activities.

Dated: September 3, 1996.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

Note: The following Appendix will not be codified in the Code of Federal Regulation.

Appendix

The material contained in this appendix to the HOPE 3 final rule published on September 16, 1996 is provided for the convenience of users of the HOPE 3 regulations. The appendix contains material removed from codification in 24 CFR part 572 (title 24 of the Code of Federal Regulations, part 572).

Examples

Calculation under § 572.130(d)(3): The following example illustrates a calculation under paragraph (3) of § 572.130(d), which addresses the amount payable under a promissory note with respect to a sale by an initial homeowner after the first 6 years and through the 20th year after acquisition.

Example: If the family sells at the end of the 13th year of homeownership (at the halfway point between the end of the 6th year and the end of the 20th year of ownership), 84/168 (or one-half) of the note would be forgiven, and only half of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note would be forgiven.

Calculation under § 572.130(d)(4): The following example illustrates a calculation under paragraph (4) of § 572.130(d), which addresses the amount payable on a promissory note that is required to be executed by a subsequent purchaser who purchases the property for less than the fair market value during the 20-year period, as measured by the term of the initial promissory note.

Example: If the subsequent homeowner acquires the property from an initial homeowner at the end of year 4, there are 192 months (16 years × 12 months/year) remaining in the 20-year period. The term of the promissory note is 16 years. If the subsequent homeowner sells at the end of year 10, having owned the property for 72 months (6 years × 12 months/year), 72/192 (37.5 percent) of the note would be forgiven,

and 62.5 percent of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the subsequent homeowner retains ownership until the end of the initial 20-year period (for 16 years, in the example), the entire amount of the note would be forgiven.

Examples of non-Federal resources that may apply toward matching requirements as cash contributions, under § 570.220(b)(1)(ii)(C) (income from a Federal grant earned after the end of the award period, if no programmatic requirements govern the disposition of the program income): Repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G), the Housing Development Grant Program (24 CFR part 850), and the Rental Rehabilitation Program (RRP) when all RRP grant years of participation by an RRP recipient have been closed out by HUD.

Calculation under § 572.220(b)(2)(ii): The following example illustrates a calculation under § 572.220(b)(2)(ii), which addresses the valuation of administrative services contributed toward the matching requirement applicable to implementation grants.

Example: If the grant amount is \$600,000, the recipient must assure the provision of at least \$198,000 (33 percent of grant) or \$150,000 (25 percent of the grant, if awarded after April 11, 1994) from non-Federal sources, as applicable. Contributions for administrative costs that may be counted toward the match may not exceed \$42,000 (7 percent of the grant amount of \$600,000). Although a recipient can spend more than this on administrative costs, it may not be counted towards the match. In addition, the recipient must provide contributions covering the remaining \$156,000 (\$198,000–\$42,000) or the remaining \$108,000 (\$150,000–\$42,000 for grants awarded after April 11, 1994) required for the match from non-Federal sources.

Planning Grants—Provisions in Effect Immediately Before September 16, 1996:

The following provisions relating to planning grants under the HOPE 3 program were moved from the CFR by the final rule published on September 16, 1996. In the event that planning grants are made in the future, HUD will recodify the applicable provisions in full. Existing projects remain subject to grant agreements and the regulatory provisions contained therein:

Former § 572.200—Planning Grants

(a) *General authority.* HUD will make HOPE 3 planning grants to applicants for the purpose of developing HOPE 3 homeownership programs under this part. Applications will be selected in a national competition in accordance with the selection and NOFA process described in subpart D of this part. The maximum amount of a planning grant will be specified in the NOFA.

(b) *Overall limitations.* (1) If two or more fundable applications for planning grants propose substantially the same general

locations, the highest ranking application will be selected. However, HUD may reduce the scope of an application if the size of the jurisdiction is sufficiently large to justify approval of more than one grantee. HUD may also approve a planning grant in an area where an implementation grant already exists or is being approved in the current funding round as long as the program that could result from the planning grant will not lead to substantial competition among grant recipients for eligible properties. However, if a determination is made that the approval of both a planning grant and implementation grant will lead to substantial competition for eligible properties, only the implementation grant will be approved.

(2) A single applicant may apply for more than one planning in response to any NOFA, but HUD will not approve more than one planning grant for any one applicant.

(3) An applicant who has previously received a HOPE 3 planning grant or implementation grant is not eligible for an additional HOPE 3 planning grant.

(4) No amendments to increase previously approved grant amounts are allowed.

(c) *Scope of program.* (1) Applications that identify a public body as the entity to execute the grant agreement may only propose a program to be carried out within the jurisdiction of that entity. Applications that identify a private nonprofit organization as the entity to execute the grant agreement may propose a program to be carried out within two or more jurisdictions. No application may propose a program to be carried out in more than one State, except for Indian tribes or IHAs whose jurisdiction covers more than one State.

(2) An applicant must demonstrate that at least 10 units in eligible properties will be available for use in the area proposed for the program through evidence of current availability or evidence of availability during the 12-month period prior to submission of the application.

(d) *Deadline for completion of activities.*

(1) Activities under a planning grant, including the requirements outlined in paragraph (d)(2) of this section, must be carried out within 12 months of the effective date of the planning grant agreement. HUD Field Offices may extend the period up to 60 days. HUD may deobligate amounts not drawn down by the approved completion date. HUD Headquarters may approve a request for an additional extension for costs related to the preparation of an implementation grant application where it determines an extension is necessary.

(2) Each recipient must submit either:

(i) An implementation grant application by the deadline date stated in a HOPE 3 NOFA issued within 12 months of the effective date of the planning grant agreement; or

(ii) A report on activities undertaken under the planning grant agreement, including the recipient's determination whether it is feasible for it to undertake a homeownership program and an assessment of the factors used to make the determination.

Former § 572.205 Planning Grants—Eligible Activities

Planning grants may be used for the reasonable costs of eligible activities

necessary to develop homeownership programs under this part. No additional activities may be approved. Applicants are not required to request funding for each type of eligible activity. Only costs incurred on or after the effective date of the grant agreement qualify for funding under this part. Activities eligible under a planning grant are:

(a) *Assessing stock of eligible properties.* Assessing the availability on an ongoing basis of eligible properties of the appropriate condition, type, and price in specific neighborhoods or areas to implement a homeownership program. For example, planning grants may be used to fund the costs of obtaining and analyzing lists of potentially eligible properties from appropriate Federal, State, and local agencies and inspecting representative properties, including inspection for the purpose of evaluating potential lead-based paint hazards. Technical studies to evaluate environmental problems and to determine whether mitigation is feasible are eligible.

(b) *Training and technical assistance for grant recipients.* Training of and technical assistance to grant recipients related to development of a specific homeownership program. This may include, for example, courses in real estate financing and examining alternative approaches for carrying out a homeownership program. Training and technical assistance may only be provided by qualified entities other than the recipient and may not be provided to any individual or group other than the grant recipient and any cooperating entity named in the approved application.

(c) *Feasibility studies.* Studies of the feasibility of a specific homeownership program, including whether the program can be designed to meet the affordability standards under § 572.120 and achieve financial feasibility.

(d) *Preliminary architectural and engineering work.* Preliminary architectural and engineering work, including developing estimates of the amount of work necessary to support rehabilitation of a typical unit that may be acquired by an eligible family under the program and other cost estimates to be included in a HOPE 3 implementation grant application.

(e) *Identification of counseling and training curricula and sources.* Identification of course curricula and sources that can provide homebuyer and homeowner counseling and training, including such subjects as personal financial management, home maintenance, home repair, construction skills (to the extent appropriate, especially where eligible families will do some of the rehabilitation ("sweat equity")), and general rights and responsibilities of a homeowner. Development of new curricula is not an eligible cost.

(f) *Economic development planning.* Planning for economic development activities that are eligible implementation grant activities under § 572.215. The aggregate amount of planning and implementation grants that may be used for economic development activities related to any one HOPE 3 program may not exceed \$250,000.

(g) *Security plans.* Development of security plans. This activity may cover, where

necessary, such costs as assessing the need for negotiating agreements with local law enforcement agencies and for planning security systems.

(h) *Application for an implementation grant.* Preparation of an application for an implementation grant to carry out a homeownership program under this part.

(i) *Administrative costs.* Administrative costs necessary to carry out the eligible activities specified in the approved application.

Former § 572.315—Rating Criteria for Planning Grants

HUD will review each application for a planning grant that qualifies for additional consideration under the screening procedures described in § 572.300(c), in accordance with the following rating criteria:

(a) *Capability.* The ability of the applicant to develop a HOPE 3 homeownership program in a reasonable time and in a successful manner. In assigning points for this criterion, HUD will consider evidence in the application that demonstrates:

(1) The capability of the applicant to develop a HOPE 3 homeownership program, demonstrated through previous experience of

the applicant or key staff in managing acquisition, rehabilitation, construction, real estate financing, counseling and training, or other relevant activities, or by an explanation of how such capability will be obtained.

(2) The ability of the applicant to handle financial resources, demonstrated through such evidence as previous experience of the applicant or key staff and existing financial control procedures, or an explanation of how such capability will be obtained.

(b) *Public/private support.* In assigning points for this criterion, HUD shall consider:

(1) The extent of interest of the unit of general local government (or Indian tribe, where applicable), or State or territorial government, and other public agencies, in support of a homeownership program, demonstrated through evidence of intent to provide assistance, such as supportive services (including counseling and training), rehabilitation loans or grants, interest rate subsidies, water and sewer improvements, street and sidewalk improvements, and tax abatements.

(2) The extent of interest of the private sector and nonprofit organizations (including places of worship, banks, neighborhood or

community organizations, the business community, or other community groups) in support of a home ownership program, demonstrated through evidence of intent to provide assistance such as the donation of labor or materials, interest rate reductions or other financing subsidies, and volunteer assistance in some aspect of the program (activities of the applicant will not be considered under this subcriterion).

(c) *Need for homeownership program.* In assigning points for this criterion, HUD will consider the relative percentage of the total number of rental households consisting of persons with incomes at or below the poverty level, as determined by the Bureau of Census, in the applicable jurisdiction or jurisdictions.

(d) *Planning approach.* HUD will consider the extent to which the proposal represents a sound approach to planning, demonstrates an understanding of the nature and scope of activities required to successfully implement a homeownership program, and is likely to result in a successful homeownership program.

[FR Doc. 96-23574 Filed 9-13-96; 8:45 am]

BILLING CODE 4210-29-P

Registered
Federal Paper

Monday
September 16, 1996

Part VI

**Department of
Transportation**

Federal Highway Administration

**Nationwide Programmatic Agreement for
Transportation Enhancement Activities;
Notice**

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****[FHWA Docket No. 96-42]****Nationwide Programmatic Agreement for Transportation Enhancement Activities****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice of proposed nationwide programmatic agreement among the FHWA, the Advisory Council on Historic Preservation (ACHP), and the National Conference of State Historic Preservation Officers (SHPO); request for comments.

SUMMARY: The purpose of this document is to propose, pursuant to § 316(2) of the National Highway System Designation Act of 1995 (Pub. L. 104-59, 109 Stat. 568), a nationwide programmatic agreement among the FHWA, the Advisory Council on Historic Preservation, and the National Conference of State Historic Preservation Officers. Section 316(2) requires the development of a nationwide programmatic agreement to expedite and improve implementation of transportation enhancement activities authorized under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102-240, 105 Stat. 1914). The proposed agreement would fulfill that requirement. The FHWA has consulted with the Advisory Council on Historic Preservation and the National Conference of State Historic Preservation Officers in developing the proposed nationwide programmatic agreement. The FHWA requests comments on the proposed agreement.

DATES: Comments should be received by October 16, 1996.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 96-42, Federal Highway Administration, Room 4232, HCC-10, Office of Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Eberle, FHWA Historic Preservation Officer, Office of Environment and Planning, HEP-40, (202) 366-2060, or Mr. Brett Gainer, Attorney-Advisor, Office of the Chief Counsel, HCC-30, (202) 366-1372,

FHWA. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The ISTEA authorized approximately \$3 billion for transportation enhancement activities. These activities span a range of nontraditional transportation projects, including historic preservation activities with a direct relationship to the intermodal transportation system. Since the enactment of the ISTEA, approximately one quarter of the funds expended on transportation enhancement activities have been used to improve over 1100 historic properties. The historic preservation enhancements have also created and improved a wider range of partnerships among State transportation agencies, project sponsors (including States, cities, counties, historic preservation societies, and private owners), and historic preservation organizations like the National Trust for Historic Preservation. The development of such partnerships is important as the Nation looks toward improving the Intermodal system to meet the needs of the 21st century while respecting, preserving, and enhancing its historic framework, the fabric of our Nation, in which it operates.

The development of a nationwide programmatic agreement will permit State transportation agencies to expedite their enhancement activities by activating an existing nationwide review process. This programmatic agreement is based on operational agreements that have been developed in individual States by the FHWA Division offices to speed reviews and reduce paperwork requirements.

The FHWA Administrator would sign this nationwide programmatic agreement on behalf of the FHWA. Individual States may activate this programmatic agreement by sending concurrent letters of acceptance to the three signatories and to the SHPO and the FHWA Division Office. The FHWA Division Administrator will be the agency official with responsibility for ensuring that the agreement is carried out.

This programmatic agreement is not mandatory; States do not have to adopt it for their enhancements projects. Many States have already developed agreements that work for them. Some may wish to adapt the approach conveyed in this nationwide programmatic and tailor it for their specific program needs through further consultation with the SHPO, the FHWA, and the ACHP. The nationwide programmatic agreement offers, though,

a quick, easy way to benefit from the work of historic preservation and transportation experts to expedite the transportation enhancement activity effort by encouraging local coordination and public participation and reducing the need for project-by-project coordination with out-of-State groups.

Text of the Nationwide Programmatic Agreement

In order to facilitate the implementation of Transportation Enhancement Activities, the Federal Highway Administration (FHWA), the National Conference of State Historic Preservation Officers (SHPO), and the Advisory Council on Historic Preservation (ACHP) agree that:

Whereas, Section 316(2) (23 U.S.C. 133(e)(5)(B)) of the National Highway System Designation Act of 1995 (Pub. L. 104-59, 109 Stat. 568) requires the development of a nationwide programmatic agreement to expedite and improve implementation of transportation enhancement activities; and

Whereas, Section 1007(a) (23 U.S.C. 133(b)(8)) of the ISTEA authorizes the expenditure of Federal Surface Transportation Program funds for transportation enhancement activities; and

Whereas, Section 1007(c) (23 U.S.C. 101(a)) of ISTEA defines the term "transportation enhancement activities" to include a variety of project categories that can be beneficial to the preservation of historic properties; and

Whereas, the FHWA has determined that transportation enhancement activities may have effects upon properties included in or eligible for the National Register of Historic Places and has consulted with the ACHP, and the National Conference of SHPOs pursuant to 36 CFR 800.13 of the regulations implementing section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

Whereas, the signatories to this agreement desire to expedite the necessary historic preservation review for transportation enhancement activities beneficial to historic preservation and thereby encourage the use of transportation enhancement funds for historic preservation purposes; and

Whereas, the signatories to this agreement recognize that although most projects advanced as transportation enhancement activities should benefit historic properties, the State Transportation Agency (STA) shall make known any findings regarding effects to historic properties through its normal public participation process;

Now, therefore, the FHWA, the ACHP, and the National Conference of SHPOs, pursuant to § 316(2) of the National Highway System Designation Act of 1995, agree that transportation enhancement activities shall be implemented in accordance with the following stipulations to satisfy the FHWA's section 106 responsibilities for all individual undertakings of transportation enhancement activities which may affect historic properties in any State where this programmatic agreement is activated. The STA may activate this programmatic agreement by sending concurrent letters of acceptance to the three signatories and to the SHPO and the FHWA Division Office. Any STA that activates this agreement and implements these terms is hereby deemed to have met the requirements of 36 CFR 800 governing State processes for performing § 106 activities.

Stipulations

The FHWA shall ensure that the following measures are carried out:

I. Expediting the Processing of the Following Categories of Transportation Enhancement Activities:

1. Provision of facilities for pedestrians and bicycles.
2. Acquisition of scenic easements and scenic or historic sites.
3. Scenic or historic highway programs.
4. Landscaping and other scenic beautification.
5. Historic preservation.
6. Rehabilitation and operation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals).
7. Preservation of abandoned railway corridors (including conversion and use for pedestrian or bicycle trails).
8. Control and removal of outdoor advertising.
9. Archeological planning and research.
10. Mitigation of water pollution due to highway runoff.

II. Identifying and Evaluating Historic Properties

A. The STA will be responsible for identifying and evaluating all historic properties within each activity's area of potential effect, and evaluating eligibility for the National Register of Historic Places, in consultation with the individual State Historic Preservation Officer (SHPO), following the procedures set out in 36 CFR 800.4.

B. The STA may encourage or require project sponsors to include historic property documentation or survey results as part of the transportation

enhancement activity application, in consultation with the SHPO.

III. Determining Effect on Historic Properties

The STA will assess the effects of the proposed transportation enhancement activities on historic properties by applying the Criteria of Effect and Adverse Effect (36 CFR 800.9). The STA will ensure that the SHPO is provided adequate documentation to review the STA's effect determination. The SHPO will promptly inform the STA if more information is reasonably necessary to make its determination.

A. No Effect

If the STA determines that the undertaking will have no effect on historic properties, it will notify the SHPO in writing. The SHPO will review this determination and provide written comments to the STA within 15 days after receipt of the STA's finding and adequate documentation. If the SHPO concurs with the STA's no effect determination, or fails to provide comments within 15 days, the undertaking may proceed as planned. If the SHPO objects to the STA's finding, the SHPO will indicate the reasons for nonconcurrence and the STA and the SHPO shall consult further to identify project alternatives that may result in the undertaking having no effect on historic properties or shall apply the Criteria of Adverse Effect and continue the review of the project pursuant to Stipulation III.B. of this agreement.

B. No Adverse Effect and Adverse Effect

1. If the STA determines that the undertaking will have no adverse effect on historic property, it will notify the SHPO in writing. The SHPO shall review this determination and provide written comments to the STA within 30 days after receipt of the STA's finding and adequate documentation.

a. If the SHPO concurs with the STA's no adverse effect determination or fails to provide comments within 30 days, the STA shall document that finding, which shall be available for public inspection, and proceed with the activity as planned without further review by the ACHP.

b. If the SHPO objects to the STA's finding, the SHPO will indicate the reasons for nonconcurrence and the STA and the SHPO shall consult further to identify project alternatives that may result in the undertaking having no adverse effect on historic properties or shall proceed in accordance with Stipulation III.B.2. or III.B.3.

2. If the STA and the SHPO cannot agree that the proposed transportation

enhancement activity will have no adverse effect, or if they agree there is an adverse effect, then the STA shall notify the FHWA and the FHWA shall complete the section 106 process in accordance with 36 CFR 800.5 and 800.6, unless stipulation III.B.3. applies.

3. Transportation enhancement activities may advance without further comment from the ACHP, provided that the FHWA and the SHPO concur with the STA that: (a) the benefits to historic property(ies) outweigh any minor adverse effects (e.g., when a proposed rehabilitation substantially meets the Secretary of the Interior's Standards for Preservation Projects); and that (b) agreed upon measures will be implemented to mitigate those effects (e.g., appropriate recordation measures).

IV. Amending This Programmatic Agreement, if Requested

Any party to this Programmatic Agreement may request that it be amended, whereupon the parties to this Agreement shall consult to consider such amendment in accordance with 36 CFR 800.13. No amended agreement shall take effect until it has been executed by all parties and the STA has been duly notified.

V. Processing of Any Public Objections

If at any time during the implementation of the measures contained in this Agreement, an objection to any such measure or its manner of implementation should be raised by an interested person, as that term is defined at 36 CFR 800.1(c)(2), the FHWA shall consult with the objecting party, the SHPO, and, as needed, the ACHP to resolve the objection. In light of the ACHP's views, the FHWA should reconsider the finding. However, an objection by the public does not require the FHWA to suspend action on an undertaking. If the objection concerns the eligibility of a property for the National Register, the FHWA may refer the matter to the Keeper of the National Register, if it considers referral appropriate.

VI. Resolving Disputes Among Parties

Should any party to this Agreement object within 30 days to any action pursuant to this Agreement, the FHWA shall consult with the objecting party to resolve the objection. If the FHWA determines that the objection cannot be resolved, the FHWA shall forward all relevant documentation to the ACHP. Within 30 days after receipt of all pertinent documentation, the ACHP will either:

A. Provide the FHWA with recommendations, which the FHWA

will take into account in reaching a final decision regarding the dispute; or

B. Notify the FHWA that it will comment pursuant to 36 CFR 800.6(b), and proceed to comment. Any ACHP comment provided in response to such a request will be taken into account by the FHWA in accordance with 36 CFR 800.6(c)(2) with reference to the subject of the dispute.

Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute; the FHWA's responsibility to carry out all actions under this Agreement that are not the subjects of the dispute will remain unchanged.

VII. Monitoring Transportation Enhancement Activities

The SHPO and the ACHP may monitor any activities carried out pursuant to this Agreement, and the ACHP will review such activity if so requested. The FHWA will cooperate with the SHPO and the ACHP in carrying out these monitoring and review responsibilities.

VIII. Terminating This Programmatic Agreement

Any party to this Programmatic Agreement may terminate it by providing 30 days notice to the other parties, provided that the parties will

consult during the period prior to termination to seek agreement on amendments or other actions that would avoid termination. In the event of termination, the FHWA will comply with 36 CFR 800.4 through 800.6 with regard to individual undertakings covered by this Agreement.

IX. Establishing Duration of This Programmatic Agreement

This Programmatic Agreement will continue in full force until such time that funds for transportation enhancement activities are no longer authorized.

X. Submitting a Biennial Report

The STA shall provide the FHWA, the SHPO, and the ACHP with a biennial report summarizing the actions taken over the prior two calendar years to implement the terms of this Programmatic Agreement and recommending any actions or revisions which should be considered by the parties. The deadline for submission of the report is March 31 or the last work day of March, if earlier, of even years commencing with 1998.

XI. Failing To Comply With This Programmatic Agreement

In the event the FHWA does not carry out the terms of this Agreement, the FHWA will comply with 36 CFR 800.4

through 800.6 with regard to individual undertakings covered by this Agreement.

EXECUTION AND IMPLEMENTATION of this Programmatic Agreement evidences that the FHWA has afforded the Council a reasonable opportunity to comment on its Transportation Enhancement Program and its effects on historic properties.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____

Date: _____

Executive Director

FEDERAL HIGHWAY ADMINISTRATION

By: _____

Date: _____

Administrator

NATIONAL CONFERENCE OF STATE
HISTORIC PRESERVATION OFFICERS

By: _____

Date: _____

Executive Director

Authority: 23 U.S.C. 101(a), 133(b)(8),
133(e)(5)(B), 315; 49 CFR 1.48(b).

Issued on: September 9, 1996.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 96-23674 Filed 9-13-96; 8:45 am]

BILLING CODE 4910-22-P

Registered
Federal Paper

Monday
September 16, 1996

Part VII

**Environmental
Protection Agency**

40 CFR Part 437

**Centralized Waste Treatment Category:
Data Availability; Proposed Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 437

[FRL-5610-1]

RIN 2040-AB78

Notice of Data Availability; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards: Centralized Waste Treatment Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: On January 27, 1995, EPA proposed Clean Water Act effluent limitations and pretreatment standards to reduce the discharge of pollutants from the centralized waste treatment industry (60 FR 5464). This document describes new information the Agency has obtained since the proposal. This document also explains, based on this information, the Agency's revised estimates of the size and regulatory impacts of the proposed rulemaking on the proposed oils treatment and recovery subcategory of the industry. This document presents the preliminary results of EPA detailed analyses for the subcategory with the inclusion of the new information and the data developed from it. EPA originally estimated that there were 35 facilities in this subcategory. EPA now estimates that there are a total of 275 facilities in the subcategory. EPA further believes that the majority of the facilities treat dilute oily wastestreams rather than the concentrated wastestreams that were described in the proposal.

DATES: Comments on this notice are solicited and will be accepted until October 16, 1996.

ADDRESSES: Comments are to be submitted to Mr. Ed Terry at the following address: Engineering and Analysis Division (4303), EPA, 401 M Street, S.W., Washington, D.C. 20460.

The data and analyses being announced today are available for review in the EPA Water Docket at EPA Headquarters at Waterside Mall, room M2616, 401 M Street, SW, Washington, DC 20460, telephone (202) 260-3027. The Docket staff requests that interested parties call for an appointment before visiting the Docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For additional technical information, contact Mr. Ed Terry at the following address: Engineering and Analysis Division (4303), EPA, 401 M Street,

S.W., Washington, D.C. 20460, telephone number (202) 260-7128. For information on economic impacts, contact Ms. Susan Burris at the same address, telephone number (202) 260-5379.

SUPPLEMENTARY INFORMATION:

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I. Summary of Proposed Regulation and Purpose of Today's Notice

On January 27, 1995 (60 FR 5464), EPA proposed regulations to reduce discharges to navigable waters of toxic, conventional, and nonconventional pollutants in treated wastewater from facilities defined in the proposal as "centralized waste treatment facilities." At proposal, these effluent limitations guidelines and pretreatment standards

would apply to "any facility that treats any hazardous or non-hazardous industrial waste received from off-site by tanker truck, trailer/roll-off bins, drums, barge or other forms of shipment." These facilities include both stand-alone waste treatment and recovery facilities that treat waste received from off-site as well as those facilities that treat on-site generated process wastewater with wastes received from off-site. Based on its review of the data on the types of waste accepted for treatment or recovery at such facilities, EPA concluded that different limitations and standards were appropriate for subcategories within the industry. The Agency preliminarily determined that three subcategories were appropriate for the centralized waste treatment (CWT) industry. These subcategories are: metal-bearing waste treatment and recovery, oily waste treatment and recovery, and organic waste treatment and recovery.

Today's notice focuses exclusively on the Oily Waste Treatment and Recovery subcategory, or "oils subcategory," defined in the proposal as "facilities that treat, and recover oil from oily waste received from off-site." At the time of proposal, EPA believed that the oils subcategory was comprised of 35 facilities treating predominantly concentrated oily wastes. Since proposal, EPA has learned that the data used to develop the proposal may have mischaracterized this portion of the CWT industry. EPA learned that there are approximately 240 previously unaccounted for facilities treating oily waste received from off-site, many of which accept dilute, not concentrated, oil wastestreams. Today's notice discusses these facilities and describes how the proposal limitations and standards, if promulgated, would affect such facilities. EPA is requesting comment on the accuracy of the information it has developed and its conclusions about the likely effect of the proposed limits and standards, if promulgated, on these facilities.

Based on information EPA received during the comment period as well as material obtained from communication with the industry and the National Oil Recyclers Association (NORA), EPA has revised its profile of the oils subcategory of the centralized waste treatment industry to take account of the newly identified facilities. Using this information in conjunction with questionnaire responses and sampling data used to develop the proposal, EPA has recharacterized this subcategory of this industry. EPA developed individual profiles for each of the newly identified facilities by modeling current

wastewater treatment performance and treated effluent discharge flow rates. Additional information on how EPA modeled these facilities is provided below. In addition, assuming the same treatment technology options identified at proposal, EPA has recalculated the projected costs of the proposed options under consideration, expected pollutant reductions associated with these options, and the projected economic impacts.

EPA is today announcing the availability of the new information and requesting comment on it. EPA is specifically requesting that individual facilities in the oils subcategory review the data developed for their facility to ensure that EPA has accurately characterized their operations. To the extent that actual wastewater treatment data is available, EPA is also soliciting that information.

As noted, EPA has developed a facility profile for each of the 240 oils subcategory facilities. EPA will use the data to decide what limitations and standards for the oils subcategory the Agency should promulgate. EPA tested the assumptions and models it used to generate the profiles against information already in the CWT rulemaking record to validate its initial conclusions about the 240 new facilities in the oils subcategory. In some cases, the results were consistent with that observed in EPA's available data base. In other cases, the results seem less certain. Given the use to which this data will be put, calculation of pollutant reductions and treatment option costs, EPA hopes that facilities will review the profiles to ensure their accuracy and that these profiles are representative of actual conditions at individual facilities.

In order to facilitate this effort, copies of the profiles for each of the newly identified facilities will be available at the Agency. Moreover, EPA will mail copies of this notice to each of the facilities and include the profile for that facility with the notice. This will provide that facility with an easy means of modifying the profile as necessary.

In its proposal, EPA proposed limitations and standards for the oils subcategory based on two treatment systems comprised of various treatment technologies that the Agency identified. These were emulsion breaking followed by (1) ultrafiltration and (2) ultrafiltration, carbon adsorption, and reverse osmosis. These wastewater treatment schemes were identified based on the data EPA had collected for facilities treating highly concentrated, hazardous oily wastes. As explained further below, EPA believes that the newly identified facilities treat largely

non-hazardous, dilute oily wastes. In addition, EPA has learned that a number of these facilities are using dissolved air flotation (DAF) systems to treat their wastewater. Consequently, EPA will be sampling some of these facilities as part of its assessment of appropriate limitations and standards for the oils subcategory. EPA is particularly interested in obtaining information on the use of DAF in treatment of oily wastes and requests any data and information which commenters may have on this issue. This will be used in the Agency's reconsideration of the achievable effluent limitations and pretreatment standards.

II. Post-Proposal Data Gathering for the Oily Waste Treatment and Recovery Subcategory

Since the January 27, 1995 proposal, EPA has obtained a more inclusive list of facilities that may fall into the oils subcategory. EPA gathered and evaluated technical data and economic data from various sources, including comments to the January 27, 1995 proposal, facility lists in the 1995 Environmental Information Directory, membership lists from the National Oil Recyclers Association, information from EPA Regions, and Dun and Bradstreet. EPA has compiled a list of an additional 240 facilities that may be included in the oils subcategory. Some of these facilities began operation after the Waste Treatment Industry Questionnaire, the primary source of information for the 1995 proposal was conducted. Others were in operation in 1989, the base year for the questionnaire, but had not been identified by EPA as centralized waste treatment facilities. EPA believes that many of the newly identified facilities were created or altered their oily waste treatment services in response to provisions of 40 CFR 279, promulgated on September 10, 1992 (Standards for the Management of Used Oil, which covers the handling and fate of used oils under the Solid Waste Disposal Act and CERCLA). For the analyses presented in today's notice, EPA determined that new facilities created after 1989 should be included in the data base for development of the regulation because of the tremendous growth rate of the industry.

EPA is also conducting further sampling in order to better characterize the incoming waste receipts and type and concentrations of wastewater constituents resulting from treatment of oily wastes and wastewaters. EPA is sampling and evaluating the use of additional treatment technologies including Dissolved Air Flotation (DAF) and plans to re-examine the technology

basis and proposed limitations and treatment standards for the oils subcategory based on the results of this additional sampling.

III. Facility Specific Information

In developing these effluent limitations guidelines and pretreatment standards, EPA considers impacts on the entire industry as well as individual subcategories. Having learned of the additional facilities treating oily wastes, not previously considered in development of the proposal, EPA needed to develop information of both a technical and economic nature for the newly identified facilities and then incorporate this into the data base used for developing final limitations and standards. EPA had several options. One method to obtain the required information would be to send a questionnaire to the 240 facilities. EPA rejected this option since questionnaires are burdensome for the facilities and time consuming to the EPA to develop, conduct, and analyze.

The option EPA has recently adopted is to generate data for each of the additional 240 facilities using modeling assumptions developed from newly obtained information and the data base for the proposal. EPA has then taken the data for each of the 240 facilities and used the information to re-evaluate the proposed limits and standards for the oils subcategory. The following sections explain how EPA developed this information.

A. Wastewater Discharge Flow Estimates

In lieu of sending out questionnaires to the newly identified facilities to collect technical and economic information, EPA used data from secondary sources to estimate several facility characteristics such as wastewater discharge flow. For most of the facilities, information about total facility revenue and employment were available from public sources (such as Dun and Bradstreet). Using these two pieces of information, EPA used statistical procedures to match the newly identified facilities to similar facilities that provided information about facility operations in 1989 in response to EPA's "Waste Treatment Industry Questionnaire." This matching enabled EPA to estimate the flow of treated wastewater from each of the newly identified facilities. Where EPA had actual estimates of flow from the facility or public sources, EPA used the actual values. This methodology is described in more detail in the record accompanying this notice.

B. Baseline Treatment Technology

In developing the 1995 proposal, EPA evaluated the treatment technologies being used at the 35 facilities that EPA had identified as belonging to the oils subcategory. EPA determined that the vast majority of these facilities utilized emulsion breaking with either acid and/or heat to separate the oil and water fractions. A few facilities utilized other types of treatment systems in addition to emulsion breaking, such as Dissolved Air Flotation (DAF). A few facilities only utilized gravity separation; these facilities only accepted unstable oil-water emulsions. However, very few facilities utilized the technologies for the two co-proposed options—identified as Option 2 and Option 3 in the 1995 proposal. Under Option 2, the proposed numerical effluent limitations and standards were based on the use of ultrafiltration in the wastewater treatment system. Under Option 3, the proposed limitations and standards were based on the use of carbon adsorption and reverse osmosis in addition to the Option 2 technology.

Based on information from NORA and from other secondary sources, EPA discovered that the newly identified oils facilities utilize technologies similar to those identified by questionnaire respondents. EPA has found little evidence that the newly identified facilities utilize the technologies associated with the proposed options for limitations and standards. In modeling and costing technology improvements necessary for the newly identified facilities to achieve the effluent limitations and standards for the proposed options, EPA assumes that none of the facilities have ultrafiltration, carbon adsorption or reverse osmosis currently in place. Baseline treatment for these newly identified facilities is assumed to be emulsion breaking.

C. Final Treated Effluent Characterization

In developing the proposal, establishing the quantities of pollutants currently being discharged in the final treated effluent from oils facilities was a difficult task. As a result of EPA's sampling at a few oils facilities, EPA determined that the wastewater discharge from these facilities are characterized by as many as 100 pollutant parameters. Unfortunately, very few of the original 35 facilities could provide monitoring data for this wide list of parameters. Additionally, most of these facilities mixed oily wastewater with other centralized waste treatment (CWT) wastewaters, industrial wastewater or stormwater prior to their

monitoring point. This made it extremely difficult to characterize the effluent from oils treatment only.

As discussed previously, EPA found chemical emulsion breaking to be baseline treatment for this subcategory. Therefore, current discharge performance is the concentration of pollutants following chemical emulsion breaking multiplied by the facility discharge flow. EPA determined the concentration of pollutants resulting from chemical emulsion breaking during the sampling program conducted prior to proposal. This sampling program is discussed in more detail in the Development Document for the Proposed Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry (EPA 821-R-95-006, January 1995, NTIS #PB95-187985). EPA is currently conducting additional sampling at some of the newly identified facilities to supplement the earlier data and plans to publish the sampling results for comments before promulgation.

For this notice, EPA estimated current discharge concentrations for the newly identified facilities in the same manner as that used for the proposal. Table I summarizes the concentrations of the parameters that EPA is using to characterize wastewater pollutant concentrations for each of the newly identified oils facilities.

TABLE I.—OILS SUBCATEGORY CURRENT WASTEWATER POLLUTANT CONCENTRATIONS

Pollutant	Pollutant concentration (mg/L)
Conventional:	
BOD ₅	7,164
Oil and Grease	29,396
TSS	7,209
Metals:	
Aluminum	48.93
Antimony	1.34
Arsenic	0.22
Barium	2.53
Boron	239.36
Cadmium	0.24
Chromium	2.20
Cobalt	0.72
Copper	15.79
Iron	232.26
Lead	8.15
Manganese	7.39
Molybdenum	3.05
Nickel	26.44
Silver	1.08
Tin	2.10
Titanium	0.38
Zinc	42.00
Organics:	
1,1,1-Trichloroethane	3.64
2-Butanone	20.10
2-Propanone	221.07

TABLE I.—OILS SUBCATEGORY CURRENT WASTEWATER POLLUTANT CONCENTRATIONS—Continued

Pollutant	Pollutant concentration (mg/L)
4-Chloro-3-Methylphenol	22.31
Benzene	8.25
Benzoic Acid	16.81
Ethyl Benzene	6.61
Hexanoic Acid	5.38
Methylene Chloride	1.47
m-Xylene	11.37
n-Decane	91.78
n-Docosane	3.03
n-Dodecane	70.39
n-Eicosane	42.69
n-Hexacosane	3.08
n-Hexadecane	153.22
n-Octadecane	95.36
n-Tetradecane	282.72
o+p-Xylene	5.19
Phenol	4.59
Tetrachloroethene	2.16
Toluene	33.95
Tripropyleneglycol Methyl Ether	86.47

IV. Revised Description of the Oily Waste Treatment and Recovery Subcategory

EPA's original description of the oils subcategory was based on Questionnaire responses for 1989. The following description reflects the Agency's current, revised thinking on how the oils subcategory should be characterized.

A. Overview

At the time of proposal, 35 facilities were estimated to be in the oils subcategory. EPA now believes there are a total of 275 oils facilities. These facilities accept a variety of wastes, oil, and oily wastewater for treatment and/or recovery. Types of wastes accepted for treatment include but are not limited to: lubricants, used petroleum products, used oils, oil spill clean-up, bilge water, tank cleanout, off-spec fuels, and underground storage tank remediation waste. Many facilities pre-treat the oily wastes for contaminants such as water and then blend the resulting oil residual to form a product—usually fuel.

At the time of proposal, EPA believed that 85 percent of oils facilities were primarily accepting concentrated, difficult to treat stable oil-water emulsions. As such, EPA's sampling program prior to proposal focused on facilities that treated the more concentrated and difficult to treat stable oil-water emulsions. New information indicates that the majority of the newly identified facilities are treating less concentrated wastestreams. At facilities that EPA recently visited, EPA found

that many of the wastestreams treated for oil content were fairly dilute and consisted of less than 10 percent oils. In contrast, at the time of the proposal, EPA believed that oily wastestreams were more concentrated and mainly consisted of more than 10 percent oils. While EPA still believes some facilities are accepting the more concentrated wastes, the dilute wastestreams increasingly represent the more significant portion of the incoming wastes.

Further, at proposal, only three of the facilities included in the data base for this subcategory were identified as solely accepting wastes classified as non-hazardous under RCRA. The remaining facilities accepted either hazardous wastes alone or a combination of hazardous and non-hazardous wastes. In contrast, EPA believes that the vast majority of the newly identified facilities only accept wastestreams that would be classified by RCRA as non-hazardous.

Additionally, for the 1995 proposal, EPA decided not to propose nationally applicable effluent limitations guidelines and standards for fuel blending which was defined as "the process of mixing organic waste for the purpose of generating fuel for reuse." The 1989 Preliminary Data Summary for the Solvent Recycling Industry (EPA 440/1-89/102, September 1989, NTIS #PB90-126467), which included fuel blending operations, stated that 81 percent of the industry achieved zero discharge of process wastewater primarily through incineration, fuel blending, and contract hauling. EPA chose to exclude fuel blending operations from the CWT rulemaking because EPA believed, based on information obtained in the Waste Treatment Industry Questionnaire, that fuel blending was essentially a "dry" process and did not generate any wastewater. The oily waste treatment industry's compliance with the Standards for the Management of Used Oil (40 CFR 279) seems to have increased the number of facilities that treat oily wastes for the purpose of recovering used oils and fuels for use in fuel blends. As such, EPA believes that the majority of the newly identified facilities perform fuel blending operations as part of their waste treatment services. EPA solicits comments on fuel blending operations in general as well as those in conjunction with waste oil recovery and treatment. EPA solicits information on the fuel blending process, wastewater generated as a result of fuel blending operations, and the applicability of the proposed rule to such operations.

B. Wastewater Flow and Discharge

Table II summarizes the original estimates of wastewater flow and the revised estimates developed by including the newly identified facilities for the oils subcategory. At the time of proposal, EPA estimated that four of the 35 facilities were direct dischargers. The remainder were indirect dischargers, discharging to Publicly Owned Treatment Works (POTWs). During EPA's recent data gathering for oils facilities, however, EPA has not identified any new facilities that are direct dischargers. Therefore, for the newly identified oils facilities, EPA assumes that all facilities are indirect dischargers. EPA now believes that there are four direct dischargers and 271 indirect dischargers.

TABLE II.—SUMMARY OF WASTEWATER DISCHARGES FROM OILS SUB-CATEGORY

	Original	Revised
Total Annual Direct Discharge (million gallons)	64.2	64.2
Total Annual Indirect Discharge (million gallons)	162.5	946.8
Total Annual Discharge (million gallons)	226.7	1,011.1
Median Annual Flow (million gallons) ...	2.2	2.1
Average Annual Flow (million gallons)	6.5	3.7
Number of Facilities	35	275

V. Costs of Technology Options

The Agency has estimated the cost for each of the newly identified oils facilities to achieve each of the effluent limitations and standards proposed in the January 27, 1995 Federal Register Notice. These estimated costs are summarized in this section. The general methodology used to calculate the costs for the newly identified facilities was the same as that used for the proposal. A detailed discussion of this methodology can be found in the Development Document accompanying the proposal and in the Detailed Costing Document for the Centralized Waste Treatment Industry (EPA 821-R-95-002, January 1995, NTIS #PB95-187001).

All cost estimates in this section are expressed in 1995 dollars. The cost components reported in this section represent estimates of the investment cost of purchasing and installing equipment, the annual operating and maintenance (O & M) costs associated

with the equipment, additional costs for monitoring, land costs, and costs for facilities to modify existing RCRA permits. Even though EPA has assumed that the newly-identified facilities accept only non-hazardous wastes, EPA assumed that all facilities have an existing RCRA permit and that the proposed technology changes would require permit modifications. EPA made this assumption because EPA has identified non-hazardous facilities which have a RCRA permit. EPA recognizes that use of this assumption will necessarily overstate the costs of treatment for facilities treating non-hazardous wastes which do not have a RCRA permit. The land costs and the permitting costs have been included in the capital costs. The monitoring costs are included in the O & M costs. Total annualized costs include (1) the costs of capital and land annualized over 20 years at 7 percent, and (2) the annual O & M costs.

For comparison purposes, the cost estimates calculated for the original proposal for the oils subcategory have been included in today's notice. The costs presented in the original proposal were expressed in 1993 dollars. EPA adjusted the cost estimates from proposal by applying the McGraw-Hill Company Engineering News Record Construction Costs Indices for the appropriate years.

A. BPT Costs

The Agency estimated the cost of complying with the proposed effluent limitations based on the best practicable control technology currently available (BPT) for both of the proposed options—Option 2 and Option 3. BPT limitations are expected to apply to the four direct discharging facilities in this subcategory. BPT costs presented in this notice including the newly identified facilities are the same as the costs presented in the original proposal because EPA has assumed that all of the newly identified facilities are indirect dischargers and therefore not subject to BPT. The capital expenditures for Option 2 are estimated to be \$1.07 million with annual O&M costs of \$0.82 million; for Option 3, the capital expenditures are estimated to be \$4.03 million with annual O&M costs of \$8.56 million. To the extent that any of the newly identified facilities are direct dischargers, they would incur costs in complying with BPT and these figures would be an underestimate.

B. BCT Costs

In the 1995 proposal, the Agency estimated that there would be no incremental cost of compliance for

limitations based on the best conventional pollutant control technology (BCT) because the technology is identical to BPT. This is still the case for any newly identified facilities which are direct dischargers.

C. BAT Costs

In the 1995 proposal, the Agency estimated that there would be no incremental cost of compliance for limitations based on the best available technology economically achievable

(BAT) because the technology is identical to BPT. This is still the case for the newly identified facilities which are direct dischargers.

D. PSES Costs

The Agency estimated the cost for compliance with pretreatment standards for existing sources (PSES) using the same assumptions and methodology used to estimate cost of implementing BPT. Table III summarizes the capital expenditures, annual O&M costs, and

total annualized costs for implementing PSES for the original 35 facilities as well as the revised estimates including the newly identified oils facilities. For PSES Option 2, EPA estimates capital expenditures of \$45.72 million, annual O&M costs of \$31.38 million, and total annualized costs of \$35.31 million. For PSES Option 3, EPA estimates capital expenditures of \$120.1 million, annual O&M costs of \$173.85 million, and total annualized costs of \$203.05 million.

TABLE III.—COST OF COMPLYING WITH PSES FOR THE OILS SUBCATEGORY

Proposed option	Original estimates (\$ millions)				Revised estimates (\$ millions)			
	Number of facilities	Capital costs	Annual O&M costs	Total annualized costs	Number of facilities	Capital costs	Annual O&M costs	Total annualized costs
Oils—Option 2	31	4.42	2.49	3.12	271	45.72	31.38	35.31
Oils—Option 3	31	13.65	22.58	25.59	271	120.1	173.85	203.05

VI. Pollutant Reductions

The Agency estimated the reduction in the mass of pollutants that would be discharged from the newly identified oils facilities after the implementation of the regulation proposed in January 1995. The methodology used to estimate the pollutant reductions in this notice is the same as that used for the proposal. A detailed discussion of this methodology can be found in The Development Document for Proposed Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry (EPA 821-R-95-006, January 1995, NTIS #PB95-187985).

A. Conventional Pollutant Reductions

EPA has calculated how much the proposed BPT and BCT limitations would reduce the total quantity of conventional pollutants that are discharged by the oils facilities. The information presented in this notice applies to the oils subcategory only. If a facility could be classified in more than one subcategory, then only reductions related to the oils portion have been included in this discussion. The estimated conventional pollutant reductions due to BPT and BCT limitations including the newly identified facilities are the same as the reductions estimated in the original proposal since all of the newly identified facilities are assumed to be indirect dischargers and not subject to BPT and BCT limitations. The Agency

estimates that the proposed regulations will reduce BOD₅ discharges by approximately 1.9 million pounds per year for Option 2 and by approximately 2.6 million pounds per year for Option 3; TSS discharges by approximately 3.9 million pounds per year for both Options 2 and 3; and oil and grease discharges by approximately 14.4 million pounds per year for Option 2 and 15.7 million pounds per year for Option 3.

B. Priority and Non-Conventional Pollutant Reductions

EPA applied the same methodology used to estimate conventional pollutant reductions attributable to application of BPT/BCT control technologies to estimate priority and non-conventional pollutant reductions for each facility for the oils subcategory. Because EPA proposed BAT limitations equivalent to BPT, there are no additional pollutant reductions associated with the BAT limitations.

1. Direct Dischargers and BAT

The estimated reductions in pollutants directly discharged in treated final effluent from the oils subcategory resulting from implementation of BPT and BAT are summarized in Table IV. For convenience in reviewing today's notice, this table provides the same information that was presented in the proposal. EPA does not estimate that any of the newly identified facilities are direct dischargers. The Agency

estimates that proposed BPT and BAT regulations will reduce direct facility discharges of priority and non-conventional pollutants by 0.85 million pounds per year for Option 2 and 0.93 million pounds per year for Option 3.

TABLE IV.—REDUCTION IN DIRECT DISCHARGE OF PRIORITY AND NON-CONVENTIONAL POLLUTANTS FOR THE OILS SUBCATEGORY

Proposed option	Metal compounds (pounds/year)	Organic compounds (pounds/year)
Option 2	294,543	556,627
Option 3	319,847	610,937

2. Indirect Dischargers and PSES

The estimated reductions in pollutants indirectly discharged to POTWs resulting from implementation of PSES for the oils subcategory are summarized in Table V. For comparison purposes, the table includes the pollutant reductions originally estimated at the time of proposal as well as the estimated pollutant reductions including the newly identified facilities. The Agency estimates that proposed PSES regulations including the newly identified facilities will reduce indirect facility discharges to POTWs by 12.7 million pounds per year for Option 2 and 13.6 million pounds per year for Option 3.

TABLE V. REDUCTION IN INDIRECT DISCHARGE OF PRIORITY AND NON-CONVENTIONAL POLLUTANTS FOR THE OILS SUBCATEGORY

Proposed option	Original estimates (pounds/year)		Revised estimates (pounds/year)	
	Metal compounds	Organic compounds	Metal compounds	Organic compounds
Oils—Proposed Option 2	709,834	1,341,439	4,212,333	8,509,688
Oils—Proposed Option 3	771,668	1,474,708	4,667,589	8,932,084

VII. Revised Economic Impacts

A. Overview

As explained in Section IV.A, EPA believes that the vast majority of newly identified facilities only accept RCRA non-hazardous wastestreams. Although the economic analysis assumes separate markets for oily waste management services (one for hazardous oily wastes and one for non-hazardous oily wastes), the following discussion focuses on the economic impacts for facilities exclusively managing non-hazardous oily waste.

The Agency has estimated the economic and financial impacts expected to result from the proposed limitations and standards for all of the newly identified oils facilities. This analysis includes an assessment of projected changes in the prices and quantities of oily waste treatment services, employment, facility profitability, and impacts on companies owning these facilities (including small business impacts). Today's notice summarizes the results of these analyses. For all the analyses, dollar values from other years were adjusted to 1995 values using a cost adjustment factor.

Additional information about the economic analysis, including a detailed description of the model and method, is available in Economic Impacts of Effluent Limitations Guidelines and Standards for the Centralized Waste Treatment Industry: Revised Impacts of Oils Option 2 and Oils Option 3 (EPA 821-R-95-001, January 1995, NTIS #PB95-187985).

B. Data Sources and Assumptions for Revised Economic Analyses

In developing and running the models for the non-hazardous waste market, EPA utilized five main sources of data: information obtained from Dun and Bradstreet, information from the National Oil Recyclers Association (NORA), information from comments to the 1995 proposal, information from site visits conducted after the proposal at a limited number of oils facilities, and information obtained from the Waste Treatment Industry Questionnaire. The

Agency solicits comment on the representativeness of the data used and the accuracy of the assumptions made in modeling facility operations for the new facilities.

EPA has assumed that the volume of waste and wastewater received from off-site for treatment and/or recovery is evenly split between oily waste from which oil is recovered and oily wastewater which is treated. For facilities that recover oil, EPA has assumed that 60 percent of the incoming volume is recovered as oil and the remainder is wastewater. Combining these assumptions, EPA assumed that the total volume of incoming waste receipts at a facility is 1.25 times the estimated discharge flow to the POTW. These assumptions were based on information from NORA, site visits and previous questionnaire responses.

The Agency estimated operating costs, revenues, and profits at each facility, based on confidential cost and price data obtained from commenters, and on each facility's estimated quantity of waste received from off site. Each facility is assumed to charge \$0.35 per gallon to accept incoming waste receipts from off site, and to sell recovered oil for \$0.12 per gallon. Since no data are available from secondary sources to enable the Agency to include other revenue or cost at each facility, the Agency's analysis is limited to costs, revenues, and profits from oily waste CWT operations only.

Demand for oily waste management services is assumed to be relatively unresponsive to changes in price. Thus, when the price of CWT services increases, EPA's analysis assumes that most generators continue to send their waste to CWTs, and pay a higher price.

C. Changes to Economic Analysis Methodology Since Proposal

The economic analysis of Oils Option 2 and Oils Option 3 includes impacts on 243 non-hazardous oily waste CWT facilities. This analysis includes the 240 newly identified oily waste CWTs, plus the three non-hazardous oils facilities from the pre-proposal analysis.

The Agency believes that the waste managed by the 243 non-hazardous oily waste management CWTs is fundamentally different from the waste managed at CWTs also accepting hazardous waste. Thus, facilities managing non-hazardous oily waste offer services that are not perfect substitutes for the services offered by facilities managing hazardous oily waste. In other words, there are two separate markets for the two types of oily waste CWT services. For this reason, the Agency has chosen to develop two separate market models: one for hazardous oily waste CWT services and one for non-hazardous oily waste CWT services. For both markets, the Agency has assumed that there are six regional markets, corresponding to the Northeast, Southeast, Upper Midwest, Lower Midwest, Northwest, and Southwest of the United States. There the similarities between the models end.

The model used to analyze the economic impacts on hazardous waste CWTs is described in detail in the proposal and in EPA's Economic Impact Analysis of Proposed Effluent Limitation Guidelines and Standards for the Centralized Waste Treatment Industry (EPA 821-R-95-001, January 1995, NTIS #PB95-106821). A brief description of the hazardous model follows in order to contrast the model used to analyze impacts on non-hazardous oily waste CWTs.

The hazardous oily waste CWT model assumed six regional markets in which a few facilities offered centralized waste treatment services. Within each region, markets are assumed to be imperfectly competitive: facilities are aware of their competitors' actions and determine how much waste to accept at a given market price based on their assumptions about how their competitors will respond. Perhaps because of a desire to avoid triggering additional RCRA corrective action requirements by closing a facility, companies managing hazardous oily waste have tended to keep unprofitable CWT facilities in operation for extended periods of time. For this reason, the model does not assume that facilities

becoming unprofitable due to the proposed rule will close; rather, it tallies the number of facilities becoming unprofitable (as well as those becoming more profitable).

Unlike the hazardous waste markets, each of the six regional markets for non-hazardous oily waste CWT services includes from 15 to 70 facilities offering to supply these services. With so many facilities, it is not possible for each facility to keep track of all of its competitors' activities. Neither is it possible for any one facility to have a significant impact on market price. Thus, the analysis assumes that the market for non-hazardous oily waste CWT services is competitive. Rather than making a strategic decision when faced with new market conditions, non-hazardous oils CWTs determine the profit-maximizing quantity of waste to

treat, given a new market price. Unlike the hazardous waste oils CWTs, these facilities do not share the same concerns about RCRA corrective action; they are all estimated to be profitable at baseline and are assumed to close if unprofitable.

D. Revised Economic Impacts for Oils Options 2 and 3

1. Impacts on Non-Hazardous Oily Waste CWT Facilities and Markets

Facilities complying with Option 2 and Option 3 may need to obtain land, install capital equipment, and employ more labor and materials. These compliance activities will increase the cost of treating oily waste and oily wastewater at CWT facilities. The costs incurred by oily waste management facilities are described in Section V. In this section, EPA describes expected

facility responses to the increased costs, and the resulting impacts on the markets for oily waste management services, industry and facility profitability, and employment.

Facilities are assumed to respond to changes in their costs and in the market price for treatment services by selecting the profit-maximizing quantity of waste to treat. All non-hazardous oily waste CWT facilities are assumed to incur compliance costs under both Option 2 and Option 3. Overall, the quantity of waste accepted by each facility declines; market supply falls and market price rises. Facilities become less profitable and some close. Because they are accepting less waste, they need fewer employees, and employment declines. Table VI summarizes the results of this analysis.

TABLE VI.—IMPACTS OF OILS OPTION 2 AND OPTION 3 ON CWTS MANAGING NON-HAZARDOUS OILY WASTE

	Changes from baseline	
	Absolute	Percent
Market Impacts		
Option 2:		
Market Price (\$1995/gallon)	0.03	8.5
Quantity Treated (10 ³ gallons/year)	-20,158	-2.0
Option 3:		
Market Price (\$1995/gallon)	0.12	34.4
Quantity Treated (10 ³ gallons/year)	-71,210	-7.1
Industry Impacts		
Option 2:		
Average Change in Operating Profits (\$10 ³)	-12	-1.0
Facilities Becoming Unprofitable	3	1.2
Change in Employment	-721	-9.6
Option 3:		
Average Change in Operating Profits (\$10 ³)	-166	-14.5
Facilities Becoming Unprofitable	30	12.3
Change in Employment	-2,024	-26.9

Under Option 2, the price charged to generators of oily waste increases substantially, and the quantity of oily waste treated decreases slightly. This relatively large increase in price and moderate decrease in the quantity of waste treated reflect the fact that supply and demand curves for oily waste CWT services are both relatively unresponsive to changes in price. Thus, when the costs of the facilities increase, they are able to pass most of the increased cost along to their customers. While the price charged to the generators for oily waste CWT services is projected to increase significantly, this does not represent a significant burden to the average manufacturer, for whom CWT services is a very small share of total manufacturing costs. Three oily waste CWT facilities, which

are predicted to incur very high compliance costs, are predicted to close as a result of Option 2. Employment is estimated to decline by more than 700 employees. Under Option 3, the impacts are considerably higher. Thirty facilities are projected to close and employment is projected to decline by more than 2,000 employees, from a base of approximately 7,530.

2. Small Business Impacts

As was the case for proposal, the Agency has defined small business according to the Small Business Administration's definition for SIC code 4953 (Refuse Systems). Small businesses owning CWTs are those having less than \$6 million in annual sales. Of the 243 non-hazardous oils facilities, the Agency has determined that 99 are

owned by small businesses. Of the remaining facilities, 90 are owned by businesses that are not small. The Agency has been unable to determine the size of the companies owning the remaining 54 facilities because no company ownership data are available from publicly available financial databases. For this notice, the Agency's analysis of impacts on small businesses is limited to impacts on the 99 facilities known to be owned by small companies.

The impacts of the proposed regulation on small businesses are summarized in Table VII. Total annualized compliance costs for these facilities average \$125,000 per facility under Option 2 and \$567,000 per facility under Option 3. Under Option 2, total annualized compliance costs

represent 9% of baseline facility revenues for the facilities owned by small businesses; under Option 3, they are 39 percent. Profits for small businesses owning oily waste CWT facilities are projected to decline by

2.0% as a result of Option 2 and by 15.4% as a result of Option 3. No facilities owned by small businesses are projected to close as a result of Option 2, but two are projected to close as a result of Option 3. Employment at

facilities owned by small businesses is projected to decline by 6.7 percent under Option 2 and by nearly 23 percent under Option 3.

TABLE VII.—SMALL BUSINESS IMPACTS OF THE PROPOSED REGULATION

	Changes from baseline	
	Absolute	Percent
Option 2:		
Average Change in Operating Profits (\$10 ³)	-20	-2.0
Facility Closures	0	0
Change in Employment	-86	-6.7
TAC as a Share of Baseline Revenue		8.8
Option 3:		
Average Change in Operating Profits (\$10 ³)	-160	-15.4
Facility Closures	2	2.0
Change in Employment	-293	-22.8
TAC as a Share of Baseline Revenue		39.9

E. Cost-Effectiveness of Option 2 and Option 3

EPA's cost-effectiveness analysis compares the costs of complying with the control options to their effectiveness in removing pollutants from surface waters. Cost-effectiveness ratios are expressed as dollars per pound-equivalent removed, where a "pound-equivalent" is a pound of pollutant weighted by its relative toxicity. The estimated pollutant reductions (see Section VI) for indirect dischargers are also adjusted to reflect pollutant removals by the POTW. Total cost-effectiveness is calculated as the ratio of the total annualized costs to the pound

equivalents removed. Cost-effectiveness can also be presented incrementally between options, comparing incremental costs to incremental removals from option to option. To permit comparison with cost-effectiveness results for effluent limitation guidelines and standards for other industries, the total annualized costs of Option 2 and Option 3 were converted to 1981 dollar values.

Table VIII details the results of the revised cost-effectiveness analysis for Option 2 and Option 3. The results reported include costs and removals for the entire oils subcategory and thus include hazardous oily waste CWTs as

well as the non-hazardous oily waste CWTs. Since no new direct dischargers have been identified, the cost-effectiveness results for direct dischargers remain unchanged since proposal. At the time of proposal, EPA's cost effectiveness results for indirect discharging oils facilities were lower than the results presented in Table VIII. Total and incremental cost-effectiveness of Option 2 was \$13.79 per pound-equivalent removed. For option 3, total cost-effectiveness was \$111.37 per pound equivalent removed, and incremental cost-effectiveness was \$6,692.49 per pound equivalent removed.

TABLE VIII.—COST EFFECTIVENESS OF OPTION 2 AND OPTION 3

	Total annualized costs (\$1981/yr)	Removals (lb-eq/yr)	Total cost-effectiveness (\$/lb-eq)	Incremental cost-effectiveness (\$/lb-eq)
Direct Dischargers:				
Option 2	628,218	113,500	5.53	5.53
Option 3	6,143,526	119,256	51.52	958.18
Indirect dischargers:				
Option 2	22,861,383	950,144	24.06	24.06
Option 3	131,454,856	969,858	135.54	5,508.44

VIII. Solicitation of Data and Comments

A. Introduction and General Solicitation

EPA invites and encourages public participation in this rulemaking. The Agency asks that comments address any perceived deficiencies in the record of this notice and that suggested revisions or corrections be supported by data. EPA is requesting that individual facilities in the oils subcategory review the data developed for their facility to ensure that EPA has accurately characterized their operations.

The Agency invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost-effective data submissions. EPA is interested in participating in study plans, data collection and documentation. Please refer to the **FOR FURTHER INFORMATION** section at the beginning of this notice for technical contacts at EPA.

All information that you provide to EPA in your comments may be made public by EPA without further notice to

you if not claimed as Confidential Business Information (CBI). Any information submitted, other than effluent data, may be claimed as CBI, as described in 40 CFR Section 2.203 (b):

(b) Method and time of asserting business confidentiality claim. A business which is submitting information to EPA may assert a business confidentiality claim covering the information at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as 'trade secret,' 'proprietary,' or 'company confidential.' Allegedly

confidential portions of otherwise non-confidential documents should be clearly identified by the business, and may be submitted separately to facilitate identification and handling by EPA. If the business desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state.

Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth in 40 CFR Part 2, Subpart B. In general, submitted information protected by a business confidentiality claim may be disclosed to other employees, officers, or authorized representatives of the United States concerned with carrying out the Clean Water Act and Clean Air Act, or when relevant to any proceeding under these Acts.

B. Specific Data and Comment Solicitations

EPA requests comments and data on the following issues:

1. Estimation of Oils Subcategory Size

Based on data gathered from various sources for today's notice, EPA has revised its estimate of the number of facilities in the oils subcategory. EPA estimates that there are 275 facilities in the oils subcategory. A portion of these facilities may have been considered as part of the Preliminary Data Summary for the Solvent Recycling Industry rather than part of the Preliminary Data Summary for the Hazardous Waste Treatment Industry (EPA 440/1-89/100, September 1989, NTIS #PB90-126517). EPA solicits general comments on this revised estimate as well as specific information on the number, name, and location of facilities within the industry.

2. Waste Receipt Characterization

At the time of proposal, EPA believed that the vast majority of oils facilities treated concentrated, stable oil-water emulsions. As such, EPA's sampling program prior to proposal focused on facilities which accepted these types of wastes. EPA no longer believes that the majority of wastewater receipts are comprised of concentrated (>10% oil) wastestreams. EPA requests information on the type of oily waste (stable, unstable, % water, etc.) accepted for treatment by the oils subcategory as well as constituents found in the incoming wastes and wastewaters.

3. Wastewater Discharge Flow Rates

For this notice, EPA estimated the annual discharge flow rate at each of the newly identified facilities based on publicly available information on total

facility revenue and employment. Additionally, EPA assumed that all of these facilities discharge to Publicly Owned Treatment Works (POTWs) rather than to surface waters. EPA solicits information on the actual annual wastewater discharge flow rate at each of the oils facilities as well as the destination of the wastewater discharge.

4. Wastewater Treatment Technologies

EPA assumed that all of the newly-identified oils facilities have chemical emulsion breaking to treat wastes and wastewaters accepted for treatment. EPA additionally assumed that none of the newly-identified facilities utilize any of the technologies that form the basis for the proposed options. EPA solicits information on these assumptions. Facilities should provide detailed information on the types of treatment technologies employed in both their oil recovery and wastewater treatment operations.

5. Characterization of Wastewater Resulting From Various Treatment Technologies

EPA has proposed chemical emulsion breaking as the baseline wastewater treatment technology for this subcategory. In order to provide a broader picture of the pollutant removal effectiveness, EPA is seeking additional information on the concentrations of pollutants in wastewater resulting from treatment by chemical emulsion breaking and gravity separation. Additionally, as noted previously, EPA will be sampling at some oils subcategory facilities that use dissolved air flotation (DAF) to treat oily wastewaters. EPA is particularly interested in data on the chemical composition of wastewaters resulting from treatment by DAF. To the extent that actual wastewater treatment data is available for DAF, EPA is also soliciting that information.

6. Final Effluent Characterization

EPA has very limited data on the level of constituents currently being discharged in the treated final effluent resulting solely from the treatment of oily wastes and wastewaters at oils facilities. For the proposal and today's notice, EPA has assumed that all facilities have the same constituents and concentrations of constituents in their discharges. EPA requests discharge monitoring data from facilities prior to commingling with other centralized waste treatment wastewater, non-contaminated stormwater, or other sources of wastewater.

7. Fuel Blending

In EPA's 1995 proposal, EPA chose not to propose nationally applicable effluent limitations guidelines and standards for fuel blending operations defined as "the process of mixing organic waste for the purpose of generating fuel for reuse." New information indicates that the majority of the newly identified facilities perform fuel blending operations as part of their waste treatment services. EPA solicits comments on fuel blending operations in general as well as those in conjunction with waste oil recovery and treatment. EPA solicits information on the fuel blending process, wastewater generated as a result of fuel blending operations, and the applicability of the proposed rule to such operations.

8. RCRA Permits

EPA has identified non-hazardous oils facilities which have obtained or applied for RCRA permits. As such, EPA assumed that all of the newly identified facilities had the potential to have a RCRA permit, and EPA included the cost of permit modifications in the capital component of complying with the proposed options. EPA recognizes that use of this assumption will necessarily overstate the costs of treatment for those non-hazardous facilities which do not have a RCRA permit. EPA solicits comment on why non-hazardous facilities would obtain a RCRA permit and the extent of RCRA permits in the non-hazardous portion of this industry.

9. Assumptions for Revised Economic Analysis

EPA used various sources of information to make assumptions used in modeling the baseline conditions for the newly identified oils facilities. EPA made assumptions concerning the relationship between the volume of incoming waste and wastewaters being treated in oil recovery and wastewater treatment, the percent of oil recovered, the relationship between incoming waste receipts and final treated effluent flow rates, the charge to generators for the CWT service, the price of recovered oil, and the market structure. EPA solicits comments on the accuracy of the assumptions used.

Dated: September 9, 1996.

Robert Perciasepe,

Assistant Administrator for Water.

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15 Parts:			
0-299	(869-028-00045-2)	16.00	Jan. 1, 1996
300-799	(869-028-00046-1)	26.00	Jan. 1, 1996
800-End	(869-028-00047-9)	18.00	Jan. 1, 1996
16 Parts:			
0-149	(869-028-00048-7)	6.50	Jan. 1, 1996
150-999	(869-028-00049-5)	19.00	Jan. 1, 1996
1000-End	(869-028-00050-9)	26.00	Jan. 1, 1996
17 Parts:			
1-199	(869-028-00052-5)	21.00	Apr. 1, 1996
200-239	(869-028-00053-3)	25.00	Apr. 1, 1996
240-End	(869-028-00054-1)	31.00	Apr. 1, 1996
18 Parts:			
1-149	(869-028-00055-0)	17.00	Apr. 1, 1996
150-279	(869-028-00056-8)	12.00	Apr. 1, 1996
280-399	(869-028-00057-6)	13.00	Apr. 1, 1996
400-End	(869-028-00058-4)	11.00	Apr. 1, 1996
19 Parts:			
1-140	(869-028-00059-2)	26.00	Apr. 1, 1996
141-199	(869-028-00060-6)	23.00	Apr. 1, 1996
200-End	(869-028-00061-4)	12.00	Apr. 1, 1996
20 Parts:			
1-399	(869-028-00062-2)	20.00	Apr. 1, 1996
400-499	(869-028-00063-1)	35.00	Apr. 1, 1996
500-End	(869-028-00064-9)	32.00	Apr. 1, 1996
21 Parts:			
1-99	(869-028-00065-7)	16.00	Apr. 1, 1996
100-169	(869-028-00066-5)	22.00	Apr. 1, 1996
170-199	(869-028-00067-3)	29.00	Apr. 1, 1996
200-299	(869-028-00068-1)	7.00	Apr. 1, 1996
300-499	(869-028-00069-0)	50.00	Apr. 1, 1996
500-599	(869-028-00070-3)	28.00	Apr. 1, 1996
600-799	(869-028-00071-1)	8.50	Apr. 1, 1996
800-1299	(869-028-00072-0)	30.00	Apr. 1, 1996
1300-End	(869-028-00073-8)	14.00	Apr. 1, 1996
22 Parts:			
1-299	(869-028-00074-6)	36.00	Apr. 1, 1996
300-End	(869-028-00075-4)	24.00	Apr. 1, 1996
23	(869-028-00076-2)	21.00	Apr. 1, 1996
24 Parts:			
0-199	(869-028-00077-1)	30.00	May 1, 1996
200-219	(869-028-00078-9)	14.00	May 1, 1996
220-499	(869-028-00079-7)	13.00	May 1, 1996
500-699	(869-028-00080-1)	14.00	May 1, 1996
700-899	(869-028-00081-9)	13.00	May 1, 1996
900-1699	(869-028-00082-7)	21.00	May 1, 1996
1700-End	(869-028-00083-5)	14.00	May 1, 1996
25	(869-028-00084-3)	32.00	May 1, 1996
26 Parts:			
§§ 1.0-1-1.60	(869-028-00085-1)	21.00	Apr. 1, 1996
§§ 1.61-1.169	(869-028-00086-0)	34.00	Apr. 1, 1996
§§ 1.170-1.300	(869-028-00087-8)	24.00	Apr. 1, 1996
§§ 1.301-1.400	(869-028-00088-6)	17.00	Apr. 1, 1996
§§ 1.401-1.440	(869-028-00089-4)	31.00	Apr. 1, 1996
§§ 1.441-1.500	(869-028-00090-8)	22.00	Apr. 1, 1996
§§ 1.501-1.640	(869-028-00091-6)	21.00	Apr. 1, 1996
§§ 1.641-1.850	(869-028-00092-4)	25.00	Apr. 1, 1996
§§ 1.851-1.907	(869-028-00093-2)	26.00	Apr. 1, 1996
§§ 1.908-1.1000	(869-028-00094-1)	26.00	Apr. 1, 1996
§§ 1.1001-1.1400	(869-028-00095-9)	26.00	Apr. 1, 1996
§§ 1.1401-End	(869-028-00096-7)	35.00	Apr. 1, 1996
2-29	(869-028-00097-5)	28.00	Apr. 1, 1996
30-39	(869-028-00098-3)	20.00	Apr. 1, 1996
40-49	(869-028-00099-1)	13.00	Apr. 1, 1996
50-299	(869-028-00100-9)	14.00	Apr. 1, 1996
300-499	(869-028-00101-7)	25.00	Apr. 1, 1996

Title	Stock Number	Price	Revision Date	Title	Stock Number	Price	Revision Date
500-599	(869-028-00102-5)	6.00	⁴ Apr. 1, 1990	425-699	(869-026-00156-1)	30.00	July 1, 1995
600-End	(869-028-00103-3)	8.00	Apr. 1, 1996	700-789	(869-026-00157-0)	25.00	July 1, 1995
27 Parts:				790-End	(869-026-00158-8)	15.00	July 1, 1995
1-199	(869-028-00104-1)	44.00	Apr. 1, 1996	41 Chapters:			
200-End	(869-028-00105-0)	13.00	Apr. 1, 1996	1, 1-1 to 1-10		13.00	³ July 1, 1984
28 Parts:				1, 1-11 to Appendix, 2 (2 Reserved)		13.00	³ July 1, 1984
1-42	(869-026-00108-1)	27.00	July 1, 1995	3-6		14.00	³ July 1, 1984
43-End	(869-026-00109-0)	22.00	July 1, 1995	7		6.00	³ July 1, 1984
29 Parts:				8		4.50	³ July 1, 1984
0-99	(869-028-00108-4)	26.00	July 1, 1996	9		13.00	³ July 1, 1984
100-499	(869-028-00109-2)	12.00	July 1, 1996	10-17		9.50	³ July 1, 1984
500-899	(869-026-00112-0)	36.00	July 1, 1995	18, Vol. I, Parts 1-5		13.00	³ July 1, 1984
900-1899	(869-026-00113-8)	17.00	July 1, 1995	18, Vol. II, Parts 6-19		13.00	³ July 1, 1984
1900-1910 (§§ 1901.1 to				18, Vol. III, Parts 20-52		13.00	³ July 1, 1984
1910.999)	(869-026-00114-6)	33.00	July 1, 1995	19-100		13.00	³ July 1, 1984
1910 (§§ 1910.1000 to				1-100	(869-026-00159-6)	9.50	July 1, 1995
End)	(869-026-00115-4)	22.00	July 1, 1995	101	(869-026-00160-0)	29.00	July 1, 1995
1911-1925	(869-026-00116-2)	27.00	July 1, 1995	102-200	(869-028-00161-1)	17.00	July 1, 1996
1926	(869-026-00117-1)	35.00	July 1, 1995	201-End	(869-026-00162-6)	13.00	July 1, 1995
1927-End	(869-026-00118-9)	36.00	July 1, 1995	42 Parts:			
30 Parts:				1-399	(869-026-00163-4)	26.00	Oct. 1, 1995
1-199	(869-026-00119-7)	25.00	July 1, 1995	400-429	(869-026-00164-2)	26.00	Oct. 1, 1995
200-699	(869-026-00120-1)	20.00	July 1, 1995	430-End	(869-026-00165-1)	39.00	Oct. 1, 1995
700-End	(869-028-00119-0)	38.00	July 1, 1996	43 Parts:			
31 Parts:				1-999	(869-026-00166-9)	23.00	Oct. 1, 1995
0-199	(869-026-00122-7)	15.00	July 1, 1995	1000-3999	(869-026-00167-7)	31.00	Oct. 1, 1995
200-End	(869-026-00123-5)	25.00	July 1, 1995	4000-End	(869-026-00168-5)	15.00	Oct. 1, 1995
32 Parts:				44	(869-026-00169-3)	24.00	Oct. 1, 1995
1-39, Vol. I		15.00	² July 1, 1984	45 Parts:			
1-39, Vol. II		19.00	² July 1, 1984	1-199	(869-022-00170-7)	22.00	Oct. 1, 1995
1-39, Vol. III		18.00	² July 1, 1984	200-499	(869-026-00171-5)	14.00	Oct. 1, 1995
1-190	(869-026-00124-3)	32.00	July 1, 1995	500-1199	(869-026-00172-3)	23.00	Oct. 1, 1995
191-399	(869-026-00125-1)	38.00	July 1, 1995	1200-End	(869-026-00173-1)	26.00	Oct. 1, 1995
400-629	(869-026-00126-0)	26.00	July 1, 1995	46 Parts:			
630-699	(869-028-00125-4)	14.00	⁵ July 1, 1991	1-40	(869-026-00174-0)	21.00	Oct. 1, 1995
700-799	(869-026-00128-6)	21.00	July 1, 1995	41-69	(869-026-00175-8)	17.00	Oct. 1, 1995
800-End	(869-026-00129-4)	22.00	July 1, 1995	70-89	(869-026-00176-6)	8.50	Oct. 1, 1995
33 Parts:				90-139	(869-026-00177-4)	15.00	Oct. 1, 1995
1-124	(869-026-00130-8)	20.00	July 1, 1995	140-155	(869-026-00178-2)	12.00	Oct. 1, 1995
125-199	(869-026-00131-6)	27.00	July 1, 1995	156-165	(869-026-00179-1)	17.00	Oct. 1, 1995
200-End	(869-026-00132-4)	24.00	July 1, 1995	166-199	(869-026-00180-4)	17.00	Oct. 1, 1995
34 Parts:				200-499	(869-026-00181-2)	19.00	Oct. 1, 1995
1-299	(869-026-00133-2)	25.00	July 1, 1995	500-End	(869-026-00182-1)	13.00	Oct. 1, 1995
300-399	(869-026-00134-1)	21.00	July 1, 1995	47 Parts:			
400-End	(869-026-00135-9)	37.00	July 5, 1995	0-19	(869-026-00183-9)	25.00	Oct. 1, 1995
*35	(869-028-00134-3)	15.00	July 1, 1996	20-39	(869-026-00184-7)	21.00	Oct. 1, 1995
36 Parts				40-69	(869-026-00185-5)	14.00	Oct. 1, 1995
1-199	(869-026-00137-5)	15.00	July 1, 1995	70-79	(869-026-00186-3)	24.00	Oct. 1, 1995
200-End	(869-026-00138-3)	37.00	July 1, 1995	80-End	(869-026-00187-1)	30.00	Oct. 1, 1995
37	(869-026-00139-1)	20.00	July 1, 1995	48 Chapters:			
38 Parts:				1 (Parts 1-51)	(869-026-00188-0)	39.00	Oct. 1, 1995
0-17	(869-026-00140-5)	30.00	July 1, 1995	1 (Parts 52-99)	(869-026-00189-8)	24.00	Oct. 1, 1995
18-End	(869-026-00141-3)	30.00	July 1, 1995	2 (Parts 201-251)	(869-026-00190-1)	17.00	Oct. 1, 1995
39	(869-028-00140-8)	23.00	July 1, 1996	2 (Parts 252-299)	(869-026-00191-0)	13.00	Oct. 1, 1995
40 Parts:				3-6	(869-026-00192-8)	23.00	Oct. 1, 1995
1-51	(869-026-00143-0)	40.00	July 1, 1995	7-14	(869-026-00193-6)	28.00	Oct. 1, 1995
52	(869-026-00144-8)	39.00	July 1, 1995	15-28	(869-026-00194-4)	31.00	Oct. 1, 1995
53-59	(869-026-00145-6)	11.00	July 1, 1995	29-End	(869-026-00195-2)	19.00	Oct. 1, 1995
60	(869-026-00146-4)	36.00	July 1, 1995	49 Parts:			
61-71	(869-026-00147-2)	36.00	July 1, 1995	1-99	(869-026-00196-1)	25.00	Oct. 1, 1995
72-85	(869-026-00148-1)	41.00	July 1, 1995	100-177	(869-026-00197-9)	34.00	Oct. 1, 1995
86	(869-026-00149-9)	40.00	July 1, 1995	178-199	(869-026-00198-7)	22.00	Oct. 1, 1995
87-135	(869-028-00149-1)	5.00	July 1, 1996	200-399	(869-026-00199-5)	30.00	Oct. 1, 1995
87-149	(869-026-00150-2)	41.00	July 1, 1995	400-999	(869-026-00200-2)	40.00	Oct. 1, 1995
150-189	(869-026-00151-1)	25.00	July 1, 1995	1000-1199	(869-026-00201-1)	18.00	Oct. 1, 1995
190-259	(869-026-00152-9)	17.00	July 1, 1995	1200-End	(869-026-00202-9)	15.00	Oct. 1, 1995
260-299	(869-026-00153-7)	40.00	July 1, 1995	50 Parts:			
300-399	(869-026-00154-5)	21.00	July 1, 1995	1-199	(869-026-00203-7)	26.00	Oct. 1, 1995
400-424	(869-028-00155-6)	33.00	July 1, 1996	200-599	(869-026-00204-5)	22.00	Oct. 1, 1995
				600-End	(869-026-00205-3)	27.00	Oct. 1, 1995
				CFR Index and Findings			
				Aids	(869-028-00051-7)	35.00	Jan. 1, 1996

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¹Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

²The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

³The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

⁴No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1996. The CFR volume issued April 1, 1990, should be retained.

⁵No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1996. The CFR volume issued July 1, 1991, should be retained.